

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 01-3128
)
ELIO M. RODRIGUEZ and COAST TO)
COAST REALTY, INC.,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 24, 2001, in Miami, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Juana Carstarphen Watkins, Esquire
Department of Business and
Professional Regulation
400 West Robinson Street
Hurston Building-North Tower, Suite N308
Orlando, Florida 32801

For Respondents: Steven W. Johnson, Esquire
Steven W. Johnson, P.A.
1801 East Colonial Drive, Suite 101
Orlando, Florida 32803

STATEMENT OF THE ISSUES

Whether Respondents, a real estate broker and his corporation, committed the offenses alleged in the Administrative Complaint and the penalties, if any, that should be imposed.

PRELIMINARY STATEMENT

Petitioner filed an Administrative Complaint against Respondents that alleged certain facts pertaining to a transaction involving Lepanto International as owner of a residential building lot and CTC Development Corporation (CTC Development) as the prospective purchaser. Respondent Rodriguez is the sole owner of Respondent Coast to Coast Realty, Inc. (CTC), and of CTC Development. The factual allegations centered on a down payment that was to be placed in CTC's escrow account. Based on those factual allegations, Petitioner charged the following violations:

Counts I and II: Respondent Rodriguez and Respondent CTC, respectively, failed to account and deliver funds in violation of Section 475.25(1)(d)1, Florida Statutes;

Counts III and IV: Respondent Rodriguez and Respondent CTC, respectively, failed to maintain trust funds in violation of Section 475.25(1)(k), Florida Statutes;

Count V: Respondent Rodriguez is guilty of failure to deposit money in escrow when the licensee is the purchaser of

real estate, in violation of Section 475.25(1)(d)2, Florida Statutes; and

Counts VI and VII: Respondent Rodriguez and Respondent CTC, respectively, are guilty of misrepresentation, breach of trust, or violation of duty imposed by law in any business transaction, in violation of Section 475.25(1)(b), Florida Statutes.

Respondents requested a formal administrative hearing, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

Respondent Rodriguez did not appear at the final hearing, which was duly noticed for October 24, 2001, because he had an automobile accident. Respondent's counsel appeared at the final hearing, but he was not aware of the accident until he communicated with Respondent Rodriguez by telephone the day of the hearing. Without objection, Petitioner's witnesses testified and were cross-examined, and Respondent was permitted to testify by late-filed video deposition. The record in this matter closed with the filing of the written transcript of Respondent Rodriguez's deposition on December 14, 2001. The video of the deposition was filed on November 28, 2001.

At the final hearing, Petitioner presented the testimony of John Esposito (an investigator employed by Petitioner); Ricardo Martinez-Cid (an attorney for the owner of the subject

property); and Angel Cabrera (the realtor for the owner of the subject property). Petitioner's pre-marked Exhibits 1, 7, 11, and 12 were offered and admitted into evidence. By Respondent Rodriguez's deposition, Respondents offered five exhibits, pre-marked Respondents' Exhibits A-E. Those five exhibits have been admitted into evidence by separate order.

A Transcript of the proceedings was filed on November 15, 2001. Each party filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a state licensing and regulatory agency charged with the responsibility and duty to prosecute administrative complaints pursuant to the laws of the State of Florida, in particular Section 20.165 and Chapters 120, 455, and 475, Florida Statutes, and the rules promulgated pursuant thereto.

2. At all times material to this proceeding, Respondent Rodriguez has been a licensed real estate broker and the holder of license number BK-0596230.

3. At all times material to this proceeding Respondent Rodriguez has been the sole owner and qualifying broker for Respondent CTC, which is a real estate corporation and the holder of license number CQ-1005507.

4. At all times material to this proceeding, Respondent Rodriguez has been the sole owner of CTC Development. There was no allegation that CTC Development was licensed by Petitioner.

5. At all times material to this proceeding Angel Cabrera was a licensed real estate broker affiliated with Principal Realty, Inc.

6. At all times material to this proceeding, Mr. Cabrera and his company represented Lepanto International, the owner of property located at 251 North Coconut Lane, Miami, Florida (the subject property). The subject property is a vacant oceanfront residential building lot.

7. On December 3, 1999, Respondent Rodriguez presented to Mr. Cabrera an offer to purchase the subject property. The purchaser was to be CTC Development or assigns.¹ The offer was memorialized in a four-page form contract copyrighted by the Florida Association of Realtors and styled "'As Is' Sale and Purchase Contract."²

8. The initial offer submitted by CTC Development contained the material terms discussed below. The purchase price was \$500,000 with a down payment of \$25,000 and the balance of \$475,000 being due at closing. Respondent CTC was identified by the offer as being the escrow agent. The offer reflected that Respondent CTC had received the sum of \$10,000 as part of the down payment, and Respondent Rodriguez, on behalf of

Respondent CTC, acknowledged by his signature receipt of that deposit.³ The remainder of the down payment, in the amount of \$15,000, was to be made on or before December 24, 1999. The initial offer contained a clause that required the seller to hold a second mortgage on the subject property in the amount of \$100,000. The initial offer also contained a provision that Respondent CTC would receive a real estate commission of 3% of the sales price.

9. Respondent Rodriguez faxed to Mr. Cabrera on December 3 or December 4, 1999, a copy of the front of check number 1076 from CTC Development to Respondent CTC in the amount of \$10,000. The check, dated December 3, 1999, reflected that it was a deposit for the purchase of the subject property.

10. Respondent Rodriguez testified that he told Mr. Cabrera that Respondent CTC did not have an escrow account and that his attorney, Anibal Duarte, would serve as escrow agent. Respondent Rodriguez testified that he faxed to Mr. Cabrera a copy of the back of the check, which contained the following:

DO NOT DEPOSIT: EXCHANGE CHECK FOR CASHIERS
CHECK OR MONEY ORDER. ASSIGNED TO ANIBAL J.
DUARTE, ESQ., TRUST ACCOUNT.

11. Mr. Cabrera testified that Respondent made no such representation about the escrow agent and that he was not provided a copy of the back of the check. Respondent

Rodriguez's self-serving testimony conflicts with the clear language of the offer CTC Development made to purchase the subject property and with Mr. Cabrera's testimony. It is clear from the record that the seller's agents believed that Respondent CTC was acting as escrow agent, that Respondent CTC had received the \$10,000 deposit, and that Respondent CTC had placed the deposit in its escrow account.

12. The representation that Respondent CTC would act as the escrow agent was misleading. At no time material to this proceeding did Respondent CTC have an escrow account, and at no time did Respondent Rodriguez intend for Respondent CTC to serve as escrow agent. Identifying Respondent CTC as the escrow agent and representing that it had received the sum of \$10,000 as part of the down payment was also misleading because those representations created the clear inference that the money was being held in an escrow account. At no time material to this proceeding did Respondents deposit, attempt to deposit, or intend to deposit the \$10,000 check from CTC Development to Respondent CTC in an escrow account owned by Respondent CTC.⁴

13. The misrepresentations as to Respondent CTC acting as the escrow agent and as to Respondent CTC having received the \$10,000 deposit were made in an offer, not in an executed contract.

14. After receiving the initial offer from CTC Development, the seller made a counter-offer. In addition to several minor changes, the seller's agent deleted the provision requiring the seller to hold a second mortgage, and he changed the real estate commission for Respondent CTC from 3% to 2%. The changes were made on the same form that CTC Development had submitted. The provision pertaining to the second mortgage was deleted by the use of whiteout. Before the counter-offer was presented to Respondent Rodriguez, the seller's agent initialed each change and Mr. Martinez-Cid reviewed the documents. Thereafter, Mr. Cabrera met with Respondent Rodriguez and presented the counter-offer to him.

15. Mr. Cabrera testified that Respondent Rodriguez agreed to all changes, and that when he left Respondents' office, he believed that the contract had been duly executed. Mr. Cabrera testified that Respondent Rodriguez told him that everything was okay with the contract and that Respondent Rodriguez did not object to the terms of the contract, including the deletion of the provision regarding the second mortgage provision by the use of whiteout or any other term of the contract.

16. Respondent Rodriguez testified that he agreed to the reduced real estate commission, but that he did not agree to the deletion of the provision pertaining to the second mortgage. Respondent Rodriguez initialed the change pertaining to the real

estate commission, but he did not initial the provision pertaining to the second mortgage that had been deleted by the use of whiteout.⁵ Respondent Rodriguez asserted that there was no executed contract.

17. Respondent Rodriguez testified that Mr. Cabrera was given a form styled "Miscellaneous Clauses Addendum" when he visited Respondents' offices on or about December 4, 1999. The Addendum, dated December 4, 1999, named Elio M. Rodriguez/CTC Development Group, Inc., as owner, and Elio M. Rodriguez as broker and supposedly modified CTC Development's initial offer as follows:

1. Page 3 Additional Terms:
Buyer/broker, & disclosure to be signed and executed.
2. That a survey be provided, and a prior [sic] title policy and or abstract for title, prior to closing.
3. That Coast to Coast Realty, Inc. holdes [sic] the check 1076 for \$10,000 and exchange for a cashier [sic] check or money order and assign to Anibal J. Duarte, Esq. Trust Account once all documents are fully executed.
4. That all contracts and addendum be deliveried [sic] in original signers [sic] and that no whiteout be used.
5. That the subject lot must be buildable for the use of a single-family residents [sic] of no less than 3500 square feet.
6. That Coast to Coast Realty, Inc. will receive a 3 per cent total in commission, regardless owner/broker [sic].

18. Mr. Cabrera and Mr. Martinez-Cid testified that they never saw the addendum. The conflict in the evidence is

resolved by finding that the greater weight of the credible evidence established that the addendum was not delivered to the seller's agents.⁶

19. Respondent Rodriguez testified that on December 6, 1999, he faxed the following letter to Mr. Cabrera:

Please be advised that the current contract and check 1076 for \$10,000.00 DOLLARS [sic] is NOLL [sic] & VOID. Since whiteout was used, the contract must be done in its original form with out [sic] whiteout.

Until that time no further negotiations will take place. This is for my protection as well as our [sic] sellers [sic].

20. Mr. Cabrera and Mr. Martinez-Cid testified that they never saw the letter dated December 6, 1999. The conflict in the evidence is resolved by finding that the greater weight of the credible evidence established that the letter was not delivered to the seller's agents.⁷

21. December 24, 1999, was the deadline for the remainder of the down payment, in the amount of \$15,000, to be deposited. That deposit was not made. Mr. Cabrera testified that he talked to Respondent Rodriguez several times about the deposit, and that Respondent Rodriguez assured him that the deposit would be made. Mr. Cabrera testified that Respondent Rodriguez told him that a woman from Respondents' office was sent to the bank to make the deposit in early January 2000, but that the woman

returned without making the deposit because the lines at the bank were too long.

22. On January 10, 2000, Kristine Acosta, an employee of CTC Development, sent Mr. Carera the following letter regarding the subject transaction:

Please be advised that due to Mr. Rodriguez being hospitalized and absent to complete the contract requirements he hereby cancels the above mentioned contract.

Mr. Rodriguez has expressed that as soon as he has recovered he will contact you personally if you are still interested in completing this transaction.

23. On January 14, 2000, Mr. Martinez-Cid faxed to Respondent CTC the following letter regarding the subject transaction:

Under the contract, the second deposit is long overdue. It was required on December 23, 1999. Consequently, unless you advise this office, as attorney for Lepanto International, LC via (305)858-2513, of your receipt of the second deposit, in the amount of \$15,000, by [sic] on or before 5:00 p.m. on Monday, January 17, 2000, demand is hereby made for the tender of the initial \$10,000 deposit, as full liquidated damages.

24. In response to letter dated January 14, 2000, from Mr. Martinez-Cid, Respondent Rodriguez, as president of Respondent CTC asserted the following:

Please be advised that the contract in question was never fully executed by both parties and or [sic] completed and therefore this contract is not enforceable.

25. The conflict as to whether a contract did or did not exist is resolved by finding that Petitioner failed to prove by clear and convincing evidence that there was an executed contract. This finding is based on the fact that the buyer did not initial the provision pertaining to the second mortgage that had been deleted by the use of whiteout.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

27. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

28. Section 475.25(1), Florida Statutes, provides, in pertinent part, as follows:

(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:

29. Counts I and II charge Respondents with violating Section 475.25(1)(d)1, Florida Statutes, which provides as follows:

(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 . . . 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. . . .

30. Respondents are not guilty of the violations alleged in Counts I and II because the contract was never fully executed. Petitioner failed to establish by clear and convincing evidence that Mr. Martinez-Cid, on behalf of Lecanto, was entitled to an accounting of the \$10,000 down payment that should have been placed in Respondent CTC's escrow account. Consequently, no violations of Section 475.25(1)(d)1, Florida Statutes should be found.

31. Counts III and IV charge Respondents with violating Section 475.25(1)(k), Florida Statutes, which provides as follows:

(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. . . .

32. Petitioner proved these alleged violations by clear and convincing evidence. Respondents had a clear duty to promptly deposit the funds it received from CTC Development in an appropriate escrow account, and they failed to do so.

33. Count V charges Respondent Rodriguez with violating Section 475.25(1)(d)2, Florida Statutes, which provides as follows:

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.

34. Respondent Rodriguez is not guilty of this alleged violation because he was not the purchaser. Although Respondent Rodriguez owns CTC Development, Petitioner presented no evidence that would justify ignoring the fact that CTC is a separate and distinct legal entity.

35. Counts VI and VII charge Respondents with violating Section 475.25(1)(b), Florida Statutes, which provides as follows:

(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.

36. Petitioner established that Respondents made misleading statements by representing that Respondent CTC would serve as the escrow agent and by stating that it had received the \$10,000 deposit, which infers that the deposit would be placed in the escrow account of Respondent CTC, which did not exist.

37. Rule 61J2-24.001, Florida Administrative Code, contains the following disciplinary guidelines that should be applied to the violations found above:

(1) Pursuant to s. 455.2273, Florida Statutes, the Commission sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon licensees guilty of violating Chapters 455 or 475, Florida Statutes. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which normally will be imposed for each count during a formal or an informal hearing. For purposes of this rule, the order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial. Pursuant to s. 475.25(1), Florida Statutes, combinations of these penalties are permissible by law. Nothing in this rule shall preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Probable Cause Panel from issuing a letter of guidance.

(2) As provided in s. 475.25(1), Florida Statutes, the Commission may, in addition to other disciplinary penalties, place a licensee on probation. The placement of the licensee on probation shall be for such a period of time and subject to such conditions as the Commission may specify. Standard probationary conditions may include, but are not limited to, requiring the licensee: to attend pre-licensure courses; to satisfactorily complete a pre-licensure course; to attend post-licensure courses; to satisfactorily complete a post-licensure course; to attend continuing education courses; to submit to and successfully complete the state-administered examination; to be subject to periodic inspections and interviews by a DPR

investigator; if a broker, to place the license on a broker-salesperson status; or, if a broker, to file escrow account status reports with the Commission or with a DPR investigator at such intervals as may be prescribed.

(3) The penalties are as listed unless aggravating or mitigating circumstances apply pursuant to paragraph

(4) The verbal identification of offenses is descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

38. Rule 61J2-24.001(3)(c), Florida Administrative Code, provides the guideline for a violation of Section 475.25(1)(b), Florida Statutes. In the case of fraud, misrepresentation, and dishonest dealing, the usual action of the Commission shall be to impose a penalty of revocation. In the case of concealment, false promises, and false pretenses, the usual action of the Commission shall be to impose a penalty of a three to five year suspension and an administrative fine of \$1,000. In the case of culpable negligence and breach of trust, the usual action of the Commission shall be to impose a penalty from a \$1,000 fine to a one year suspension. In the case of violating a duty imposed by law or a listing agreement; aided, assisted or conspired; or formed an intent, design or scheme to engage in such misconduct, the usual action of the Commission shall be to impose a penalty from a \$1,000 fine to a five-year suspension.

39. Rule 61J2-24.001(3)(e), Florida Administrative Code, provides the guideline for a violation of Section 475.25(1)(d), Florida Statutes. The usual action of the Commission shall be to impose a penalty of an administrative fine of \$1,000 to a five-year suspension.

40. Rule 61J2-24.001(3)(i), Florida Administrative Code, provides the guideline for a violation of Section 475.25(1)(k), Florida Statutes: a minimum of a 90 day suspension and \$1,000 fine up to revocation.

41. Rule 61J2-24.001(4)(b), Florida Administrative Code, provides the following may be considered as aggravating or mitigating circumstances in determining the penalties to be imposed for violations such as the ones found herein:

- (4)(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:
 1. The severity of the offense.
 2. The degree of harm to the consumer or public.
 3. The number of counts in the Administrative Complaint.
 4. The number of times the offenses previously have been committed by the licensee.
 5. The disciplinary history of the licensee.
 6. The status of the licensee at the time the offense was committed.
 7. The degree of financial hardship incurred by a licensee as a result of the imposition of a fine or suspension of the license.
 8. Violation of the provision of Chapter 475, Florida Statutes, where in a letter of

guidance as provided in s. 455.225(3), Florida Statutes, previously has been issued to the licensee.

42. The recommended penalties that follow are based on 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 recommendations that follows: Respondents have no disciplinary record and there was no harm to the public resulting from these violations.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner enter a final order finding Respondents not guilty of the violations alleged in Counts I, II, and V of the Administrative Complaint. It is further RECOMMENDED that the final order find the respective Respondents guilty of the violations alleged in Counts III, IV, VI, and VII of the Administrative Complaint. For the violations of Counts III and IV, Respondents' licenses should be suspended for a period of 90 days and each Respondent should be fined the sum of \$1,000. For the violations of Counts VI and VII, Respondents' licenses should be suspended for a period of six months and each Respondent should be fined the sum of \$1,000. It is further RECOMMENDED that the periods of suspension run concurrently.

DONE AND ENTERED this 31st day of January, 2002, in
Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2002.

ENDNOTES

^{1/} There was no evidence that CTC Development ever assigned its interest in the contract to another party.

^{2/} Petitioner introduced the offer, as subsequently modified, as its Exhibit 11 and Respondents introduced it as their Exhibit C. Both Petitioner's Exhibit 11 and Respondents' Exhibit C were of poor quality and very difficult to read, perhaps because the parties had faxed the form to each other after changes were made and then duplicated what had been faxed. The original of the form was not offered into evidence.

^{3/} The initial form reflected that the deposit was subject to the check clearing the bank by December 7, 1999.

^{4/} The misrepresentations were made in an offer to purchase real estate, which is clearly a business transaction within the meaning of Section 475.25(1)(b), Florida Statutes. Whether the offer ever became an executed contract is irrelevant to the issue as to whether the misrepresentations in the offer violated Section 475.25(1)(b), Florida Statutes.

^{5/} In addition, the line on the form providing the effective date of the contract was left blank. This fact is irrelevant to whether the offer ripened into an executed contract because the offer defines the effective date of the contract as being the

date on which the last party signed or initialed acceptance of the final offer or counter-offer. That date can be proven by extrinsic evidence.

^{6/} In making this finding, the undersigned has considered Respondent Rodriguez's testimony that he could not have closed this transaction without the \$100,000 second mortgage. The addendum objects to the use of the whiteout, but it does not object to the deletion of the second mortgage provision. The undersigned has also considered that this addendum was not provided to Petitioner's investigator during the investigation stage of this proceeding.

^{7/} This letter also was not provided to Petitioner's investigator during the investigation stage of this proceeding. Further, the conduct of the seller's agents was inconsistent with their having received such a letter. Moreover, the letter is inconsistent with the letter subsequently written by Kristine Acosta, an employee of CTC Development, which is discussed in Paragraph 22 of this Recommended Order.

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.

¹ There was no evidence that CTC Development ever assigned its interest in the contract to another party.

² Petitioner introduced the offer, as subsequently modified, as its Exhibit 11 and Respondents introduced it as their Exhibit C. Both Petitioner's Exhibit 11 and Respondents' Exhibit C were of poor quality and very difficult to read, perhaps because the parties had faxed the form to each other after changes were made and then duplicated what had been faxed. The original of the form was not offered into evidence.

³ The initial form reflected that the deposit was subject to the check clearing the bank by December 7, 1999.

⁴ The misrepresentations were made in an offer to purchase real estate, which is clearly a business transaction within the meaning of Section 475.25(1)(b), Florida Statutes. Whether the offer ever became an executed contract is irrelevant to the issue as to whether the misrepresentations in the offer violated Section 475.25(1)(b), Florida Statutes.

⁵ In addition, the line on the form providing the effective date of the contract was left blank. This fact is irrelevant to whether the offer ripened into an executed contract because the offer defines the effective date of the contract as being the date on which the last party signed or initialed acceptance of the final offer or counter-offer. That date can be proven by extrinsic evidence.

⁶ In making this finding, the undersigned has considered Respondent Rodriguez's testimony that he could not have closed this transaction without the \$100,000 second mortgage. The addendum objects to the use of the whiteout, but it does not object to the deletion of the second mortgage provision. The undersigned has also considered that this addendum was not provided Petitioner's investigator during the investigation stage of this proceeding.

⁷ This letter also was not provided Petitioner's investigator during the investigation stage of this proceeding. Further, the conduct of the seller's agents was inconsistent with their having received such a letter. Moreover, the letter is inconsistent with the letter subsequently written by Christine Acosta, an employee of CTC Development, which is discussed in Paragraph 22 of this Recommended Order.