

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-4384PL  
 )  
JOSEPH E. STALLS, JR., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the final hearing was held in this case on January 23, 2002, in Vero Beach, Florida, before Larry J. Sartin, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sunia Y. Marsh, Esquire  
Department of Business and  
Professional Regulation  
Division of Real Estate  
Hurston Building, North Tower  
400 West Robinson Street, Suite N308  
Orlando, Florida 32801

For Respondent: Joseph E. Stalls, Jr., pro se  
1165 36th Avenue  
Vero Beach, Florida 32960

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent, Joseph E. Stalls, Jr., committed the violations alleged in an Administrative Complaint issued by the Petitioner, Department of Business and Professional Regulation, Division of Real Estate, on July 19, 2000, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

Petitioner issued an Administrative Complaint on July 19, 2000, against Respondent, alleging in Count I that Respondent "is guilty of having been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime which directly relates to the activities of a licensed real estate salesperson or involves moral turpitude or fraudulent or dishonest dealing in violation of Section 475.25(1)(f), Florida Statutes"; and in County II that Respondent "is guilty of not having informed the Florida Real Estate Commission in writing within thirty (30) days of having pled guilty or having been convicted of a felony and therefore is in violation of Section 475.25(1)(p), Florida Statutes."

In support of Counts I and II, it is alleged in the Administrative Complaint that, on "February 17, 1999, Respondent pled guilty to fraud, relating to Workman's [sic] Compensation pursuant to Section 817.034(4)(A), Florida Statutes"; that

adjudication was withheld; that Respondent was ordered to pay restitution of \$738,566.00; and that Respondent failed to notify the Florida Real Estate Commission of his plea within the statutorily required period.

Respondent timely filed a request for a formal hearing to contest the allegations of the Administrative Complaint. Respondent's request was filed with the Division of Administrative Hearings for assignment of an administrative law judge. The request was designated case number 01-4384PL and was assigned to Administrative Law Judge Susan B. Kirkland; the case was subsequently transferred to the undersigned.

On December 27, 2001, Petitioner filed a Motion for Summary Final Order and Motion for Order Relinquishing Jurisdiction. Petitioner argued that Respondent, when first informed of the Administrative Complaint, filed an Election of Rights form in which he did not dispute the allegations of material fact of the Administrative Complaint. It was not until Petitioner discovered that Respondent had been provided with the incorrect Election of Rights form and a correct form was provided to Respondent that he indicated that he disputed the material facts of the Administrative Complaint. Based upon these allegations, Petitioner argued that there were in fact no disputed issues of fact in this matter.

At best, the allegations of the Motions suggested that Respondent had made two contradictory assertions, with the latest assertion being that he disputed the allegations of fact. Therefore, it was concluded that the Motion for Summary Final Order and Motion for Order Relinquishing Jurisdiction, absent more, should not be granted. Despite this conclusion, efforts were made to hold a motion hearing by telephone prior to the final hearing to ensure that Respondent still disputed the allegations of fact. Those efforts, however, proved unsuccessful.

At the commencement of the final hearing, Respondent was asked to explain why he had made contradictory assertions. Respondent stated that he had indicated he disputed the factual allegations of the Administrative Complaint after the consequences of not doing so were explained to him by an attorney. Respondent also indicated that he continued to dispute the factual allegations of the Administrative Complaint. Therefore, the Motions were denied.

Despite Respondent's assertion that he disputed the allegations of fact, upon further inquiry Respondent admitted all of the factual allegations contained in the Administrative Complaint with explanation. Petitioner was, therefore, informed that, in light of Respondent's admissions, the material allegations would be treated as admitted, but that Respondent

would be given an opportunity to present further explanation. Petitioner requested, however, an opportunity to present its case. The request was granted.

Petitioner presented the testimony of Jonathan Platt, an investigator for Petitioner. Petitioner's Exhibits, numbered 1, 2, and 4, were admitted. Petitioner's Exhibit numbered 3 was withdrawn. Respondent testified on his own behalf and Respondent's Exhibits numbered 1 and 2 were admitted.

The one-volume Transcript of the proceedings was filed with Petitioner, rather than the Division of Administrative Hearings, on February 11, 2002. After inquiry from the undersigned as to why no transcript had been filed, the Transcript was filed the Division of Administrative Hearings on April 3, 2002. By Order entered April 4, 2002, the parties were informed that their proposed recommended orders were to be filed on or before April 15, 2002. Neither party filed any post-hearing pleading.

#### FINDINGS OF FACT

1. Petitioner, the Department of Business and Professional Regulation, Division of Real Estate (hereinafter referred to as the "Department"), is the state agency charged the duty to prosecute administrative complaints pursuant to Section 20.125, and Chapters 120, 455, and 475, Florida Statutes (2000).

2. At the times material to this proceeding, Joseph E. Stalls, Jr., was a licensed Florida real estate salesperson.

Mr. Stalls license number is 0125262. For his last issued license, Mr. Stalls was an active salesperson c/o Jim See Realty, Inc., located at 206 North 6th Avenue, Wauchula, Florida 33873.

3. Prior to 1999, Mr. Stalls was actively engaged in growing, harvesting, and selling citrus. Mr. Stalls engaged in this business through a corporation, Stalls Fruit Co., Inc. (hereinafter referred to as "Stalls Fruit"). Mr. Stalls owned half of the stock of Stalls Fruit and was its president.

4. Stalls Fruit elected coverage for its workers' compensation insurance through the Florida Fruit & Vegetable Association Self-Insurers' Fund (hereinafter referred to as the "Fund").

5. On or about August 21, 1998, an Information was issued in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, charging Mr. Stalls with engaging in a scheme to defraud the Fund "to-wit: workers' compensation coverage from Florida Fruit & Vegetable Association Self-Insurer's Fund pursuant to policy number 840-8844-01, as valued by the diminution in premium payments resulting from said fraud or fraudulent pretenses or representations, with an aggregate value of \$50,000 or more, in violation of Florida Statute 817.034(4)(a)."

6. On or about February 17, 1999, Mr. Stalls pled guilty to the charge of the Information, which constitutes a felony.

7. The court, upon the entry of Mr. Stalls' plea, withheld adjudication, ordered Mr. Stalls to serve one day in the Orange County Jail, with credit for a day already served, placed Mr. Stalls on Community Control for one year, followed by ten years of supervised probation, ordered Mr. Stalls to perform 500 hours of community service within a three-year period, and ordered that he make restitution in the amount of \$738,566.00. The requirement that Mr. Stalls make restitution has placed an extreme financial hardship on him.

8. Mr. Stalls, unaware that he was required to inform the Florida Real Estate Commission of his plea, and based upon his incorrect understanding of the consequences of adjudication being withheld, failed to report these events to the Florida Real Estate Commission.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2000).

10. In the Administrative Complaint, the Department seeks to impose penalties against Mr. Stalls including suspension or revocation of his license and/or the imposition of an

administrative fine. The Department, therefore, has the burden of proving the allegations of the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

11. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), the court defined clear and convincing evidence as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

12. Section 475.25, Florida Statutes (1999), provides that disciplinary action may be taken against a real estate salesperson if it is found that the salesperson has committed certain enumerated offenses. In this matter, it has been alleged that Mr. Stalls committed the offenses described in Section 475.25(1)(f) and (p), Florida Statutes (1999), which are:



(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or salesperson, or involves moral turpitude or fraudulent or dishonest dealing. . . .

. . . .

(p) Has failed to inform the commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

13. Mr. Stalls pled guilty to fraud, a felony. Although the crime to which Mr. Stalls pled guilty, fraud, did not directly relate to his activities as a licensed real estate salesperson, it did involve fraudulent or dishonest dealing.

14. The Department proved by clear and convincing evidence that Mr. Stalls violated Section 475.25(1)(f), Florida Statutes (1999).

15. Mr. Stalls also failed to notify the Florida Real Estate Commission of his plea. The Department, therefore, provided by clear and convincing evidence that Mr. Stalls violated Section 475.25(1)(p), Florida Statutes (1999).

16. A range of disciplinary guidelines for violations of Chapters 455 or 475, Florida Statutes, has been adopted in Rule 62J2-24.001, Florida Administrative Code.

17. For a violation of Section 475.25(1)(f), Florida Statutes, the suggested penalty ranges from a seven-year

suspension to revocation, and an administrative fine of \$1,000.00. Rule 62J2-24.001(1)(g), Florida Administrative Code.

18. For a violation of Section 475.25(1)(p), Florida Statutes, the suggested penalty ranges from a five-year suspension to revocation. Rule 62J2-24.001(1)(q), Florida Administrative Code.

19. Rule 62J2-24.001(4), Florida Administrative Code, provides for a consideration of aggravating or mitigating circumstance demonstrated by clear and convincing evidence by the petitioner or respondent in a proceeding before the Division of Administrative Hearings. If demonstrated, the guidelines of the rule may be deviated from. Advance notice of intent to present evidence of aggravating or mitigating circumstances is required to be given no less than seven days before the formal hearing.

20. The aggravating or mitigating circumstances that may be considered 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.

21. Neither party gave notice of intent to present evidence of aggravating or mitigating circumstances in this case. Nor did the Mr. Stalls prove by clear and convincing evidence any mitigating circumstance other than the fact that the imposition of an administrative fine on Mr. Stalls would be a serve financial hardship on him due to the requirement that he make restitution of \$738,566.00.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the a final order be entered finding that Joseph E. Stalls, Jr., violated Section 475.25(1)(f) and (p), Florida Statutes (1999), and that his salesperson license be revoked.

DONE AND ENTERED this 20th day of May, 2002, in  
Tallahassee, Leon County, Florida.

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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of May, 2002.

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.