

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

Final Order No. BPR-2005-05521 Date: 10-3-05
FILED

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE,

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

By Brendan M. Nichol

Petitioner,

vs.

AP

CASE NO. 200081014
DOAH NO. 02-3677PL

Shirley K. Bemenderfer,

LJS
Closed

Respondent.

FINAL ORDER

On March 19, 2003, pursuant to Sections 120.569 and 120.57(1) of the Florida Statutes, the Florida Real Estate Commission ("Commission") heard this case to issue a Final Order.

Administrative Law Judge Larry Sartin of the Division of Administrative Hearings ("ALJ") presided over a formal hearing on November 14, 2002. On January 29, 2003, a Recommended Order ("RO") was issued by the ALJ. A copy of which is attached hereto as Exhibit A and made a part hereof.

Petitioner filed Exceptions to the RO, which is attached here to as Exhibit B and made a part hereof.

After completely reviewing the record and being otherwise fully advised, the Commission accepts Petitioner's exception number one and rejects paragraph 46 of the RO and finds that it is reasonable or more reasonable to conclude that Petitioner proved by clear and convincing evidence that Respondent is guilty of culpable negligence or breach of trust in violation of 475.25 (1)(b) Florida Statutes, as alleged in count I of the Administrative Complaint.

The Commission finds after completely reviewing the record and being otherwise fully advised the Commission accepts Petitioner's exceptions two through six and rejects the ALJ's conclusion of law in paragraph 41-45.

The Commission further finds after completely reviewing the record and being otherwise fully advised the Commission accepts Petitioners exception seven through ten and rejects ALJ's finding of fact in paragraph 16 of RO in that the Commission finds there is no substantial evidence to support the ALJ's finding of fact in paragraph 16 of the RO.

The Commission further finds after completely reviewing the record and being otherwise fully advised the Commission accepts Petitioner's exception eleven and twelve and rejects the ALJ's conclusions of law in paragraphs 49 and 50, and finds that Petitioner has proven by clear and convincing evidence that Respondent is guilty of failure to maintain trust funds in escrow violation of section 475.25 (1)(k), Florida Statutes.

The Commission further finds after completely reviewing of the record and being otherwise fully advised the commission accepts Petitioner's exception thirteen, and rejects the ALJ's recommended penalty.

The Commission finds that Respondent violated section 475.25 (1)(b), 475.25 (1)(d) 1, 475.25 (1)(k), 475.25 (1)(e) and 475.25 (1)(o), Florida Statutes and is therefore guilty of Counts I through V of the Administrative Complaint.

Therefore, based upon a complete review of the record and Exceptions to the RO, the Commission **ORDERS** that Respondent's real estate broker license be suspended for a period of ninety (90) days. At the conclusion of the suspension, the Respondent shall contact the Records Section of the Division of Real Estate at 400 W. Robinson Street, Suite 801N, Orlando, Florida 32801-1757 to secure the proper forms for reinstatement of the suspended license.

The Commission further **ORDERS** Respondent be placed on probation for a period of two years, subject to the following terms and conditions:

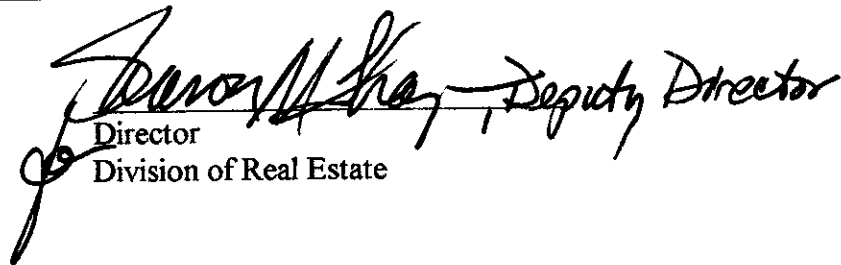
1. The licensee shall notify the Division of Real Estate of any changes in employment.
2. The licensee shall not violate any provisions of Chapter 475, Florida Statutes, or Rules adopted by the Commission.
3. The licensee shall not be found guilty or convicted of any crime in any jurisdiction.
4. The licensee shall satisfactorily complete an escrow management course and provide proof of completion to the Division of Real Estate.
5. The licensee shall not maintain a real estate escrow account.

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 of the 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 801N, 400 West Robinson Street, Orlando, Florida 32801-1757. 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 ____ day of September, 2005, 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: Shirley K. Bemenderfer, 1402 Delaware Avenue, Ft. Pierce, Florida 34950 and 1801 Okeechobee Road, Ft. Pierce, Florida 34950; the Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and a copy provided to James P. Harwood, Senior Attorney, Department of Business and Professional Regulation, 400 West Robinson Street, Suite 801N, Orlando, FL 32801-1757, this 3rd day of ~~September~~ ^{October}, 2005.
(bm)

Brandon M. Nichol