

11-21-03

Final Order No. BPR-2004-04815 Date: 10-29-04
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

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

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

AP

Petitioner,

vs.

CASE NO. 200182517; 200181554
DOAH NO. 03-1721

PHM-CAS

MALLORY KAUDERER AND
NEW RIVIERA REALTY, INC.,

Respondents.

FINAL ORDER

On March 16, 2004, pursuant to Sections 120.569 and 120.57(1) of the Florida Statutes, the Florida Real Estate Commission heard this case to issue a Final Order.

Administrative Law Judge Patricia Hart Malono of the Division of Administrative Hearings presided over a formal hearing on September 12, 2003. On November 21, 2003, a Recommended Order was issued, which is adopted by the Florida Real Estate Commission as to all Findings of Fact, Conclusions of Law and Recommendations except as provided further herein. A copy of which is attached hereto as Exhibit A and made a part hereof.

Petitioner filed Exceptions to the Recommended Order, which is attached hereto as Exhibit B and made a part hereof. At the Hearing on March 16, 2004, Petitioner and Respondents stipulated that the Exceptions to the Conclusions of Law in Petitioner's Exception to the Final Order were well taken and that Respondents would not appeal the entry of a Final Order fining Respondent Kauderer \$500.00 and requiring him to complete an escrow management course and reprimanding Respondent

New Riveria Realty, Inc., for the violation of Rule 61J2-14.012(2) and F.S. 473.25(1)(e) (Count VII). Accordingly a Conclusion of Law that New Riveria Realty, Inc., violated Rule 61J2-14.012(2) and F.S. 473.25(1)(e) is added to paragraph 54 of the Conclusions of Law in the Recommended Order and paragraphs 56, 57, 58 and 59 of the Conclusions of Law in the Recommended Order are stricken.

After completely reviewing the record and being otherwise fully advised, the Commission accepted the Petitioner's Exceptions as noted above.

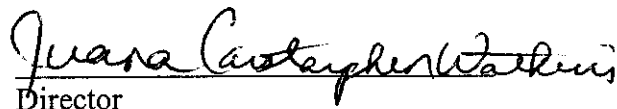
The Commission finds that Respondents Mallory Kauderer and New Riveria Realty, Inc. violated Section 475.25(1)(e), Florida Statutes, and Rule 61J2-14.012(2), Florida Administrative Code and therefore, are guilty of failing to prepare the required written monthly escrow statement-reconciliations.

Therefore, based upon a complete review of the record, Exceptions to the Recommended Order and Response to the Exceptions, the Commission **ORDERS** that Respondent Kauderer pay an administrative fine of \$500 and satisfactorily complete four hours of escrow management education within six months. Respondent New Riveria Realty, Inc., is reprimanded.

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 16th day of March, 2004, 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: Arnaldo Velez, Esquire, 35 Almeria Avenue, Coral Gables, Florida 33134; the Division of

Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and a copy provided to Alpheus C. Parsons, Senior Attorney, Department of Business and Professional Regulation, 400 West Robinson Street, Suite 801N, Orlando, FL 32801-1757, this 29th day of October 2004.

Brandon M. Nichol