

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT MELLER, JR. AND )  
KRISTINE M. MELLER, )  
 )  
 Petitioners, )  
 )  
 vs. ) Case No. 05-3275  
 )  
 REVONDA CROSS AND DEPARTMENT OF )  
 BUSINESS AND PROFESSIONAL )  
 REGULATION, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on November 23, 2005, in Orlando, Florida.

APPEARANCES

For Petitioners: Robert L. Meller, Jr., Esquire, pro se  
Best & Flanagan, LLP  
225 South 6th Street, Suite 4000  
Minneapolis, Minnesota 55402-4690

For Respondents: Joseph A. Solla, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street, Suite 801N  
Orlando, Florida 32801-1757

Revonda Stewart Cross, pro se  
1102 South East 39th Terrace, No. 104  
Cape Coral, Florida 33904

STATEMENT OF THE ISSUE

Whether Petitioners' rental property was licensed under Chapter 509, Florida Statutes (2003).

PRELIMINARY STATEMENT

In October 2003, a Recovery Fund Claim Final Order was entered in Case No. 2002012997, Robert Meller, Jr., and Kristine M. Meller, Claimant, v. Revonda Cross, Licensee. In that Final Order, the Florida Real Estate Commission (FREC) denied claimants' claim based on a determination that the licensee managed claimants' property as a transient rental property licensed under Chapter 509, Florida Statutes (2003), thereby specifically exempting the property from protection afforded the public under Part 1, Chapter 475, Florida Statutes.

Claimants, Petitioners herein, appealed FREC's decision to the District Court of Appeal, Fifth District, which, in May 2005, ruled that Petitioners were entitled to a Subsection 120.57(1), Florida Statutes (2005), hearing. After a particular discussion of the facts of the case, Justice Sawaya, speaking for the panel, indicated: "[W]hether the property was licensed under Chapter 509 is a critical issue because it determines whether the Mellers can recover."

Petitioners made a timely request for administrative hearing by letter to FREC dated July 7, 2005. On September 6, 2005, FREC forwarded the case to the Division of Administrative

Hearings on September 6, 2005. On September 12, 2005, an Initial Order was sent to all parties. At Petitioners' request, the case was scheduled for November 23, 2005, in Orlando, Florida.

The case was presented as scheduled on November 23, 2005. Petitioners presented themselves as witnesses and offered 11 exhibits, which were received into evidence and marked as Petitioners' Exhibits 1 through 11. Respondent, Department of Business and Professional Regulation (Respondent DBPR), presented Respondent, Revonda Cross (Respondent Cross), as its witness and offered four exhibits which were received into evidence and marked as Respondent's Exhibits 1 through 4. Respondent Cross testified on her own behalf. At the close of her testimony, leave was granted for Respondent Cross to produce computer printouts that were provided to the Division of Hotels and Restaurants which listed transient rental properties maintained by Properties in Paradise, Inc. On December 5, 2005, Respondent Cross filed documents consisting of 24 pages of computer printout which has been marked as Respondent Cross' Exhibit 1, which is included in this record as these records have been considered by the undersigned Administrative Law Judge.

The Transcript of Proceedings was filed on December 20, 2005. Petitioners and Respondent DBPR filed Proposed

Recommended Orders, which have been considered by the undersigned in preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of fact are made:

1. Petitioners, Robert Meller, Jr., and Kristine M. Meller, were owners of a rental property (a house located at 4516 Bowan Bayou) in Sanibel, Florida. In addition, they owned a condominium in the same area.

2. Respondent Cross held a valid real estate license at all times material to matters at issue. Respondent Cross had a business relationship with Petitioners, which antedated the purchase of the Bowen Bayou house as a result of being the leasing agent for a condominium association with which Petitioners were associated.

3. Respondent DBPR is the State of Florida agency which represents the FREC in matters such as this matter.

4. In January 2000, Petitioners purchased the house in Sanibel located at 4516 Bowan Bayou.

5. On or about January 20, 2000, Respondent Cross mailed a Rental Property Management Agreement to Petitioners for the property located at 4516 Bowan Bayou, Sanibel, Florida. The parties to this contract were Petitioners and Properties in

Paradise, Inc. Petitioner, Robert Meller, Jr., signed the contract and returned the contract to Respondent Cross.

6. Petitioners maintain that the Rental Property Management Agreement was not signed by Petitioner, Robert Meller, Jr., and that his name is forged. He maintains that he entered into an oral agreement with Respondent Cross, individually, to manage the property.

7. From the purchase of the house in January 2000 through April 2001, Petitioners received correspondence, including a monthly "owner statement" reflecting short-term rental income, commissions, and debits for maintenance, from Properties in Paradise, Inc., regarding all aspects of the business relationship contemplated by the Rental Property Management Agreement.

8. By letter dated January 20, 2000, Petitioner, Robert Meller, Jr., authorized "Revonda Cross of Properties in Paradise as my agent in establishing telephone and electrical service and so forth for my property on Sanibel Island at 4516 Bowen's [sic] Bayou Road." Thereafter, Petitioners received correspondence from Respondent Cross relative to the subject property wherein she is identified as "Operations Manager, Properties in Paradise, Inc."

9. During the relevant time period, Petitioners' property was rented at least 22 times; once for 17 days, four times for

14 days, once for nine days, thirteen times for seven days, and once for five days. The frequency and term of these rentals qualify for the statutory definition of a "resort dwelling" and transient rental dwelling.

10. Properties in Paradise, Inc., listed the property located at 4516 Bowan Bayou in the list of properties it provided the Division of Hotels and Restaurants as licensed in accordance with Chapter 509, Florida Statutes (2005).

11. In April 2001, Properties in Paradise, Inc., through an attorney, notified clients that it had effectively ceased doing business. At that time, Petitioners were owed \$11,588.06, which went unpaid.

12. Petitioners made a claim in July 2001, against Respondent Cross to recover their loss from the Florida Real Estate Recovery Fund. In October 2003, Petitioners' claim was denied by the Florida Real Estate Recovery Fund.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2005).

14. Petitioners have the burden of proof in these proceedings. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

15. Petitioners have failed to demonstrate that the Rental Property Management Agreement dated January 20, 2000, was not signed by Petitioner, Robert Meller, Jr. The greater weight of the evidence compels the conclusion that the Rental Property Management Agreement controlled the related activities of the parties and was generally followed by both parties until Properties in Paradise, Inc., defaulted in late April 2001.

16. Petitioners' claim to recover their losses is exempt from the Florida Real Estate Recovery Fund. The statutes governing the requirement for eligibility to make a claim require that the activity giving rise to the claim must be part of a brokerage transaction. §§ 475.482(1) and 475.483(1), Florida Statutes (2003). The activity of Respondent Cross and Properties in Paradise, Inc., arose from Petitioners' contract to manage the transient rental property.

17. Subsection 475.482(1), Florida Statutes (2003), reads as follows:

Real Estate Recovery Fund.--There is created the Florida Real Estate Recovery Fund as a separate account in the Professional Regulation Trust Fund.

(1) The Florida Real Estate Recovery Fund shall be disbursed as provided in s. 475.484, on order of the commission, as reimbursement to any person, partnership, or corporation adjudged by a court of competent civil jurisdiction in this state to have suffered monetary damages by reason of any act committed, as a part of any real estate

brokerage transaction involving real property in this state, by any broker or sales associate who:

\* \* \*

(c) Was acting solely in the capacity of a real estate licensee in the transaction;

18. Subsection 475.483(1)(a), Florida Statutes (2003), reads as follows:

Conditions for recovery; eligibility.--

(1) Any person is eligible to seek recovery from the Real Estate Recovery Fund if:

(a) Such person has received a final judgment in a court of competent civil jurisdiction in this state against an individual broker or sales associate in any action wherein the cause of action was based on a real estate brokerage transaction.

19. Subsection 475.011, Florida Statutes (2003), reads as follows:

Exemptions. This part [Part 1 which includes Section 476.482, Florida Statutes (2003)] does not apply to:

\* \* \*

(11) Any person, partnership, corporation, or other legal entity which, for another and for compensation or other valuable consideration, rents or advertises for rent, for transient occupancy, any public lodging establishment licensed under chapter 509.

20. In accordance with its responsibilities as set forth in the Rental Property Management Agreement dated January 20,



2000, as demonstrated by the evidence, Properties in Paradise, Inc., licensed Petitioners' rental property as a transient rental property in accordance with Subsection 509.242(1)(g), Florida Statutes (2003), which reads as follows:

Public lodging establishments;  
classifications.--

(1) A public lodging establishment shall be classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or resort dwelling if the establishment satisfies the following criteria:

\* \* \*

(g) Resort dwelling.--A resort dwelling is any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Respondent, Department of Business and Professional Regulation, enter a final order denying Petitioners' claim for recovery from the Florida Real Estate Recovery Fund.

DONE AND ENTERED this 21st day of February, 2006, in  
Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of February, 2006.

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.