

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF REAL ESTATE,)
)
Petitioner,)
)
vs.) Case No. 07-2325PL
)
MATHEW JOHNSON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings, conducted a formal hearing in the above-styled case via video-teleconference on August 2, 2007, at locations in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: Patrick J. Cunningham, Esquire
Department of Business and
Professional Regulation
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Orlando, Florida 32801

For Respondent: Chad Alvaro, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent committed the offenses set forth in the two-count Administrative Complaint, dated April 17, 2007, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On April 17, 2007, Petitioner issued a two-count Administrative Complaint against Respondent, Mathew Johnson, a licensed Florida real estate sales associate. Count I alleges that Respondent is 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 violation of Subsection 475.25(1)(b), Florida Statutes(2006).¹ Count II alleges that Respondent is guilty of having operated as a broker while licensed as a sales associate, in violation of Subsection 475.42(1)(b), Florida Statutes.

On May 18, 2007, Respondent submitted a Petition for Formal Hearing denying the allegations and requesting a formal hearing. On May 24, 2007, this matter was forwarded to the Division of Administrative Hearings ("DOAH") for assignment of an Administrative Law Judge and conduct of a formal administrative hearing.

At the hearing, Petitioner offered the testimony of Denise Johnson, the investigation specialist who conducted the

investigation of the original complaint that led to the charges against Respondent; and of Tab L. Bish, Respondent's former employing broker and the original complainant in this case. Petitioner's Exhibits 1 through 6 were admitted into evidence.

Respondent testified on his own behalf and presented the testimony of Jacqueline Sanderson, his current employing broker; and of Corina Johnson, Respondent's wife. Respondent's Exhibits 1 through 6 were admitted into evidence.

The parties agreed at the hearing that proposed recommended orders would be filed within 21 days of the filing of the final hearing. Respondent filed a Proposed Recommended Order on August 22, 2007, then timely filed an Amended Proposed Recommended Order on August 23, 2007. Petitioner timely filed its Proposed Recommended Order on August 23, 2007. A Transcript of the hearing was filed at DOAH on August 24, 2007.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following findings of fact are made:

1. The Department of Business and Professional Regulation, Division of Real Estate (the "Department"), is the state agency charged with enforcing the statutory provisions pertaining to persons holding real estate broker and sales associate's

licenses in Florida, pursuant to Section 20.165 and Chapters 455 and 475, Florida Statutes.

2. At all times relevant to this proceeding, except where specifically noted, Respondent Mathew Johnson was a licensed Florida real estate sales associate, having been issued license number SL3149081.

3. Respondent first obtained his real estate associate's license in 2003 and worked under the license of broker Jacqueline Sanderson in Orlando. When he married and his wife became pregnant, Respondent believed that he needed a more steady income than his commission-based employment with Ms. Sanderson provided. Respondent left Ms. Sanderson's employ on good terms and commenced work as the marketing manager for the downtown YMCA in Orlando.

4. While working at the downtown YMCA, Respondent met a member of the YMCA named Tab L. Bish ("Mr. Bish"), a broker who owns First Source, Inc., an Orlando real estate sales company (sometimes referred to as "FSI Realty"). Respondent became friendly with Mr. Bish, and expressed an interest in getting back into the real estate business. Mr. Bish offered Respondent a job at First Source.

5. Respondent had allowed his sales associate's license to lapse while he was working at the YMCA. Respondent informed Mr. Bish of that fact, and told Mr. Bish that he required a

salaried position in order to support his young family.

Respondent testified that Mr. Bish was happy to hire him as an office manager, because Mr. Bish wanted Respondent to perform a marketing role for First Source similar to that he had performed for the YMCA. Respondent started working at First Source in May 2005, as a salaried office manager.

6. Mr. Bish agreed that he initially hired Respondent as an office manager, but only on the understanding that Respondent would take the necessary steps to reactivate his sales associate's license and commence selling property as soon as possible. Respondent took the licensing course again. Mr. Bish believed that Respondent was taking too long to obtain his license, and cast about for something Respondent could do during the interim.

7. In order to make profitable use of Respondent's time, Mr. Bish began to deal in referral fees from apartment complexes. Certain complexes in the Orlando area would pay a fee to brokers who referred potential renters to the apartments, provided these potential renters actually signed leases. Among the apartment complexes offering referral fees was the Jefferson at Maitland, which in 2005 offered a referral fee of half the first month's rent.

8. Mr. Bish placed Respondent in charge of connecting potential renters with apartment complexes, showing the

apartments, following up to determine whether the potential renters signed leases, and submitting invoices for the referral fees. Mr. Bish did not authorize Respondent to collect the payments. Respondent initiated contact with the Jefferson at Maitland and began sending potential renters there. Respondent would submit invoices to the Jefferson at Maitland, payable to First Source, for each referral that resulted in a lease agreement. Respondent estimated that he submitted between 12 and 15 invoices for referral fees to the Jefferson at Maitland during his employment with First Source.

9. Respondent obtained his license and became an active sales associate under Mr. Bish's broker's license on November 16, 2005. Mr. Bish began a process of weaning Respondent away from his salaried position and into working on a full commission basis. Respondent stopped showing apartments under the referral arrangement and began showing properties for sale. The last lease for which First Source was due a referral fee from the Jefferson at Maitland was dated December 5, 2005.

10. In early February 2006, it occurred to Respondent that he had failed to follow up with the Jefferson at Maitland regarding the last group of potential renters to whom he had shown apartments during October and November 2005. Respondent claimed that he "hadn't had the opportunity" to follow up because of the press of his new duties as a sales associate and

the intervening holiday season. However, nothing cited by Respondent explained his failure to make a simple phone call to the Jefferson at Maitland to learn whether First Source was owed any referral fees.

11. Respondent finally made the call to the Jefferson at Maitland on February 9, 2006. He spoke to a woman he identified as Jenny Marrero, an employee whom he knew from prior dealings. Ms. Marrero reviewed Respondent's list and found three persons who had signed leases after Respondent showed them apartments: Mike Tebbutt, who signed a one-year lease on October 26, 2005, for which First Source was owed a referral fee of \$532.50; Terry Ford, who signed an eight-month lease on November 14, 2005, for which First Source was owed a referral fee of \$492.50; and Juan Sepulveda, who signed an eight-month lease on December 2, 2005, for which First Source was owed a referral fee of \$415.00.

12. However, there was a problem caused by Respondent's failure to submit invoices for these referral fees in a timely manner. Respondent testified that Ms. Marrero told him that the Jefferson at Maitland had reduced its referral fee from 50 percent to 20 percent of the first month's rent, effective January 2006.² Ms. Marrero could not promise that these late invoices would be paid according to the 2005 fee structure. According to Respondent, Ms. Marrero suggested that the Jefferson at Maitland's corporate office would be more likely to

pay the full amount owed if Respondent did something to "break up" the invoices, making it appear that they were being submitted by different entities. She also suggested that no invoice for a single payee exceed \$1,000, because the corporate office would know that amount exceeded any possible fee under the 2006 fee structure. Ms. Marrero made no assurances that her suggestions would yield the entire amount owed for the 2005 invoices, but Respondent figured the worst that could happen would be a reduction in the billings from 50 percent to 20 percent of the first month's rent.

13. On February 9, 2006, Respondent sent a package to the Jefferson at Maitland, via facsimile transmission. Included in the package were three separate invoices for the referral fees owed on behalf of Messrs. Tebbutt, Ford, and Sepulveda. The invoices for Messrs. Tebbutt and Sepulveda stated that they were from "Matt Johnson, FSI Realty," to the Jefferson at Maitland, and set forth the name of the lessee, the lease term, the amount of the "referral placement fee," and stated that the checks should be made payable to "FSI Realty, 1600 North Orange Avenue, Suite 6, Orlando, Florida 32804."

14. The invoice for Mr. Ford stated that it was from "Matt Johnson" to the Jefferson at Maitland. It, too, set forth the name of the lessee, the lease term, and the amount of the referral fee. However, this invoice stated that the check

should be made payable to "Matt Johnson, 5421 Halifax Drive, Orlando, Florida 32812." The Halifax Drive location is Respondent's home address.

15. The package sent by Respondent also included an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, for Mr. Bish and for Respondent, a copy of Respondent's real estate sales associate license, a copy of Mr. Bish's real estate broker's license, and a copy of First Source, Inc.'s real estate corporation registration.

16. Approximately one month later, in early March 2006, Mr. Bish answered the phone at his office. The caller identifying herself as "Amber" from the Jefferson at Maitland and asked for Respondent, who was on vacation. Mr. Bish asked if he could help. Amber told Mr. Bish that the W-9 form submitted for Respondent had been incorrectly filled out, and that she could not send Respondent a check without the proper information.

17. Mr. Bish told Amber that under no circumstances should she send a check payable to Respondent. He instructed her to make the payment to First Source. Amber said nothing to Mr. Bish about a need to break up the payments or to make sure that a single remittance did not exceed \$1,000.

18. Mr. Bish asked Amber to send him copies of the documents that Respondent had submitted to the Jefferson at Maitland. Before those documents arrived, Mr. Bish received a phone call from Respondent, who explained that he submitted the invoice in his own name to ensure that Mr. Bish received the full amount owed by the Jefferson at Maitland.

19. On March 10, 2006, after reviewing the documents he received from the Jefferson at Maitland, Mr. Bish fired Respondent. On March 29, 2006, Mr. Bish filed the complaint that commenced the Department's investigation of this matter.³

20. At the hearing, Mr. Bish explained that, even if Respondent's story about the need to "break up" the invoices and keep the total below \$1,000 were true, the problem could have been easily resolved. Had Mr. Bish known of the situation, he would have instructed the Jefferson at Maitland to make one check payable to him personally as the broker, and a second check payable to First Source, Inc.

21. In any event, there was in fact no problem. By a single check, dated March 15, 2008, First Source received payment from the Jefferson at Maitland in the amount of \$1,440, the full sum of the three outstanding invoices from 2005.

22. Respondent testified that he never intended to keep the money from the invoice, and that he would never have submitted it in his own name if not for the conversation with

Ms. Marrero. Respondent asserted that if he had received a check, he would have signed it over to Mr. Bish.

23. Respondent and his wife each testified that the family had no great need of \$492.50 at the time the invoices were submitted. Respondent's wife is an attorney and was working full time in February 2006, and Respondent was still receiving a salary from First Source. In his capacity as office manager, Respondent had access to the company credit card to purchase supplies. Mr. Bish conducted an internal audit that revealed no suspicious charges.

24. Respondent failed to explain why he did not immediately tell Mr. Bish about the potential fee collection problem as soon as he learned about it from Ms. Marrero, why he instructed the Jefferson at Maitland to send the check to his home address rather than his work address, or why he allowed a month to pass before telling Mr. Bish about the invoices. He denied knowing that Mr. Bish had already learned about the situation from the Jefferson at Maitland's employee.

25. The Department failed to demonstrate that Respondent intended to keep the \$492.50 from the invoice made payable to Respondent personally. The facts of the case could lead to the ultimate finding that Respondent was engaged in a scheme to defraud First Source of its referral fee. However, the same facts also may be explained by Respondent's fear that Mr. Bish

would learn of his neglect in sending the invoices, and that this neglect could result in a severe reduction of First Source's referral fees. Respondent may have decided to keep quiet about the matter in the hope that the Jefferson at Maitland would ultimately pay the invoices in full, at which time Respondent would explain himself to Mr. Bish with an "all's well that ends well" sigh of relief. Given the testimony at the hearing concerning Respondent's character and reputation for honesty, given that Respondent contemporaneously told the same story to his wife and to Ms. Sanderson that he told to this tribunal, and given that this incident appears anomalous in Respondent's professional dealings, the latter explanation is at least as plausible as the former.

26. Respondent conceded that, as a sales associate, he was not authorized by law to direct the Jefferson at Maitland to make the referral fee check payable to him without the express written authorization of his broker, Mr. Bish. Respondent also conceded that Mr. Bish did not give him written authorization to accept the referral fee payment in his own name.

27. Respondent has not been subject to prior discipline.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of

the parties thereto, pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

29. In its Administrative Complaint, the Department seeks to impose penalties against Respondent that include suspension or revocation of Respondent's license and/or the imposition of an administrative fine. Therefore, the Department has the burden of proving by clear and convincing evidence that Respondent committed the violations alleged in the Administrative Complaint. See 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). Clear and convincing evidence is the proper standard in license revocation proceedings, because they are penal in nature and implicate significant property rights. See Osborne Stern, 670 So. 2d at 935.

30. 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 of 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).

31. Judge Sharp, in her dissenting opinion in Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998)(Sharp, J., dissenting), reviewed recent pronouncements on clear and convincing evidence:

Clear and convincing evidence requires more proof than preponderance of evidence, but less than beyond a reasonable doubt. In re Inquiry Concerning a Judge re Graziano, 696 So. 2d 744 (Fla. 1997). It is an intermediate level of proof that entails both qualitative and quantitative [sic] elements. In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), cert. denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L.Ed.2d 672 (1996). The sum total of evidence must be sufficient to convince the trier of fact without any hesitancy. Id. It must produce in the mind of the fact finder a firm belief or conviction as to the truth of the allegations sought to be established. Inquiry Concerning Davey, 645 So. 2d 398, 404 (Fla. 1994).

32. In Count I of the Administrative Complaint, Respondent is charged with having violated Subsection 475.25(1)(b), Florida Statutes, which provides:

(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 \$5,000 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:

* * *

(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.

33. There must be wrongful intent or scienter on the part of the licensee for there to be a violation of Subsection 475.25(1)(b), Florida Statutes. See Munch v. Department of Professional Regulation, 592 So. 2d 1136, 1143-44 (Fla. 1st DCA

1992); and Morris v. Department of Professional Regulation, 474 So. 2d 841, 843 (Fla. 5th DCA 1985).

34. The Morris case may be usefully applied to the facts of the instant case. In Morris, a broker had been accused of violating Subsection 475.25(1)(b) for passing a check on an account with insufficient funds for a deposit on a purchase of land. The hearing officer found that the broker made an unconditional commitment to make a \$37,000 deposit on a large tract of land for his own purposes, wrote a check for the \$37,000 deposit on Saturday, then decided to back out of the deal and stopped payment on the check. The hearing officer found the fact that there were insufficient funds in the account at the time the check was written was immaterial, because the check was tendered on a Saturday. Had he intended to follow through on the transaction, the broker could have transferred sufficient funds into the account on Monday morning to allow the check to clear. The hearing officer concluded that the broker might be civilly liable for renegeing on the deal, but that there was no evidence the broker entered the transaction with any dishonest or illicit intent. 474 So. 2d at 843.

35. The agency's final order rejected the hearing officer's conclusion and held that the broker's issuance of a check on an account with insufficient funds constituted a violation of Subsection 475.25(1)(b) as a matter of law. On

appeal, the court rejected the agency's conclusion under the following analysis: "Passing a worthless check may be probative of a finding of fraudulent intent . . . , [b]ut it clearly is not determinative of fraud, as a matter of law. The finding of absence of fraudulent intent in this case is a finding of fact." Id. (citations omitted)

36. In the instant case, Respondent's submitting the invoice made payable to himself was probative of a finding of fraudulent intent, but it was not determinative of Respondent's intent to defraud First Source. The element of wrongful intent was not established in this case. The Department has failed to prove by clear and convincing evidence that Respondent violated Subsection 475.25(1)(b), Florida Statutes.⁴

37. In Count II of the Administrative Complaint, Respondent is charged with having violated Subsection 475.42(1)(b), Florida Statutes, which provides:

A person licensed as a sales associate may not operate as a broker or operate as a sales associate for any person not registered as her or his employer.

38. Subsection 475.01(1)(a) provides the definition of "broker," which states, in relevant part:

"Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor,

appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists.

39. A person may not operate as a broker without being the holder of a current and active broker's license. Subsection 475.42(1)(a), Florida Statutes. Respondent did not have a broker's license at the time he committed the alleged violation of submitting a referral fee invoice to the Jefferson at Maitland that directed the apartment complex to pay the fee directly to Respondent.

40. At the time of the alleged violation, Respondent was licensed as a sales associate, defined as "a person who performs any act specified in the definition of 'broker,' but who performs such act under the direction, control, or management of another person." Subsection 475.01(1)(j), Florida Statutes. As a sales associate, Respondent acted under the "direction, control, or management" of his employer and qualifying broker, Mr. Bish.

41. The Department proved by clear and convincing evidence that Respondent violated Subsection 475.42(1)(b), Florida Statutes. The evidence established that Respondent "operate[d] as a broker" by seeking direct compensation for referring a renter to the Jefferson at Maitland, and that he did so outside the "direction, control, or management" of Mr. Bish.⁵

42. Florida Administrative Code Rule 61J2-24.001 sets forth disciplinary guidelines providing a range of penalties that the Florida Real Estate Commission ("Commission") can impose on licensees who are guilty of having violated Chapter 475, Florida Statutes. Florida Administrative Code Rule 61J2-24.001(3)(x) sets forth the range of penalties specified for a violation of Subsection 475.42(1)(b), Florida Statutes (2003), as follows:

The usual action of the Commission shall be to impose a penalty of a 3 year suspension to revocation.

43. Florida Administrative Code Rule 61J2-24.001(3) provides that the Commission may consider aggravating or mitigating circumstances in imposing a penalty. Florida Administrative Code Rule 61J2-24.001(4) provides, in relevant part:

(b) Aggravating or mitigating circumstances may include, but are not limited to, the following:

1. The degree of harm to the consumer or public.
2. The number of counts in the Administrative Complaint.
3. The disciplinary history of the licensee.
4. The status of the licensee at the time the offense was committed.
5. The degree of financial hardship incurred by a licensee as a result of the imposition of a fine or suspension of the license.
6. Violation of the provision of Chapter 475, F.S., wherein a letter of guidance as provided in Section 455.225(3), F.S., previously has been issued to the licensee.

44. While there is no question that Respondent's violation constituted a serious lapse in judgment, there are several mitigating factors in this case. No harm came to any consumer or member of the public. It was not established that Respondent intended to convert the funds to his own use. The

Administrative Complaint had two counts, both related to a single incident. Respondent has not been subject to prior discipline. While no direct evidence was presented as to the financial hardship Respondent would incur as a result of a suspension, the evidence did establish that Respondent has a wife and two young children, and from this it is not unreasonable to presume that the loss of Respondent's income would be a hardship for the family.

45. It is concluded that revocation of Respondent's license would be draconian under all the circumstances of the case. A suspension of Respondent's license for a period of one year is sufficient in light of all the circumstances.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Real Estate Commission enter a final order:

1. Dismissing Count I of the Administrative Complaint against Respondent; and
2. Suspending Respondent's sales associate's license for a period of one year for the violation established in Count II of the Administrative Complaint.

DONE AND ENTERED this 21st day of September, 2007, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of September, 2007.

ENDNOTES

^{1/} All references are to the 2006 edition of the Florida Statutes, unless otherwise noted.

^{2/} Neither Ms. Marrero nor another Jefferson at Maitland employee identified only as "Amber" testified at the hearing in this matter. Mr. Bish testified that he had spoken to Amber on the telephone, but that he had never heard of Ms. Marrero.

^{3/} At the hearing, Respondent introduced evidence intended to show that Mr. Bish filed the complaint in retaliation for Respondent's refusal to settle an unrelated dispute regarding listings that Respondent had secured prior to his dismissal from First Source. Mr. Bish's motive in filing the complaint is irrelevant to the complaint's merits. Further, Mr. Bish was a thoroughly credible witness.

^{4/} The Department's case clearly was based on allegations sounding in fraud or misrepresentation, not "culpable negligence." In Munch, 592 So. 2d at 1143-1144, the court made the following observations about the first clause of Subsection 475.25(1)(b), Florida Statutes, which contains the term "culpable negligence":

It is clear that Subsection 475.25(1)(b) is penal in nature. As such, it must be construed strictly, in favor of the one against whom the penalty would be imposed Reading the first clause of Section 475.25(1)(b) . . . and applying to the words used their usual and natural meaning, it is apparent that it is contemplated that an intentional act be proved before a violation may be found. See Rivard v. McCoy, 212 So. 2d 672 (Fla. 1st DCA), cert. denied, 219 So. 2d 703 (Fla. 1968). [Emphasis in the original].

Culpable negligence was not proven in this case.

^{5/} Respondent argues that he did not violate Subsection 475.42(1)(b), because he never held himself out to the public as a broker. Respondent contends that his act of sending his sales associate's license to the Jefferson at Maitland along with the invoice demonstrates that he was not acting as a broker. This argument is an effort to shift the responsibility for ascertaining the legal significance of Respondent's licensure status over to the management of the apartment complex, and is rejected.

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.