

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

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

Petitioner,

vs.

**NESTOR MENDOZA and,
DIAMONDS REALTY of MIAMI BEACH, INC.,**

Respondents.

**CASE NO. : 09-1514PL
DBPR CASE NOS.: 2007027590
2008002439**

FILED
2009 DEC -8 P 2:20
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came before the **FLORIDA REAL ESTATE COMMISSION** ("Commission") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 20, 2009, in Orlando, Orange County, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order in the above-styled cause. A copy of said Recommended Order is attached hereto and incorporated herein as Exhibit "A."

The Petitioner was represented by Patrick Cunningham, Esquire, Senior Attorney for the Division of Real Estate, Orlando, Orange County, Florida. The Respondents were not present and were not represented by counsel. The Commission was represented by Tom Barnhart of Tallahassee, Leon County, Florida. After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order, the hearing

transcript, the Notice of Intent To Present Aggravating Evidence and Petitioner's Exceptions to the Recommended Order, and the arguments of each party, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Administrative Law Judge's findings of fact as set forth in the Exhibit "A" are approved, adopted and incorporated herein by reference.

2. There is competent, substantial evidence to support the Administrative Law Judge's findings of fact as adopted by the Commission.

CONCLUSIONS OF LAW

3. The Board has jurisdiction of this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, Chapter 475, Part I, Florida Statutes, and Chapter 61J2 of the Florida Administrative Code.

4. The Administrative Law Judge's conclusions of law as set forth in Exhibit "A" are approved, adopted and incorporated herein by reference.

5. The Administrative Law Judge's recommendation as to the appropriate penalty is a \$2,000.00 penalty and a 5 year suspension. For the reasons set forth in the Petitioner's Notice of Intent to Present Aggravating Evidence (which is adopted and incorporated herein by reference) and Petitioner's Exceptions, and after a review of the complete record, the Commission rejects the Administrative Law Judge's recommended penalty and concludes that REVOCATION of Respondents' license is appropriate under the circumstances of the instant case. See Section 120.57(1)(l), Fla. Stat. (2008)(providing that "[t]he agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a

review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action.”).

DISPOSITION

6. Upon a complete review of the record, the Commission rejects the Administrative Law Judge’s recommended penalty.

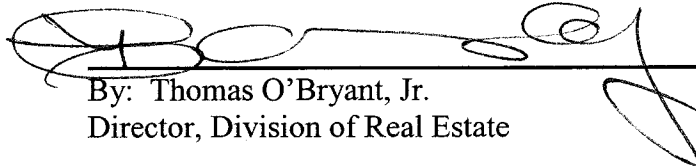
WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that:

1. Respondents are in violation of Counts 1 through 4 of the Administrative Complaint;
2. Respondents’ licenses are **REVOKED** for the reasons stated in the Petitioner’s Notice of Intent To Produce Aggravating Evidence and Petitioner’s Exceptions to the Recommended Order and the penalty guidelines of Rule 61J2-24.001(4), F.A.C.

This Order is effective when filed with the Clerk of the Department of Business and Professional Regulation.

DONE and **ORDERED** this 23 day of November, 2009.

FLORIDA REAL ESTATE COMMISSION


By: Thomas O’Bryant, Jr.
Director, Division of Real Estate

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Department of Business and Professional Regulation and a second copy, accompanied by filing fees prescribed by law, with the district court of appeal in the appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Nestor Mendoza, Diamonds Realty of Miami Beach, Inc., 12501 S.E. 26th Street, Miami, Florida 33175; June C. McKinney, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Patrick Cunningham, Esquire, 400 W. Robinson Street, Suite 801, North Tower, Orlando, Florida 32801-1757; and to Tom Barnhart, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this _____ day of _____, 2009.

Brandon M. Nichols

12-4-2009

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