

FILED
Department of Business and Professional Regulation
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Date 4/5/2010
File # 2010-02435

**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.

GREGORY JOHN OWEN,

Respondent.

**CASE NO. : 09-2995PL
DBPR CASE NOS.: 2008014092**

FILED
2010 APR -6 A 11:15
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 January 19, 2010, 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 Jennifer Blakeman, Esquire, Senior Attorney for the Division of Real Estate, Orlando, Orange County, Florida. The Respondent was present and was 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 Petitioner's Exceptions to the Recommended Order and the Respondent's Response to the

Exceptions, 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 Commission 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. Respondent's Motion to Strike Petitioner's Exceptions is DENIED.

5. Except for paragraph 25 of the Recommended Order, the Administrative Law Judge's conclusions of law as set forth in Exhibit "A" are approved, adopted and incorporated herein by reference. Except for paragraph 25, there is competent, substantial evidence to support the conclusions of law in the Recommended Order.

6. Paragraph 25 is rejected because of the reasons set forth in Petitioner's Exception I to the Recommended Order, which is adopted and incorporated herein by reference. Because the Administrative Law Judge's conclusion in Paragraph 25 is contrary to the clear requirements of Section 475.25(1)(k), F.S., the Commission finds that its interpretation of this statute under the facts of this case is more reasonable than the ALJ's. See Section 120.57(1)(l), Fla. Stat. (2008)(providing that "[t]he agency in its final order may reject or modify the conclusions of law

over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.”)

EXCEPTIONS

8. Petitioner’s Exception I was considered and GRANTED.
9. Petitioner’s Exceptions II, III and IV were considered and DENIED.

DISPOSITION

10. Upon a complete review of the record, the Commission finds that Respondent violated Section 475.25(1)(k), F.S. as set forth in Count III of the Administrative Complaint.

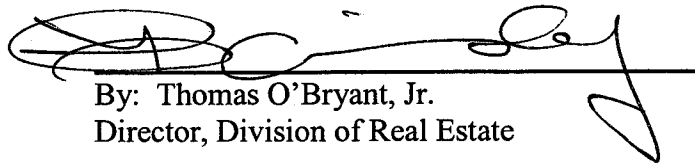
WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that:

1. Respondent is in violation of Count III of the Administrative Complaint;
2. Respondent’s license is **SUSPENDED** for six (6) months beginning 30 days from the filing date of this Final Order.
3. Respondent shall pay an administrative fine of \$1,000.00 and \$845.63 in costs within twelve (12) months of the filing date of this Final Order;
4. Respondent is placed on probation for twelve (12) months from the filing date of this Final Order. Respondent shall attend two (2) 2-day FREC meetings during this time.

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

DONE and ORDERED this 10 day of March, 2010.

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 Daniel Villazon, Esquire, 1420 Celebration Boulevard, Suite 200, Celebration, Florida 34747; Jeff B. Clark, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060;

Jennifer Blakeman, Esquire, 400 W. Robinson Street, Suite 801, North Tower, Orlando, Florida 32801-1757; and to Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this 5th day of April, 2010.

Brandon M. Nichols

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PS Form 3800, August 2006	
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