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File #	2010-09685

**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.

**CASE NO. : 10-0389PL
DBPR CASE NO.: 2007038214**

HERIBERTO ALONSO,

Respondent.

FINAL ORDER

THIS CAUSE came before the FLORIDA REAL ESTATE COMMISSION ("Commission") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on July 20, 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, Assistant General Counsel for the Division of Real Estate, Orlando, Orange County, Florida. The Respondent was not present and was 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 parties' Proposed Recommended Orders, and Petitioner's Exceptions, 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. Except for paragraphs 27 and 28 and the recommended penalty 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.

5. Paragraph 27 is rejected because the Commission disagrees with the Administrative Law Judge's conclusion of law that considering the possibility that fraud was involved was not proper. The fraudulent nature of the transaction may be considered as an aggravating circumstance under the 'catch-all' provision of Rule 61J2-24.001(4)(b). Furthermore, Mr. Alonso was put on notice by the Administrative Complaint that fraud was involved in this transaction. The Commission's conclusion that considering the possibility of fraud is proper is more reasonable than the conclusion of law made by the Administrative Law Judge. See Section 120.57(1)(1), 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.”)

6. Paragraph 28 is rejected because an upward movement for the penalty is appropriate, and aggravating circumstances are present for an upward movement or departure from the guidelines.

7. The Administrative Law Judge’s recommendation as to the “adequate” penalty is set forth in paragraph 28 of the Recommended Order. For the reasons set forth in the Petitioner’s Exceptions (which are adopted and incorporated herein by reference) and after a review of the complete record, the Commission rejects the Administrative Law Judge’s recommended penalty and concludes that an the appropriate penalty for fraud in this case is payment of a \$1,000 fine, payment of \$1,551.00 in costs and revocation of Respondent’s license. In the original Recommended Order, Respondent was found guilty of concealment under Florida Statutes 475.25(1)(b), which carries a guideline sentence of a three to five year suspension and a fine of \$1,000.00. Therefore, a penalty of revocation is an upward departure based on the existence of aggravating factors, as outlined in Petitioner’s Exceptions. See Section 120.57(1)(1), 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.”).

EXCEPTIONS

8. Petitioner's Exception One was considered and GRANTED.
9. Petitioner's Exception Two was considered and GRANTED.
10. Petitioner's Exception Three was considered and GRANTED.

DISPOSITION

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

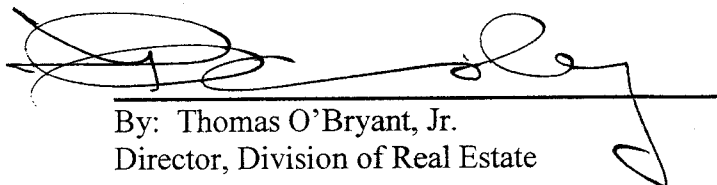
WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that:

1. Respondent is in violation of Count 1 of the Administrative Complaint;
2. Respondent's license is REVOKED for the reasons stated in the Petitioner's Exceptions to the Recommended Order and the penalty guidelines of Rule 61J2-24.001(1)(c), F.A.C.
3. Respondent shall pay an administrative fine of \$1,000.00 and costs of \$1,551.00 within six (6) months of the date of this Final Order.

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

DONE and **ORDERED** this 65 day of October, 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 Heriberto Alonso, 11336 Southwest 75th Terrace, Miami, Florida 33173; Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to Jennifer Blakeman, Esquire, 400 W. Robinson Street, Suite 801, North Tower, Orlando, Florida 32801-1757; and by interoffice mail to Tom Barnhart, Special Counsel, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this 13th day of October, 2010.



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