

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-2690  
 )  
LINDA JOHANNA IVERSON AND )  
SANCTUM STAY CORP., )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 13, 2010, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Patrick J. Cunningham, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street  
Hurston Building-North Tower Suite N801  
Orlando, Florida 32801

For Respondents: No appearance

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in the Administrative Complaint dated December 22, 2009, and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In a six-count Administrative Complaint dated December 22, 2009, the Department of Business and Professional Regulation, Division of Real Estate ("Division"), charged Linda Johanna Iverson and Sanctum Stay Corporation with having failed to "account or deliver funds," in violation of Section 475.25(1)(d)1., Florida Statutes (2009),<sup>1</sup> (Counts One and Four); having "obstructed or hindered in any manner the enforcement of Chapter 475, Florida Statutes, or the performance of any lawful duty by any person acting under the authority of Chapter 475," in violation of Section 475.42(1)(i), Florida Statutes, and, "therefore, in violation of Section 475.25(1)(e) [,] Florida Statutes," (Counts Two and Five); and with having failed "to preserve and make available to the Petitioner all books records, and supporting documents" and having failed "to keep accurate account of all trust fund transactions," in violation of Florida Administrative Code Rule 61J2-14.012(1) and Section 475.5051, Florida Statutes, and "therefore, in violation of Section 475.25(1)(e), Florida Statutes" (Counts Three and Six). These statutory violations

were predicated on the factual allegations in the Administrative Complaint that Ms. Iverson failed to return to a tenant a deposit of \$1,000.00 and failed to provide business records to the Petitioner's representative.

Ms. Iverson timely requested an administrative hearing, and the Division transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. At the final hearing, the Division presented the testimony of Krystal Cordo, an investigator employed by the Division, and Sharon Hendee, the complainant, who testified by telephone. Petitioner's Exhibits 1 through 8 were offered and received in evidence. Ms. Iverson did not make an appearance at the final hearing, either in person or through representation.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on August 3, 2010, and the Division timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

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

1. The Division is the government licensing and regulatory agency with the responsibility and duty to investigate and

prosecute persons holding licenses and registrations as real estate brokers and real estate broker corporations. See § 475.021, Fla. Stat. The Florida Real Estate Commission ("Commission") has the authority to impose discipline on persons licensed pursuant to Chapter 475, Part I, Florida Statutes. See § 475.25, Fla. Stat.

2. At the times material to this proceeding, Ms. Iverson was a real estate broker licensed in Florida, having been issued license numbered 3184122. Sanctum Stay Corporation was a corporation registered as a real estate broker in Florida, having been issued license numbered 1032989.

3. Ms. Iverson operated as the qualifying broker and an officer of Sanctum Stay Corporation, which was also known at the time material to this proceeding as Equilect Capital, Inc. ("Equilect Capital").

4. In or about October 2008, Ms. Iverson, in her capacity as a real estate broker, reached a verbal agreement with Sharon Hendee whereby Ms. Iverson agreed to rent to Ms. Hendee a house at 2880 Northeast 9th Street, Pompano, Florida, from January 24, 2009, through February 7, 2009.

5. Pursuant to the agreement, Ms. Hendee was to pay a \$1,000.00 refundable deposit on the house, and she wrote a check dated October 24, 2008, to Equilect Capital in the amount of \$1,471.81. On January 24, 2009, Ms. Hendee's bank records

reflect a transaction in the amount of \$3,246.09, payable to Equilect Capital, which was the final payment for the rental of the house at 2880 Northeast 9th Street, Pompano, Florida.

6. In an electronic mail dated January 8, 2009, Ms. Iverson confirmed that she had received payment for the rental commencing January 24, 2009.

7. Ms. Hendee and/or her relatives occupied the rental house during the agreed-upon period of time in January and February 2009.

8. Ms. Hendee did not receive a refund of her \$1,000.00 deposit from Ms. Iverson, and, in or about April 2009, she filed a complaint with the division.

9. In an electronic mail exchange between Ms. Iverson and Ms. Hendee that took place on May 14, 2009, Ms. Iverson stated that she had set up a list of people she needed to pay, and she included the list in the electronic mail. Ms. Hendee's name was on the list, followed by the notation "\$1,000.00 stay 24 Jan - 7 Feb 2009."<sup>2</sup> Ms. Iverson asked Ms. Hendee for her address as part of the electronic mail exchange on May 14, 2009, explaining that she needed Ms. Hendee's mailing address so she could send Ms. Hendee a check. Ms. Hendee provided Ms. Iverson with her address by electronic mail on May 14, 2009. As of the final hearing, Ms. Hendee had not received a refund of her \$1,000.00 deposit.

10. As part of the Division's investigation of Ms. Hendee's complaint, Krystal Cordo, the Division's investigator, met with Ms. Iverson and her husband on September 4, 2009, at the offices of the Sanctum Stay Corporation. At the meeting, Ms. Iverson told Ms. Cordo that she had opened an escrow account for one month to handle "this specific transaction" but that the account was closed at the time of the September 4, 2009, meeting. Ms. Iverson also told Ms. Cordo that she "did not have copies of her bank/reconciliation statements or a copy of the transaction file."<sup>3</sup> Ms. Cordo asked Ms. Iverson to provide her with a statement showing that the account was closed.

11. During the meeting on September 4, 2009, Ms. Iverson signed a Division form entitled "Office Inspection & Escrow/Trust Account Audit Form," on which Ms. Cordo noted: "Broker will make available her bank statements/reconciliation for when she did hold escrow no later than 9-11-09."<sup>4</sup>

12. Ms. Cordo made a follow-up visit to the offices of Sanctum Stay Corporation on September 11, 2009, to obtain the requested documents. Ms. Iverson's husband was present and advised Ms. Cordo that Ms. Iverson was not in the office.

13. Ms. Iverson had not, at the time of the final hearing, provided the requested bank statements or reconciliations to Ms. Cordo, despite telephone calls Ms. Cordo made to

Ms. Iverson, which Ms. Iverson did not return, and electronic mail messages sent to Ms. Cordo by Ms. Iverson.

14. Neither Ms. Iverson nor Sanctum Stay Corporation has previously been the subject of a disciplinary action by the Florida Real Estate Commission.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2010).

16. In its Administrative Complaint, the Division seeks to impose penalties against Ms. Iverson and Sanctum Stay Corporation that include suspension or revocation of Ms. Iverson's and Sanctum Stay Corporation's licenses and/or the imposition of an administrative fine. Therefore, the Division has the burden of proving by clear and convincing evidence that Ms. Iverson and Sanctum Stay Corporation 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); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. 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. 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).

18. 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 several 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 trier of



fact a firm belief or conviction as to the truth of the allegations sought to be established. Inquiry Concerning Davie, 645 So. 2d 398, 404 (Fla. 1994).

19. In the Administrative Complaint, the Division charged Ms. Iverson and Sanctum Stay Corporation in Counts One and Four, respectively, with having violated Section 475.25(1)(d)1., Florida Statutes; in Counts Two and Five, respectively, with having violated Section 475.42(1)(i), Florida Statutes, and, therefore, Section 475.25(e), Florida Statutes; and, in Counts Three and Six, respectively, with having violated Florida Administrative Code Rule 61J2-14.012 and Section 475.5015, Florida Statutes, and, therefore, Section 475.25(e), Florida Statutes.

20. Section 475.25, Florida Statutes, provides in pertinent part:

(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:

\* \* \*

(d)1. Has failed to account or deliver to any person, including a licensee under this

chapter, at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, . . . .

\* \* \*

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

21. Section 475.42, Florida Statutes, provides in pertinent part:

(1) VIOLATIONS.--

\* \* \*

(i) A person may not obstruct or hinder in any manner the enforcement of this chapter or the performance of any lawful duty by any person acting under the authority of this chapter or interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

Violations of Section 475.42(1), Florida Statutes, are identified in Section 475.42(2), Florida Statutes, as second-degree misdemeanors.

22. Section 475.5015, Florida Statutes, provides in pertinent part:

Each broker shall keep and make available to the department such books, accounts, and

records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter. Each broker shall preserve at least one legible copy of all books, accounts, and records pertaining to her or his real estate brokerage business for at least 5 years from the date of receipt of any money, fund, deposit, check, or draft entrusted to the broker or, in the event no funds are entrusted to the broker, for at least 5 years from the date of execution by any party of any listing agreement, offer to purchase, rental property management agreement, rental or lease agreement, or any other written or verbal agreement which engages the services of the broker. . . .

Florida Administrative Code Rule 61J2-14.012, provides in pertinent part:

(1) A broker who receives a deposit as previously defined shall preserve and make available to the BPR, or its authorized representative, all deposit slips and statements of account rendered by the depository in which said deposit is placed, together with all agreements between the parties to the transaction. In addition, the broker shall keep an accurate account of each deposit transaction and each separate bank account wherein such funds have been deposited. All such books and accounts shall be subject to inspection by the DBPR or its authorized representatives at all reasonable times during regular business hours.

23. As to Counts One and Four, based on the findings of fact herein, the Division has met its burden of proving by clear and convincing evidence that Ms. Iverson and Sanctum Stay Corporation violated Section 475.25(1)(d)1., Florida Statutes,

because Ms. Iverson failed to return to Ms. Hendee the \$1,000.00 refundable deposit Ms. Hendee paid to Ms. Iverson to secure the rental of the property located at 2880 Northeast 9th Street, Pompano, Florida.

24. As to Counts Three and Six, based on the findings of fact herein, the Department has met its burden of proving by clear and convincing evidence that Ms. Iverson and Sanctum Stay Corporation violated Section 475.5051, Florida Statutes,<sup>5</sup> because Ms. Iverson and Sanctum Stay Corporation did not provide to the Division documents related to the monies paid by Ms. Hendee or to the escrow account Ms. Iverson opened for the purpose of handling the rental transaction. A violation of Section 475.5051, Florida Statutes, also constitutes a violation of the "catch all" provision of Section 475.25(1)(e), Florida Statutes.

25. As to Counts Two and Five, based on the findings of fact herein, the Division failed to prove by clear and convincing evidence that Ms. Iverson and Sanctum Stay Corporation "obstruct[ed] or hinder[ed]" Ms. Cordo's investigation, and it, therefore, failed to prove that Ms. Iverson and Sanctum Stay Corporation violated Section 475.42(1)(i), Florida Statutes. The evidence established only that Ms. Iverson failed to provide to the Division documents related to the deposit received from

Ms. Hendee and the records of the escrow account maintained by Ms. Iverson. The Division cited no cases in support of its contention that the failure of a real estate broker to provide documents to the Division, without more, constitutes a violation of Section 475.42(1)(i), Florida Statutes.<sup>6</sup> Indeed, the entirety of the description of the violation encompassed by Section 475.42(1)(i), Florida Statutes, as well as the fact that a violation of any provision of Section 475.42(1), Florida Statutes, is a second-degree misdemeanor, makes it clear that something more than the failure to provide documents to the Division is required for a violation of Section 475.42(1)(i), Florida Statutes.

26. Florida Administrative Code Rule 61J2-24.001(3) sets forth the penalty guidelines established by the Commission "from which disciplinary penalties will be imposed upon licensees guilty of violating Chapter 455 or 475, F.S." The penalties for the violations proven by the Division in this case are as follows:<sup>7</sup>

a. Pursuant to Florida Administrative Code Rule 61J2-24.001(3)(e), Florida Statutes, a violation of Section 475.25(1)(d)1., Florida Statutes, carries a penalty of an administrative fine ranging from \$250 to \$1,000 and suspension to revocation.

b. Pursuant to Florida Administrative Code Rule 61J2-24.001(3)(f), Florida Statutes, a violation of Section 475.25(1)(e), Florida Statutes, carries a penalty of an administrative fine ranging from \$250 to \$1,000 and suspension to revocation.

c. Pursuant to Florida Administrative Code Rule 61J2-24.001(3)(mm), Florida Statutes, a violation of Section 475.5015, Florida Statutes, carries a penalty of an administrative fine ranging from \$250 to \$1,000 and suspension to revocation.

27. The penalties recommended herein fall within the ranges set forth in the penalty guidelines:

a. Count One: A penalty of \$1,000.00 for violation of Section 475.25(1)(d)1., Florida Statutes, by Ms. Iverson.

b. Count Three: A penalty of \$1,000.00 for violation of Section 475.5051, Florida Statutes, by Ms. Iverson.

c. Count Four: A penalty of \$1,000.00 for violation of Section 475.25(1)(d)1., Florida Statutes, by Sanctum Stay Corporation.

d. Count Six: A penalty of \$1,000.00 for violation of Section 475.5051, Florida Statutes, by Sanctum Stay Corporation.

e. Suspension of the licenses of Ms. Iverson and Sanctum Stay Corporation for a period of five years.

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 imposing on Linda Johanna Iverson and Sanctum Stay Corporation an administrative fine in the amount of \$4,000.00 and suspending the brokerage licenses of Linda Johanna Iverson and Sanctum Stay Corporation for a period of five years.

DONE AND ENTERED this 27th day of September, 2010, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of September, 2010.

ENDNOTES

<sup>1/</sup> All references to the Florida Statutes herein are to the 2009 edition unless otherwise indicated.

<sup>2/</sup> Petitioner's Exhibit 5, page 2.

<sup>3/</sup> Transcript at page 16; Petitioner's Exhibit 7, page 2 (reporting statements made by Ms. Iverson during September 4, 2009, meeting). Ms. Cordo attributed the quoted statements to

Ms. Iverson during her testimony and in her Investigative Report dated October 29, 2009. Ms. Cordo further testified at the final hearing that Ms. Iverson and her husband made "conflicting" statements about the escrow account, and Ms. Cordo also testified that Ms. Iverson "said she didn't hold any escrow and then they said that they did." Transcript at page 16. By "they," Ms. Cordo apparently meant Ms. Iverson and her husband. It is significant, however, that Ms. Cordo did not report such "conflicting" statements in her Investigative Report. This lack of corroboration in a report written much closer to the time in question than the final hearing diminishes the credibility of Ms. Cordo's testimony on this point, and, especially, of her assent to the rephrasing of her testimony by Petitioner's counsel to describe Ms. Iverson as a person who "in your own words doesn't really give you a straight answer." Transcript at page 17. Ms. Cordo did not make this statement about Ms. Iverson anywhere in her testimony.

<sup>4/</sup> Petitioner's Exhibit 6.

<sup>5/</sup> Florida Administrative Code Rule 61J2-14.012 does not constitute a separate violation because it merely sets out with particularity the "books, accounts, and records" a broker is required to maintain by Section 475.5051, Florida Statutes.

<sup>6/</sup> See endnote 3, above.

<sup>7/</sup> In its Proposed Recommended Order, the Division has apparently relied on the December 2007 version of Florida Administrative Code Rule 61J2-24.001 in setting forth the disciplinary guidelines applicable in this case; references to this rule herein are to the version of the rule that was effective in July 2010 and, therefore, applicable in this administrative proceeding.

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.