

**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. : 10-3197PL  
DBPR CASE NO.: 2009048835**

**MARSHA EVANS FRIELS,**

**Respondent.**

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**FINAL ORDER**

**THIS CAUSE** came before the FLORIDA REAL ESTATE COMMISSION (“Commission”) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on November 16, 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 Joseph Solla, Esquire, Senior Attorney 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 Petitioner’s 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 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 37 and 42 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 37 is rejected because the Petitioner has no duty to notify a licensee of continuing education requirements prior to prosecuting a violation of Section 475.42, Florida Statutes. 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.”)

6. The Administrative Law Judge’s recommendation as to the appropriate penalty is set forth in paragraph 42 and in the paragraphs following “Recommendation.” For the reasons set forth in the Petitioner’s Exceptions (which is 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 this licensee should be disciplined more severely within the range of the penalties approved for this violation. 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.”).

### **DISPOSITION**

7. 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:

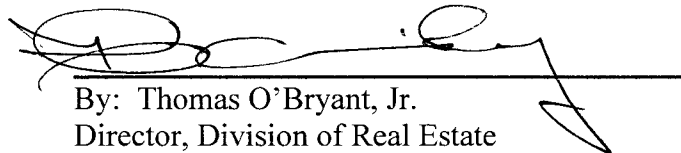
1. Respondent has violated Section 475.42(1)(a), Florida Statutes (and thereby Section 475.25(1)(e), Florida Statutes).

2. Respondent’s license is **SUSPENDED** for 30 days beginning 30 days from the filing date of this Final Order. Respondent shall also pay a fine of \$1,000.00 and costs of \$752.40 within 30 days of the filing date of this Final Order. Respondent is on probation for 1 year and during this time, she shall attend one (1) 2-day FREC meeting.

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

**DONE** and **ORDERED** this 29 day of December, 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 Marsha Evans Friels, 6395 21<sup>st</sup> Way, South, St. Petersburg, Florida 33712; Elizabeth W. McArthur, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Joseph Solla, 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 3<sup>rd</sup> day of January, ~~2010~~ <sup>2011</sup>.

Brandon M. Nichols

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