

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-0067  
 )  
ROGER CHANCEY AND RENTAL )  
SEARCH, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Edward T. Bauer, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing on March 1, 2011, by video teleconference at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Patrick Cunningham, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street, Suite N-801  
Orlando, Florida 32801

For Respondent: Roger Chancey, pro se  
Rental Search  
120 East Oakland Park Boulevard, Suite 105  
Wilton Manors, Florida 33334

## STATEMENT OF THE ISSUES

Whether Respondents committed the violations alleged in the Administrative Complaint, and, if so, the penalty that should be imposed.

## PRELIMINARY STATEMENT

On January 18, 2008, Petitioner Department of Business and Professional Regulation, Division of Real Estate ("the Division"), filed an Administrative Complaint against Respondents Roger Chancey and Rental Search. Counts I and II of the Administrative Complaint allege, respectively, that Mr. Chancey and Rental Search operated as real estate brokers without a valid license. Respondents timely filed a request<sup>1</sup> for a formal administrative hearing, which Petitioner forwarded to the Division of Administrative Hearings on January 10, 2011.

During final hearing, Petitioner presented the testimony of Fred Seli and Daniel Kerrigan. Petitioner's Exhibits 1, 2, 3, 4, 5, and 7 were received in evidence. Respondents presented no witness testimony, but introduced three exhibits, labeled 1, 2, and 3.

The final hearing Transcript was filed on March 18, 2011. Petitioner subsequently filed a Proposed Recommended Order, which the undersigned has considered. Respondents did not file a proposed recommended order.<sup>2</sup>

FINDINGS OF FACT

1. Petitioner is the state governmental agency charged with the licensing and regulation of real estate brokers and sales associates, pursuant to section 20.165 and chapters 120, 455, and 475, Florida Statutes.

2. At all times material to this cause, Mr. Chancey was not a licensed Florida real estate agent/sales associate or broker.

3. Prior to the alleged misconduct giving rise to this proceeding, Mr. Chancey registered the fictitious name "Rental Search" with the Florida Department of State and conducted business under that name.

4. On or about December 13, 2006, Mr. Chancey placed an advertisement in a publication known as "www.theflyer.com"<sup>3</sup> (hereinafter "the Flyer"), which read as follows:

**EFFICIENCY-\$120/WEEK**  
Apartment \$195/week  
Includes Utilities. Furnished  
Unfurnished. Also Nice Houses For  
Rent. 954-607-1949

(Emphasis in original).

5. In the following days, a copy of the Flyer was delivered to Daniel Kerrigan, who noticed Mr. Chancey's advertisement. Mr. Kerrigan called the telephone number listed in the advertisement and was connected to an automated message, which advised that a "Rental Search directory" could be obtained

at Hollywood Postal, a pack and ship store located in Hollywood, Florida. The automated message further informed Mr. Kerrigan that the Rental Search directory contained over 3,000 properties that were readily available for rent.

6. On or about December 18, 2006, Mr. Kerrigan secured a copy of the Rental Search directory for \$125 at the Hollywood Postal store. At the time of purchase, Mr. Kerrigan signed a pre-printed form, which provided in relevant part:

Under this Agreement, RENTAL SEARCH provides our LANDLORDS TELEPHONE DIRECTORY which contains almost every landlords' telephone number within 20 miles of HOLLYWOD POSTAL, Hollywood, FL. We list each landlord's telephone number, the type of property formerly marketed, the area and price. Often the landlords have other rentals of the exact same type, as formerly advertised, available, or soon coming available. It shall be your responsibility to call the landlords for availability. Today's directory has about 3,000 listings. Updates are placed online and are free to clients.

Landlords Telephone Directory is the source that enables you to reach the landlords who are not in today's newspaper so you can learn of the new rentals BEFORE they are advertised. We require a \$125 deposit to back up your word that you will:

1. SELECT A RENTAL either from our LANDLORDS TELEPHONE DIRECTORY or from any current newspaper or publication where the landlord had placed an ad. (A rental from any publication will qualify for your refund).
2. REGISTER YOUR SELECTED RENTAL prior to move-in with sixty days from today's date below. (This means you have up to 60 days

to choose a place, and you must register your rental before you move in.)

3. STAY SIX MONTHS MINIMUM in your selected rental complying with all rental terms.

4. PAY YOUR RENT ON TIME during the rental period.

5. GIVE A 2-WEEK NOTICE of your intent to move out, to the landlord, and register your intent to move out two weeks before you move, with our office.

If you do the above, we will be pleased to refund your \$125 deposit upon move-out.

If you FAIL to do the above your \$125 will not be returned.

(Emphasis added).

7. Upon contacting various landlords in the directory and learning that no properties were available, Mr. Kerrigan unsuccessfully attempted to obtain a refund of his \$125 payment.

8. The undersigned finds, as a matter of ultimate fact, that Mr. Chancey acted as a real estate broker without a valid license, contrary to section 475.42(1)(a), Florida Statutes, and is therefore subject to discipline pursuant to section 455.228, Florida Statutes.

#### CONCLUSIONS OF LAW

##### A. Jurisdiction

9. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to section 120.57(1), Florida Statutes.

B. Burden of Proof

10. This is a disciplinary proceeding against Respondent's license. Accordingly, Petitioner must prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin., Div. of Secs. & Investor Protect. v. Osborne Sterne, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987).

11. Clear 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 testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

C. Count I

12. In Count One of the Administrative Complaint, Petitioner alleges that Mr. Chancey operated as a broker without a valid license, contrary to section 475.42(1)(a), and is therefore subject to discipline.

13. Section 475.01(1)(a), Florida Statutes, defines a "broker" as:

[A] person who, for another, and for a compensation or valuable consideration

directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4) (a) . . . . The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of

any number of persons, except as provided in ss. 475.011 and 721.20.

(Emphasis added).

14. Mr. Chancey's advertisement in the Flyer—that referenced "houses for rent" and included price quotes for an apartment and an efficiency—plainly falls within the ambit of section 475.01(1)(a), which provides that a broker includes "all persons who advertise rental property information or lists."

15. Although Mr. Chancey has suggested in his pleadings that he is entitled to market properties that belong to him, the evidence clearly and convincingly demonstrates that the advertisement in the Flyer (which included the phone number to a recorded message that informed callers how to purchase the Rental Search directory) related to properties owned by other landlords. Accordingly, the statutory exemption afforded to property owners is inapplicable. See § 475.011(2), Fla. Stat. (providing an exemption to "any individual, corporation, partnership, trust, joint venture, or other entity which sells, exchanges, or leases its own real property"); see also Dep't of Bus. & Prof'l Reg. v. Winter, Case No. 03-4208, 2004 Fla. Div. Adm. Hear. LEXIS 1741 (Fla. DOAH Apr. 30, 2004) ("According to Subsection 475.011(2) . . . an individual who is not a licensed real estate broker or salesperson may sell property, if he owns that property. However, that exception does not apply in this



case because the clear and convincing evidence established that Respondent did not own the property.")

16. As the evidence demonstrates that Mr. Chancey acted as a broker, he is in violation of section 475.42(1)(a), which provides that it is unlawful to "operate as a broker or sales associate without being the holder of a valid and current active license." Therefore, Mr. Chancey is guilty of Count I and is subject to discipline pursuant to section 455.228(1).

D. Count II

17. In Count II of the Administrative Complaint, Petitioner alleges—based upon the same misconduct addressed in Count I—that Respondent Rental Search is guilty of operating as a broker without a license.

18. Petitioner fails to recognize, however, that Rental Search is not a distinct business entity, but merely a fictitious name Mr. Chancey utilized to conduct business and registered with the Florida Department of State. See § 865.09(2)(a), Fla. Stat. (defining "fictitious name" as any name under which a person transacts business in this state, other than the person's legal name); Robinson & St. John Adver. & Pub. Relations v. Lane, 557 So. 2d 908 (Fla. 1st DCA 1990) (noting that the purpose of section 865.09, which provides that it is unlawful to use a fictitious name to conduct business unless the name is registered with the Florida Department of State, is "to

provide notice to the public, and especially to creditors, of the identities of persons who are doing business under fictitious names for the purpose of protecting creditors from fraud and deceit"). While there is no question that disciplinary action may be taken against Mr. Chancey for misconduct he committed while using the Rental Search name (as Petitioner has done in Count I), a fictitious name, in and of itself, is not subject to discipline. Cf. Dep't of Bus. & Prof'l Reg. v. Ellis d/b/a Economy Meats, Case No. 95-3493, 1995 Fla. Div. Adm. Hear. LEXIS 4738 (Fla. DOAH Oct. 19, 1995) ("The licensees in this case are Debra Ellis and Ricardo Ellis. Economy Meats is a fictitious name and, as such, does not hold the subject license"). As such, Count II should be dismissed.

E. Penalty

19. Finally, the undersigned must determine the appropriate penalty to impose against Mr. Chancey in connection with Count I of the Administrative Complaint.

20. In its Proposed Recommended Order, Petitioner requests a penalty of \$5,000 (the maximum fine authorized by section 455.228) and the recovery of its investigative expenses.

21. The undersigned declines to recommend the maximum fine, as the demonstrated harm to the public (Mr. Kerrigan's loss of \$125) is minimal. Further, significant time has elapsed—over four years—since the misconduct, which is

directly attributable to Petitioner's decision to wait nearly three years to forward Mr. Chancey's request for formal hearing to the Division of Administrative Hearings. Under the circumstances, a fine of \$500 is a fair and appropriate penalty.<sup>4</sup>

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Petitioner, Department of Business and Professional Regulation, Division of Real Estate, issue a final order, as follows:

1. Finding Respondent Roger Chancey guilty of acting as a broker without a license, as alleged in Count I of the Administrative Complaint, and imposing an administrative fine in the amount of \$500.
2. Dismissing Count II of the Administrative Complaint.

DONE AND ENTERED this 14th day of April, 2011, in Tallahassee, Leon County, Florida.



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EDWARD T. BAUER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of April, 2011.

ENDNOTES

<sup>1</sup> In his Election of Rights, Mr. Chancey did not dispute the factual allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 8, and 9 of the Administrative Complaint.

<sup>2</sup> Following the final hearing, Mr. Chancey filed a document titled "Items to Consider and Suggested Resolve," which the undersigned reviewed.

<sup>3</sup> Notwithstanding its name, "www.theflyer.com" is available in print form.

<sup>4</sup> The undersigned concludes that Petitioner failed to adduce clear and convincing evidence in support of its request to recover \$811.80 in investigative expenses. Petitioner presented no documentary evidence in support of such costs, and the only testimony concerning the issue was from Mr. Fred Seli (a supervisor with the Division of Real Estate), whose involvement was limited to "signing off" on the final reports prepared by the Division employee who conducted the investigation.

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 must be filed with the agency that will issue the final order in this case.