STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF INSURANCE AGENTS AND AGENCY SERVICES, Petitioner, vs. WESTON PROFESSIONAL TITLE GROUP, INC., Respondent.	)	Case No. 11-1088

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on August 25, 2011, by video teleconference between sites in Tallahassee and Miami, Florida, and on October 27-28, 2011 in Miami, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Melinda Butler, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Victor K. Rones, Esquire
Law Office of Victor K. Rones, P.A.
16105 Northeast 18th Avenue
North Miami Beach, Florida 33162

STATEMENT OF THE ISSUES

Whether Weston Professional Title Group, Inc. (Respondent) committed the violations alleged in Counts I, II, III, V, VI, and VII of the Amended Administrative Complaint and, if so, the penalties that should be imposed.

PRELIMINARY STATEMENT

On November 10, 2010, Petitioner filed an Administrative Complaint against Respondent that contained allegations pertaining to two real estate closings by Respondent and, based on those allegations, alleged certain violations of applicable law in four separate counts. Respondent timely denied the allegations of the Administrative Complaint, the matter was referred to DOAH, and assigned to ALJ Errol H. Powell. On May 10, 2011, Petitioner moved to amend the Administrative Complaint (motion to amend) and attached an Amended Administrative Complaint (Amended AC) to its motion. The Amended AC contained factual allegations as to the two real estate closing referenced in the initial Administrative Complaint, and, based on those allegations, alleged certain violations of applicable law in seven sequentially-numbered counts, which will be discussed below. On May 16, 2011, Respondent filed its response to the motion to amend. On June 2, 2011, ALJ Powell granted the motion to amend and

accepted the Amended AC. Thereafter, the matter was transferred to the undersigned for all further proceedings.

Respondent, as the title and settlement agent, closed on the sale of a residence located on Collonade Drive, Wellington, Florida, on November 14, 2006 (Collonade closing). Respondent, as the title and settlement agent, closed on the sale of a residence located on Vignon Place, Wellington, Florida, on December 15, 2006 (Vignon closing).

Counts I, V, and VI of the Amended AC contained alleged violations of applicable law pertaining to the Collonade closing. Count IV of the Amended AC was voluntarily dismissed by Petitioner and will not be discussed further. Counts II and VII contained alleged violations of applicable law pertaining to the Vignon closing. Count III contained alleged violations regarding Respondent's surety bond.

Counts I, V, and VI will be discussed together in the Findings of Fact under the heading "Collonade Drive Closing." Counts II and VII will be discussed together under the heading "Vignon Place Closing." Count III will be discussed separately under the heading "Surety Bond."[1/]

All statutory references are to Florida Statutes (2011). The cited provisions have not changed since 2006, when the closings occurred.

References will be made to the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq. (RESPA). The federal Department of Housing and Urban Development (HUD) has developed a form that is required to be used in the settlement of the type real estate transactions at issue in this proceeding. The form is referred to as a HUD-1 Settlement Statement (HUD-1).

COLLONADE CLOSING - COUNTS I, V, AND VI

Count I alleged that Respondent disbursed $361,000 in contradiction to the HUD-1 to entities other than the seller, thereby violating the following provisions of law:

> (a) Section 626.8473(2), Florida Statutes, which provides that all funds received by a title insurance agent as described in subsection 626.8473(1) shall be trust funds received in a fiduciary capacity by the title insurance agent and shall be the property of the person or persons entitled thereto.
>
> (b) Section 626.8473(4), which provides that funds required to be maintained in escrow trust accounts pursuant to this section shall not be subject to any debts of the title insurance agent and shall be used only in accordance with the terms of the individual escrow, settlement, or closing instructions under which the funds were accepted.
>
> (c) Section 626.8437(4), which provides that it is a violation for a licensee to have demonstrated a lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments, binders, policies of title insurance, or guarantees of title.
>
> (d) Section 626.8437(5), which provides that it is a violation to demonstrate lack of reasonably adequate knowledge and

> technical competence to engage in the transactions authorized by a license or appointment.
>
> (e) Section 626.8437(6), which provides that it is a violation to exhibit fraudulent or dishonest practices in the conduct of business under a license or appointment.
>
> (f) Section 626.8437(9), which provides that a willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act is, in itself, a violation of law.[2/]

COUNT V

Count V alleged that Respondent prepared two HUD-1s in conjunction with the Collonade closing that contained different monetary figures for specified items. Petitioner charged Respondent with providing a false and inaccurate HUD-1 in violation of subsections 626.8437(4), (5), and (6).

COUNT VI

Count VI alleged that Respondent's records fail to support the existence of a $195,000.00 deposit that was reflected on the HUD-1s prepared by Respondent as to the Collonade closing in violation of subsections 626.8437(4), (5), and (6).

VIGNON COURT COUNTS II AND VII

Count II alleged that Respondent prepared a HUD-1 that misrepresented a payment to Gaspare Valentino in connection with the Vignon Court closing in violation of the same provisions of law set forth in Count I.

COUNT VII

Count VII alleged that Respondent prepared a HUD-1 in connection with the Vignon Court closing that contained false and inaccurate information as to a deposit or earnest money in violation of subsections 626.8437(4), (5), and (6).

SURETY BOND - COUNT III

Count III alleged that Respondent operated from on or about August 30, 2010 until November 18, 2010, without a required surety bond, thereby providing grounds for the revocation or suspension of its license pursuant to section 626.8437(1) and in violation of sections 626.8418(2) and 626.8437(9). Section 626.8437(1) requires a title insurance agency to have at all times a surety bond of not less than $35,000.00 value. Section 626.8437(9) provides that a willful failure to comply with, or willful violation of any proper order or rule of the department or willful violation of any provision of the act is, in itself, a violation of law.

On August 18, 2011, the parties filed a Joint Pre-Trial Stipulation that contained certain stipulated facts and agreed

issues of law. Those stipulations have been incorporated into this Recommended Order to the extent deemed appropriate.

On August 18, 2011, Petitioner filed a motion to take official record of a final order entered by Petitioner in another proceeding. That motion was granted during the course of the formal hearing.

At the formal hearing, Petitioner presented the testimony of Ray Wenger (a financial administrator employed by Petitioner) and offered 33 sequentially-numbered exhibits, each of which was admitted into evidence. Respondent presented the testimony of Alan Shuminer (a practicing real estate attorney), Mr. Wenger, Keila Marrero (an employee of Respondent) and Jose Marrero (a practicing attorney, who is the president of Respondent). (Ms. Marrero and Mr. Marrero are siblings). Respondent offered 80 sequentially-numbered exhibits each of which was admitted into evidence except for Respondent's Exhibit 14.

The Transcript of the proceedings conducted on August 25, 2011, consisting of two volumes, was filed on September 22, 2011. The Transcript of the proceedings conducted on October 27 and 28, consisting of three volumes, was filed on November 21, 2011.

The parties timely filed their respective Proposed Recommended Orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times, Petitioner has been the entity of the State of Florida charged with the responsibility to regulate title insurance agencies.

2. At all times relevant to this proceeding Respondent was licensed by Petitioner as a title insurance agent in the State of Florida. As of the formal hearing, Respondent had ceased its operations due to the lack of business.

3. Petitioner's investigation of Respondent was initiated by a complaint from a man named Robert Anderson. Mr. Anderson represented to Petitioner that he discovered that his name and address had been used as the buyer of the two residences discussed above.

4. Respondent was the title and settlement agent for both transactions. The Collonade Drive transaction settled on November 14, 2006, with disbursement of the funds on November 16, 2006. The Vignon Place transaction settled and the funds were disbursed on December 15, 2006.

5. Mr. Anderson reported to Petitioner his belief that his identity had been stolen by a person named Pamela Higgins. Mr. Anderson reported to Petitioner that he had not participated in either transaction, and asserted that he did not sign any of the documents that purport to contain his signature as the buyer.

6. Respondent was required to comply with the provisions of RESPA in completing the HUD-1 for the Collonade Drive closing and the Vignon Place closing. RESPA required that disbursements at closing be consistent with the HUD-1 as approved by the parties to the transaction and by the lender.

COLLONADE DRIVE CLOSING

7. On September 15, 2006, Robert Anderson (or someone impersonating Mr. Anderson) signed a "Contract for Sale and Purchase" (Collonade contract), agreeing to buy the Collonade Drive property from Mark Mariani and Kathy Mariani, for the purchase price of $1,375,000.00.

8. The Collonade contract reflected that a deposit had been made to "FLORIDA TITLE & ESC." in the amount of $5,000 with an additional deposit of $5,000 to be made within ten days.

9. Two loans with separate mortgages constituted the financing for the purchase of the Collonade Drive property. The first mortgage was $962,500.00. The second mortgage, as reflected on the HUD-1 Settlement Statement with the disbursement date of November 14, 2006, was $263,430.08.[3/] First Magnus Financial Corporation, an Arizona corporation, was the lender for both loans.

10. Agents of America Mortgage Corp. served as the mortgage broker for the transaction.

11. Juan Carlos Rodriguez, an employee of Agents of America Mortgages, signed Mr. Anderson's loan application as the "interviewer."

12. The following was a special clause of the Collonade contract: "BUYER AGREES TO PAY FOR TITLE INSUANCE [sic] FEE ONLY (LINE 1108 OF SELLERS' SETTLEMENT STATEMENT), ONLY [SIC] IF SELLERS AGREE TO USE BUYER'S TITLE COMPANY OF CHOICE. BUYER IS A LICENSED FLORIDA REAL ESTATE AGENT."

13. Petitioner established that Robert Anderson was not a licensed Florida real estate agent.

14. The Collonade contract represented that there were no real estate brokers representing either party.

15. On or about November 1, 2006, Respondent received a "Request for Title Commitment" from Claudit Casanova, a mortgage broker with Agents of America Mortgage Corp., for the Collonade Drive transaction. This was a revised request. The first request had been sent to Respondent on or about October 3, 2006. A copy of the Collonade contract had been forwarded to Respondent with the first request.

16. In connection with the Collonade Drive transaction, Respondent prepared two HUD-1s,[4/] each of which was approved by the parties and the lender.[5/] The first HUD-1 had an anticipated closing date of November 14, 2006. That HUD-1 was revised in response to the lender's instruction to move the disbursement

date from November 14, 2006, to November 16, 2006. The revision of the HUD-1 slightly reduced the amount of cash the buyer needed to close as a result of interest beginning to run on the loans as of November 16 instead of November 14.

17. This was a mail-away closing, in that a packet of the documents the buyer was to sign was sent to someone named Laurie Martin at a title agency in Glendale, Arizona. Ms. Marrero testified she mailed the packet pursuant to instructions without specifying who gave her those instructions. The packet of documents was returned to Respondent, with signatures purporting to be Mr. Anderson's. Laurie Martin appears to have served as the notary public when the documents were signed.

18. The transaction closed pursuant to the revised HUD-1 with the disbursement date of November 16, 2006, which, as approved by the parties and the lender, reflected that the sellers were to receive $477,884.93 upon closing.

19. Upon closing, Respondent drafted a check in the amount of $477,884.93 made payable to the sellers. The sellers voided the check and based on instructions from the sellers, Ms. Marrero redistributed the sellers' proceeds by wire transfer as follows: $116,112.85 to sellers; $170,250.00 to Pamela Higgins; and $191,508.08 to Unlimited Advertising USA. Fourteen dollars were spent on wire transfer charges.

20. The actual disbursement of the seller's proceeds was inconsistent with the HUD-1 and unknown to the buyer and the lender. Respondent violated the provisions of RESPA by disbursing the proceeds of the sale in a manner that was inconsistent with the HUD-1.

$195,000 DEPOSIT

21. The Collonade contract reflected that a $5,000 deposit had been made to "Fla. Title & Esc." required for the buyer to pay an additional deposit of $5,000 within ten days. There was no evidence establishing any relationship between Respondent and "Fla. Title & Esc." Both HUD-1s for the Collonade Drive transaction reflected that the buyer had provided to the sellers a deposit in the amount of $195,000.

22. These HUD-1s, reflecting that the sellers were holding a deposit in the amount of $195,000, were approved by the parties and the lender.

23. Ms. Marrero testified that she was instructed to include the $195,000 deposit on the HUD-1s without specifying who gave her those instructions.

24. Ms. Marrero did not attempt to verify that the $195,000 deposit was actually being held by the sellers.

FRAUD

25. Petitioner alleged that the Collonade Drive transaction was fraudulent. Mr. Wenger's testimony, based in

part on reports of mortgage fraud prepared by the Federal Bureau of Investigation, supported that allegation. Other evidence supporting that allegation included the following facts

A. The first mortgage quickly went into foreclosure;

B. A mailing address given for Robert Anderson did not (as of April 19, 2011) exist.

C. The address of Unlimited Advertising USA was also the address of Claudia Rodriguez, a former Florida title agent whose license had been suspended by Petitioner for failing to disburse in accordance with HUD statements and disbursing on uncollected funds;

D. The address of Unlimited Advertising USA was also the address of Juan Carlos Rodriguez (the person who supposedly took the credit application from Robert Anderson);

E. The address of Unlimited Advertising USA was also the address of Agents of America Mortgage Corporation (the mortgage broker for the Collonade closing.

F. Juan Carlos Rodriguez supposedly notarized the document authorizing disbursement of part of the sellers' proceeds to Pamela Higgins.

G. Mr. Anderson's purported signatures on different documents are inconsistent.

26. The address for Mr. Anderson as it appears on the HUD-1 Settlement Statements is 14233 W. Jenan Drive, Surprise, Arizona.

27. Prior to the closing Ms. Marrero sent by Federal Express a copy of the unexecuted closing documents to "Pam Higgins c/o Robert S. Anderson" 12211 N. 85th Street, Scottsdale, Arizona.

28. Following the closing, Ms. Marrero sent a copy of the closing documents by Federal Express to Robert S. Anderson, at the address 12211 N. 85th Street, Scottsdale, Arizona.

29. Ms. Marrero testified that she acted on instructions in sending the two packages, without identifying who gave her those instructions.

30. There was no evidence that anyone employed by Respondent knew anyone connected to this transaction prior to being asked to provide a title commitment. There was insufficient evidence to establish that Respondent had anything to do with the buy-sell agreement between the buyer and the sellers or the efforts by Mr. Anderson (or the person or persons impersonating Mr. Anderson) to obtain financing for the purchase.

31. While there was significant evidence that the Colonnade Closing was a fraudulent transaction, there was insufficient evidence to establish that Respondent was complicit in that fraud.

VIGNON COURT CLOSING

32. On a date prior to November 6, 2006, Maribel and Timothy Graves signed a "Contract for Sale and Purchase" offering to sell their Vignon Court residence to Robert Anderson for the purchase price of $1,975,000.00. Mr. and Mrs. Graves were represented by counsel during this transaction. The copy of the contract admitted into evidence had not been signed by Mr. Anderson and did not bear a legible date. The contract provided an acceptance date of November 6, 2006. The fully executed contract was not admitted into evidence.

33. On October 4, 2006, Claudit Casanova of Agents of America Mortgage requested Respondent to provide a title commitment for the Vignon Court transaction. In that request, the sales price was stated as being $1,975,000; the loan amount was $1,481,250 and the mortgagee was American Brokers Conduit.

34. Preferred Properties, Int., Inc., was listed as being the real estate broker for the transaction.

35. Respondent prepared a HUD-1 for the Vignon Court transaction that reflected a closing and disbursement date of December 15, 2006.

DEPOSIT

36. The unexecuted (by the buyer) and undated copy Purchase Agreement required a deposit of $100,000 at the time of acceptance with an additional $50,000 being due within ten days

thereafter. There was no evidence as to the terms of the completely executed Purchase Agreement.

37. Line 201 of the HUD-1 reflected a deposit of $250,000 paid on behalf of the buyer. Respondent did not verify that deposit had been made. The HUD-1 specified that the deposit was being held by the sellers.

38. The buyer, sellers, and lender approved the HUD-1, which reflected the existence of a deposit of $250,000, prior to closing.

GASPARE VALENTINO

39. On December 6, 2006, Mr. and Mrs. Graves entered into a "Joint Venture and Property Resale Agreement" (Resale Agreement) pertaining to the sale of the Vignon Court residence with Gaspare Valentino. On February 5, 2002, Gaspare Rino Valentino was issued a license by the Department of Business and Professional Regulation of the type "Real Estate Broker or Sales" and of the rank "Sales Associate." That license was valid at the times relevant to this proceeding.

40. Paragraph 2 of the Resale Agreement provides as follows:

> (2) SALE EFFORTS: CONTRACT PROCEEDS. Valentino agrees to use reasonable efforts to obtain a third party purchaser (a "Purchaser") for the Property. Valentino is not required to advertise the Property or list the Property for sale, but shall have such right to do so. Valentino does not guaranty [sic] the procurement of a

> Purchaser. The parties agree that the intention is for Valentino to secure a Purchaser who will pay a purchase price sufficient in order to (i) satisfy the existing debt upon the Property, (ii) pay ordinary and reasonable closing costs of the transaction, (iii) generate a net proceeds [illegible] to Owner not less than ONE HUNDERED THOUSAND AND NO/100 DOLLARS ($100,000); and (iv) generate such further sums beyond the foregoing in order to pay Valentino a fee for services rendered as set forth in this Agreement. In accordance with such understanding, Owner agrees to enter into and fully execute a Contract for Purchase and Sale with a Purchaser procured by Valentino which is consistent with the terms set forth in this Agreement, including without limitation, a designated sales price which enables Owner to receive at closing a net proceeds sum equal to ONE HUNDERED THOUSAND AND NO/100 DOLLARS ($100,000) (the "Owner's Sale Proceeds") after payment of the Property Sale Expenses, hereinafter defined as set forth in Paragraph 3. Owner agrees that any net sales proceeds in excess of the Owner's Sale Proceeds shall be payable to Valentino (the "Excess Proceeds Fee), as Valentino's fee for the efforts of Valentino as set forth herein.

41. Paragraph 3 (i) of the Resale Agreement reiterates that after the payment of the "Property Sale Expenses" as follows:

> (i) Owner shall receive the Owner Sale Proceeds consisting of exactly ONE HUNDERED THOUSAND AND NO/100 DOLLARS ($100,000) from the net sales proceeds . . .

42. Paragraph 3 (ii) of the Resale Agreement reiterates that after the payment of the "Property Sale Expenses" and the "Owner Sale Proceeds":

> (ii) Valentino shall receive the Excess Proceeds Fees, constituting all remaining net sales proceeds in excess of the Owner Sale

> Proceeds, as a fee for services rendered by Valentino pursuant to this Agreement.

43. Paragraph 7 of the Resale Agreement is as follows:

> 7. Licensed Agent: Valentino represents and discloses that Valentino is a licensed real estate agent in the State of Florida. Notwithstanding such, Valentino is individually entering into this Agreement using his own resources to assist Owner in the improvement and sale of the Property, and as such is a principal in this transaction earning the Excess Proceeds Fee. The parties acknowledge that Valentino is an investor in this transaction and as such at closing is entitled to and shall receive the Excess Proceeds Fee as set forth in Section [Paragraph] 3(ii) of this Agreement.

44. Under RESPA, Section 700 of a HUD-1 is appropriately used for reporting the payments for commissions to real estate salesmen and/or brokers as part of the "Settlement Charges."

45. Such payments can also be reported under Section 1300 ("Additional Settlement Charges"), if the payments are appropriately labeled.

46. Respondent reflected the payment of $527,656.92 as "Payoff" to Gaspare Valentino at line 1307 of Section 1300."

47. Prior to closing the buyer, sellers, and lender had approved the HUD-1 for the Vignon Court transaction. The lender was aware of the Resale Agreement.

48. Mr. Marrero is an attorney licensed to practice law in Florida. Mr. Marrero construed the payments to Mr. Valentino to be other than a real estate commission. Although it is clear that Petitioner considers that payment to Mr. Valentino to be a

real estate commission, the terms of the Resale Agreement entitled Mr. Marrero to treat that payment as being to an investor. Petitioner failed to establish that Respondent erroneously stated the payment to Mr. Valentino on the HUD-1.

SURETY BOND

49. As a condition of licensure, a title agency is required to provide to Petitioner a $35,000 security deposit or a $35,000 surety bond. In connection with its application for licensure on August 29, 2002, Respondent filed the required surety bond with Petitioner. The bond was issued by Fidelity and Deposit Company of Maryland with bond number 133046577.

50. On July 14, 2004, Petitioner received from Respondent a surety bond issued by Western Surety Company in the amount of $35,000, effective as of August 29, 2004. The bond number was 69728435.

51. On May 28, 2010, Petitioner received a letter from his surety dated May 24, 2010, which advised that bond number 69728435 would be voided or cancelled as of August 29, 2010.

52. That letter of cancellation showed a copy being furnished to Respondent at the address "1820 North. Corporate Lakes Boulevard, Suite 105, Weston, Florida 33326."

53. On June 11, 2010, Petitioner advised Respondent by letter sent to "1820 North Corporate Lakes Boulevard, Suite.

105, Weston, Florida 33326" that it had received the cancellation letter. The letter stated, in part, as follows:

> If we do not receive a replacement bond within 30 days of the dated letter, we will forward your file to the appropriate division for disciplinary action. If you do not plan to continue transacting business and wish to terminate your license, you must submit a request to us immediately.

54. Prior to May 24, 2010, Respondent moved its offices from 1802 North Corporate Lakes Boulevard, Suite 105, Weston, Florida, to Suite 304 of the same building. Mr. Marrero testified that he had no recollection of receiving the letters cancelling the surety bond or the letter from Petitioner dated June 11, 2010.

55. Respondent was without a surety bond between August 29, 2010, and November 18, 2010. Petitioner did not establish that Respondent's failure to maintain it surety bond during that period was willful within the meaning of section 626.8437(9).

56. No prior disciplinary action has been brought against Respondent.

CONCLUSIONS OF LAW

57. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569 and 120.57(1).

58. This proceeding seeks to impose discipline against Respondents and is, consequently, penal in nature. State ex

rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, to impose discipline, the Department must prove the charges against Respondents by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996)(citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Med., 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

59. Regarding the standard of proof, in Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the court developed a "workable definition of clear and convincing evidence" and found that of necessity such a definition would need to contain "both qualitative and quantitative standards." The court held that:

> 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 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 a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id. The Florida Supreme Court later adopted the Slomowitz court's description of clear and convincing evidence. See In re Davey, 645 So. 2d 398, 404 (Fla. 1994).

60. The provisions of the Insurance Code cited in this Recommended Order have not changed at any time relevant to this proceeding.

61. Petitioner proved by clear and convincing evidence that Respondent distributed portions of the sellers' proceeds to entities other than the sellers in contradiction of the HUD-1 for the Collonade closing and contrary to the instructions given to it by the lender. That distribution constituted a violation of subsections 626.8473(2) and (4) as alleged in Count I of the AC. Petitioner did not prove by clear and convincing evidence that by making the distribution Respondent violated the provisions of section 626.8437(4) (lack of fitness), section 626.8437(5) (lack of knowledge), section 626.8437(6) (fraud or dishonesty), or section 626.8437(9) (willful failure to comply with a provision of the act).

62. Petitioner did not prove by clear and convincing evidence that Respondent provided a false and/or inaccurate HUD-1 in connection with the Collonade closing as alleged in Count V of the Amended AC. Consequently, Respondent is not guilty of the violations alleged in Count V of the Amended AC.

63. Petitioner proved by clear and convincing evidence that Respondent did not independently verify the existence of a $195,000 deposit supposedly held by the sellers as part of the Collonade closing. However, Petitioner did not prove by clear

and convincing evidence that Respondent had a duty to make such an independent verification of the deposit. Consequently, it is concluded that Petitioner failed to prove that Respondent committed the violations alleged in Count VI of the Amended AC.

64. Petitioner failed to prove by clear and convincing evidence that Respondent committed the violations alleged in Count II of the Amended AC relating to the Vignon closing by misrepresenting the payment made to Gaspare Valentino. Mr. Valentino's entitlement to the portion he received was a result of the Resale Agreement he executed with the sellers. Respondent was not required to represent the distribution to Mr. Valentino as a real estate commission.

65. Petitioner did not prove by clear and convincing evidence that the HUD-1 prepared for the Vignon closing contained false and inaccurate information as to the $250,000 deposit. There was no evidence that the deposit did not exist or that the amount was inaccurate. Petitioner failed to prove that Respondent had a duty to verify the existence of or the amount of the deposit since Respondent was not holding the deposit in escrow. Consequently, Respondent is not guilty of the violations alleged n Count VII of the Amended AC.

66. Petitioner proved by clear and convincing evidence that Respondent did not have a surety bond between August 30 and November 18, 2010, as required by section 626.8418(2) and in

violation of section 626.8437(1), as alleged in Count III of the Amended AC. Petitioner did not prove by clear and convincing evidence that Respondent's failure to maintain its surety bond was willful. Consequently, Petitioner failed to prove that the failure to maintain the surety bond violated section 626.8437(9). In reaching this conclusion, the undersigned has considered Mr. Marrero's testimony that Respondent's offices relocated and that he could not recall receiving notice of cancellation from the surety or the warning letter from Petitioner.

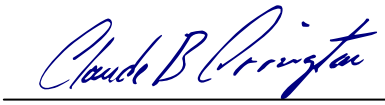
67. In recommending the penalties to be imposed, the undersigned has considered the disciplinary guidelines found at Florida Administrative Code Rule 69B-231.120. There are no mitigating or aggravating factors to be considered pursuant to Florida Administrative Code Rule 69B-231.160.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services enter a final order finding Respondent guilty of violating the provisions of subsections 626.8473(2) and (4) as alleged in Count I of the Amended AC; and guilty of failing to maintain a surety bond as required by section 626.8418(2) in violation of section 626.8437(1), as alleged in Count III of the Amended AC. It is further recommended that the final order find Respondent

not guilty of all other violations alleged in the Amended AC. For the violations found as to Count I, it is recommended that Respondent's licensure be suspended for a period of six months. For the violations found in Count III, it is recommended that Respondent's licensure be suspended for a period of three months. It is further recommended that the periods of suspension run concurrently.

DONE AND ENTERED this 8th day of February, 2012, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of February, 2012

ENDNOTES

[1/] The following is intended to be a summary of Petitioner's pleadings only.

[2/] The reference to the "act" is to the Florida Insurance Code as defined by section 624.01.

[3/] As will be discussed below, Respondent prepared two HUD-1 Settlement Statements. The first reflected that the settlement and disbursement would both be on November 14, 2006. The second

reflected a settlement date on November 14, 2006, and a disbursement date of November 16, 2006.

[4/] Petitioner's contention that there were four separate HUD-1s prepared by Respondent is not supported by the evidence.

[5/] In its PRO, Petitioner proposes findings of fact that are consistent with a finding that Mr. Anderson did not sign the HUD-1 with the disbursement date of November 14, nor did he sign the HUD-1 with the disbursement date of November 16. Those proposed facts are rejected as being contrary to the allegations of the Amended AC and to the stipulated facts set forth in the Joint Pre-Hearing Stipulation.

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.