

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/10/2012
File #	2012-02232

**DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE,**

Petitioner,

vs.

**CASE NO. : 11-4528PL
DBPR CASE NO.: 2010007144**

MONIQUE H. MORGAN,

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 March 20, 2012, 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 Leigh Matchett, Esquire, 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 Commission 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 paragraph 32 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. The Administrative Law Judge's recommendation as to the appropriate penalty is set forth in paragraph 32 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. (2011)(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.”).

6. As a broker licensed under Chapter 475, Florida Statutes (Part 1), Respondent is obligated under Section 475.5015, F.S., to “keep and make available to the department (Petitioner) such books, accounts, and records as will enable the department to determine whether such broker is in compliance with the provisions of this chapter.” The statute then describes what records must be kept and for what length of time. In this case, Respondent conducted business through an unregistered and unlicensed real estate company. Respondent had received two escrow deposits totaling \$9,600.00 for the purchase of a property. The property did not sell and the customer requested his deposits back from the Respondent. Respondent refused and the customer filed a complaint with the Petitioner against Respondent. Respondent repeatedly refused to allow Petitioner’s investigators to examine Respondent’s books and records (T. 109, 110). Respondent continues to deny to Petitioner access to the Respondent’s business records.

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 475.5015, Florida Statutes (and thereby Section 475.25(1)(e), Florida Statutes) and Section 455.227(1)(j), Florida Statutes. Petitioner dismisses Count I of the Administrative Complaint.

2. Respondent’s license is REVOKED. Respondent shall also pay a fine of \$2,000.00

within 30 days of the filing date of this Final Order.

3. Respondent shall within 5 days make available to Petitioner the records previously asked for during the investigation as well as any other "books, accounts, and records" described in Section 475.5015, Florida Statutes.

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

DONE and ORDERED this 4 day of April, 2012.

FLORIDA REAL ESTATE COMMISSION



By: Juana C. Watkins
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 Joseph W. Gibson, Jr., Esquire, 19 W. Flagler Street, Suite 620, Miami, Florida 33130; Stuart M. Lerner, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Leigh Matchett, 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 10th day of April, 2012.

Brandon M. Nichols