

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF REAL ESTATE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 12-1264PL  
 )  
SARAH ELIZABETH HENDRICK, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 20, 2012, by video teleconference at sites in Tallahassee and Lakeland, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Megan Demartini, Esquire  
Paul Rendleman, Esquire  
Department of Business and  
Professional Regulation  
Suite 42  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

For Respondent: No Appearance by  
Sarah Elizabeth Hendrick, pro se  
527 Ridges Drive  
Dundee, Florida 33838

STATEMENT OF THE ISSUES

Whether Respondent violated sections 475.42(1) (b) and (e), and 455.227(1) (j), Florida Statutes (2011), as alleged in the Administrative Complaint; and, if so, the appropriate penalty.<sup>1/</sup>

PRELIMINARY STATEMENT

On December 15, 2011, Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Department), filed a two-count Administrative Complaint against Respondent, Sarah Elizabeth Hendrick (Ms. Hendrick). The Administrative Complaint charges Ms. Hendrick with violating the following: section 475.42(1) (b), which prohibits a licensee from operating as a sales associate for an entity not registered as her employer; section 475.25(1) (e), which subjects a licensee to discipline for violating any provisions of chapter 475; and section 455.227(1) (j), which prohibits a licensee from aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to chapter 455.

On January 11, 2012, Ms. Hendrick disputed the material facts contained in the Administrative Complaint, and requested a formal hearing pursuant to chapter 120, Florida Statutes.

On April 11, 2012, the Department sent Ms. Hendricks's request for hearing to the Division of Administrative Hearings (DOAH). On April 12, 2012, an Initial Order was issued to the

parties, and based on the joint response, a final hearing was set for June 20, 2012.

The Department presented the testimony of Robert Howes (Mr. Howes) and introduced into evidence Exhibits 1 through 5. The Department requested official recognition of sections 475.25(1)(e), 475.42(1)(b), and 455.227(1)(j), which was granted.

Ms. Hendrick failed to appear for the hearing. A review of the case docket showed that she failed to file a request for a continuance. Further, at the beginning of the hearing, the undersigned inquired of the Department's counsel and learned that Ms. Hendrick had not contacted the Department indicating that she would not be able to attend the hearing. Having found that proper notice had been given, the undersigned inquired whether the Department wanted DOAH to relinquish jurisdiction or proceed with the hearing. The Department elected to present its case before the undersigned, and the hearing was held.

The Department ordered a transcript of the proceedings, which was filed with DOAH on July 6, 2012. The Department submitted a Proposed Recommended Order on July 16, 2012. Ms. Hendrick did not file a proposed recommended order.

FINDINGS OF FACT

1. At all times relevant, Ms. Hendrick held real estate sales associate license number 3239708 with the State of Florida.

2. From February 24 to April 18, 2011, Ms. Hendrick was registered with the Department as a sales associate with Florida Home Choice Realty, LLC, which is a brokerage company located in Winter Haven, Florida, and holds license number CQ 1037790. The record shows that Ms. Hendricks's license was inactive for the time period of April 18-20, 2011. Her license was then activated for the time period of April 20, 2011, until April 20, 2012. During the time period of April 20, 2011 to April 20, 2012, Ms. Hendrick was listed in the Department's records as a sales associate affiliated with EZ Choice, Incorporated, trading as EZ Choice Realty license number CQ 1036523. Since April 20, 2012, Ms. Hendricks's real estate sales associate license has been listed as inactive with the Department.

3. La Roca Realty International Corporation (La Roca Realty) is a corporation organized under the laws of the State of Florida, and listed with the State of Florida, Department of State. The Articles of Incorporation on file with Florida Department of State show that Ms. Hendrick incorporated La Roca Realty on October 27, 2010, listing herself as registered agent,

initial officer, and director. On November 23, 2010, Ms. Hendrick filed an amendment to the Articles of Incorporation, removing herself as initial officer and director, and placing ownership of the stock in Mr. Harry Hunt and Ms. Louise Allen.

4. A Certificate of Non-Licensure, dated May 10, 2012, shows "no evidence that La Roca Realty ever had a current or active license as a real estate brokerage in the State of Florida, in accordance with chapter 475, Florida Statutes." As such, it is clear that at all times pertinent to this case, La Roca Realty did not hold a brokerage license.

5. In late March 2010, Mr. Howes, a real estate investor from Canada, sought to invest in Florida. Mr. Howes was seeking to purchase between 10 and 15 homes in the Orlando, Florida, area. Mr. Howes holds a real estate license in Canada; thus, he is familiar with purchasing and investing in real estate.

6. Mr. Howes contacted a Florida bank located in Kissimmee, to discuss his potential investment. During the meeting, the bank loan officer informed Mr. Howes that he had a friend who was a realtor and could help him. The loan officer introduced Mr. Howes to Ms. Hendrick on March 30, 2011.

7. During the initial meeting, Ms. Hendrick provided Mr. Howes with a business card, which showed Ms. Hendrick as a "Realtor" for "La Roca Realty." Further, Ms. Hendrick informed

Mr. Howes that she could be his realtor, and she began to forward potential investment properties to Mr. Howes for consideration. Further, Ms. Hendrick showed Mr. Howes specific properties which she stated were for sale.

8. Mr. Howes became suspicious about Ms. Hendrick because when he asked the name of the seller of the homes, Ms. Hendrick stated that all title checks would list "owner of record." Furthermore, Ms. Hendrick informed Mr. Howe that he should make any escrow deposit check for the purchase of the homes payable to La Roca Realty. Based on his prior real estate experience, Mr. Howe knew that escrow deposit checks were made payable to the listing agent, not the buyer's real estate agent.

#### CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties and subject matter of this cause, pursuant to section 120.57(1), Florida Statutes (2012).

10. 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.

11. 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 Sec. & Inv. Prot. v. Osborne

Stern, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987).

12. Clear and convincing evidence requires the evidence to be credible; the facts to which the witnesses testify to be distinctly remembered; and the testimony to 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)). Moreover, in disciplinary proceedings, the statutes and rules for which a violation is alleged must be strictly construed in favor of Respondent. Elmariah v. Dep't of Bus. & Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990).

13. The Agency first charged Ms. Hendrick with violating sections 475.42(1)(b) and 475.25(1)(e). Section 475.42(1)(b) provides that "[a] person licensed as a sales associate may not operate as a broker or operate as a sales associate for any person not registered as her or his employer." Further, section 475.25(1)(e) makes it a disciplinary offense to violate any of the provisions of chapter 475.

14. The issue presented here is whether Ms. Hendrick operated as a sales associate. It is undisputed that

Ms. Hendrick holds a sales associate license, and that La Roca Realty was not registered as her employer. Section 475.01(1)(j), defines a "sales associate" as:

a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

15. The term "broker" is fully defined in section 475.01(1)(a).<sup>2/</sup> In pertinent part, the definition provides that a "broker" is a person who, for payment, agrees to negotiate the sale or purchase of any real property, or who holds out to the public by any oral or printed solicitation that she is engaged in the business of selling real property of others, or who assists in the procuring of prospects or the negotiation or closing of any real property transaction.

16. Here, the facts show that Ms. Hendrick informed Mr. Howes that she was a realtor and would assist him in identifying real property for him to purchase. In addition to the oral statements to Mr. Howes, Ms. Hendrick provided Mr. Howe with a business card showing her as a realtor for La Roca Realty. Mr. Howes understood Ms. Hendrick to be his realtor and that he would pay her for her work. Finally, the record showed by clear and convincing evidence that Ms. Hendrick offered to negotiate and help Mr. Howes purchase real estate properties for



his business, and directed Mr. Howes to make escrow deposit checks payable to La Roca Realty. Based on the foregoing facts, the Department showed by clear and convincing evidence that Ms. Hendrick violated sections 475.42(1)(b) and 475.25(1)(e).

17. Count Two of the Administrative Complaint charges Ms. Hendrick with violating section 455.227(1)(j), Florida Statutes, which prohibits a person from "aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to chapter 455."

18. The Department showed by clear and convincing evidence that Ms. Hendrick assisted La Roca Realty by acting as a realtor for the corporation, even though La Roca Realty was not licensed in the State of Florida. Ms. Hendrick, who incorporated La Roca Realty, knew or should have known that it was not licensed as a broker in the State of Florida. Additionally, the facts showed that Ms. Hendrick requested that escrow deposit checks be made payable to La Roca Realty and held herself out as a "realtor" for La Roca Realty. At the time she was requesting the escrow checks and showing Mr. Howes properties, the record shows that La Roca Realty was not a licensed entity. Therefore, the Department proved by clear and convincing evidence that Ms. Hendrick violated section 455.227(1)(j), Florida Statutes.

19. Florida Administrative Code Rule 61J2-24.001 sets forth a range of disciplinary guidelines from which to impose

disciplinary penalties. The recommended range for a first violation of sections 475.42(1)(b) and 475.25(1)(e) is an administrative fine from \$250.00 to \$1,000.00, and suspension to revocation. Further, because Ms. Hendrick is guilty of violating section 455.227(1)(j), the disciplinary range set out for 475.25(1)(e), which covers a violation of any rule or order or provision under chapters 475 and 455, is also applicable. The rule allows for proof of mitigating and aggravating circumstances that allow for deviation from the guidelines. No facts were brought forward to show that a deviation from the guidelines is appropriate.

20. Based on the evidence, the undersigned finds that the guidelines are appropriate in recommending the discipline for the two counts. The undersigned recommends \$1,000.00, administrative fine for Count I, a \$1,000.00, administrative fine for Count II, and a five-year suspension of Ms. Hendricks's real estate license.

#### RECOMMENDATION


Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order finding that:

1. Ms. Hendrick violated sections 475.42(1)(b) and 475.25(1)(e), as alleged in Count I of the Administrative Complaint, and fining her \$1,000.00;

2. Ms. Hendrick violated section 455.227(1)(j), as alleged in Count II of the Administrative Complaint, and fining her \$1,000.00; and

3. Suspending her real estate license for a period of five years.

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



---

THOMAS P. CRAPPS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of August, 2012.

#### ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2011 version.

<sup>2/</sup> Section 475.01(1)(a) provides:

(a) "Broker" means 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 therefore, 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 therefore; 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). Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. 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.

COPIES FURNISHED:

Megan Demartini, Esquire  
Department of Business and  
Professional Regulation  
Suite 42  
1940 North Monroe Street  
Tallahassee, Florida 32399

Sarah Hendrick  
517 Ridges Drive  
Dundee, Florida 33838

J. Layne Smith, General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

Juana Watkins, Director  
Department of Business and  
Professional Regulation  
Division of Real Estate  
400 West Robinson Street, Suite N801  
Orlando, Florida 32801

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.