

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, REAL
ESTATE COMMISSION,

Petitioner,

vs.

Case No. 12-4134PL

JUDY LIMEKILLER,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 8, 2013, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH) in Sarasota, Florida.

APPEARANCES

For Petitioner: Susan Leigh Matchett, Esquire
Department of Business and
Professional Regulation,
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399

For Respondent: James Harwood, Esquire
1277 North Semoran Boulevard
Suite 106
Orlando, Florida 32807

STATEMENT OF THE ISSUES

Whether Judy Limekiller (Respondent) committed the violation alleged in the Administrative Complaint dated August 30, 2012, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

The Department of Business and Professional Regulation, Division of Real Estate (Petitioner), filed a one-count Administrative Complaint against Respondent that alleged a violation of section 475.25(1)(b), Florida Statutes (2012). The alleged violation stemmed from Respondent's dealings with individuals whose signatures were affixed to documents by Respondent. It is undisputed the individuals, whom Respondent represented, did not personally sign the documents. Respondent maintains that she had the individuals' permission to sign papers, that there was no intent to defraud anyone, and that no one suffered any monetary loss as a result of the documents being signed by her.

The matter was forwarded to DOAH for formal proceedings on December 21, 2012. An Initial Order was issued on December 26, 2012. After a number of continuances requested by the parties, the case was heard on April 8, 2013.

At the hearing, Petitioner presented the testimony of Respondent, Patricia Craig Voigt, Darla Furst, Kelli Quigley, Paula Rees, and Lisa Arena. Respondent testified in her own

behalf and presented witnesses Terrance Coveney, Lisa Arena, and Robert Limekiller. Petitioner's Exhibits 1 through 12 were admitted into evidence. Respondent's Exhibit 1 was also received into evidence.

The Transcript of the proceedings was filed with DOAH on April 24, 2013. A Motion for Extension of Time to File Proposed Recommended Order was granted. The parties timely filed proposed recommended orders that have been considered in the preparation of this Recommended Order. All references to law are to Florida Statutes (2012) unless otherwise stated.

FINDINGS OF FACT

1. Petitioner is an agency of the State of Florida created by section 20.165, Florida Statutes. Petitioner is charged with the responsibility of regulating the real estate industry in Florida pursuant to chapters 455 and 475, Florida Statutes. As such, Petitioner is fully authorized to prosecute disciplinary cases against real estate licensees.

2. Respondent was at all times material to this matter, the holder of a Florida real estate license, license number 3131887. At all times material to the allegations of this case Respondent was an active sales associate with Michael Saunders and Company.

3. Respondent's address of record is 1529 Pelican Point Drive, HA 205, Sarasota, Florida.

4. In January 2012, Respondent was a sales associate handling a transaction with Regina Zahofnik (Ms. Zahofnik). Ms. Zahofnik was the seller of property located at 4527 MacEachen Boulevard, Sarasota, Florida. Respondent admits she signed Ms. Zahofnik's name to a Cancellation of Contract and Release. Respondent did not have written authorization to sign for Ms. Zahofnik. Instead, she maintains Ms. Zahofnik gave her verbal authority to sign the document.

5. In February 2012, Respondent was a sales associate handling a transaction with Lynda Kravitz. Ms. Kravitz was the seller of property located at 1526 Pelican Point Drive, BA 147, Sarasota, Florida. Respondent signed Ms. Kravitz' name to a Seller's Property Disclosure Statement. Ms. Kravitz did not authorize Respondent to sign the document.

6. In February 2012, Respondent was a sales associate handling a transaction with Cherryne Kravitz. Ms. Kravitz was the seller of property located at 1526 Pelican Point Drive, BA 147, Sarasota, Florida. On or about February 10, 2012, Respondent signed Ms. Kravitz' name to a Residential Contract for Sale and Purchase. Ms. Kravitz did not authorize Respondent to sign the document.

7. In all situations, Respondent believed she was authorized to sign the documents. She claims either e-mail or text message gave her the go-ahead to sign documents so that they

could be timely processed. In the case of Ms. Zahofnik, the "deal was dead" and could not close. Since the buyer elected to walk away from the purchase when the seller could not complete the transaction, Respondent maintains that no party was injured by the signing of the document and that by doing so the refund to the buyer was processed.

8. In the case of the Kravitz sale, Respondent signed the property disclosure because she knew the property better than the sellers and an expedited completion of the paperwork was requested. Again, Respondent states Ms. Kravitz authorized the signature.

9. And with regard to the signing of the contract, Respondent asserts that Ms. Kravitz was slow to return the contract and that she was getting pressure from the other Ms. Kravitz to get the paperwork completed. Eventually, both Kravitz daughters signed the contract. Respondent does not deny signing the contract.

10. As a result of the allegations of this case, Michael Saunders and Company incurred expenses and lost commissions.

11. Petitioner did not present evidence regarding the cost of investigating this matter.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

13. Petitioner seeks to impose administrative penalties against Respondent that include the suspension or revocation of her real estate license. Therefore, Petitioner has the burden of proving the specific allegations of fact that support its charges by clear and convincing evidence. See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Pou v. Dep't of Ins. & Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998).

14. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), as follows:

[C]lear 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 evidence 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 the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652 (Fla. 5th DCA 1998) (Sharp, J., dissenting).

15. Section 475.25, Florida Statutes, authorizes Petitioner to discipline any Florida real estate licensee who commits any of a number of offenses defined by the statute. Pertinent to this case, however, is the following provision that Petitioner alleged Respondent violated:

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

* * *

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or

scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

16. Based upon the undisputed testimony in this cause, Respondent signed documents with signatures other than her own. That is to say, she signed others' names on documents with the intention that those signatures be treated as the original persons' signatures. Respondent did not have a power of attorney to sign for anyone. Respondent maintains she was given verbal authority to sign. This claim conflicts with the deposition testimony of the persons for whom Respondent signed.

17. Based upon the foregoing, Petitioner has established by clear and convincing evidence that Respondent violated the provisions of law cited in the Administrative Complaint. It is improper to sign anyone's name other than your own to legal documents. Respondent's well-meaning intentions do not excuse her misconduct. Contracts are legally binding documents. Only the named party may sign. Disclosures are intended to protect parties so that all known problems or conditions of a property may be fully known. Even if Respondent assisted an owner in the

preparation of a disclosure form, the owner is responsible to the buyer to assure the accuracy of the disclosure. Respondent misrepresented the signatures to her company as those of the persons named. Such misrepresentation is ground for discipline.

18. Petitioner has adopted rules to establish guidelines for the punishment of violations of real estate law. Florida Administrative Code Rule 61J2-24.001 provides, in part:

(1) Pursuant to Section 455.2273, F.S., the Commission sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon licensees guilty of violating Chapter 455 or 475, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which normally will be imposed for each count during a formal or an informal hearing. For purposes of this rule, the order of penalties, ranging from lowest to highest, is: reprimand, fine, probation, suspension, and revocation or denial. Pursuant to Section 475.25(1), F.S., combinations of these penalties are permissible by law. Nothing in this rule shall preclude any discipline imposed upon a licensee pursuant to a stipulation or settlement agreement, nor shall the range of penalties set forth in this rule preclude the Probable Cause Panel from issuing a letter of guidance.

(2) As provided in Section 475.25(1), F.S., the Commission may, in addition to other disciplinary penalties, place a licensee on probation. The placement of the licensee on probation shall be for such a period of time and subject to such conditions as the Commission may specify. Standard probationary conditions may include, but are not limited to, requiring the licensee: to attend pre-licensure courses; to

satisfactorily complete a pre-licensure course; to attend post-licensure courses; to satisfactorily complete a post-licensure course; to attend continuing education courses; to submit to and successfully complete the state-administered examination; to be subject to periodic inspections and interviews by a DBPR investigator; if a broker, to place the license on a broker associate status; or, if a broker, to file escrow account status reports with the Commission or with a DBPR investigator at such intervals as may be prescribed.

(3) The penalties are as listed unless aggravating or mitigating circumstances apply pursuant to subsection (4). The verbal identification of offenses is descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included. [Table Omitted]

For the violation alleged in this case the first violation penalty range is an administrative fine of \$1,000.00 to \$2,500.00 and a 30-day suspension to revocation of license. The second and subsequent violations increase the penalties to a fine of \$2,500.00 to \$5,000.00 and six-month suspension to revocation.

19. Aggravating circumstances were not provided at hearing. Respondent maintains that she is the primary wage earner in her household and that should she lose her license the family will suffer significant financial hardship. Based upon the foregoing, Respondent asserts that should be considered in determining what the penalty should be.

20. The disciplinary guidelines place restrictions and limitations on the exercise of the Commission's disciplinary authority. See Parrot Heads, Inc. v. Dep't of Bus. & Prof'l Reg., 741 So. 2d 1231, 1233 (Fla. 5th DCA 1999) ("An administrative agency is bound by its own rules . . . creat[ing] guidelines for disciplinary penalties."); and § 455.2273(5), Fla. Stat. In accordance with the guidelines, it is therefore recommended that Respondent be fined not less than \$2,500.00, be suspended for 30 days, and be placed on probation for a length of time deemed appropriate by the Florida Real Estate Commission.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Florida Real Estate Commission finding Respondent in violation of the provision of law set forth in the Administrative Complaint as alleged by Petitioner, imposing an administrative fine in the amount of \$2,500.00, and imposing a suspension of Respondent's real estate license for a period of 30 days, with probation to follow for such period of time as the commission deems appropriate.

DONE AND ENTERED this 21st day of June, 2013, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 21st day of June, 2013.

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.