STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF REAL ESTATE,[1/]

Petitioner,

vs. Case No. 13-0143PL

MOUNIR ALBERT EL BEYROUTY,

Respondent.
_____/

RECOMMENDED ORDER

On May 8 and 9, 2013, a final administrative hearing was held in this case in Clearwater before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Magdalena Ozarowski, Esquire
Joshua Kendrick, Esquire
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For Respondent: Bruce J. Robbins, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Florida Real Estate Commission should discipline the Respondent, Mounir Albert El Beyrouty, on charges that he failed to deliver rental proceeds,

was dishonest in his dealings regarding the rental property, failed to escrow rental deposits and proceeds, and failed to properly reconcile his escrow account.

PRELIMINARY STATEMENT

The Petitioner, Department of Business and Professional Regulation, Division of Real Estate (Division), filed an Administrative Complaint against the Respondent alleging: in Count I, that he failed to deliver rental proceeds, in violation of section 472.25(1)(d), Florida Statutes (2013)[2/]; in Count II, that he was dishonest in his dealings regarding the property, in violation of section 472.25(1)(b); in Count III, that he failed to deposit rental deposits and proceeds in escrow, in violation of section 472.25(1)(k); and, in Count IV, that he failed to properly reconcile his escrow account, in violation of Florida Administrative Code Rule 61-14.012(2) and, therefore, section 472.25(1)(e). The Respondent disputed the charges and requested an administrative hearing.

At the hearing, the Division had Petitioner's Exhibits 1 through 23 admitted in evidence and called the following witnesses: Virginia Covington; Patric Zwolenski; and Lisa Arena. The Respondent called David McClure, Harry Karim, Blair Newton, testified himself, and had Respondent's Exhibits 5 through 19 admitted in evidence. The Transcript of the final hearing was

filed, and the parties filed proposed recommended orders that have been considered.

FINDINGS OF FACT

1. The Respondent, Mounir Albert El Beyrouty, is licensed as a real estate broker in Florida, having been issued license no. BK 596936. He is the qualifying broker for Intermab, Inc., d/b/a Byblos Beach Realty.

2. Acting through the real estate brokerage he qualified, Intermab, Inc., the Respondent orally agreed with Virginia Covington to manage apartment Unit 1-E, Redington Tower 3, located at 17940 Gulf Boulevard in Redington Shores, Florida. Initially, Covington, who is a federal district judge, was the personal representative and sole beneficiary of her mother's estate, which owned the unit; after probate, Judge Covington became the owner of the unit.

3. The Respondent and Judge Covington agreed orally that the Respondent would try to lease the apartment on an annual basis at a lease rate of $850 per month, less a 15 percent commission to the Respondent. Although the Respondent was unable to secure such a lease, he intentionally misled Judge Covington to think there was such a lease and, in January 2008, began paying her $722.50 per month by check drawn on his brokerage operating account. He did this because he wanted her to think highly of his abilities as a real estate broker in the hopes that

she would retain him to list the property when she decided to sell.

4. Not long after he began sending monthly checks, the Respondent told Judge Covington that a leak in the kitchen sink should be repaired and a stained mattress should be replaced. He got her permission, took care of both items, and was reimbursed. However, he perceived that Judge Covington did not want to put additional money into the apartment unnecessarily and decided to avoid these kinds of conversations and dealings with her. Instead, he began to expend his own funds to maintain and upgrade the property as he saw fit without telling her.

5. The Respondent secured a paying tenant for the apartment for six weeks during February and March 2008. He collected a $500 security deposit and $5,250 in rent, all of which he deposited in the brokerage operating account. He did not tell Judge Covington about the seasonal renter. Instead, he kept paying her $722.50 per month and continued to lead her to believe there was an annual lease for $850 a month. When the seasonal renter left, the Respondent continued to pay Judge Covington $722.50 per month.

6. In April 2008, the Respondent allowed friends to stay in Judge Covington's apartment free of charge and without paying a security deposit. He did not tell Judge Covington, rationalizing

that he was paying her the $722.50 per month she thought was her share of the annual lease payments.

7. The Respondent secured a paying tenant for the apartment for January, February, and March 2009. He collected a $500 security deposit and $9,000 in rent, all of which he deposited in the brokerage operating account. He did not tell Judge Covington about the seasonal renter. Instead, he kept paying her $722.50 per month and continued to lead her to believe there was an annual lease for $850 a month. When the seasonal renter left, the Respondent continued to pay Judge Covington $722.50 per month.

8. The Respondent secured a paying tenant for the apartment for January, February and March 2010. He collected a $500 security deposit and $9,000 in rent, all of which he deposited in the brokerage operating account. He did not tell Judge Covington about the seasonal renter. Instead, he kept paying her $722.50 per month and continued to lead her to believe there was an annual lease for $850 a month. When the seasonal renter left, the Respondent continued to pay Judge Covington $722.50 per month.

9. In July 2010, the Respondent was able to lease the apartment for a year at a monthly rent of $1,300. He also collected a $1,000 security deposit. He deposited this money in the brokerage operating account. He did not tell Judge Covington

about the seasonal renter. Instead, he kept paying her $722.50 per month and continued to lead her to believe there was an annual lease for $850 a month.

10. In November 2010, Judge Covington told the Respondent to tell the tenant she wanted to increase the annual lease rate to $935 a month. The Respondent continued to lead her to believe there was an annual lease for $850 a month and told her that he would advise the supposed tenant of the rent increase. Instead, he kept collecting $1,300 a month from the tenant and began paying Judge Covington $794.75 a month (the $935, less a 15 percent commission). He did not tell her there actually was an annual lease for $1,300 a month.

11. The $1,300 annual lease was not renewed in July 2011. The Respondent continued to pay Judge Covington $794.75 a month and to lead her to believe there was an annual lease for $935 a month.

12. In about June 2011, Judge Covington decided to sell her apartment. As the Respondent hoped and planned, she listed it with his brokerage. Judge Covington asked the Respondent to notify the supposed annual tenant, who she believed had been living in the apartment since December 2007, to make sure the tenant would be agreeable to a month-to-month lease during their efforts to sell. The Respondent continued to lead Judge Covington to believe there was such an annual tenant and assured

her that he would be able to convince the tenant to cooperate with her plan to sell.

13. From August 29 through October 5, 2011, the Respondent allowed friends to stay in Judge Covington's apartment free of charge and without paying a security deposit. He did not tell Judge Covington, rationalizing that he was paying her the $794.75 per month she thought was her share of the annual lease payments.

14. In November and December 2011, the Respondent rented Judge Covington's apartment to the sister of the court clerk for $850 a month without requiring a security deposit. He did not tell Judge Covington about this rental.

15. The Respondent secured paying tenants for the apartment for February, March and April 2012. He collected a $500 security deposit and $9,000 in rent, all of which he deposited in the brokerage operating account. He did not tell Judge Covington about the seasonal renter. Instead, he kept paying her $794.75 a month and led her to believe there was an annual lease for $935 a month.

16. Despite several price reductions, the Respondent was unable to sell the apartment, and Judge Covington decided to switch selling brokers. In February 2012, she signed a listing agreement with another real estate broker.

17. Later in February 2012, a real estate salesperson showed Judge Covington's apartment to a prospective purchaser.

Upon questioning, an older woman told the salesperson that they were paying $3,000 a month in rent. The Respondent told the salesperson to disregard the information because the woman was not thinking straight, or words to that effect, because her husband had been ill. He also told her that the woman's son was actually paying the rent.

18. The salesperson related this information to Judge Covington and also told her that she noticed that the residents were not the same people she happened to see in the apartment on one occasion in February 2012. Upon receiving this information, Judge Covington became suspicious that the Respondent had been dishonest and misleading her. She contacted the State Attorney's Office and the Division regarding the process for filing a complaint against the Respondent. She also arranged for a meeting with the Respondent. When she met with the Respondent, she brought a forensic accountant to review the Respondent's records. The Respondent told them he was sorry that Judge Covington was upset with him, but that he did not owe her any money--to the contrary, that she owed him money. However, he told them he was being audited by the Division and was unable to provide supporting documentation.

19. At the final hearing, the Respondent provided a ledger to support his position that all the rent he collected belonged to him alone because Judge Covington owed him money throughout

his dealings with her due to his payments to her, regardless whether her apartment was rented, and the money he spent to maintain and improve the apartment. (This was an after-the-fact justification for his failure to deposit any security deposits or rental payments into his escrow account when, in fact, he did not do so because he did not know it was required.)

20. There is reason to believe that the ledger is not entirely accurate. For example, the Respondent omitted rent collected from at least one occupant of the apartment. It also does not account for the times the Respondent allowed friends and relatives to stay there free of charge, essentially acting as if he owned the apartment. Although the Respondent's testimony regarding the money he paid to maintain and improve the apartment is accepted, his failure to timely apprise Judge Covington regarding those expenditures makes it difficult to be certain about it. Finally, even accepting the ledger at face value, it shows that there were times when the Respondent owed Judge Covington, and not vice-versa.

21. The Division attempted to make a case that the Respondent intended to and attempted to steal rental proceeds. It is unlikely that the Respondent actually targeted a federal judge to victimize in that way. It is more likely that the Respondent was attempting to impress Judge Covington with his skill and expertise as a real estate broker and, ultimately, to

be rewarded with the listing on the property when it was sold. In so doing, the Respondent flagrantly violated several laws and rules regarding his professional responsibilities as a licensed Florida real estate broker.

22. Respondent has been a licensed real estate broker for many years and depends on his license to make a living to support himself and his family. He has no prior disciplinary record. However, it has become known in this case that, over the years, he consistently has failed to use his escrow account for rental deposits and proceeds because he did not know it was required.

CONCLUSIONS OF LAW

23. Since this is a license discipline case, the Department must prove its allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The Supreme Court has stated:

> 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 Henson, 913 So. 2d 579, 590 (Fla. 2005)(quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

24. In Count I, the Division charged the Respondent essentially with failure to deliver rental proceeds on the Covington property, in violation of section 475.25(1)(d). The evidence was clear and convincing that the Respondent violated this statute--albeit, in a roundabout manner that was peculiar and complicated.

25. In Count II, the Division charged the Respondent with violating 475.25(1)(b) by: fraud; misrepresentation; concealment; false promises; false pretenses; dishonest dealing by trick, scheme, or device; culpable negligence; or breach of trust. The evidence was clear and convincing that the Respondent was guilty of all those offenses (even though it was not proven that the Respondent intended to steal rental proceeds from Judge Covington).

26. In Count III, the Division alleged that the Respondent failed to deposit rental deposits and proceeds in escrow, in violation of section 475.25(1(k). The evidence was clear and convincing that the Respondent did not put any Covington rental deposits or proceeds in escrow. The Respondent argues that by the time he received the rental deposits or proceeds, and every succeeding time he received any, he was owed money by Judge Covington, so no rental deposits or proceeds ever were required to be placed in escrow.

27. The Respondent's argument is wrong for numerous reasons. First, it was conceived after-the-fact. Actually, the Respondent did not place rental deposits and proceeds in his escrow account because he did not know rental deposits and proceeds were required to be placed in escrow. As a result, he never deposited any rental deposits or proceeds into his escrow account, not just on the Covington property. Second, even accepting the Respondent's ledger of his dealings with the Covington property, security deposits and advances on rentals not yet earned did not belong to Judge Covington exclusively when the Respondent failed to place them in escrow; the renters had a contingent claim on them. Third, even accepting the Respondent's ledger of his dealings with the Covington property, and disregarding the renters' claims to the money, the Respondent was not, in fact, "owed" money by Judge Covington each and every time he received rental deposits and proceeds. Finally, even accepting the rest of Respondent's incorrect argument in its entirety, the rental deposits and proceeds still should have been put in escrow first and checks written out of the escrow account to the Respondent to document the transactions. See Dreyer v. Fla. Real Estate Comm'n, 370 So. 2d 95, 98 (Fla. 4th DCA 1979).

28. The Respondent argues that the Division should not be allowed to prove Count III based on rental deposits and proceeds on property other than the Covington property because the

Administrative Complaint contained specific allegations only as to the Covington property. Notwithstanding the pleading deficiencies, the Respondent was fully aware that the Division intended to prove Count III based on rental deposits and proceeds on property other than the Covington property. In addition, the Respondent admitted to never placing any rental deposits or proceeds in his trust account because he did not think it was required. For that reason, he was not prejudiced by the pleading deficiency.

29. In Count IV, the Division alleges that the Respondent violated Florida Administrative Code Rule 61J2-14.012(2), and therefore section 475.25(1)(e), by failing to reconcile his trust account. This violation was proven by clear and convincing evidence.

30. The Respondent contends that he did not violate rule 61J2-14.012(2) because he did not use the trust account. However, the requirement of the rule is to compare total liability with the trust account balances. The evidence was clear that the Respondent had trust liabilities, and they did not reconcile with the balances in his trust account.

31. Under the disciplinary guidelines in rule 61J2-24.001(3), the normal range of discipline for the proven violations are: for Count I, from suspension to revocation and an administrative fine from $250 to $1,000 under paragraph (e);

for Count II, from a 30-day suspension to revocation and an administrative fine from $1,000 to $2,500 under paragraph (c); for Count III, from a 30-day suspension to revocation and an administrative fine from $250 to $1,000 under paragraph (l); and for Count IV, from a 30-day suspension to a five-year suspension and an administrative fine from $250 to $1,000 under paragraph (f). In addition to other disciplinary penalties, a licensee can be placed on probation for a period of time, subject to conditions, which may include 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 take and pass the state-administered examination; to be subject to periodic inspections and interviews by a Division 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 Real Estate Commission or with a Division investigator at prescribed intervals. Fla. Admin. Code R. 61J2-24.001(2).

32. Under rule 61J2-24.001(4), aggravating or mitigating circumstances that can justify a departure from the normal range of discipline, if proven by clear and convincing evidence, include: the degree of harm to the consumer or public; the number of counts in the administrative complaint; the licensee's

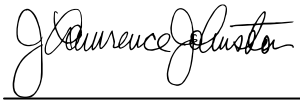
disciplinary history; the status of the licensee at the time of the offense; the degree of financial hardship incurred by the licensee from a fine or suspension; and a previous letter of guidance.

33. The facts of this case do not justify a departure from the normal range of discipline. However, consideration of the facts relevant to that question informs the appropriate discipline to impose within the normal range. In this case, discipline at the lower end of the normal range is appropriate, with a suitable period of probation upon suitable conditions to ensure the Respondent understands and comports himself in accordance with his duties and responsibilities as a real estate broker.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Real Estate Commission enter a final order: finding the Respondent guilty as charged; fining him $2,000; suspending his license for one year; and placing him on probation for a suitable period of time and upon suitable conditions.

DONE AND ENTERED this 5th day of August, 2013, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of August, 2013.

ENDNOTES

[1/] The caption is amended to specify the Division of Real Estate. See 475.021, Fla. Stat. (2013).

[2/] Unless otherwise noted, all statutory references are to Florida Statutes (2013), which reflects the statutes in effect during the relevant conduct of the Respondent. Likewise, all rule references are to the version of the rule in effect during the relevant time period.

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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.