

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

Case No. 20-3973PL

MARCELLA BOLT,

Respondent.

SUMMARY FINAL ORDER

Pursuant to section 120.574, Florida Statutes (2020),¹ Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”) issues this Summary Final Order.

STATEMENT OF THE ISSUES

Whether Respondent, Marcella Wyatt Bolt, committed the violations alleged in Petitioner’s Administrative Complaint; and, if so, what penalties should be imposed.

PRELIMINARY STATEMENT

The Department of Business and Professional Regulation, Division of Real Estate (“the Division”) issued a three-count Administrative Complaint on December 17, 2019, alleging that Ms. Bolt violated sections 475.227(1)(j), 475.25(1)(h), and 475.42(1)(c), Florida Statutes (2016-2018). Ms. Bolt responded to the Administrative Complaint by requesting a formal

¹ Unless stated otherwise, all statutory references shall be to the 2020 version of the Florida Statutes.

administrative hearing, and the Division referred this matter to DOAH on September 2, 2020.

On September 18, 2020, the Division filed an “Amended Motion for Summary Proceedings” requesting that this proceeding be conducted pursuant to section 120.574. Because Ms. Bolt had no objection, the undersigned issued an Order on September 21, 2020, granting the aforementioned Motion.

Prior to the commencement of the final hearing, scheduled for October 23, 2020, the parties notified the undersigned that a settlement had been reached and filed a “Joint Proposed Recommended Final Order” on October 8, 2020. The instant Summary Final Order incorporates the parties’ stipulated facts and their proposed disposition.

FINDINGS OF FACT

1. The Division is the state agency charged with regulating the practice of real estate in Florida pursuant to section 20.165, Florida Statutes, and chapters 120, 455, and 475, Florida Statutes.

2. At all relevant times, Ms. Bolt was a Florida-licensed real estate broker holding license number BK 3104456.

3. Since February 2, 2007, Ms. Bolt has been the qualifying broker for MWB Real Estate Venture, Inc. (“MWB”), a licensed real estate corporation holding license number CQ 1028208. MWB does business as Tropic Coast Realty.

4. On approximately February 1, 2017, Ms. Bolt hired Laura Mayer to work as an inside sales associate soliciting sales leads for MWB. Ms. Mayer did not hold a real estate license at that time.

5. On approximately August 9, 2017, Ms. Bolt and Ms. Mayer entered into an “Inside Sales Agent Offer and Agreement of Employment” outlining

Ms. Mayer's employment duties and compensation structure. Ms. Bolt agreed to pay Ms. Mayer a base salary and bonuses based on active listings taken and sold. Ms. Mayer was to receive \$100.00 per lead that resulted in a sales listing and a structured bonus² for leads resulting in commissions for Ms. Bolt.

6. Ms. Mayer's duties included, but were not limited to, the following tasks: (a) calling owners of Florida real estate who were potential sellers; (b) following approved scripts and dialogues provided to her; (c) working to compel each prospect to agree to a face-to-face agent presentation; (d) making follow-up calls as assigned; (e) achieving a minimum goal of five listing presentations per week; and (f) continuously contacting potential sellers until making contact.

7. Ms. Bolt paid Ms. Mayer for performing work associated with the following real estate transactions:

- a. \$750.00 on May 11, 2017, for the sale of Wading Bird;
- b. \$400.00 on September 26, 2017, for the sale of Fernandina;
- c. \$650.00 on September 28, 2017, for the sale of Woodfield;
- d. \$1,750.00 on October 19, 2017, for the sale of Willoughby;
- e. \$475.00 on October 27, 2017, for the sale of Darrow;
- f. \$500.00 on October 27, 2017, for the sale of Rayfield;
- g. \$375.00 on December 21, 2017, for the sale of Sugar Creek;

² The structured bonus was a graduated amount based on the sales price.

- h. \$450.00 on April 18, 2018 for the sale of Achilles;
- i. \$250.00 on April 18, 2018, for the sale of Hyacinth;
- j. \$100.00 on September 14, 2018 for the listing of Birdland, Brown;
- k. \$100.00 on September 14, 2018, for the listing of Goldenrod, Kennedy;
- l. \$300.00 on September 25, 2018, for the sale of Creel;
- m. \$100.00 on September 26, 2018, for the listing of Venetian, Nall;
- n. \$100.00 on October 2, 2018, for the listing of Colorado, Luidmela;
- o. \$100.00 on October 15, 2018, for the listing of Kerry Downs, DeGraaf;
- p. \$100.00 on October 15, 2018, for the listing of Emerson, Board; and
- q. \$250.00 on October 19, 2018, for the sale of Amaryllis.

8. Ms. Mayer did not hold a real estate license when any of the aforementioned payments and/or sales were completed.

9. The Division and Ms. Bolt submitted a “proposed disposition” that is adopted by the undersigned and set forth below.

CONCLUSIONS OF LAW

10. Pursuant to section 120.574, DOAH has jurisdiction over the parties and subject matter of this proceeding.

11. Chapter 475 governs real estate licensees, and section 475.01(1)(a) defines a “broker,” in pertinent part, as:

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 therefor, 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 therefor; and all persons who advertise rental property information or lists.

12. The Second District Court of Appeal held in *Alligood v. Florida Real Estate Commission*, 156 So. 2d 705 (Fla. 2d DCA 1963), that a telephone solicitor paid for contacting people by telephone and inviting them to visit a real estate development project at the developer's expense was subject to regulation under chapter 475.

13. Section 455.227(1)(j) subjects a real estate licensee to discipline for:

[a]iding, assisting, procuring, employing, or advising any unlicensed person or entity to practice

a profession contrary to this chapter, the chapter regulating the profession, or the rules of the [Department of Business and Professional Regulation] or [the Florida Board of Real Estate].

14. A real estate licensee violates section 475.25(1)(h), if the licensee:

[h]as shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

15. Section 475.42(1)(c), mandates that “[a] broker may not employ, or continue in employment, any person as a sales associate who is not the holder of a valid and current license as a sales associate...”

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and proposed disposition submitted by the parties, it is ORDERED that:

1. Ms. Bolt shall pay a fine of \$1,000.00 for violating section 455.227(1)(j); a fine of \$1,000.00 for violating section 475.25(1)(h); and investigative costs of \$435.00. Ms. Bolt shall pay the fines and investigative costs by separate checks made payable to the Department of Business and Professional Regulation, Division of Real Estate, within six months from the rendition of the instant Summary Final Order. Payment shall be mailed to 400 West Robinson Street; Suite N801, Orlando, Florida 32801.

2. Ms. Bolt shall complete a 14-hour continuing education course within six months of the rendition of the instant Summary Final Order. That education is in addition to any requirement for Ms. Bolt to maintain a real estate license. The course may be attended live or online. However, the course must be authorized and/or approved by the Florida Real Estate Commission. Unapproved or out-of-state courses will not satisfy this requirement.

3. Count Three of the Division's Administrative Complaint is dismissed.

4. This Summary Final Order shall be construed as disciplinary action against Ms. Bolt's license pursuant to section 455.227(1)(f). The Division and the Florida Real Estate Commission may consider this Summary Final Order in connection with any future disciplinary proceedings.

5. This Summary Final Order shall not preclude or deter the Division or the Florida Real Estate Commission from other disciplinary proceedings against Ms. Bolt for acts or omissions unrelated to those set forth in the Administrative Complaint.

6. Each party shall bear any and all attorney's fees and costs incurred in connection with this cause, except for the costs set forth above which shall be paid by Ms. Bolt.

DONE AND ORDERED this 27th day of October, 2020, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 27th day of October, 2020.

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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 the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.