

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



JAN 28 2013

GEORGIA REAL ESTATE)
COMMISSION,)
Petitioner,)
v.)
STACY RUTH BONDAR,)
Respondent.)

K. Westray
Kevin Westray, Legal Assistant

DOCKET NO.
OSAH-GREC-SAN-1321560-60-Walker
AGENCY REFERENCE No.: 11C1003

INITIAL DECISION

I. INTRODUCTION

Petitioner, Georgia Real Estate Commission (“Commission”), seeks to impose sanctions against Respondent’s real estate associate broker’s license. An evidentiary hearing took place on January 22, 2013. Petitioner appeared and was represented by Alison Spencer, Esq. Although duly noticed, Respondent did not appear at the hearing. Based upon the evidence presented at the hearing, it is the initial decision of the undersigned Administrative Law Judge that Respondent’s license be **SUSPENDED** until she provides satisfactory proof that she has completed a course of study in real estate brokerage that has been approved by the Commission.

II. FINDINGS OF FACT

1.

Respondent Bondar is a licensed real estate associate broker (#B342213) in the State of Georgia. On June 28, 2010, the State of Georgia issued Respondent a real estate associate broker’s license via reciprocity with another state. Respondent immediately requested her license be placed on inactive

status. Respondent's license has remained on inactive status since its issuance. *Testimony of Investigator Rosa Scott; Exhibit P-1.*

2.

On or about January 27, 2011, Petitioner received a request for investigation/complaint which alleged that Respondent was engaging unlawfully in real estate brokerage activities. Specifically, the complaint alleged that Respondent was acting as a property manager for the apartment community Eon at Lindbergh. *Testimony of John Cain; Testimony of Investigator Scott; Exhibit P-2.*

3.

The Commission assigned Investigator Rosa Scott to review the complaint. Investigator Scott has worked for the Commission for seventeen years. During an interview with Respondent regarding the allegations in the complaint, Respondent admitted to Investigator Scott that she was employed with ZRS Management, LLC, as a full time property manager from June of 2010 until May of 2011. In that capacity Respondent was responsible for recruiting and retaining property residents, collecting and depositing rents, tracking expenses, and maintaining accurate records and reporting property activities. Her real estate associate broker's license remained inactive during this time. *Testimony of Investigator Scott; Exhibit P-4.*

4.

Based on the admissions made by Respondent, Investigator Scott informed her that she was engaging in real estate brokerage activity while her license was on inactive status and that such activity was unlawful. Respondent strongly denied any culpability. While she acknowledged that she had not read the applicable real estate statutes, rules and regulations, Respondent maintained that the Investigator was mistaken about the law. *Testimony of Investigator Scott; Exhibits P-1; P-3.*

5.

On or about December 14, 2011, the Commission issued a Citation to Respondent. The Citation charged that Respondent had engaged in real estate brokerage activities while her license was on inactive status and ordered that she pay a total amount of \$1,100.00. This Citation was sent to Respondent by certified and regular mail. While the certified mailing was returned to Petitioner as unclaimed, Respondent did request an administrative hearing regarding the Citation. *Testimony of Investigator Scott; Exhibits P-5; P-6; P-7; P-8.*¹

6.

After Respondent received the Citation, she contacted Deputy Commissioner Craig Coffee. During their conversation Respondent again asserted that Commission staff did not understand real estate brokerage law. She also stated that she had not engaged in real estate brokerage activities while her license was on inactive status. Based on this conversation, Deputy Coffee is concerned that Respondent exhibits a fundamental “lack of understanding” of real estate law. *Testimony of Deputy Commissioner Craig Coffee.*

7.

On or about December 5, 2012, Petitioner forwarded a Statement of Matters Asserted to the Office of State Administrative Hearings, seeking the imposition of sanctions against Respondent’s real estate associate broker’s license. *Exhibit ALJ-1.*

¹ O.C.G.A. § 43-40-25.2 provides the Commission with the power to issue Citations as an alternative to other stated sanctions. It appears the Commission has abandoned the Citation in this case, instead pursuing the sanction of Revocation sought in the Statement of Matters Asserted, as no administrative hearing regarding the Citation ever took place.

III. CONCLUSIONS OF LAW

1.

Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Georgia Real Estate Commission has full power to regulate the issuance of real estate broker's licenses and to discipline real estate brokers. O.C.G.A. § 43-40-14.

3.

Under O.C.G.A. § 43-40-1, a broker:²

- (A) Negotiates or attempts to negotiate, or assists in procuring prospects for the listing, sale, purchase, exchange, renting, lease, or option for any real estate or of the improvements thereon;
- (B) Holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, lease, or option for any real estate or of the improvements thereon;
- (C) Collects rents, assessments, or other trust funds or attempts to collect rents, assessments, or other trust funds... [; and]
- (H) Performs property management services or community association management services....

Real estate brokerage activity includes "community association management services, property management services, and any of the activities identified under the definition of 'Broker' in O.C.G.A. § 43-40-1." Ga. Comp. R. & Regs. 520-1-.05(g). In this case, the Findings of Fact demonstrate that Respondent engaged in real estate brokerage activity as defined by statute and regulation.

² O.C.G.A. § 43-40-1 defines an associate broker as "a person who acts on behalf of a real estate broker in performing any act authorized by this chapter to be performed by the broker."

4.

A real estate broker who does not wish to be actively engaged in the brokerage business may place his or her license on inactive status. A licensee whose license has been placed on inactive status shall not engage in the real estate brokerage business except in connection with property owned by the licensee. O.C.G.A. § 43-40-12(g); Ga. Comp. R. & Regs. 520-1-.05(g).

5.

O.C.G.A. § 43-40-29(a)(8) provides an exemption from the chapter's licensing requirements, such that the chapter shall not apply to "[a]ny person employed on a full-time basis by the owner of property for the purpose of providing property management services or community association management services, selling, buying, leasing managing, auctioning or otherwise dealing with such property...."; see also *Piedmont Engineering & Constr. Corp. v. Balcor Partners-84-II*, 196 Ga. App. 486 (1990). Accordingly, under this exemption, had Respondent remained unlicensed, she would have been exempt from the statute's licensing requirements. See Ga. Comp. R. & Regs. 520-1-.05(h) ("license law contains an exception (not available to licensees) that allows an unlicensed person who is a full-time employee of an unlicensed person to perform real estate brokerage activity on property owned by that unlicensed person's employer.")

6.

In this case Respondent obtained her real estate brokerage license and immediately placed the license on inactive status. Although her license was on inactive status, the property management services exemption did not apply because she remained a licensee. Therefore, Respondent acted in violation of the law by engaging in real estate brokerage activity while her license was inactive.

7.

Under O.C.G.A. § 43-40-25(b)(25) a real estate broker may be sanctioned for demonstrating incompetency to act as a real estate licensee in such a manner as to safeguard the public. Based on the foregoing findings of fact, Respondent violated O.C.G.A. § 43-40-25(b). Not only did Respondent violate the law, she denied culpability to at least two Commission employees, even after acknowledging that she had not reviewed the applicable statutes and/or regulations.

IV. DECISION

The Commission may sanction a licensee when such licensee “has been found guilty of a violation of [the statutes governing real estate brokers and salespersons] or any of the rules and regulations....” O.C.G.A. § 43-40-25(a). The foregoing Findings of Fact demonstrate that Respondent is in violation of the law as contemplated by O.C.G.A. § 43-40-25(a), and that there are sufficient grounds for the imposition of sanctions against her real estate broker’s license. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent’s real estate broker’s license shall be **SUSPENDED** until she provides satisfactory proof that she has completed a course of study in real estate brokerage that has been approved by the Commission.

SO ORDERED this 28 day of January, 2013.



RONIT WALKER
ADMINISTRATIVE LAW JUDGE