

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



JUL 1 2013

GEORGIA REAL ESTATE)
COMMISSION,)
Petitioner,)
)
v.)
)
LAUREN ASHLEY RUEHMAN,)
License No. S313940)
Respondent.)

DOCKET NO.
OSAH-GREC-SAN-1326299-33-Walker

K. Westray
Kevin Westray, Legal Assistant

AMENDED INITIAL DECISION

I. INTRODUCTION

Petitioner, Georgia Real Estate Commission, seeks to impose sanctions against Respondent's real estate salesperson's license. An evidentiary hearing took place on June 4, 2013. Alison Spencer, Senior Assistant Attorney General, represented Petitioner. Respondent represented herself. Based upon the evidence presented at the hearing, it is the initial decision of the undersigned Administrative Law Judge that Respondent's real estate salesperson's license be **REVOKED**.

II. FINDINGS OF FACT

A. Procedural History

1.

Respondent is a licensed real estate salesperson (#S313940) in the State of Georgia. *Testimony of Joanne Newton; Exhibit P-1.*

2.

On or about June 2, 2011, Dana Ash filed a complaint with the Petitioner, alleging that Respondent

had altered a real estate commission check without authorization. On or about January 11, 2012, the Commission issued a Citation to Respondent. Respondent timely requested a hearing. *Testimony of Joanne Newton; Exhibits P-18; P-18a.*

3.

As a result of Respondent's request for a hearing, and prior to the Commission's filing a Notice of Hearing with the Office of State Administrative Hearings, Petitioner further investigated Respondent's conduct as it related to several real estate transactions. During Petitioner's investigation, Respondent voluntarily surrendered her real estate salesperson's license on March 13, 2012. *Testimony of Joanne Newton; Exhibit P-20.*

4.

Subsequent to Respondent's voluntary surrender, the Commission issued an order revoking her real estate salesperson's license. Respondent requested the instant hearing to challenge the Commission's revocation. *Testimony of Joanne Newton; Testimony of Respondent; Exhibits P-19; P-19a.*

5.

Respondent received her real estate salesperson's license on October 12, 2006. Prior to December 28, 2010, Respondent affiliated her real estate salesperson's license with Cardinal Realty Services LLC, America's Realty Atlanta Inc., and Ashton Woods Realty, Inc. From December 28, 2010 through February 28, 2011, Respondent affiliated her license with Magnolia Brokers LLC (hereinafter "Magnolia Brokers"). From March 1, 2011 through June 2, 2011, Respondent's real estate salesperson's license was affiliated with Park Mason Brokers and Associates, LLC (hereinafter "Park Mason" or "Park Mason Brokers"). From June 3, 2011 through January 9, 2012,

Respondent's real estate salesperson's license was on inactive status. From January 10, 2012, through the date that she surrendered her license to the Commission, Respondent affiliated her license with Palmerhouse Properties, LLC. *Testimony of Joanne Newton; Exhibit P-1.*

B. The Shenandoah Trail Property

6.

On or about February 12, 2011, Respondent submitted a Purchase and Sale Agreement for real property located at 7018 Shenandoah Trail, Austell, Cobb County, Georgia (hereinafter the "Shenandoah Property"). Respondent represented the buyer. The Shenandoah Property was owned by SunTrust Bank, who was represented in the transaction by Don Griffin, a real estate salesperson with Rasmus Real Estate Group, Inc. At the time of the initial offer Respondent's license was affiliated with Magnolia Brokers, and she executed the Purchase and Sale Agreement on behalf of Magnolia Brokers. *Testimony of Joanne Newton; Exhibits P-2; P-3.*

7.

Respondent did not include Magnolia Broker's brokerage firm number on the Purchase and Sale Agreement. She did not inform her broker about the Shenandoah Property, nor did she turn over a copy of the submitted Purchase and Sale Agreement to her broker. *Testimony of Laura Johnson; Testimony of Joanne Newton; Exhibit P-2.*

8.

A few days after receiving Respondent's offer, Mr. Griffin received a second offer from another interested party regarding the Shenandoah Property. He asked Respondent and the other potential buyer to submit their highest and best offers to him within twenty four hours. When he received the

two offers, the Bank determined that Respondent had presented a better offer. On or about February 22, 2011, Mr. Griffin redrafted Respondent's Purchase and Sale Agreement to conform to the requirements for bank-owned property. Mr. Griffin listed Magnolia Brokers as the selling broker.

Testimony of Don Griffin; P-4; P-6.

9.

On February 25, 2011, Respondent sent Mr. Griffin an email agreeing to the changes he had made to the Purchase and Sale Agreement. On or about February 27, 2011, Respondent requested that Magnolia Brokers release her real estate salesperson's license. Respondent did not inform Magnolia Brokers that she had any sales pending. Respondent affiliated with Park Mason Brokers on or about March 1, 2013. *Testimony of Don Griffin; Testimony of Laura Johnson; Testimony of Respondent; Exhibit P-1.*

10.

Respondent returned a signed copy of the Purchase and Sale Agreement to Mr. Griffin. In the third iteration of the Purchase and Sale Agreement, Respondent listed Park Mason Brokers as the selling broker. Suntrust accepted this offer and it became binding on March 8, 2011. *Testimony of Don Griffin; Testimony of Respondent; Exhibit P-5.*

C. The Commission Check

11.

Dana Ash owns Park Mason Brokers. Park Mason offers its real estate agents a "pay at close" option, which enables the agent to receive their commission at the closing. In order to exercise the "pay at close" option, agents must submit required documentation prior to the closing date. When

Park Mason hires a real estate agent, they send the agent an independent contractor agreement describing the requirements for the “pay at close” program. These requirements are also available to agents at Park Mason’s website. *Testimony of Dana Ash.*

12.

Prior to closing the Shenandoah Property, Respondent had emailed Park Mason Brokers on several occasions stating that she had questions about the closing procedures. She did not receive a reply. *Testimony of Respondent; Exhibit R-1.*

13.

The closing for the Shenandoah Property occurred on April 4, 2011. The firm of O’Kelley and Sorohan closed the transaction. Lindsey Smithson, Esq. appeared for O’Kelley and Sorohan as the closing attorney. She remembers the closing because she had forgotten the key to the firm’s office, and the transaction closed outside of the office. While some agents are paid at closing, this payment requires direction from the real estate broker involved in the transaction. Ms. Smithson never received a “pay at close” document from Park Mason Brokers regarding the Shenandoah Transaction. *Testimony of Lindsey Smithson.*

14.

The firm gave Respondent a settlement statement and a commission check made payable to Park Mason Brokers in the amount of \$1,500. Respondent altered the commission check so that the payee was listed as “Park Mason Brokers c/o Lauren Ruehman” and cashed the check. She then deposited the proceeds in her personal checking account, commingling the proceeds from the commission check with her personal funds. *Testimony of the Respondent; Testimony of Lindsey Smithson; Exhibit P-11.*

15.

On April 21, 2011, Park Mason contacted Respondent asking her to advise them as to the status of the contract. On or about May 3, 2011, Park Mason confirmed with the closing attorney that the Shenandoah Property transaction had closed, and that a commission check had been distributed to the Respondent. Park Mason sent Respondent another email asking Respondent to clarify the status of the closing and the whereabouts of the settlement statement and the commission check. Respondent did not reply. Subsequently, Park Mason blocked Respondent's access to the multiple listing service. *Testimony of Dana Ash; Exhibits P-12; P-13.*

16.

On or about May 13, 2011, Park Mason sent another email to Respondent stating that it believed that the Shenandoah Property transaction had closed and asking her about the settlement statement and commission check. Respondent replied to this email stating, "Yes it is closed. What is going on with my FMLS access?" On May 14, 2011, Respondent sent a second email to Dana Ash, owner of Park Mason Brokers, stating that "it appears that I may have cashed the PMB check on accident." At the hearing, Respondent maintained that she did not know how to exercise the "pay at close" option and believed that inserting her name on the check was appropriate at the time. *Testimony of Dana Ash; Testimony of Respondent; Exhibits P-14; P-15.*

17.

After learning that Respondent had altered the commission check by including her name as the payee, Park Mason Brokers and the law firm of O'Kelley and Sorohan filed a fraud affidavit with Respondent's bank. The proceeds from the commission check were debited from Respondent's account. O'Kelley and Sorohan reissued the commission check to Park Mason Brokers. Park Mason

Brokers sent Respondent an invoice for the transaction fee, and Respondent paid the invoice. *Testimony of Dana Ash; Testimony of Respondent; Testimony of Lindsey Smithson; Exhibits P-10; R-6.*

18.

As of the date of the hearing, Respondent has not submitted all of the required documentation from the Shenandoah Property closing to Park Mason Brokers, and the broker has not send her a commission check. Respondent won a default judgment in Fulton County Magistrate Court for the commission payment. *Testimony of Dana Ash; Testimony of Respondent; Exhibit R-1.*

D. The Vinings View Transaction

19.

On or about January 16, 2011, while Respondent was affiliated with Magnolia Brokers, she executed a Purchase and Sale Agreement for property located at 5417 Vinings Lake View, Mableton, Cobb County, Georgia (hereinafter the “Vinings View Property”). Respondent executed the contract as selling broker on behalf of Magnolia Brokers. Donna C. Robinson was the listing broker for the property. The offer was accepted and a contract became binding on January 21, 2011. *Testimony of Laura Johnson; Testimony of Donna Robinson; Exhibit P-16.*

20.

Ms. Robinson owned a lock box located on the Vinings View Property. The lock box was a “super lock box.” Agents could insert their firm key into the lock box and obtain a key to the property so that a prospective buyer could view the property. *Testimony of Laura Johnson; Testimony of Donna Robinson.*

21.

Respondent removed the key to the property from the lockbox and failed to return it promptly. The key to the property must always be returned to the lockbox so that it can be shown to potential buyers. Ms. Robinson contacted Respondent numerous times to tell her to return the key, but Respondent did not return her calls. Finally, claiming that her key to the lockbox was not working, Respondent taped the property key to the outside of the lockbox. This placement was dangerously reckless, in that an unauthorized person could have gained access to the property. *Testimony of Laura Johnson; Testimony of Donna Robinson.*

22.

Laura Johnson is the qualifying broker for Magnolia Brokers. Respondent failed to remit a copy of the Vinings View Purchase and Sale Agreement to Magnolia Brokers. Ms. Johnson learned about the potential transaction when Ms. Robinson could not reach Respondent, and called Ms. Johnson to ask her what was happening with the Vinings View transaction. Ms. Johnson asked Respondent about the status of the transaction, and Respondent indicated that the transaction would not close because the bank would not approve the terms of the sale. Ms. Johnson told Respondent to execute a Notice to Terminate. *Testimony of Laura Johnson.*

23.

Respondent submitted a Notice to Terminate to Ms. Robinson. The Notice to Terminate was executed on a Metro 8 Real Estate form, indicating that Respondent was affiliated with Metro 8 Real Estate. At the hearing, Respondent stated she was unsure whether she was ever affiliated with Metro 8 Real Estate. Petitioner's records reflect that Respondent has never been affiliated with Metro 8 Real Estate. *Testimony of Donna Robinson; Exhibits P-1; P-16A.*

24.

Respondent offered a number of excuses for her conduct, stating that despite requests for assistance she had had no direction from her brokers and that her actions were unintentional. She assumed that the commission check was her check to cash, and believes that “the only thing I may have done wrong” was commingling the commission check with her personal funds. She does not understand why Petitioner is pursuing revocation of her real estate salesperson’s license. *Testimony of Respondent.*

25.

Multiple witnesses testified that they did not believe that Respondent is honest or trustworthy, nor that she is she competent to act as a real estate salesperson. Witnesses also found that she was unprofessional. *Testimony of Dana Ash; Testimony of Laura Johnson.; Testimony of Donna Robinson.*

III. CONCLUSIONS OF LAW

1.

Petitioner bears the burden of proof to show that its proposed imposition of sanctions is appropriate. The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.07 & .21.

2.

Petitioner has the full power to regulate the issuance of real estate salesperson’s licenses and to discipline real estate salespersons. O.C.G.A. § 43-40-14. Petitioner may revoke a license whenever a licensee has been found guilty of unfair trade practices under O.C.G.A. § 43-40-25 or of violating

the rules and regulations promulgated by the Commission.

3.

O.C.G.A. § 43-40-15(g) provides that whenever Petitioner initiates an investigation and the licensee who is the subject of the investigation surrenders the license to Petitioner, the Petitioner may issue an order revoking such licensee's license.

4.

Based on the foregoing Findings of Fact, by altering the commission check made payable to Park Mason Brokers and depositing it into her personal bank account, Respondent failed to account for and remit monies coming into the licensee's possession which belonged to others. Such conduct is an unfair trade practice and is prohibited by O.C.G.A. § 43-40-25(b)(3) and Ga. Comp. R. & Regs. r. 520-1-.08(1)(b) (a licensee shall place all cash, checks, or other items of value received by the licensee in a brokerage capacity into the custody of the broker holding the licensee's license as soon after receipt as is practicably possible).

5.

Based on the foregoing Findings of Fact, by depositing the altered commission check into her personal bank account, Respondent commingled the money of the licensee's principals with her own funds in violation of O.C.G.A. § 43-40-25(b)(4).

6.

Based on the foregoing Findings of Fact, by failing to provide copies of the Purchase and Sales Agreements in the Shenandoah and Valley View transactions, Respondent violated Ga. Comp. R. & Regs. r. 520-1-.10(3) (Licensee must provide a copy of a document utilized in a real estate transaction to the broker holding her license).

7.

Based on the foregoing Findings of Fact, by failing to list Magnolia Brokers' license number on the Purchase and Sale Agreement for the Shenandoah Property, Respondent violated Ga. Comp. R. & Regs. r. 520-1-.10(2) (licensee preparing or signing a brokerage engagement or offer to purchase, sell, lease, or exchange real property shall include the license number of each firm and of each licensee participating in the transaction).

8.

Based on the foregoing Findings of Fact, Respondent demonstrated incompetency to act as a real estate licensee in such a manner as to safeguard the interest of the public in violation of O.C.G.A. § 43-40-25(b)(25). Respondent failed to prepare real estate documentation appropriately, failed to submit required documentation to her broker, altered a commission check and commingled these funds with personal funds, failed to timely return a key belonging to another licensee to a lock box, ultimately returning the key in a reckless and dangerous manner. Respondent used documentation that indicated that she was affiliated with Metro 8 Real Estate, although no such affiliation is listed in Petitioner's records. Most troubling of all, at the hearing Respondent repeatedly disclaimed responsibility for her actions, seeming at times not to understand either the nature of or significance of the violations.

9.

Based on the foregoing Findings of Fact, there are sufficient grounds for the imposition of sanctions upon Respondent's real estate license under O.C.G.A. § 43-40-15(f).

IV. DECISION

The foregoing Findings of Fact demonstrate that there are sufficient grounds for the imposition of sanctions against Respondent's real estate salesperson's license. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's real estate salesperson's license shall be and is hereby **REVOKED**.

SO ORDERED this 1st day of July, 2013.



RONIT WALKER
ADMINISTRATIVE LAW JUDGE