

**BEFORE THE
REAL ESTATE AGENCY
STATE OF OREGON**

IN THE MATTER OF: WENDI L. HACKER, Licensee) FINAL ORDER)) OAH Case No. 1303490) Agency Case No. 2013-24
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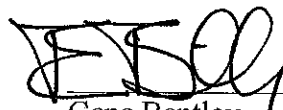
This matter came before the Real Estate Agency to consider the Ruling on Motion for Summary Determination and Proposed Order issued by Administrative Law Judge Rick Barber on March 12, 2014. The Ruling and Proposed Order provided instructions on how to file exceptions. Licensee filed a letter outlining explanations of her conduct and requesting that her license not be revoked. Licensee also submitted a timeline of events and 8 exhibits (A-H).

The Agency considered Licensee's submissions as exceptions. Respondent's exhibits and timeline are new evidence that cannot be considered now as the evidentiary record is closed. Even if the timeline and exhibits were considered on their merits, they would not change the outcome of the case. Licensee's letter is considered as argument against revocation. The Agency does not find Licensee's argument persuasive.

After considering the records and the file herein, the Agency adopts the attached Ruling on Motion for Summary Determination and Proposed Order as the Final Order.

Based on the foregoing, Licensee's Broker License is hereby revoked.

IT IS SO ORDERED THIS 7th day of April, 2014



Gene Bentley
Commissioner

Date of Service: 4-8-2014

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
REAL ESTATE AGENCY**

IN THE MATTER OF:

WENDI L. HACKER
Licensee.

) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION & PROPOSED**
) **ORDER**
)
) OAH Case No. 1303490
) Agency Case No. 2013-24

HISTORY OF THE CASE

On October 25, 2013, the Real Estate Agency issued a Notice of Intent to Revoke to Wendi L. Hacker (Licensee). On November 12, 2013, Licensee requested a hearing. The Agency issued an Amended Notice to Revoke on November 25, 2013.

On December 6, 2013, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned the case to Administrative Law Judge (ALJ) Rick Barber to preside at hearing, and set the hearing for April 29, 2014. No prehearing conference was held in the case. ALJ Barber sent a letter to the parties to explain the hearing process and, among other things, to set a February 14, 2014 due date for any motions for summary determination to be filed.

On February 12, 2014, the Agency filed a Motion for Summary Determination. Licensee was given until March 7 to file a response, but no response was received. The record for the motion closed on March 11, 2014. **Because this Ruling resolves all issues in the case, the April 29, 2014 hearing is hereby cancelled.**

ISSUES

The Agency raises the following issues:

1. Whether Licensee intentionally interfered with the contractual relations of others concerning real estate and/or committed an act of fraud or dishonest conduct by hacking her former employer's computer to obtain access to that company's communications with its clients, thereby violating ORS 696.301(6) and (14).

2. Whether Licensee intentionally interfered with the contractual relations of others concerning real estate and/or committed an act of fraud or dishonest conduct by deleting her former employer's Comparative Market Analyses (CMAs) from her former employer's computer, thereby violating ORS 696.301(6) and (14).

NATURE OF THE REVIEW

A Motion for Summary Determination may be filed by the agency or a party not less than 28 days before the date set for hearing, requesting a ruling on the legal issues in the contested case. The rule sets forth the standard by which I review the motion and states in part:

Motion for Summary Determination

* * * * *

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

OAR 137-003-0580. Pursuant to this rule, I examine the motions and the responses to determine whether there are questions of material fact that remain to be decided, and further look to determine whether the moving party is entitled to a ruling as a matter of law.

RECORDS REVIEWED FOR THE MOTION

I have reviewed the Agency's motion, together with Exhibits 1 through 5, which includes the affidavit of Robert Pierce, the Agency's investigator.

FINDINGS OF FACT

1. Licensee began working for Coldwell Banker Evergreen Realty (Evergreen) as the office administrator in December 1997. In July 2000, Licensee received her broker's license and continued to work for Evergreen as both a broker and the office administrator. (Ex. 4).

2. Over the years, the relationship between Licensee and Margaret Page, the principal of Evergreen, deteriorated. Licensee claimed that Page was a liar and had failed to pay her the amounts she was entitled to in the business. Evergreen worked with many banks to market the banks' real estate owned (REO) properties. Licensee believed she was instrumental in obtaining and keeping that business for Evergreen. When Licensee left employment with Evergreen on August 9, 2011, she had to leave those bank contacts behind. (Ex. 4).

3. At the time Licensee left Evergreen or shortly thereafter, she input her personal email address into Evergreen's "Equator" account, causing the program to send her a "cc:" of any documents sent between Evergreen and the banks. This information enabled her to obtain copies of all of the transactions and communications between Evergreen and its client banks. Licensee knew she was wrong to obtain that information from Evergreen. (Ex. 4).

4. After Licensee left Evergreen and began working for a competitor, she spoke with a contractor who had worked with both companies. The contractor told Licensee that Page was blaming Licensee's accounting methods for why the contractor had not been paid. Licensee later stated:

When I heard this it upset me. That is when I went on Margaret's MLS account and began deleting her CMA's [Comparative Market Analysis files]. I calmed down and stopped but later began thinking of it and what else she might be saying and finished deleting the CMA's from her account. I understand what I did was inappropriate. I was just so upset and frustrated! I do regret my actions as they were juvenile and wrong.

(Ex. 4 at 3).

5. When Evergreen discovered Licensee's personal email address on the "cc:" line of documents in its Equator account, and when Page discovered that all of her CMAs had been deleted (through an IP address that originated with Licensee's new employer, King Realty), she filed a complaint against Licensee with the Agency. (Ex. A2).

CONCLUSIONS OF LAW

1. Licensee intentionally interfered with the contractual relations of others concerning real estate and/or committed an act of fraud or dishonest conduct by hacking her former employer's computer to obtain access to that company's communications with its clients, thereby violating ORS 696.301(6) and (14).

2. Licensee intentionally interfered with the contractual relations of others concerning real estate and/or committed an act of fraud or dishonest conduct by deleting her former employer's Comparative Market Analyses (CMAs) from her former employer's computer, thereby violating ORS 696.301(6) and (14).

OPINION

Although the Agency's burden in an administrative action is to prove its case by a preponderance of the evidence, the burden under a motion for summary determination is even stricter. The moving party under such a motion is entitled to relief only if there are no material issues of fact remaining to be decided, and if the moving party is entitled to a ruling in its favor as a matter of law. OAR 137-003-0580. In this case, looking at the evidence in a light most favorable to the opposing side, the Agency has established both elements.

Factually, Licensee has admitted that she inserted her personal email into Evergreen's Equator account and was able to track every aspect of Evergreen's transactions with its client banks. Licensee knew her actions were wrong. Licensee has also admitted that she intentionally deleted all of Page's CMAs in her MLS account, another act she knew to be wrong.

There is some dispute concerning why Licensee took these actions against Page and Evergreen. However, given the intentional nature of Licensee's actions and her admission that she knew they were inappropriate, the reasons why she took the actions in not material here.

ORS 696.301 states in part:

Grounds for discipline. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(6) Intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity.

* * * * *

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

The Agency contends that both of Licensee's actions (monitoring Evergreen's transactions with its clients and deleting Page's CMAs) violated both of the highlighted subsections in this statute. I agree.

When Licensee inserted her personal email address into the Equator account and was able to see every transaction Evergreen had with its bank clients, she was interfering with the business relationship between Evergreen and its clients. Although Licensee claims that she was doing it just to monitor the amount of business she was getting at King Realty compared to Evergreen, she was in fact interfering with the business relationship. Her actions were also dishonest and clearly related to her fitness to conduct professional real estate conduct.

Similarly, Licensee's decision to destroy Page's work by deleting the CMAs from the system interfered with Evergreen's business and also constituted dishonest conduct. There are no material questions of fact remaining, and the Agency is entitled to a ruling in its favor.

The Sanction. The Agency seeks to revoke Licensee's real estate license for violating ORS 696.301. That statute, as quoted above, allows the Agency to suspend or revoke Licensee's license under these circumstances.

Licensee did not respond to the motion, and has not provided any defense that would lessen the sanction. Accordingly, I conclude that Licensee's license should be revoked as alleged by the Agency.

RULING AND ORDER

The Motion for Summary Determination is granted. I propose the Real Estate Agency issue the following order:

The November 25, 2013 Amended Notice of Intent to Revoke is **AFFIRMED**.

Rick Barber

Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis
Oregon Real Estate Agency
1177 Center St. NE
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.