

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

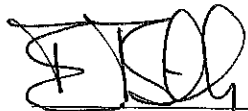
IN THE MATTER OF: JOHN OLAF HALVORSON, Respondent) FINAL ORDER)) OAH Case No. 1403962) Agency Case No. 2013-90
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This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Alison Greene Webster on June 25, 2015. Respondent filed exceptions to the Proposed Order on July 15, 2015.

The exceptions were not filed timely, however, even if the exceptions were considered timely, the Commissioner did not find them persuasive. After considering the records and the file herein, the Agency adopts the attached and incorporated Proposed Order as the Final Order.

IT IS HEREBY ORDERED that the principal real estate broker license of John Olaf Halverson is revoked, with said revocation to be effective the date of this order.

Dated this 8th day of August 2015.



Gene Bentley
Real Estate Commissioner

Date of Service: 8/5/2015

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:

JOHN O. HALVORSON

) **RULING ON MOTION FOR
) SUMMARY DETERMINATION
) AND PROPOSED ORDER**

)
) OAH Case No.: 1403962
) Agency Case No.: 2013-90

HISTORY OF THE CASE

On October 2, 2014, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke to John O. Halvorson (Licensee), proposing to revoke Licensee's license for violations of ORS 696.301(6), (7) and (14). The Notice alleged that by demanding a commission on a real estate transaction when he did not have a valid listing agreement and was not listed on the sale agreement, Licensee intentionally interfered with the contractual relations of others concerning professional real estate activity, intentionally interfered with the exclusive representation or exclusive brokerage relationship of another licensee, and committed an act of fraud or dishonesty substantially related to his fitness to conduct professional real estate activity. On October 21, 2014, Licensee requested a hearing.

On November 21, 2014, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Alison Webster to preside at hearing.

On February 12, 2015, ALJ Webster convened a prehearing conference. Senior Assistant Attorney General (AAG) Raul Ramirez appeared for the Agency. Licensee participated without counsel. During the conference, AAG Ramirez advised that the Agency anticipated filing a Motion for Summary Determination. A briefing schedule for the Agency's motion was established. In addition, a hearing was scheduled for July 14, 2015, in the event the motion was denied or not determinative of all issues.

On April 27, 2015, the Agency issued an Amended Notice of Intent to Revoke proposing revocation of Licensee's license. In the Amended Notice, the Agency added an allegation that Licensee violated ORS 696.301(14) by forging a contractual document and committing perjury in connection with the forged document.

On May 7, 2015, the Agency, through its attorney, AAG Erin Williams, filed a Motion for Summary Determination (Motion) along with supporting documents pursuant to OAR 137-003-0580. On June 1, 2015, Licensee, through attorney Gary Roberts, filed a Memorandum in

Opposition to Motion for Summary Determination. On June 8, 2015, the Agency filed its Reply brief. Thereafter, ALJ Webster took the Motion under advisement.

ISSUES

Whether, as a matter of law, the Agency is entitled to revoke Licensee's license and assess costs based on Licensee committing one or more of the following violations:

- (1) Intentionally interfering with the contractual relations of others concerning real estate or professional real estate activity. ORS 696.301(6).
- (2) Intentionally interfering with the exclusive representation or exclusive brokerage relationship of another licensee. ORS 696.301(7).
- (3) An act of fraud or dishonest conduct substantially related to Licensee's fitness to conduct professional real estate activity. ORS 696.301(14).

EVIDENTIARY RULINGS

In connection with the Motion, the Agency offered Exhibits 1 through 24. Agency Exhibits 1, 2, 6 through 10, 12 through 14, 16 through 18, 20, 23 and 24 were admitted without objection.

Licensee objected to Agency Exhibits 3, 4, 5, 11, 15, 19, 21 and 22 on hearsay and due process grounds.¹ First, hearsay is generally admissible in administrative proceedings. *See Cole/Dinsmore v. DMV*, 336 Or 565 (2004); *Petteys v. DMV*, 195 Or App 644, 650 (2004). Furthermore, the foundation for each of the challenged documents is established in Exhibit 1, the Affidavit of Philip Johnson. Despite Licensee's contention, Licensee has no constitutional due process right in this administrative proceeding to "confront the witnesses who provide evidence against him." (Opposition at 4.) It is well-established that Article I, section 11, and the Sixth Amendment "confrontation clause" apply only to criminal prosecutions, and not proceedings under the Administrative Procedures Act. *See, e.g., Carney v. MVD*, 100 Or App 533 (1990). Consequently, Licensee's hearsay and due process objections to these exhibits are overruled. The exhibits were admitted and considered in ruling on the Motion.

Licensee also objected to Agency Exhibit 22 insofar as it references deposition testimony of Licensee taken in connection with litigation between Licensee and others. Licensee contends

¹ Exhibits 3, 4 and 5 are business records, the Operating Agreements of Pacific Commercial Group LLC, Baek 124th LLC and Baek Holdings LLC, respectively; Exhibit 11 is a written report documenting Agency Investigator Philip D. Johnson's interview of Richard Baek; Exhibit 15 is a Residential Real Estate Sale Agreement dated November 29, 2012; Exhibit 19 is a written report of Investigator Johnson's interview of Scott Elliott; Exhibit 21 is a copy of the complaint the Agency received from Mr. Baek regarding Licensee; and Exhibit 22 is a series of emails to Investigator Johnson from Jenee Hilliard regarding litigation between Licensee and Mr. Baek. According to Exhibit 1, the Affidavit of Philip D. Johnson, all of these documents were received or generated by the Agency in the course of its investigation of Licensee.

that his deposition testimony is confidential and subject to a court protective order prohibiting the use of confidential information obtained in discovery in the litigation. As noted, Exhibit 22 consists of emails from attorney Jennee Hilliard to Investigator Johnson. The emails describe developments in the circuit court litigation between Licensee, Mr. Baek and others and reference documents from the litigation provided to the Agency in connection with Mr. Baek's complaint and the Agency's investigation of Licensee.

Agency Exhibit 24, a document to which Licensee raised no objection, establishes that Licensee's objection to Exhibit 22 as confidential and protected is not well taken. Exhibit 24 is a General Judgment of Contempt issued in Multnomah County Circuit Case No. 1309-12855 (Consolidated) on February 9, 2015. The Judgment provides that evidence submitted in connection with the court's order to show cause proceedings (*i.e.*, Licensee's deposition testimony) is not subject to any protective order issued in the consolidated proceedings, is not confidential and may be used by any party for any purpose. (Ex. 24 at 6.) Consequently, Licensee's objection to Exhibit 22 on this basis is also overruled.

In its Opposition to the Motion, Licensee offered the Affidavit of John Halvorson and Exhibits 101 through 121, and the Affidavit of Jonathan Radmacher with Exhibits A through G attached thereto. The Agency did not object to these records. Accordingly, they were admitted into the hearing record and considered in ruling on the Motion.

FINDINGS OF FACT

1. From April 23, 2007 through March 29, 2013, Licensee held an active license to conduct real estate activity in Oregon. Licensee did not renew his license, and the license expired on March 31, 2013. (Exs. 1 and 2.)

2. At all times pertinent to this matter, Licensee resided in California. (Ex. 11; Halvorson Aff.) Licensee has been a real estate broker for 25 years, and holds, or has held, licenses in California, Washington and Arizona in addition to Oregon. (Halvorson Aff.)

3. In Oregon, Licensee's real estate license was associated with Pacific Commercial Group, LLC (PCG), a real estate brokerage firm. (Ex. 1.) PCG was formed in April 2007 by Licensee and Vital Technical Marketing, Inc. (VTM). When the company was formed, both Licensee and VTM held 50 percent interest in PCG.² (Ex. 3.) Richard Baek (Mr. Baek) is the principal of VTM. (Exs. 1 and 3.)

4. In 2004 and 2005, R. Baek, and his sister, Grace Baek (Ms. Baek), formed two limited liability companies to hold real estate, Baek 124th LLC and Baek Holdings, LLC (the Baek LLCs). The Baek siblings were the only members of the Baek LLCs when the companies were formed. Each held a 50 percent interest. Initially, the Baeks agreed that management of the Baek LLCs would be vested in the members without an appointed manager. (Exs. 4 and 5.)

5. In 2005, Licensee and Ms. Baek were married. (Ex. 7 at 3; Ex. 11 at 2.) The marriage included a prenuptial agreement in which, among other things, Licensee agreed that he

² At some point prior to May 2012, Licensee gave up his ownership interest in PCG. (Ex. 11.)

would have no claim, based on the marriage, in various companies that served as investment vehicles for the Baek family. (Ex. 23 at 2.)

6. In October 2006, the Baeks amended the Operating Agreements of Baek 124th LLC and Baek Holdings LLC to make Licensee the manager of the Baek LLCs. (Ex. 101.)

7. In approximately 2007, the Baek LLCs purchased two parcels of property located at 8255 SW Beaverton Hillsdale Highway, Portland, Oregon. (Ex. 7 at 3.)

8. At some point, Ms. Baek gave Licensee half of her 50 percent interest in the Baek LLCs, giving him a 25 percent share in each company. (Ex. 11.)

9. In March 2010, the Baek LLCs, through managing member Licensee, entered into a "Listing Agreement – Exclusive Authorization to Sell" with PCG and Licensee, as manager and principal broker, to sell the two parcels of property on SW Beaverton Hillsdale Highway. The Listing Agreement, which authorized a six percent sales commission, gave PCG and Licensee exclusive right to sell the property for the period of March 1, 2010 to February 28, 2011. The Listing Agreement further required the Baek LLCs to pay the commission to Licensee if:

within Three Hundred Sixty (360) days after the expiration of this Authorization or any extension thereof, the Property or any interest therein is sold, transferred or conveyed to any person or entity with whom Broker has negotiated or to who Broker has submitted the Property prior to such expiration in an effort to effect a transaction (efforts to effect a transaction shall include but not be limited to individuals or companies which have been contacted directly, through mailings, phone solicitation, email or other means and for which can be identified by individual or company name and any affiliates thereof) * * * .

(Ex. 8.)

10. In June 2011, Licensee, in his capacity as the manager of the Baek LLCs, entered into purchase and sale agreement with JP Morgan Chase Bank for the sale of one of the parcels of property along SW Beaverton Hillsdale Highway (the front parcel). (Ex. 114.) In May 2012, Licensee, in his capacity as the manager of the Baek LLCs, entered into an amended agreement with Chase Bank for the purchase and sale of the front parcel. (Ex. 102.) The sale of the front parcel to Chase Bank closed in July 2012. (Ex. 7.)

11. Meanwhile, in May 2012, Scott Elliott of Edge Development, Inc. contacted Licensee via email and expressed an interest in purchasing the back parcel of property. Licensee, through Pacific Commercial Capital (Licensee's California business), advised Elliott as follows:

Yes, we would sell the lot for \$400,000. I know the lot next door is being marketed for \$300k, but we are in no rush to sell. Chase will be doing construction this summer and putting in storm and all other utilities on site.

(Ex. 9 at 1.)

12. On May 17, 2012, Elliott emailed Licensee a proposed Purchase and Sale Agreement for the back parcel. The proposed Purchase and Sale Agreement listed “John Halvorson of Pacific Commercial Capital” as the seller’s agent. (Ex. 10.) Neither Licensee nor Elliott signed this document. (Ex. 1.)

13. On May 25, 2012, Elliott emailed Licensee and asked if there was “news from Chase?” (Ex. 13 at 1.) Licensee forwarded Elliott’s email to Ms. Baek and to Mark Rutherford, an employee of VTM, adding: “Hi Mark and Grace, This is from Scott who wants to buy the rear parcel. Please follow up with him.” (*Id.*)

14. At or around this same time, Licensee advised Elliott that he (Licensee) was no longer going to be involved in the transaction. Licensee put Elliott directly in touch with Rutherford. (Ex. 19.)

15. On May 29, 2012, Rutherford and Licensee had a business meeting at Licensee’s home in California. During the meeting, Licensee informed Rutherford that he “will not be working on the sale of the back lot.” (Ex. 12 at 1.) Rutherford understood that Licensee was referring to the back parcel of property on SW Beaverton Hillsdale Highway. Licensee also advised Rutherford that he planned to pull his real estate license from PCG. (*Id.*)

16. In late May and early June 2012, Licensee remained involved in the sale of the front parcel to Chase Bank. (Halvorson Aff; Exs. 103 and 104.)

17. In late May or early June 2012, Elliott, acting for Edge Development, Inc., and Mr. Baek, as a member of the Baek LLCs, signed a Letter of Intent regarding the purchase of the back parcel. This Letter of Intent, which expired by its own terms on June 10, 2012, contemplated the completed sale of the front parcel to Chase Bank and the re-plat of the property. (Ex. 14.)

18. In November 2012, Licensee petitioned for divorce from Ms. Baek. (Ex. 117.)

19. In December 2012, Elliott and Mr. Baek executed a Real Estate Sale Agreement for the sale of the back parcel. The Agreement listed Edge Development/Scott Elliott as the Buyer; Baek Holdings, LLC and Baek 124th LLC as the Sellers; and Rob Matthews of Georgetown Realty as the Listing Licensee and the Seller’s exclusive agent. (Ex. 15.)

20. The Real Estate Sale Agreement for the sale of the back parcel was submitted to escrow at First American Title Company. On March 1, 2013, as escrow at First American Title was set to close, Licensee sent the escrow agent the following email:

Re: Escrow - 570587 for Baek 124, LLC and Baek Holdings, LLC

Please accept this email as my demand for payment of 3% commission on the above transaction.

I am the Principal Broker for Pacific Commercial Group, LLC license #200701035.

Please confirm receipt of this email and that you will be setting up payment of commission by wire upon close of escrow.

(Ex. 17 at 1.) Licensee attached a letter to the email on Pacific Commercial Capital letterhead. The letter contained wiring instructions for Escrow #570587 (the escrow associated with the back parcel). The instructions directed that funds be wired to the bank account of "Halvorson Financial Inc. dba Pacific Commercial Capital" at Bank of America in El Toro, California. (*Id.* at 2.)

21. In response to Licensee's email, the escrow agent advised Licensee that the title company did "not have authorization to provide you with details regarding this transaction at this point." (Ex. 18 at 1.) Licensee then sent the escrow agent the following email:

Hi Rachel,

I understand you don't have authorization to release information to me.

But I want to be clear: have you asked the seller via email or other means for authorization?

If so did they direct you to exclude me from this transaction? If you have any communications from the seller please forward it to me so I can see it.

Again, I am a 25 percent owner and Principal of both LLCs in the selling entities.

I am also the listing broker with a legal binding [*sic*] contract for a 3% commission to be paid at close of escrow.

(*Id.*)

22. On March 4, 2013, Licensee, through counsel, sent a Notice of Adverse Interest to First American Title claiming an interest in the proceeds from the sale of the back parcel, Escrow #570587. The Notice of Adverse Interest stated that the interest was based on Licensee's community property interest arising out of his marriage to Ms. Baek, his ownership interest in the Baek LLCs and his "interest arising as a result of being the principal broker of record for this transaction (Pacific Commercial Group, LLC)." (Ex. 117.)

23. Because of Licensee's claimed interest in the sale proceeds, including his claimed entitlement to three percent commission on the sale, the escrow at First American Title was

terminated. The title company was unwilling to release proceeds from the sale of the back parcel because of Licensee's claimed interest. (Exs. 11 and 19.)

24. On April 5, 2013, Elliott emailed Rutherford regarding the pending sale of the back parcel. He wrote:

After considerable thought and discussion regarding this pending land sale I need to inform you and Rich Baek that your request to remove the sale out of escrow is not achievable. In my opinion this process deviates too far from the agreed upon contract and potentially exposes me to outside claims. We have all worked in good faith to come up with an agreeable solution but unfortunately it appears not to be possible. I remain ready willing and able to proceed with the land purchase per the agreed upon terms.

(Ex. 20.)

25. On April 26, 2013, Mr. Baek filed a complaint with the Agency regarding Licensee. Mr. Baek alleged, among other things, that Licensee misrepresented that he was the principal broker of record for the sale of the back parcel to Edge Development and falsely claimed that he was entitled to a commission on the sale of the property. Mr. Baek further alleged that Licensee's actions were preventing the sale from closing. (Ex. 21.)

26. The sale of the back parcel to Edge Development/Elliott closed on or about August 20 2013, after Elliott filed suit against the Baek LLCs for specific performance. (Exs. 6 and 19.)

27. At some point in 2013, Licensee and the Baeks became embroiled in litigation regarding Licensee's alleged ownership interest in the Baek LLCs, Licensee's entitlement to a commission on the sale of the back parcel and other matters. Licensee's actions against the Baeks and the Baek LLCs, and the Baeks and Baek LLCs actions against Licensee were consolidated into one matter in Multnomah County Circuit Court, Case No. 1309-12855. (Exs. 23 and 24.)

28. In the course of discovery in the consolidated circuit court cases, Licensee provided a document to the other parties purporting to be a 2008 amendment to his and Ms. Baek's prenuptial agreement. Among other things, this document indicated that Licensee had community interest in the Baek family properties. The opposing parties were unfamiliar with this amendment and believed that Licensee had fabricated it. When confronted about the document at his deposition, Licensee defended it and denied that he created it. He swore to its validity and asserted that it established his claims to an ownership interest in the Baek companies. Subsequently, in an errata sheet to his deposition, Licensee acknowledged that his answers to questions regarding the amended prenuptial agreement were false. He also admitted creating the forged document. (Ex. 23 at 3-4; Ex. 22; Ex. A to Radmacher Aff.)

29. In an Opinion and Order issued in the consolidated circuit court cases on June 25, 2014, Judge Edward J. Jones found as follows:

The court finds, beyond a reasonable doubt, that Mr. Halvorson intentionally, and in bad faith, forged the amended prenuptial agreement in an effort to gain unfair advantage in his litigation with the Baeks and their companies. The court further concludes Mr. Halvorson's forgery did inflict damage on the truth seeking process, was prejudicial to other parties, and did undermine the administration of justice.

(Ex. 23 at 5.)

30. In a General Judgment of Contempt issued February 9, 2015 in the consolidated cases Judge Jones found, in part, as follows:

1. Halvorson willfully and maliciously disobeyed the Court's authority or processes in contempt of this Court by deliberately and intentionally falsifying evidence in discovery and repeatedly and knowingly committing perjury about his role in producing false evidence, and that Halvorson intentionally and knowingly did so for personal gain and to deceive the parties and this Court, and his disobedience has been proven beyond a reasonable doubt.
2. Halvorson committed fraud on the Court and the parties by knowingly falsifying evidence in discovery and repeatedly committing perjury about his role in producing the false evidence.
3. Halvorson's contempt of and fraud upon the Court has inflicted serious damage to the truth seeking process and has severely prejudiced and injured other parties and the administration of justice in these consolidated proceedings.
4. At the time of the falsification of evidence and perjury, Halvorson knew that such conduct was wrongful, without cause, and would prejudice and cause injury to the other parties and the administration of justice.

(Ex. 24 at 4.) As a sanction for Licensee's willful and malicious misconduct and knowing and deliberate fraud on the court and parties, Judge Jones ordered all of Licensee's claims, counter claims and third party claims dismissed with prejudice. The court further ordered Licensee to pay all other parties all reasonable attorney fees incurred by the other parties as a result of Licensee's willful and malicious misconduct and knowing and deliberate fraud. (*Id.* at 5.)

CONCLUSIONS OF LAW

As a matter of law, the Agency is entitled to revoke Licensee's license and assess costs based on Licensee committing the following violations:

- (1) Intentionally interfering with the contractual relations of others concerning real estate or professional real estate activity. ORS 696.301(6).

(2) Intentionally interfering with the exclusive representation or exclusive brokerage relationship of another licensee. ORS 696.301(7).

(3) An act of fraud or dishonest conduct substantially related to Licensee's fitness to conduct professional real estate activity. ORS 696.301(14).

OPINION

1. *Summary Determination Standard*

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(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[.]

* * * * *

(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.

For the reasons that follow, I find that as to the alleged violations of ORS 696.301, there are no genuine issues of material fact and the Agency is entitled to favorable ruling as a matter of law. The evidence presented, even when viewed in a light most favorable to Licensee, demonstrates that Licensee intentionally interfered with contractual relations between the Baek LLCs and Edge Development/Elliott, intentionally interfered with another broker's exclusive representation and engaged in acts of fraud and dishonest conduct substantially related to his

fitness to conduct real estate activity.

2. *Applicable Statutes and Rules*

As pertinent here, ORS 696.301 grants the Agency the authority to 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 individual who has done the following:

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

(7) Intentionally interfered with the exclusive representation or exclusive brokerage relationship of another licensee.

* * * *

(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.

3. *Interference With Contractual Relations*

The Agency first asserts that by submitting a demand for commission from the sale of the back parcel to First American Title Company when he did not have a valid, active listing agreement and was not listed on the sales agreement, Licensee intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity, in violation of ORS 696.301(6).

The undisputed evidence establishes the following: Licensee had a listing agreement to sell the back parcel that expired by its own terms on February 28, 2011. More than a year later, in May 2012, Scott Elliott of Edge Development contacted Licensee and expressed an interest in purchasing the back parcel. Licensee responded that "we would sell the lot for \$400,000." Licensee notified Ms. Baek and Mark Rutherford of Elliott's interest in the property and asked them to follow up with Elliott. In June 2012, Elliott, acting for Edge Development, and Mr. Baek, acting for the Baek LLCs, signed a Letter of Intent regarding the purchase of the back parcel. In December 2012, Elliott and Mr. Baek executed a Real Estate Sale Agreement regarding the back parcel. The Sale Agreement identified Rob Matthews as the Seller's exclusive agent. The Sale Agreement was submitted to escrow at First American Title Company. Then, in March 2013, as escrow was set to close, Licensee sent a demand to First American Title for three percent commission on the transaction. Licensee represented that he was the listing broker with a legally binding contract for the commission to be paid at the close of escrow. Licensee's demand for a brokerage fee prevented the sale from closing in a timely manner in March 2013.

There is no evidence that, in May 2012 or any time thereafter, Licensee had a legally binding contract for a commission on the sale of the back parcel. Licensee's March 2010 Listing Agreement with the Baek LLCs expired on February 28, 2011. Although that agreement required the Baek LLCs to pay a commission to Licensee if the property sold to a person or entity with whom Licensee had negotiated within 360 days after the agreement's expiration, the property did not sell within that 360 day time frame (*i.e.*, by February 23, 2012). The transaction closed in August 2013, considerably more than 360 days after the expiration of the listing agreement.

There is also no evidence that, while the March 2010 Listing Agreement was in effect, Licensee solicited Elliott or that he took efforts to effect a transaction with Elliott. As noted above, the Listing Agreement expired on February 28, 2011. Elliott contacted Licensee about purchasing the property in May 2012, 15 months later. Consequently, and despite Licensee's contention in opposition to the Motion, Licensee was not entitled to a commission on the sale of the back parcel under the terms of the March 2010 Listing Agreement.

Moreover, Licensee's claimed belief that there was a subsequent listing agreement that took effect after the March 2010 Agreement expired does not create a genuine issue of material fact. There is no proof that the parties entered into a new contract, and the evidence in the record indicates otherwise. Indeed, in May 2012, Licensee directed Ms. Baek and Mr. Rutherford to follow up with Elliott about the deal. He later represented to both Elliott and Rutherford that he would not be working on the transaction. The June 2012 Letter of Agreement did not identify Licensee as the broker and the Real Estate Sale Agreement executed several months later named Rob Matthews, rather than Licensee, as the listing licensee and the seller's exclusive agent.

In short, when, in March 2013, Licensee submitted the demand for a commission from the sale of the back parcel to First American Title Company and stated that he was the "listing broker" with a legally binding contract, he did not in fact have a valid, active listing agreement for the property. Therefore, his representations to the title company were false.³ His actions were also intentional, as he deliberately attempted to insert himself into the transaction and to be paid a commission as a principal broker. Moreover, his actions were disruptive to the transaction. His demands for a commission prevented the sale from closing in a timely manner.⁴ The violation of ORS 696.301(6) has been established.

³ Whether or not Licensee misrepresented his status as an owner or manager of the Baek LLCs is not relevant or material to the violation of ORS 696.301(6). The Agency's allegations are based on Licensee's claimed status as the principal broker and his demands for a commission on the sale, rather than his claimed ownership interest in the back parcel.

⁴ Licensee's assertion that he did not intend to delay or prevent the sale from occurring is not determinative. Licensee intentionally interfered in the sales transaction and his interference contributed to the cancellation of the First American Title escrow and the several-month delay in closing.

Contrary to Licensee's argument, the Agency need not prove the elements of the tort of intentional interference with contractual relations⁵ to establish a violation of ORS 696.301(6). As the Agency asserts, the standards set out in ORS 696.301 embody professional ethical standards for real estate licensees, not tort standards. The provisions of ORS Chapter 696 were enacted "to assist in creating for the public a healthy real estate market atmosphere and to assure that professional real estate activity is conducted with high fiduciary standards." ORS 696.015(1). The Agency need only prove, as it has done here, that Licensee acted intentionally and his actions interfered with the real estate contract of another. *See, e.g., Blank v. Black*, 14 Or App 470 (1973) (noting, under a former version of the disciplinary statute, that the terms "bad faith," "untrustworthiness" and "improper dealing" include "conduct in a real estate transaction which amounts to a breach of a moral obligation or duty owed to another, as well as conduct which constitutes a breach of a legal duty and which is legally actionable.")

4. *Interference With Exclusive Brokerage Relationship*

The Agency next asserts that by submitting a demand for commission on the sale of the back parcel to First American Title Company when he did not have a valid, active listing agreement and was not listed on the sales agreement, Licensee intentionally interfered with the exclusive brokerage relationship of another licensee in violation of ORS 696.301(7)

It is undisputed that the Baek LLCs identified Rob Matthews of Georgetown Realty as the listing licensee and the seller's exclusive agent on the signed Real Estate Sale Agreement between the Baek LLCs and Edge Development for the sale of the back parcel. As discussed above, Licensee's listing agreement with the Baek LLCs expired in February 2011, a year and a half before Mr. Baek and Elliott executed the Sale Agreement in December 2012. At no point pertinent to this sale transaction did Licensee have a valid, active listing agreement with the Baek LLCs. Consequently, by representing himself to the title company as the listing broker with a binding contract for a three percent commission on the sale of the back parcel, Licensee interfered with Mr. Matthews's exclusive representation of the Baek LLCs. Licensee's violation of ORS 696.301(7) has also been established.

5. *Fraud or Dishonest Conduct*

The Agency also alleges that Licensee's demand that the title company pay him a three percent commission on the sale of the back parcel, his forgery of a contractual document and his perjury in connection with the forged document constitute acts of fraud or dishonesty substantially related to his fitness to conduct professional real estate activity in violation of ORS 696.301(14).

⁵ In Oregon, to prevail on a claim for intentional interference with economic relations, a plaintiff must prove the following: (1) the existence of a professional or business relationship (which could include, *e.g.*, a contract or a prospective economic advantage), (2) intentional interference with that relationship, (3) by a third party, (4) accomplished through improper means or for an improper purpose, (5) a causal effect between the interference and damage to the economic relationship, and (6) damages. *See, e.g., McGanty v Staudenraus*, 321 Or 532, 535 (1995).

As found above, Licensee falsely claimed to the title company in March 2013 that he was the listing broker with a legally binding contract for a three percent commission on the sale of the back parcel. However, even if one accepts Licensee's claim that he believed he had a listing agreement with the Baek LLCs in effect in 2012 which justified his demand for a commission, it is undisputed that, in the course of litigation with the Baeks and the Baek LLCs, Licensee committed an act of fraud and engaged in dishonest conduct substantially related to his fitness to conduct professional real estate activity.

Licensee concedes that he forged a contractual document and falsely testified about its validity under oath. Judge Jones specifically found beyond a reasonable doubt that Licensee intentionally and in bad faith forged the document to gain unfair advantage in litigation with the Baeks. In dismissing Licensee's claims, counterclaims and third party claims against the Baeks and the Baek LLCs with prejudice, Judge Jones determined that Licensee's conduct constituted willful and malicious misconduct and knowing and deliberate fraud on the court and parties to the litigation.⁶ While Licensee's acts of forgery and perjury occurred in his personal, as opposed to professional, capacity, his egregious conduct is nevertheless substantially related to his fitness to conduct professional real estate activity.

As the legislature recognized in ORS 696.015, professional real estate activity is a matter of public concern, and is to be conducted with high fiduciary standards. In addition to fiduciary duties to their clients, licensed brokers have an affirmative duty to, among other things, deal honestly and in good faith and disclose known material facts. *See, e.g.*, ORS 696.805, 696.810 and 696.815. Licensee's intentional acts of fraud and perjury bear an obvious and substantial relationship to his fitness, or lack thereof, to engage in professional real estate activity. His actions demonstrate the extreme lengths to which he is willing to go to achieve personal financial gain. *See Kerley v. Real Estate Agency*, 337 Or 309 (2004) (holding that a person's prior acts of dishonesty and untrustworthiness relate substantially to his or her fitness and ability to engage in real estate activity and can justify denial or revocation of licensure). The violation of ORS 696.301(14) has also been proven.

Although Licensee concedes that he engaged in fraudulent and dishonest conduct, he nevertheless asserts that his actions do not support a permanent revocation of his license. He contends that his forgery and perjury were out of character, a one-time transgression, and the result of frustration arising out of contentious divorce proceedings and a soured relationship with his brother-in-law. However, regardless of the context, the fact remains that Licensee acted intentionally and in bad faith by falsifying evidence and repeatedly committing perjury. Given the circumstances, including Licensee's violations of ORS 696.301(6), (7) and (14), the willful and malicious nature of his misconduct and the Agency's broad discretion in

⁶ Given Licensee's concession in opposing the Agency's motion that he falsified a document and gave false testimony, his assertion that the Agency's action on this issue is premature because the court's findings and rulings are not final is somewhat disingenuous. Further, pursuant to ORS 18.082 (Effect of entry of judgment), the court's February 9, 2015 General Judgment of Contempt becomes the exclusive statement of the court's decision in the case and is enforceable in the manner provided by law.

sanctioning its licensees, the Agency is entitled to revoke Licensee's Oregon real estate license.⁷

RULING AND PROPOSED ORDER

The Agency's Motion for Summary Determination is GRANTED.

John O. Halvorson's license to conduct real estate activity in Oregon is REVOKED.

NOTE: Because this Ruling on Motion for Summary Determination and Proposed Order is determinative of all issues in this matter, the contested case hearing scheduled for July 14, 2015 is cancelled.

Alison Greene Webster

Senior 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.

⁷ Although Licensee's license expired in 2013, the Agency retains jurisdiction to investigate Licensee, to conduct disciplinary proceedings, and to take action against Licensee. ORS 696.775.

CERTIFICATE OF MAILING

On June 25, 2015, I mailed the foregoing RULING ON MOTION FOR SUMMARY DETERMINATION AND PROPOSED ORDER issued on this date in OAH Case No. 1403962.

By: First Class Mail

Gary Roberts
Attorney at Law
Roberts Law Group
520 SW Yamhill Ste 208
Portland OR 97204

Denise Lewis
Real Estate Agency
1177 Center Street NE
Salem OR 97301-2505

Raul Ramirez
Senior Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301-4096

Ryan Clark
Administrative Specialist
Hearing Coordinator

CERTIFICATE OF MAILING

On August 05, 2015, I mailed the foregoing Final Order issued on this date in OAH Case No. 1403962 and Agency Case No. 2013-90.

By: First Class Mail

JOHN OLAF HALVORSON
PO BOX 80067
Rancho Santa Margarita, CA 92688

Gary Roberts
Attorney at Law
520 SW Yamhill St Ste 208
Portland, OR 97204

Office of Administrative Hearings
ALJ Alison Webster
PO Box 14020
Salem OR 97309-4020

Raul Ramirez
Senior Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301-4096

Carolyn Kalb
Compliance Specialist