

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)

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6
7 KENNETH J. SMITH)

ORDER ON DEFAULT

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9 1.

10 1.1 On June 10, 2015, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to revoke the real estate principal broker license of Kenneth J. Smith (Smith).
12 The Real Estate Agency (OREA) sent the notice of intent to Smith's last known address of
13 record with the OREA. The notice of intent was also mailed to Smith by regular first class mail
14 in a handwritten envelope.

15 1.2 The certified mailing of the notice of intent and the first class mailing were sent to
16 Smith at 16473 SW Wildlife Have Ct, Sherwood, OR 97140. OREA received the first class
17 mailing back marked, "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED
18 UNABLE TO FORWARD." On June 18, 2015, OREA received the return receipt for the
19 certified mailing of the notice of intent. The receipt was signed by Ken Smith.

20 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
21 matter and no written request for hearing has been received.

22 1.4 Copies of the entire investigation file are designated as the record for purposes
23 of default, including any submission from respondent and all information in the administrative
24 file relating to the mailing of notices and any responses received.

25 2.

26 Based upon the foregoing and upon a review of the above described investigation
27 reports, documents and files, the Real Estate Commissioner finds:

28 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is
29 properly served when deposited in the United States mail, registered or certified mail,
30 addressed to the real estate licensee or to any other person having an interest in a proceeding

1 before the Commissioner at the licensee's or other person's last known address of record with
2 OREA.

3 2.2 Smith's last known address of record with OREA was 16473 SW Wildlife Have
4 Ct, Sherwood, OR 97140.

5 2.3 A certified mailing of the notice of intent was mailed to Smith at his last known
6 address of record on June 10, 2015.

7 2.4 The mailing in the handwritten envelope has been returned to OREA. However,
8 the certified mailing receipt shows that Ken Smith received and signed the certified mailing of
9 the notice of intent.

10 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no
11 written request for a hearing has been received.

12 2.6 Pursuant to ORS 696.775, the expiration of Smith's license does not prohibit the
13 Commissioner from proceeding with further action.

14 3.

15 FINDINGS OF FACT

16 &

17 CONCLUSIONS OF LAW

18 3.1 At the time of the incidents listed below, Smith's license was associated with
19 Uptown Real Estate as a principal broker. Smith's license expired on July 1, 2012, and his
20 principal broker license has now lapsed.

21 3.2 On April 13, 2011, OREA was notified that Smith had been indicted for several
22 counts of wire fraud in U.S. District Court Case #3:11-cr-00160-HZ.

23 3.3 OREA chose to wait for the criminal case outcomes before investigating the
24 matter further.

25 3.4 On December 10, 2013, Smith was convicted of 2 counts of wire fraud and
26 sentenced to 60 months of probation and to pay restitution in the amount of \$175,769.00.
27 Smith did not report the criminal conviction to the OREA.

28 3.5 On July 31, 2014, OREA began investigating the facts surrounding the criminal
29 convictions.

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1 3.6 The wire fraud conviction involved Smith and his business partner, Jeremy
2 Jordan (Jordan). Through their actions, Smith and Jordan would purchase and refinance
3 residential properties. Two different types of transactions were involved:

- 4 • **Transaction 1:** Smith and/or Jordan would approach distressed
5 homeowners who were on the verge of losing their homes to foreclosure.
6 Smith and Jordan would offer to purchase the homes on a lease back
7 agreement, which would allow the distressed homeowners to remain in
8 their home while paying rent. A clause in the contract would allow the
9 distressed homeowners to purchase the property back at some future
10 date. The agreements were not submitted to the appropriate county for
11 recording.
- 12 • **Transaction 2:** Smith and/or Jordan obtained the loans by falsely
13 inflating their income. The loans were not disclosed to the distressed
14 homeowner, who had a leasehold interest in the property. When Smith
15 and/or Jordan obtained the loans, they falsely stated the nature of the
16 transaction to the lender by failing to disclose the leasehold interest of the
17 distressed homeowner.

18 **Violation:** By failing to disclose the criminal conviction to OREA, Smith violated ORS
19 696.301(3) (2013 Edition), which incorporates OAR 863-015-0175(1)(a) (4-1-2013 Edition),
20 which requires a real estate licensee to notify the commissioner of any criminal conviction
21 felony or misdemeanor, including a “no contest” plea or bail forfeiture.

22 **Violation:** By obtaining the loans using false and incomplete information, Smith violated
23 ORS 696.301(14) (2005 Edition), which states a licensee may be subject to discipline if they
24 have committed an act of fraud or engaged in dishonest conduct substantially related to the
25 fitness of the licensee to conduct professional real estate activity, without regard to whether the
26 act or conduct occurred in the course of professional real estate activity.

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1 3.7 In the indictment, the following facts were described.

- 2 • On or about February 27, 2006, and continuing at least through April 18, 2006,
3 Jordan, Smith and his wife, Bonnie Smith (B. Smith) submitted a loan application
4 and related documents, on Smith and B. Smith's behalf for the purchase of
5 residential property located at 17410 SW Parrett Mountain Road, Sherwood,
6 Oregon (Parrett Mountain Property). The documents were submitted to First
7 Franklin Financial Corp. The loan application and related documents falsely
8 stated Smith and B. Smith's income.
- 9 ○ On April 18, 2006, a wire transfer in the amount of \$1,213,714.55 was
10 issued from First Franklin to Fidelity National (US Bank) for the Parrett
11 Mountain Property.
- 12 • On or about April 20, 2006, continuing through at least June 12, 2006, Jordan,
13 Smith, and B. Smith submitted loan documents to First Horizon Home Loan, on
14 behalf of Smith, for the refinancing of the Parrett Mountain Property, for the
15 amount of \$1,920,000.00. The loan application and documents falsely stated
16 Smith's income.
- 17 ○ On June 12, 2006, a wire transfer in the amount of \$1,909,594.97 was
18 issued from First Horizon Home Loan to Fidelity National (Washington
19 Mutual) for the Parrett Mountain Property.
- 20 • In February 2006, Jordan, Smith, and B. Smith entered into a contract with J.K.,
21 owner of 35132 SE Hurlburt Road Corbett, Oregon (Hurlburt Road Property).
22 J.K. transferred the Hurlburt Road Property to B. Smith and gave a promissory
23 note and deed of trust in the amount of \$200,000.00 to the benefit of an entity
24 owned and controlled by Jordan and Smith. Jordan, Smith, and B. Smith, agreed
25 to allow J.K. to live on the Hurlburt Road Property for a specific period of time in
26 exchange for rent. At the end of the lease, J.K would be permitted to purchase
27 the property from Smith for an agreed upon sum. On or about February 1, 2006,
28 through at least February 5, 2006, Jordan, Smith, and B. Smith submitted a loan
29 application and loan documents to GreenPoint Mortgage, on behalf of B. Smith,
30 for the purchase of the Hurlburt Road Property from J.K., for a price of

1 \$350,000.00. The loan application falsely stated B.Smith's income, and failed to
2 disclose that J.K. had a financial and legal interest in the property.

- 3 • On or around July 5, 2006 through December 5, 2006, Jordan, Smith, and B.
4 Smith submitted a loan application to Lender's Direct Capital, on behalf of B.
5 Smith, for a loan in the amount of \$396,000.00 for the refinance of residential
6 property located at the Hurlburt Road Property. The documents submitted
7 contained falsely stated income for B. Smith, and failed to disclose that J.K. had
8 a financial and legal interest in the Hurlburt Road Property.
- 9 • Around February 2006, Jordan, Smith, and B. Smith entered into a contract with
10 M.M., owner of 7815 N. Peninsular Avenue, Portland, Oregon (Peninsular
11 Property) where M.M. agreed to give a promissory note and deed of trust in the
12 amount of \$82,000.00 to the benefit of Jordan, and then transfer the Peninsular
13 Property to Jordan, Smith, and B. Smith. M.M. was allowed to live on the
14 property for a specified period of time in exchange for rent and would be
15 permitted to purchase the property from Smith for an agreed upon sum. Starting
16 around February 16, 2006, through April 21, 2006, Jordan, Smith, and B. Smith
17 submitted loan documents to Axis Mortgage, on behalf of Smith, for the purchase
18 property of Peninsular Property from M.M. for a price of \$245,000.00. The
19 documents submitted included false incomes for Smith, and failed to disclose
20 that M.M. had a financial and legal interest in the property.
 - 21 ○ On April 21, 2005, a wire transfer in the amount of \$183,308.08 was
22 issued from Baltimore Bank of Arizona to Fidelity National (Washington
23 Mutual) in relation to the Peninsular Property.
 - 24 ○ On April 21, 2005, a wire transfer in the amount of \$48,463.75 was issued
25 from Baltimore Bank of AZ to Fidelity National (Washington Mutual) in
26 relation to the Peninsular Property.
- 27 • Around January 2006, Jordan, Smith, and B. Smith entered into an agreement
28 with D.H., owner of 4525 SE 70th Portland, Oregon (SE 70th Property). D.H.
29 agreed to transfer the property to Smith, in turn, D.H. was allowed to live on the
30 SE 70th Property for a specified period of time in exchange for rent and would be

1 permitted to purchase the property back from Smith at a later date. Starting
2 around January 2006 continuing through at least February 17, 2006, Jordan,
3 Smith, and B. Smith submitted a loan application on behalf of Smith to
4 GreenPoint Mortgage Funding for the purchase of the SE 70th Property for a
5 price of \$223,000.00. The application and supporting documents contained false
6 employment income for Smith, and failed to disclose that D.H. had a financial
7 and legal interest in the property.

- 8 • Starting around May 2006, continuing at least through June 27, 2006, Jordan,
9 Smith, and B. Smith submitted a loan application to GreenPoint Mortgage, on
10 behalf of Jordan, for the refinancing of a mortgage on real property located at
11 2350 NE Cleveland Avenue, Gresham, Oregon (Cleveland Property), for a loan
12 in the amount of \$44,000.00. The loan documents contained false employment
13 income for Jordan.

- 14 ○ On June 27, 2006, a wire transfer in the amount of \$43,705 was issued
15 from North Folk Bank to Fidelity National (Washington Mutual).

16 3.8 On September 24, 2014, OREA Investigator Philip Johnson (Johnson)
17 interviewed Smith regarding the incidents. Smith explained back in October 2003, he was
18 involved in a life threatening automobile accident. Smith said because of this accident he was
19 unable to participate in the daily work and be a producer in the business owned by him and
20 Jordan. Smith and Jordan owned Smith and Jordan Real Estate, LLC dba Uptown Real Estate
21 (Uptown).

22 3.9 After his accident, Smith told Johnson that Jordan was responsible for all of the
23 professional real estate activity at Uptown.

24 3.10 Smith said he signed the loan packets because Jordan would say something to
25 the effect of, this is what we need to do to survive or stay alive.

26 3.11 Smith said he was not on the front lines, and never participated in activity with
27 the distressed homeowners' foreclosures and lease agreements, other than sign documents
28 that Jordan presented to him. Smith said they were operating out of a position of fear of losing
29 everything they had worked for, and the refinancing and pooling of assets, that they had to put
30 back into the business, seemed like the right thing to do.

1 3.12 A review of Smith's real estate license showed that his license was sanctioned
2 after a prior case investigation. An Order on Default, signed by the OREA Commissioner on
3 March 31, 2010, suspended Smith's license for one year. In the order, it appears that Smith
4 was involved in similar activity involving the purchasing of homes from homeowners on
5 leaseback agreements.

6 3.13 On June 8, 2010, the OREA Commissioner signed a Modified Stipulated Order,
7 which set aside the previously signed Order on Default and set the suspension period for
8 Smith at one month.

9 **Violation:** In December 2013, Smith was convicted of two counts of wire fraud. This
10 criminal activity is substantially related to his trustworthiness or competence to engage in
11 professional real estate activity. ORS 696.301(11) (2005 Edition), states OREA can take
12 disciplinary action against a licensee who has been convicted of a felony or misdemeanor
13 substantially related to the licensee's trustworthiness or competence to engage in professional
14 real estate activity.

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2 4.1 The above violations are grounds for discipline pursuant to ORS 696.301. Based
3 on these violations, OREA is revoking Smith's real estate principal broker license. A
4 revocation is appropriate under ORS 696.396(2)(c)(C), which states OREA may revoke a real
5 estate license if the material facts establish a violation of a ground for discipline under ORS
6 696.301 that exhibits dishonesty or fraudulent conduct.

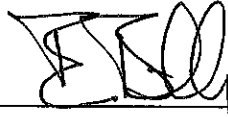
7 4.2 OREA reserves the right to investigate or pursue additional complaints that may
8 be received in the future regarding this licensee.

9 ORDER

10 IT IS HEREBY ORDERED that Smith's principal broker license is revoked.

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12 Dated this 22nd day of July, 2015.

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14 OREGON REAL ESTATE AGENCY

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17 _____
18 GENE BENTLEY
19 Real Estate Commissioner

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21 DATE of service: 7-22-2015

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23 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by
24 filing a petition for review within 60 days from the date of service of this order. Judicial review
25 is pursuant to the provisions of ORS 183.482.