

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

IN THE MATTER OF: ) **FINAL ORDER**  
 )  
**MELISSA CLEMO** ) OAH Case No.: 1604488  
 ) Agency Case No.: 2015-79

This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Joe L. Allen on June 22, 2016. No exceptions were filed to the Proposed Order.

After considering the records and the file herein, the Agency adopts the ALJ's Findings of Fact and Conclusions of Law and now issues this Final Order.

**HISTORY OF THE CASE**

On January 29, 2016, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke (Notice) to Melissa Marie Clemo (Licensee). On or about February 16, 2016, Licensee requested a hearing.

On March 3, 2016, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing. Senior ALJ Allen convened a prehearing conference on April 22, 2016. The purpose of the prehearing conference was to establish the issues for hearing and set a schedule for all proceedings in this matter.

ALJ Allen presided over a hearing held on May 9, 2016, in Salem, Oregon. Licensee appeared without counsel and testified on her own behalf. Raul Ramirez, Senior Assistant Attorney General represented the Agency. Peter Bale testified on behalf of the Agency. The record closed at the conclusion of the hearing on May 9, 2016.

**ISSUES**

1. Whether Licensee failed to notify the REA of a change in her address in violation of ORS 696.200(b) and (d).
2. Whether Licensee failed to complete three-way reconciliations for a client trust accounts in violation of ORS 696.301(3) and OAR 863-025-0025(20).
3. Whether Licensee failed to exercise reasonable care and diligence, and account in a timely manner for all funds received from or on behalf of an owner in violation of ORS 696.301(3) and ORS 696.890(4)(c) and (d).

4. Whether Licensee has demonstrated incompetence or untrustworthiness in performing property management activities. ORS 696.301(12).

5. Whether the REA should revoke Licensee's property manager license. ORS 696.396(2)(c)(B).

### **EVIDENTIARY RULING**

Exhibits A1 through A13, offered by the Agency, were admitted into the record without objection.

### **FINDINGS OF FACT**

1. Since approximately 2008, Licensee has held a Property Manager License issued by the Agency. (Ex. A1; Test. of Licensee.)

2. Licensee and her husband operate Accounted For Homes, LLC (AFH). (Ex. A5.) Licensee has served as the licensed property manager for AFH since obtaining her license in 2008. (Test. of Licensee; Ex. A5.)

3. In her role as a licensed property manager for AFH, Licensee maintains client trust accounts (CTAs) for the homeowners she represents. Licensee does not pool owner funds in a single CTA. Instead, she maintains a separate CTA for each owner. (Test. of Clemo.)

4. On or about November 6, 2014, the REA sent a Mandatory Mail-in CTA Audit form to Licensee for the owner account ending in 1966. (Test. of Bale; Ex. A2.) Licensee failed to complete the audit and return it to the REA. (Test. of Clemo.)

5. On or about December 16, 2014, the REA sent a Mandatory Mail-In CTA Audit 2<sup>nd</sup> Notice to Licensee reminding her that she was required to provide certain documentation to the REA showing reconciliation of the CTA ending in 1966. This second notice gave Licensee five banking days to return the completed audit form to the REA. (Test. of Bales; Ex. A3.) Licensee again failed to comply with the REA's audit request. (Test. of Clemo.)

6. Licensee did not complete the audit form because she did not know how to perform three-way reconciliations for any of the CTAs she maintained. (Test. of Clemo.)

7. Because Licensee failed to respond to the mail-in audit requests, an REA investigator, Peter Bale, contacted Licensee via email to set up a meeting at the AFH office. At that time, the REA database showed three different addresses on file with for Licensee. The investigator indicated he would be willing to meet with Licensee at any of the addresses that was convenient for her. Licensee responded to the investigator's email and indicated AFH had moved to the Widgi Creek Golf Course in Bend, Oregon. Licensee provided the investigator with a mailing address that was not on file with the REA. (Test. of Bale; Ex. A6.)

8. AFH moved its office to the Widgi Creek Golf Course some time prior to February 2015. (Ex. A5.) Licensee did not inform the REA of the relocation of the business office. Instead, Licensee updated her license profile on the REA website with her home address. (Test. of Clemo.)

9. On March 3, 2015, Bale met with Licensee at the AFH office located at 18707 SW Century Dr., Bend Oregon 97702. (Test. of Bale; Ex. A7.) During this meeting, Bale inquired about the three-way reconciliations for each of the CTAs maintained by AFH. Licensee informed Bale that she did not know how to perform such reconciliations and was unfamiliar with the requirement that she reconcile CTAs on a monthly basis. (Test. of Clemo and Bale.)

10. During the March 3, 2015 meeting, Bale reviewed the account record for CTAs maintained by Licensee and discovered she was not keeping any accounting ledgers. Instead, Bale determined that Licensee was working strictly off the bank statements for each account. Bale also discovered that Licensee was paying owner draws that the accounts did not support. (Test. of Bale.) In addition, Bale discovered that Licensee had allowed one of the CTAs to become overdrawn on at least two occasions because she had written checks from the wrong checkbook. (Exs. A7 at 2 and A10 at 3.)

11. Also during this March 3, 2015 meeting, Licensee informed Bale that she was a “terrible bookkeeper” and admitted that she had not been keeping AFH’s books up-to-date. (A7 at 1; test. of Bale.)

### CONCLUSIONS OF LAW

1. Licensee failed to notify the REA of a change in her address.
2. Licensee failed to complete three-way reconciliations for a client trust accounts.
3. Licensee failed to exercise reasonable care and diligence, and account in a timely manner for all funds received from or on behalf of an owner.
4. Licensee has demonstrated incompetence or untrustworthiness in performing property management activities.
5. The Agency may revoke Licensee’s property manager license.

### OPINION

The Agency alleges Licensee’s Oregon Property Manager License should be revoked because she failed to notify the Agency of an address change, failed to complete three-way reconciliations of CTAs, failed to keep her bookkeeping up to date, and demonstrated incompetence or untrustworthiness in the conduct of property management. As the proponent of these positions, the Agency bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982). . ORS 183.450(2); *see also, Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in

administrative hearings is a preponderance of the evidence). Proof by a preponderance of the evidence means the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 696.301 provides the REA authority to impose discipline on a licensee, identifies the bases for such discipline, and provides in pertinent part:

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:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS \* \* \* 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

First, the Agency alleges Licensee violated ORS 696.200 by failing to inform the Agency of an address change for her property management business. ORS 696.200 identifies the requirements for real estate licensees to update the REA of any change in business location and provides, in relevant part:

(1) A licensed real estate property manager or principal real estate broker shall:

\* \* \* \* \*

(b) Register the main office with the Real Estate Agency under a registered business name as provided in ORS 696.026 or under the real estate licensee's licensed name; [and]

\* \* \* \* \*

(d) Before changing a main office location, notify the agency of the new location on a form approved by the agency.

In February 2015, after Licensee failed to respond to the REA's mail-in audit requests, investigator Peter Bale contacted Licensee via email to set up a meeting at the AFH office. At that time, Bale proposed meeting at any one of AFH's three addresses on file with the REA. Licensee responded to Mr. Bale and indicated AFH had moved to the Widgi Creek Golf Course in Bend, Oregon. Licensee provided Mr. Bale with a mailing address that was not on file with

the REA. At the hearing, Licensee argued that she did not notify the REA of the Widgi Creek Golf Course address because she had always used her home address, rather than the AFH business address, for her license with the REA. That justification demonstrates Licensee's lack of familiarity and understanding of the statutory requirements above. As identified above, ORS 696.200(1) requires a licensee to update the REA of any change in business location, not home address. Licensee failed to comply with the requirements of ORS 696.200. Therefore, the REA may impose disciplinary action pursuant to ORS 696.301(3).

Next, the Agency alleges Licensee failed to complete three-way reconciliations of CTAs. OAR 863-025-0025(20) requires a property manager to reconcile all open CTAs and provides:

A property manager must reconcile each client's trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and

(C) The sum of all positive owners' ledgers as of the date of the bank statement.

(b) The balances of each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days from the date of the bank statement, the property manager must:

(A) Complete the reconciliation document; and

(B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of each owner's ledger balance as of the date of the bank statement.

At hearing, Licensee admitted that she had not performed any reconciliation of the CTAs prior to being contacted by the REA regarding the mail-in audit. Licensee asserted that she was unaware of the obligation to reconcile CTAs on a monthly basis. Further, Licensee admitted that she did not provide the documents requested by the REA and stated that she failed to comply because she simply did not know how to perform account reconciliations.

As a licensee, Licensee is responsible for being familiar and maintaining compliance with the statutes and rules governing her obligations to the owners she serves, the public, and the Agency. Licensee's lack of familiarity with the reconciliation requirements is not an acceptable reason for failing to comply with the requirement. Likewise, Licensee's lack of knowledge as to an integral aspect of her duties as a property manager is not a valid excuse for her non-compliance. By applying for and maintaining a property manager license, Licensee implicitly asserted that she possesses the requisite knowledge and skills to perform all required functions of a property manager.

Additionally, the Agency asserts Licensee violated ORS 696.890 by failing to keep all book keeping duties up to date. ORS 696.890 identifies the duties of real estate property managers and provides, in relevant part:

(4) A real estate property manager owes the property owner the following affirmative duties:

\* \* \* \* \*

(c) To exercise reasonable care and diligence;

(d) To account in a timely manner for all funds received from or on behalf of the owner[.]

The evidence in the record demonstrates Licensee did not maintain any books of accounts for the CTAs maintained by AFH. Instead, Licensee operated off the monthly bank statements for each account. During a meeting with the REA's investigator and at hearing, Licensee admitted that she had not been keeping the books for AFH clients because she was "a terrible bookkeeper." Evidence in the record showing that Licensee's practices resulted in a negative balance for one of the CTAs supports Licensee's self-assessment of her accounting skills. It also supports a finding by the REA that Licensee was not exercising reasonable care and diligence in accounting for owner funds. Lack of any structured bookkeeping practices demonstrates Licensee failed to account for all funds received from or on behalf of the owners in a timely manner. As such, Licensee violated the affirmative duties owed to the property owners and set forth in ORS 696.890(4)(c) and (d).

As identified above, the REA's authority to impose discipline against a licensee is subject to the provision of ORS, 696.396, which requires, *inter alia*, that the REA implement a system of progressive discipline and provides, in part:

(1) The Real Estate Commissioner shall provide by rule for the progressive discipline of real estate licensees and an objective method for investigation of complaints alleging grounds for discipline under ORS 696.301.

(2) The rules adopted by the commissioner under this section:

\* \* \* \* \*

(c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that:

\* \* \* \* \*

(B) Exhibits incompetence in the performance of professional real estate activity[.]

Licensee's violation of each of the provisions of statute and administrative rule identified above demonstrates a lack of basic competence and knowledge of the rules and regulations relating to professional real estate activity, specifically those applicable to licensed property management. The duties she breached are fundamental to fulfilling her role as a fiduciary to her clients. In addition, Licensee's failure to notify the Agency of her current address as required compromises the Agency's ability to inspect records licensee is required to maintain. Licensee's violation of the rules establishes grounds for discipline under ORS 696.301(3). Licensee's conduct during the period in issue demonstrates incompetence and untrustworthiness in performing acts for which Licensee was required to hold a real estate license and thus constitutes grounds for discipline under ORS 696.301(12). Further, because Licensee exhibited a lack of basic competence in performing property management activities, the Agency may revoke her license under ORS 696.396.

**ORDER**

Melissa Clemo's property manager license is hereby revoked.

IT IS SO ORDERED THIS 29<sup>th</sup> day of July, 2016



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Gene Bentley  
Real Estate Commissioner

Date of Service: 7/29/2016

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.



**CERTIFICATE OF MAILING**

On July 29, 2016, I mailed the foregoing Final Order issued on this date in OAH Case No. 1604488 and Agency Case No. 2015-79.

By: First Class Mail

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