

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

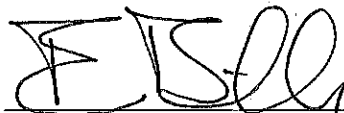
IN THE MATTER OF:  <b>DOUGLAS WADDLE, Licensee</b>	) <b>FINAL ORDER</b> ) ) OAH Case No. 1504112 ) Agency Case No. 2013-667
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This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Dove L. Gutman on November 30, 2015. No exceptions were filed to the Proposed Order.

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 real estate broker license of Douglas Waddle is revoked, with said revocation to be effective the date of this order.

Dated this 21<sup>st</sup> day of ~~January~~ 2016.

  
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Gene Bentley  
Real Estate Commissioner

Date of Service: January 21, 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.

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

IN THE MATTER OF:  <b>DOUGLAS WADDLE,</b> <b>Respondent</b>	) <b>PROPOSED ORDER</b> ) ) OAH Case No.: 1504112 ) Agency Case No.: 2013-667
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**HISTORY OF THE CASE**

On February 9, 2015, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke (Notice) to Douglas Waddle (Respondent), who had previously requested a hearing on November 16, 2014.

On April 3, 2015, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On June 5, 2015, ALJ Gutman convened a prehearing telephone conference. Senior Assistant Attorney General Raul Ramirez represented the Agency. Respondent did not appear. Hearing was scheduled for September 17, 2015.

On September 11, 2015, Respondent filed a request to postpone the hearing. On September 11, 2015, Mr. Ramirez notified the OAH that the Agency did not object to the postponement, but requested that a prehearing conference be held to reschedule the hearing.

On September 17, 2015, ALJ Gutman convened a prehearing telephone conference. Mr. Ramirez represented the Agency. Respondent represented himself. Hearing was rescheduled for November 18, 2015.

Hearing was held as scheduled on November 18, 2015, in Salem, Oregon. ALJ Gutman presided. Mr. Ramirez represented the Agency. Respondent represented himself. The following individuals provided testimony: Respondent, Nathan Seaver, Barbara Ralston, Peter Clark, and Aaron Grimes. The record closed at the conclusion of the hearing.

**ISSUES**

1. Whether Respondent committed acts of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, in violation of ORS 696.301(14) (2013 Edition).

2. Whether Respondent engaged in conduct below the standard of care for the practice of

professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon, in violation of ORS 696.301(15) (2013 Edition).

3. Whether Respondent's real estate license should be revoked. ORS 696.301.

### EVIDENTIARY RULING

The Agency's Exhibits A1 through A15 were admitted into evidence without objection. Respondent's Exhibits R1, R2, R5, R11 page 2, R13, R14, R17, and R19 were admitted into evidence without objection.

Respondent's Exhibits R3, R4, R6 through R10, R11 page 1, R12, R15, R16, R18 and R20 were excluded based on being irrelevant, cumulative, and/or unreliable.

### ADMISSIONS

During the hearing, Respondent made the following admissions:

1. He entered the listed Property on August 4, 2013, using his RMLS (lockbox) key with the intent to engage in sexual relations with RC.<sup>1</sup> He did not enter the listed Property with the intent to engage in professional real estate activity.

2. He was dishonest with and made a false statement to the Agency, the Agency's investigator and the RMLS when he stated (verbally and/or in writing) that he entered the Property to use the restroom to wash some vomit off of clothes and/or shoes.

### FINDINGS OF FACT

#### Background

1. Douglas Waddle (Respondent) has been a licensed real estate agent/broker in Oregon for approximately 25 years. (Test. of Waddle.)

2. Prior to August 2013, Respondent had never had any complaints filed with the Real Estate Agency (Agency) against him. (*Id.*)

3. During the period of August 1, 2012 to August 6, 2013, Respondent's real estate license was associated with Oregon First, Realtors. During the period of August 15, 2013 to August 21, 2013, Respondent's real estate license was associated with Willamette Realty Group. (Test. of Waddle; Ex. A11; Pleading 1.)

4. While his license was active, Respondent was a member of Regional Multiple Listing Service (RMLS). (Test. of Waddle.)

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<sup>1</sup> The name of the other individual involved in the incident is represented by the initials "RC."

5. Respondent's real estate license is currently inactive. (*Id.*)

### **Incident**

6. On August 4, 2013, at 11:14 pm, Respondent used his RMLS (lockbox) key to enter a home located at 8636 SE Yamhill Street, in Portland, Oregon (the Property). The Property was vacant and listed for sale with agent Peter Clark of The Clark Group.

Respondent entered the Property with another man, RC. Respondent entered the Property with the intent to engage in sexual relations with RC. Respondent did not enter the Property with the intent to engage in professional real estate activity. Respondent and RC were inside the Property for approximately 1.5 hours.

Nathan and Anna Seaver were owners of the Property.

At some point on August 4, 2013, after 11:14 pm, Anna Seaver drove by the Property. Mrs. Seaver observed, among other things, that lights were on inside the home and a vehicle was parked outside of the home. Mrs. Seaver contacted her husband, Nathan Seaver, and asked him to drive by the Property after he got off work to turn off the lights and make sure the home was secure.

On August 5, 2013, at approximately 12:45 am, Mr. Seaver entered the Property. Mr. Seaver found Respondent and RC in the bathroom on the first floor of the home. Mr. Seaver asked the men to leave and then called police.

Respondent left the Property. RC subsequently apologized to Mr. Seaver and confirmed that he and Respondent were having sex inside the Property. RC provided Mr. Seaver and the police with his phone number and Respondent's name and phone number.

On August 5, 2013, Mr. Seaver notified agent Peter Clark of the incident. Mr. Clark forwarded the information to Principal Broker Barb Ralston. (Test. of Waddle, Seaver, Ralston; Exs. A1, A5, A6, A7.)

### **Complaint and Response**

7. On August 8, 2013, Barb Ralston filed a Complaint against Respondent with the Agency, detailing the incident at the Property. (Ex. A1.) Ms. Ralston also filed a Rules and Regulation Report against Respondent with RMLS, alleging unauthorized use of the RMLS key and detailing the incident at the Property. (Ex. A12.)

8. On September 1, 2013, Respondent filed a Response with RMLS that stated, in material part:

Yes! I went inside the house to use bathroom to clean off some vomit from clothes that happened while giving a[n] over intoxicated person a ride home. I don't drink and sometimes get

asked to drive friends, family or acquaintances home.

This was a rash and spur of the moment bad decision and [I] know I was in the wrong. The sink was used, and the shower (1-2 min) to rinse a shoe off. There were no remnants or signs of what was cleaned off left in either one. There was no harm done to anything except for some splashed water that would have been wiped dry before leaving but then told to leave.

(Ex. A13.) Respondent was dishonest with and made a false statement to the RMLS. (Test. of Waddle.) Respondent did not admit or disclose that he entered the Property with the intent to engage in sexual relations with RC. (*Id.*; Ex. A13.)

9. On September 12, 2013, Respondent filed a Response with the Agency, which stated, in pertinent part:

Yes it was I and my keypad that was used to go in house as normally done. The only reason was to use restroom to wash some vomit off that got on clothes and shoes. There was no other intent than that.

This was a rash, drastic and spur of the moment bad decision to do so. This was the first time in 27 yrs [sic] as a[n] agent/broker to enter a listing other than normal R.E. Activity.

I am appalled and disgusted with myself that I allowed myself to be vulnerable and allow some things happen while rinseing [sic] things off in bathroom. There was no one showering. But shower was on maybe 1-2 maybe 3 mins [sic] tops to rinse shoe off.

(Ex. A2.) Respondent was dishonest with and made a false statement to the Agency. (Test. of Waddle.) Respondent did not admit or disclose that he entered the Property with the intent to engage in sexual relations with RC. (*Id.*; Ex. A2.)

10. On December 27, 2013, Aaron Grimes, investigator with Agency, interviewed Respondent regarding the incident. Respondent told Mr. Grimes that he entered the Property to clean vomit off his shoe. (Test. of Waddle; Ex. A8.) Respondent was dishonest with and made a false statement to Mr. Grimes. (Test. of Waddle.) Respondent did not admit or disclose that he entered the Property with the intent to engage in sexual relations with RC. (*Id.*; Ex. A8.)

11. Respondent was fined \$650 dollars by RMLS. (Test. of Waddle.)

12. Respondent was not authorized by RMLS to enter the Property for any reason other than professional real estate activity. (Test. of Ralston, Clark.)

13. Respondent's behavior violated the public trust. Respondent's behavior was below

the standard of care for the practice of professional real estate activity in Oregon. (Test. of Ralston, Clark.)

### CONCLUSIONS OF LAW

1. Respondent committed acts of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, in violation of ORS 696.301(14) (2013 Edition).

2. Respondent engaged in conduct below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon, in violation of ORS 696.301(15) (2013 Edition).

3. Respondent's real estate license should be revoked.

### OPINION

The Agency contends Respondent violated ORS 696.301(14) and (15) (2013 Edition), and should be sanctioned for the violations. As the proponent of this position, the Agency has the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that 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). The Agency has met its burden.

### Violations

The Agency contends that Respondent violated ORS 696.301(14) and (15) (2013 Edition). I agree with the Agency.

ORS 696.301, in effect in 2013, is titled "Grounds for 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:

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(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.

(15) Engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

“Fraud” is defined as “an instance or an act of trickery or deceit esp. when involving misrepresentation” and “a false representation of a matter of fact by words or conduct.” *Webster’s Third New International Dictionary* 904 (unabridged ed 2002.)

“Dishonest” is defined as “characterized by lack of truth, honesty, probity, or trustworthiness or by an inclination to mislead, lie, cheat, or defraud : fraudulent.” *Webster’s* at 650.

In this matter, the uncontroverted evidence establishes that Respondent entered the listed Property using his RMLS key with the intent to engage in sexual relations with RC. Respondent did not enter the Property to engage in professional real estate activity.

The uncontroverted evidence also establishes that during the subsequent investigation, Respondent was dishonest with and made a false statement to the Agency, the Agency’s investigator and the RMLS when he stated (verbally and/or in writing) that he entered the Property to use the restroom to wash some vomit off of clothes and/or shoes.

Respondent’s behavior was fraudulent and dishonest, and violated the public trust. Respondent’s behavior is substantially related to his fitness as a real estate licensee to conduct professional real estate activity in Oregon. Respondent’s behavior was below the standard of care for the practice of professional real estate activity in Oregon.

Accordingly, Respondent engaged in fraudulent and dishonest conduct that violated ORS 696.301(14) and (15) (2013 Edition).

### **Sanction**

The Agency contends that Respondent’s license should be revoked. Respondent contends to the contrary. I agree with the Agency.

ORS 696.396 is titled “Investigation of complaints and progressive discipline; rules” 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:

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(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:

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(C) Exhibits dishonesty or fraudulent conduct[.]

Pursuant to ORS 696.396(2), the rules adopted by the commissioner may not authorize revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that, among other things, exhibits dishonesty or fraudulent conduct.

As determined above, Respondent engaged in fraudulent and dishonest conduct that violated ORS 696.301(14) and (15) (2013 Edition). Therefore, the Agency may revoke Respondent's real estate license. Additionally, a review of the record establishes that revocation is the appropriate sanction in this matter.

Respondent contends that his license should be suspended rather than revoked. However, I have determined that revocation is appropriate. As such, Respondent's argument is unpersuasive.

### ORDER

I propose the Real Estate Agency issue the following order:

1. Respondent committed acts of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, in violation of ORS 696.301(14) (2013 Edition).

2. Respondent engaged in conduct below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon, in violation of ORS 696.301(15) (2013 Edition).

3. Respondent's real estate license is revoked.

Dove L. Gutman

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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  
530 Center Street NE Ste 100  
Salem, OR 97301-2505

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

**CERTIFICATE OF MAILING**

On November 30, 2015, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1504112.

By: First Class Mail

Douglas Waddle  
13720 SE Taylor St  
Portland OR 97233

Denise Lewis  
Real Estate Agency  
530 Center Street NE Ste 100  
Salem OR 97301-2505

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

Alesia Vella  
Administrative Specialist  
Hearing Coordinator

**CERTIFICATE OF MAILING**

On January 21, 2016, I mailed the foregoing Final Order issued on this date in OAH Case No. 1504112 and Agency Case No. 2013-667.

By: First Class Mail

DOUGLAS NELSON WADDLE  
13720 SE TAYLOR ST  
PORTLAND, OR 97233

Office of Administrative Hearings  
ALJ Dove L. Gutman  
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