

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

SHERRI R. GREGORY

}
FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY

1.

1.1 On April 2, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Reprimand* the real estate principal broker license of Sherri R. Gregory (Gregory). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Gregory's last known address of record with the Agency (39394 Crawfordville Dr. Sweet Home, OR). The *Notice of Intent to Reprimand* was also mailed to Gregory by regular first class mail.

1.2 The notice was also emailed to Gregory at her email address of record.

1.3 Neither of the mailings have been returned to the Agency. Over twenty (20) days have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received.

2.

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

2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is properly served when deposited in the United States mail, registered or certified mail, addressed to the real estate licensee or to any other person having an interest in a proceeding before the Commissioner at the licensee's or other person's last known address of record with the Agency.

2.2 Gregory's last known address of record with the Agency was 39394 Crawfordville Dr., Sweet Home, OR 97389.

2.3 A certified mailing of the notice of intent was mailed to Gregory at her last known address of record on April 2, 2020. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was also mailed regular first class mail in a handwritten envelope. The mailing in the handwritten envelope has not been returned to the Agency. In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed and placed with the U.S. Postal Service was delivered. That presumption has not been overcome by any evidence.

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

2.6 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

2.7 As noted in paragraph 7 of the *Notice of Intent to Reprimand*, the Agency's entire investigation file was designated as the record for purposes of presenting a *prima facie* case upon default, including submissions from Gregory and all information in the administrative file relating to the mailing of notices and any responses received.

3.

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

FINDINGS OF FACT

3.1 Gregory was licensed as a real estate principal broker doing business under Keller Williams Realty Mid-Willamette. Prior to doing business under Keller Williams Realty Mid-Willamette, Gregory worked under Heritage NW Real Estate, Inc.

3.2 On August 6, 2018, the Agency received a complaint from broker Michael Eastlund (Eastlund) alleging that Sandra Trevino (Trevino) of the Gregory Home Team with Keller Williams Realty Mid-Willamette intentionally interfered with the exclusive representation of another licensee. The Agency opened an investigation on Gregory who was the principal broker for the Gregory Home Team.

3.3 On June 30, 2018, buyers, Gerald and Janell Iverson, signed an offer to purchase property located at 1445 60th Avenue, Sweet Home, Oregon (subject property). Eastlund represented the buyers, and Gregory represented the sellers, Michael and Lorinda Hanes.

3.4 On July 9, 2018, Gregory emailed a Receipt of Reports/Removal of Contingencies Addendum (OREF 059) to Fidelity National Title (Fidelity) with a request to have all parties sign at closing. Gregory did not include Eastlund, the buyer's broker, in the communication with Fidelity, nor did Gregory send the OREF 059 directly to Eastlund.

3.5 The OREF 059 that Gregory sent to Fidelity contained the following language: "Furthermore, both buyer and seller hereby agree to hold both Keller Williams Realty Mid-Willamette and their agents harmless from any issue or matters both present and future related to this sale,"

3.6 Between December 5, 2012, and May 15, 2019, the Gregory Home Team's website did not contain a statement that the licensees were licensed in the State of Oregon on the first page.

3.7 As of April 17, 2019, the Gregory Home Team's website contained headings for both KW Mid-Willamette and KW Capital City. Gregory's license was never associated with KW Capital City.

3.8 Between December 5, 2012, and January 29, 2016, the Gregory Home Team's website did not contain the registered business name Gregory's license was associated with (Keller Williams Realty Mid-Willamette and prior to that, Heritage NW Real Estate, Inc.).

3.9 Between December 13, 2018, and May 15, 2019, the Gregory Home Team's website advertised broker, James Buckridge (Buckridge), as a member of the Gregory Home Team when Buckridge's license was associated with a completely different registered business name, Keller Williams Eugene. Due to the fact that Buckridge was under a completely different registered business name (Keller Williams Eugene) Gregory did not supervise Buckridge's professional real estate activity.

STATEMENT OF LAW

1. ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency.
2. ORS 696.301(3) as it incorporates:
 - a. ORS 696.805(5) (2017 edition) which states that except as provided in subsection 3(g) of this section, an affirmative duty may not be waived.
3. ORS 696.301(6) and (7) (2017 Edition) which states in part a licensee's real estate licensee may be disciplined if they have: (6) intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity, and (7) intentionally interfered with the exclusive representation or exclusive brokerage relationship of another real estate licensee
3. ORS 696.301(3) as it incorporates:
 - a. OAR 863-015-0125(2)(b) (1/1/2018 Edition) which states that advertising by a licensee, in process and in substance must be truthful and not deceptive or misleading.
 - b. OAR 863-015-0125(4) (9/14/2012, 4/1/2013, 5/15/2014 Editions) which states the licensed name or registered business name of the principal real estate broker, sole practitioner

real estate broker or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

c. OAR 863-015-0125(9)(b)(C) (9/14/2012, 4/1/2013, 5/15/2014, 11/15/2016 and 1/1/2018 Editions). OAR 863-015-0125(9) requires advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, E-mail, E-mail discussion groups, blogs, and bulletin boards is subject to the following requirements: (b) advertising by a licensee must include on its first page: (C) a statement that the licensee is licensed in the State of Oregon.

d. OAR 863-015-0125(11)(c) (11/15/2016 and 1/1/2018 Editions) a licensee may use the term “team” or “group” to advertise if: (c) the licensee members of the team or group are associated with the same principal broker or property manager.

ULTIMATE FINDINGS OF FACT

1. Gregory intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity and intentionally interfered with the exclusive representation or exclusive brokerage relationship of another licensee. Gregory also attempted to waive an affirmative duty that may not be waived.
2. Gregory failed to have a statement on the first page on the Gregory Home Team’s website that stated the licensees were licensed in Oregon.
3. As of April 17, 2019, Gregory’s Home Team Website contained headings for both KW Mid-Willamette and KW Capital City.
4. Between December 5, 2012 and January 29, 2016, Gregory failed to have the registered business name her license was associated with on her Gregory Home Team’s website.
5. Between December 13, 2018, and May 15, 2019, Gregory advertised a broker on her Gregory Home Team’s website that was not under her supervision and was associated with a completely different registered business name.

CONCLUSIONS OF LAW

1. Pursuant to ORS 183.417(4) and OAR 137-003-0670 Gregory is in default.
2. The material facts establish violations of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Reprimand*.
3. Based on these violations, the Agency may reprimand Gregory's principal broker license.
4. Specifically, Gregory is subject to discipline pursuant to ORS 696.301(3), (6), and (7). ORS 696.301(3), (6) and (7) (2017 Edition) which states in part a licensee's real estate licensee may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency; (6) intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity, and (7) intentionally interfered with the exclusive representation or exclusive brokerage relationship of another real estate licensee.
5. A reprimand is appropriate for violations of ORS 696.301(3), (6), and (7).
6. Based on the evidence in the record, the preponderance of the evidence weighs in favor of the reprimand of Gregory's principal broker license.
7. The Agency may, therefore, reprimand Gregory's principal broker license.

OPINION

The Agency takes its consumer protection role very seriously. Gregory's use of the hold harmless verbiage on the addendum was an intentional interference into a real estate contract and exclusive brokerage relationship. Gregory sent the addendum with the hold harmless language directly to escrow to have all parties sign at closing. The potential for harm caused by this type of hold harmless language on the addendum is high. Parties to a real estate contract may not be aware that they do not have to sign such an agreement or that affirmative duties may not be waived. The hold harmless language would likely wrongfully discourage a party to file a complaint or seek remedies against a real estate licensee in the event something

went wrong in the transaction. Additionally, by sending the addendum directly to escrow without a chance for the buyer's broker to review prior it would place additional pressure on the buyers to sign the addendum.

The specific violations are repeated here below:

(1) By including the hold harmless verbiage on the addendum which was emailed directly to Fidelity Gregory violated ORS 696.301(6) and (7) (2017 Edition) which states in part a licensee's real estate licensee may be disciplined if they have: (6) intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity, and (7) intentionally interfered with the exclusive representation or exclusive brokerage relationship of another real estate licensee. Gregory also violated ORS 696.301(3) as it incorporates ORS 696.805(5) (2017 edition) which states that except as provided in subsection 3(g) of this section, an affirmative duty may not be waived.

(2) By failing to have a statement on the first page of the website that the licensees were licensed in Oregon, Gregory violated ORS 696.301(3) as it incorporates OAR 863-015-0125(9)(b)(C) (9/14/2012, 4/1/2013, 5/15/2014, 11/15/2016 and 1/1/2018 Editions). OAR 863-015-0125(9)(b)(C) requires advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, E-mail, E-mail discussion groups, blogs, and bulletin boards is subject to the following requirements: (b) advertising by a licensee must include on its first page: (C) a statement that the licensee is licensed in the State of Oregon.

(3) By using KW Capital City in her advertising, when her license was not associated with KW Capital City, Gregory violated ORS 696.301(3) as it incorporates OAR 863-015-0125(2)(b) (1/1/2018 Edition) which states that advertising by a licensee, in process and in substance must be truthful and not deceptive or misleading.

(4) By failing to have the registered business name on the Gregory Home Team website Gregory violated ORS 696.301(3) as it incorporates OAR 863-015-0125(4) (9/14/2012, 4/1/2013, 5/15/2014 Editions) which states the licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) By advertising a Buckridge as part of the Gregory Home Team, when Buckridge was not even associated with Keller Williams Realty Mid-Willamette Gregory violated ORS

696.301(3) as it incorporates OAR 863-015-0125(11)(c) (11/15/2016 and 1/1/2018 Editions) a licensee may use the term “team” or “group” to advertise if: (c) the licensee members of the team or group are associated with the same principal broker or property manager.

ORDER

IT IS HEREBY ORDERED that Gregory’s principal broker license be, and hereby is reprimanded.

Dated this _____ day of _____, 2020.

OREGON REAL ESTATE AGENCY

Steven Strobe
Real Estate Commissioner

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