

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of)
LEAH MARIE HYLAND) STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Leah Marie Hyland (Hyland) do hereby agree and stipulate to all of the following in lieu of Hearing. Hyland does not dispute the Agency’s Procedural History, Findings of Fact, Statements of Law, and Conclusions of Law as set forth herein, and accepts the Order of Suspension which results therefrom.

PROCEDURAL HISTORY

On October 7, 2021, the Agency issued a *Notice of Intent to Suspend License No. B.200706042: Notice of Opportunity for Hearing*. On October 13, 2021, Hyland sent an email requesting a hearing. Hyland entered into settlement discussions with the Agency prior to the case being referred to the Office of Administrative Hearings. This Stipulated Final Order is the result of those discussions.

FINDINGS OF FACT, STATEMENTS OF LAW
AND
CONCLUSIONS OF LAW

1.

In establishing the violations set forth herein, the Agency may rely on one or more of the definitions contained in ORS 696.010.

First Findings of Fact:

1.1 At all times mentioned herein, Hyland was licensed as a broker with Windermere

1 Real Estate/Lane County.

2 1.2 On January 27, 2020, the Agency received a complaint from Mel Garges against
3 Hyland and the Agency opened an investigation.

4 1.3 Garland LLC was registered in February 23, 2015 and was later dissolved in April
5 2017. Per Hyland, the members of Garland LLC included Hyland as the “realtor,” Hyland’s
6 father, Ron Hyland provided the financing, and Eric Garges (Hyland’s now ex husband), who
7 was a general contractor and employee of Gemstone Builders to do remodel work.

8 1.4 Garland LLC initially purchased 677 Kamapheema PL, Eugene, OR 97405
9 (subject property) from a bank owned listing. After purchasing, blackberry bushes were
10 removed from the back hillside and a steep slope was discovered.

11 1.5 Initially Hyland stated Eric Garges (Garges) built a retaining wall on the back
12 hillside and filled it with loam. Later Hyland stated a landscaper constructed the retaining wall,
13 that Garges designed the wall and delivered the materials for the landscaper and crew to build
14 it.

15 1.6 On January 14, 2016, Hyland listed the subject property.

16 1.7 On January 15, 2016, Garland LLC prepared (appears that both Gages and
17 Hyland were involved in completing and filling out the form) and signed a Seller’s Property
18 Disclosure Statement for the subject property stating the entirety of section “8 GENERAL” was
19 unknown, including:

20 A. Are there problems with settling soil, standing water or drainage on the property or in
21 the immediate area?

22 B. Does the property contain fill?

23 C. Is there any material damage to the property or any of the structure(s) from fire, wind,
24 floods, beach movements, earthquake, expansive soils or landslides?

25 1.8 Garland LLC disclosed in section “9. FULL DISCLOSURE BY SELLER(S)” that
26 there were no other material defects affecting the property or its value that a prospective buyer
27 should know about.

28 1.9 Jacque Scott (Scott) a potential purchaser of the subject property, received a
29 letter from GeoScience, Inc. (GeoScience) dated February 18, 2016. Scott had been informed
30 about potential slope movement by her inspectors and by Mortier Engineer and as a result

1 retained Geoscience to perform further assessment. GeoScience reported the results of their
2 assessment of the slope and fill stability. Per the letter, Scott had told GeoScience that
3 Garland LLC had remodeled the property in the past year, constructing a wood retaining wall in
4 the backyard downslope from the main part of the residence, with fill placed behind the wall.

5 1.10 Charity Crosby (Crosby) the principal broker representing Scott, prepared a
6 buyer's repair addendum. The addendum asked for Garland LLC to complete all
7 recommended items on the whole house inspection except item #301, #317 and #1410. Item
8 #301 related to the driveway and the whole house inspection report notes a separation of the
9 driveway from the driveway slap, with discussion on potential drainage issues. It was
10 recommended to have a licensed foundation contractor or engineer review the driveway and
11 garage slab to determine if corrections were needed. Item #317 in the whole house inspection
12 report related to the lot/grade and the steepness of the lot's slope and led to the
13 recommendation of having a licensed contractor and/or engineer review the conditions.

14 1.11 The buyer's repair addendum further stated Scott had received a structural
15 engineer report by Mortier Engineering and based on that report a geotechnical engineer
16 report had been ordered.

17 1.12 On March 3, 2016, Crosby emailed the repair addendum.

18 1.13 On March 6, 2016, GeoScience visited the subject property and wrote a report.
19 The report noted the material on the slope below the west portion of the house and garage
20 was indicated to contain fill material. The surface on that area had numerous clusters of cut
21 blackberry vines. Below the central and eastern portions of the house, materials were present
22 that indicated fill material. Portions of the deck support posts were out of plumb. Two slide
23 scarps were observed in the fill sand downslope from the main part of the house. The
24 driveway slab was unsupported by soil.

25 1.14 The discussions and recommendations section notes it was probable the house
26 garage and much of the driveway was constructed on fill. The deck support posts had both
27 moved northward and downward. The east end of the driveway had rotated in a counter-
28 clockwise direction resulting in a gap between the driveway and garage slabs. The report in
29 part states: " With the information available at this time, it appears that the likely most cost
30 effective mitigation option is a reduction in driving forced at the top of the fill and a

1 concomitant increase in resisting forces in the lower portion of the fill slope by a re-grading of
2 the fill to a more stable slope angle. It is recommended to reduce the overall slope angle to no
3 steeper than 2H: 1V (27 degrees).”

4 1.14 On March 7, 2016, Crosby emailed Hyland and attached the GeoScience report.
5 Crosby stated the inspector gave a broad bid to fix what was needed around \$30,000 to
6 \$40,000. Crosby stated in order for Scott to continue with the sale, Garland LLC would need
7 to agree to do the following: 1. All recommendations in the “Geo” report; 2 The roof items in the
8 Whole House Inspection; 3 Driveway issues; and, 4. All dry rot and siding issues in the Whole
9 House Inspection.

10 1.15 On March 8, 2016, Hyland emailed Crosby and acknowledged the transaction
11 was terminating.

12 1.16 On March 8, 2016, the subject property went back on the market.

13 1.17 Dated May 4, 2016, an inspection report was prepared by Jeff Heide (Pillar to
14 Post Home Inspectors) for Garland LLC. The observations included a few 4x4 posts on the
15 west end of the deck were out of plumb. It was noted the grade on the south side sloped
16 toward the house, and the inspector was unable to determine if there were drain lines along
17 the foundation to divert water away from the home. Cracks were apparent in the garage floor
18 but considered typical due to normal settling and movement. A gap was noted between the
19 floor and the drive, and if the gap continued to increase it was recommended to consult with a
20 licensed contractor for the needed corrections.

21 1.18 Hyland was contacted by the second buyer, Brett Rushforth (Rushforth), who had
22 seen the property online and wanted to see it. Rushforth came out to visit the property.
23 According to Hyland, she went over the previous inspection results with Rushforth and her
24 relationship to her father as the private financing for Garland LLC and Garges as the builder.

25 1.19 Regarding his visit, Rushforth stated, “She definitely didn’t mention having any
26 connection to the house, and she always referred to the seller as “the seller” in all of our
27 communications.” He said Hyland did not tell him anything about the possibility of a landslide.

28 1.20 Rushforth signed an offer on the subject property on May 16, 2016. Ron Hyland
29 signed for Garland LLC on May 17, 2016. Both parties were represented by Hyland. In
30 section “20 ADDITIONAL PROVISIONS,” Hyland wrote, “Listing agent is related to the seller.”

1 **First Statement of Law:** The Real Estate Commissioner may suspend the real estate
2 license of any real estate licensee if the applicant has disregarded or violated any provision of
3 ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of
4 the Agency. ORS 696.301(3). ORS 696.301(3) is implemented in part by OAR 863-015-
5 0145(1) (5-15-2014 Edition) which states if a real estate licensee, whether active or inactive,
6 either directly or indirectly offers or negotiates for the sale, exchange, lease option, or
7 purchase of real estate and the licensee is a principal to the transaction, the licensee must
8 disclose to the other party to the offer or transaction that the licensee is a real estate licensee.
9 The licensee must make disclosure in any advertising or display signs, and it must appear in
10 writing on at least the first written document of agreement concerning the offer or transaction.
11 The disclosure set forth on the agreement document also must state that the real estate
12 licensee is representing himself or herself as either the buyer or the seller in the transaction.
13 Per OAR 863-015-0145(5) this section applies to offers and transactions entered into by
14 corporations, partnerships, limited partnerships, or other legal entities in which any real estate
15 licensee, active or inactive is an owner and where the licensee at any time participates in
16 negotiations concerning the offer or transaction on behalf of the entity. As used in this rule,
17 “owner” means an individual having an ownership interest equaling more than five percent of
18 the total ownership interest in the legal entity. Per OAR 863-015-0003(27) principal is defined
19 by ORS 696.800. ORS 696.800(9) Principal means the person who has permitted or directed
20 an agent to act on the principal’s behalf. In a real property transaction, this generally means
21 the buyer or the seller.

22
23 **First Conclusion of Law:** By failing to properly disclose as a licensee, that she was
24 also a principal to the transaction, Hyland violated ORS 696.301(3) and its implementing rule
25 OAR 863-015-0145(1) (5-15-2014 Edition)

26
27 **Second Findings of Fact:**

28 1.21 Rushforth received a copy of the May 2016 inspection performed by Jeff Heide,
29 which did not indicate there was anything wrong with the hillside or that there had been a
30 landslide. No further inspections were done for Rushforth.

1 1.22 On May 24, 2016, Hyland emailed Rushforth and included a copy of the Seller's
2 Property Disclosures (which was the same one that had been prepared on January 15, 2016).
3 That same day, Rushforth signed the Seller's Property Disclosure Statement (same one that
4 Hyland had prepared back on January 15, 2016).

5 1.23 Hyland did not update the seller's property disclosure from when it was initially
6 prepared back in January 2016. The document still stated "Unknown" regarding the following
7 questions:

8 A. Are there problems with settling soil, standing water or drainage on the property or in
9 the immediate area?

10 B. Does the property contain fill?

11 C. Is there any material damage to the property or any of the structure(s) from fire, wind,
12 floods, beach movement, earthquake, expansive soils or landslides.

13 Section 9 disclosed there were no other material defects affecting the property or its
14 value that a prospective buyer should know about.

15 1.24 On June 29, 2016, the subject property sold. In December 2016, rainstorms
16 washed everything away from the hillside. Experts were brought in to look into the landslide
17 and found that it was at least two years old.

18 1.25 In late April 2017, Garland LLC was dissolved and in February 2018, Hyland's
19 father repurchased the property.

20
21 **Second Statement of Law:** The Real Estate Commissioner may suspend the real
22 estate license of any real estate licensee if the applicant has disregarded or violated any
23 provision of ORS 696.301. ORS 696.301 (12) authorizes the Commissioner to suspend the
24 license of any person who has demonstrated incompetence or untrustworthiness in performing
25 any act for which the real estate licensee is required to hold a license. ORS 696.301(3)
26 authorizes the Commissioner to suspend any licensee's license who has disregarded or
27 violated any provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870
28 and 696.890 or any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is
29 made through ORS 696.810(2)(a) and (c), ORS 696.810(3)(a),(c),(d),and (e), and ORS
30 696.815(2)(b) (2015 Editions). ORS 696.810(2)(a) and (c) states: (2) a buyer's agent owes

1 the buyer, other principals and the principal's agents involved in a real estate transaction the
2 following affirmative duties: (a) to deal honestly and in good faith; (c) to disclose material facts
3 known by the buyer's agent and not apparent or readily ascertainable to a party. ORS
4 696.810(3)(a),(c),(d) and (e) states: (3) a buyer's agent owes the buyer involved in a real
5 estate transaction the following affirmative duties: (a) to exercise reasonable care and
6 diligence; (c) to be loyal to the buyer by not taking action that is adverse or detrimental to the
7 buyer's interest in a transaction; (d) to disclose in a timely manner to the buyer any conflict of
8 interest, existing or contemplated; (e) to advise the buyer to seek expert advice on matters
9 related to the transaction that are beyond the agent's expertise. ORS 696.815(2)(b) states: (2)
10 a real estate licensee acting pursuant to a disclosed limited agency agreement has the
11 following duties and obligations: (b) to the buyer, the duties under ORS 696.810.
12

13 **Second Conclusion of Law:** By failing to ensure material facts were updated in the
14 sellers' property disclosures and failing to disclose the known problem of a potential landslide,
15 Hyland violated ORS 696.301(12) and ORS 696.301(3) as it incorporates ORS 696.810(2)(a)
16 and (c), ORS 696.810(3)(a),(c),(d),and (e), and ORS 696.815(2)(b) (2015 Editions).
17

18 **Third Conclusion of Law:**

19 The foregoing violations are grounds for discipline pursuant to ORS 696.301(3) and
20 (12). Based upon the above violations a suspension of Hyland's broker license is appropriate
21 under ORS 696.396(2)(c)(A) and (B). According to ORS 696.396(2)(c)(A)(B), the Agency may
22 suspend a real estate license if the material facts establish a violation of a ground for discipline
23 under ORS 696.301 that: (A) results in significant damage or injury; (B) exhibits incompetence
24 in the performance of professional real estate activity. As previously noted, the Agency has set
25 forth the grounds of ORS 696.301(3) and (12).
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27 3.

28 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real
29 estate license, whether by operation of law, order of the Real Estate Commissioner or decision
30 of a court of law, or the inactive status of the license, or voluntary surrender of the license by

1 the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with
2 an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee;
3 (3) Take action against a licensee, including assessment of a civil penalty against the licensee
4 for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or
5 revoking a license.

6 4.

7 The Agency reserves the right to investigate and pursue additional complaints that may
8 be received in the future regarding this licensee.

9 5.

10 STIPULATION AND WAIVER

11 I, Leah Marie Hyland, have read and reviewed this Stipulated Final Order and its
12 Findings of Fact, Statements of Law and Conclusions of Law. I understand that the Findings
13 of Fact, Conclusions of Law and this Stipulation and Waiver of Hearing rights embody the full
14 and complete agreement and stipulation between the Agency and me. I further understand
15 that if I do not agree with this stipulation I have the right to request a Hearing on this matter
16 and to be represented by legal counsel at such a Hearing. I also understand that any Hearing
17 would be conducted in accordance with the procedures set forth in ORS Chapter 183 and in
18 accordance with the Rules of Practice and Procedure adopted by the Attorney General of the
19 State of Oregon. By signing this Stipulated Final Order I freely and voluntarily waive my rights
20 to a Hearing, to representation by legal counsel at such a Hearing, and to judicial review of this
21 matter.

22 I hereby agree and stipulate to the above Findings of Fact and Conclusions of Law and
23 understand that the Order which follows hereafter, which I have also read and understand,
24 may be completed and signed by the Real Estate Commissioner or may be rejected by the
25 Real Estate Commissioner. I further understand that, in accordance with the provisions of
26 ORS 696.445(3), notice of this Order shall be published in the Oregon Real Estate News
27 Journal.

28 In addition to all of the above, I agree that once the Commissioner executes this

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1 Final Stipulated Order, I will accept service of the Final Stipulated Order by email, and hereby
2 waive the right to challenge the validity of service.

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ORDER

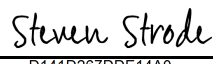
IT IS HEREBY ORDERED that Leah Marie Hyland's broker license *No. B.200706042* be, and hereby is, suspended for 60 days. The suspension will commence on December 1, 2021 and continue through and including January 29, 2022.

IT IS SO STIPULATED:

IT IS SO ORDERED:

DocuSigned by:

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LEAH MARIE HYLAND

DocuSigned by:

D141D287DDE14A0...
STEVEN STRODE



Real Estate Commissioner

Date 10/27/2021 | 10:03 AM PDT

Date 10/28/2021 | 7:39 AM PDT

Date of Service: 10/28/2021