

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of
BRIAN JAMES

STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Brian James (James) do hereby agree and stipulate to the following:

JURISDICTION

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.

PROCEDURAL HISTORY

On February 23, 2021, the Agency issued a *Notice of Intent to Reprimand License No. B.201227644: Notice of Opportunity for Hearing and Notice of Contested Case Rights and Procedures*. On February 26, 2021, James sent an email requesting a hearing. On March 11, 2021 James called the Agency’s assigned Department of Justice Senior Assistant Attorney General and requested a settlement conference. On March 25, 2021, prior to the date of hearing, James entered into settlement discussions with the Agency.

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FINDINGS OF FACT, STATEMENTS OF LAW
AND CONCLUSIONS OF LAW

1.

1.1 James was licensed as a broker. The Agency received two complaints against James. The complaints in both cases occurred when James' broker license was associated with Help-U-Sell Select Real Estate (HUS). On July 29, 2020, James was disassociated from HUS. James' license is now associated with Save Big Realty.

1.2 The first complaint, was received on May 7, 2020. The first complaint was received from Mary Gustafson (Gustafson) and Gilbert Rivero (Rivero). The second complaint was received on September 28, 2020. The second complaint was received from James' former principal broker, Lone Lassen Murphy (Murphy).

1.3 Upon review of the two complaints the Agency opened two investigations: Case No.2020-161 (Gustafson) and Case No. 2020-454 (Murphy).

1.4 Gustafson and James entered into a listing agreement to list her property located at 1509 Larkspur Ave, Medford Oregon (Larkspur). The listing agreement was signed by Gustafson and James on January 17, 2020.

1.5 On March 8, 2020, buyers Miguel Torres Jr., and Chandelle E. Torres signed an offer to purchase Larkspur and were represented by Angela Pfeiffer (Pfeiffer). The seller accepted the offer that same day.

1.6 Pfeiffer stated that during the transaction she repeatedly had to send documents back to James because they were incomplete.

(1) Violation: James failed to provide the buyers' agent with fully complete documents in the Larkspur transaction in violation of ORS 696.301(3) as it incorporates ORS 696.805(3)(a)(c) (2019 Edition) which states (3) a seller's agent owes the seller involved in a real estate transaction the following affirmative duties: (a) to exercise reasonable care and diligence, and (c) to be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in the transaction.

1.7 When interviewed Pfeiffer stated that as closing approached, the seller, escrow agent, and Pfeiffer tried to reach James for five days straight, but James never answered the phone or responded to their attempts to contact him by any other means. Emails sent to

1 James bounced back from his account.

2 **(2) Violation:** As closing for Larkspur approached James failed to respond to multiple
3 contact attempts from others regarding the pending transaction in violation of ORS 696.301(3)
4 as it incorporates ORS 696.805(3)(a)(c) (2019 Edition) which states (3) a seller's agent owes
5 the seller involved in a real estate transaction the following affirmative duties: (a) to exercise
6 reasonable care and diligence and (c) to be loyal to the seller by not taking action that is
7 adverse or detrimental to the seller's interest in the transaction.

8 1.8 When interviewed James stated that the owner had received two offers to
9 purchase the house on Larkspur. James said the first offer was \$10,000 below the asking
10 price and that Gustafson rejected the offer. Gustafson when interviewed stated she had never
11 received a written copy of that offer and was not told of the first offer by James until closing of
12 the second offer. When asked for a copy of the first offer received, James was unable to
13 produce it. The Agency then requested a copy of the offer from his principal broker but there
14 was no record of it in the documents she received from James and she stated that she had no
15 memory of ever having received one for review.

16 **(3) Violation:** By failing to present the written offer to the seller and failing to maintain a
17 copy of the offer and failing to submit the offer to his principal broker for review James violated
18 ORS 696.301(3) as it incorporates ORS 696.280(4)(b) (2019 Edition), ORS 696.805(2)(b)
19 (2019 Edition) and OAR 863-015-0250(2) (1-1-2019 and 1-1-2020 Edition). ORS 696.280(4)(b)
20 states except as provided in subsection (2) of this section, records under this section must be
21 maintained by the real estate licensee for a period of not less than six years
22 after the following date: (b) for real estate transactions, the date a transaction closed or failed,
23 whichever is later. ORS 696.805(2)(b) states a seller's agent owes the seller, other principals
24 and the principals' agent the following affirmative duties: (b) to present all written offers, written
25 notices and other written communications to and from the parties in a timely manner without
26 regard to whether the property is subject to a contract for sale or the buyer is already a party to
27 a contract to purchase. OAR 863-015-0250(2) states when a real estate broker receives any
28 document referred to in (1) of this rule, the real estate broker must transmit to the real estate
29 broker's principal broker the document within 3 banking days of a real estate broker's receipt of
30 the document.

1 1.9 When interviewed James stated that Ticor Title Company of Oregon (Ticor) had
2 sent a mobile notary to Gustafson for her convenience but that Gustafson was not cooperative
3 when the mobile notary arrived. James stated that Ticor then called James. Per James he
4 then called Gustafson and Rivero and, rather than advising them that they had the right to
5 seek legal counsel if they had concerns as to whether signing the presented documents in
6 their current form was in their best interests, told them, “This is what you signed and are
7 obligated to do.” James also told them the matter could escalate to litigation and he suggested
8 they avoid that.

9 **(4) Violation:** By advising and telling Gustafson, “This is what you signed and are obligated
10 to do” in order to avoid escalation to litigation James violated ORS 696.301(3) as it
11 incorporates ORS 696.805(3)(c)(e) (2019 Edition) states (3) a seller’s agent owes the seller
12 involved in a real estate transaction the following affirmative duties: (c) to be loyal to the seller
13 by not taking action adverse or detrimental to the seller’s interest in the transaction; and (e) to
14 advise the seller to seek expert advice on matters that are beyond the agent’s expertise.

15 1.10 On September 23, 2020, James was terminated by his HUS principal broker,
16 Murphy. At the time of his termination, James had two pending transactions about to close.
17 Without Murphy’s permission or knowledge James contacted the escrow company for one of
18 the transactions (2246 Haviland Drive, Grants Pass, OR 97527) and proceeded to change the
19 commission wiring instructions. The instructions were changed to direct the money be
20 deposited into his own account at Umpqua Bank, listing James’ own email address as the
21 point of contact, rather than listing his principal broker’s email contact information and her
22 brokerage bank account. This resulted in the full commission being deposited into James’
23 personal bank account instead of the HUSs’ brokerage account.

24 **(5) Violation:** By submitting altered wiring instructions to escrow on the 2246 Haviland Dr.
25 transaction, without his principal broker’s permission, and as a result receiving the entire
26 commission in his own bank account, James demonstrated incompetence or untrustworthiness
27 in performing any act for which a real estate licensee is required to hold a license in violation of
28 ORS 696.301(12) (2019 Edition).

29 1.11 While working under HUS, James ordered \$3,000.00 worth of advertising
30 through Cartvertising on a 12 month contract order form dated February 10, 2020. This

1 advertising was not submitted to Murphy for her approval, and she was unaware of it until she
2 received a notice from a law firm doing collections work and stating that payment for the
3 purchase was past due. The advertising James had purchased was in the HUS company
4 name and was to be paid in 8 monthly installments of \$375.00 beginning April 1, 2020. James
5 failed to pay the advertising bill.

6 **(6) Violation:** By ordering \$3,000 worth of advertising through Cartvertising, which James'
7 principal broker was unaware of and had not approved, James violated ORS 696.301(3) as it
8 incorporates OAR 863-015-0125(5)(a) (1-1-20 Edition) which states a broker must submit
9 proposed advertising to the licensee's principal broker for review and receive the principal
10 broker's approval before publicly releasing any advertisement.

11 1.12 The above acts demonstrate incompetence, or untrustworthiness in performing
12 any acts for which a licensee is required to hold a license; involves dishonest conduct related
13 to the fitness of a real estate licensee to conduct professional real estate activity; and lastly
14 conduct below the standard of care for the practice of professional real estate activity in
15 Oregon.

16 **(7) Violation:** ORS 696.301 (12), (14), and (15) (2019 Edition) which states a licensee's
17 real estate license may be disciplined if they have: (12) demonstrated incompetence or
18 untrustworthiness in performing any act for which the real estate licensee is required to hold a
19 license; (14) committed an act of fraud or engaged in dishonest conduct substantially related to
20 the fitness of the applicant or real estate licensee to conduct professional real estate activity,
21 without regard to whether the act or conduct occurred in the course of professional real estate
22 activity; (15) engaged in any conduct that is below the standard of care for the practice of
23 professional real estate activity in Oregon as established by the community of individuals
24 engaged in the practice of professional real estate activity in Oregon.

25 26 SANCTION

27 2.

28 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
29 Based on these violations a reprimand is appropriate for violations of ORS 696.301(3),(12),
30 (14), and (15).

1 2.2 The Agency reserves the right to investigate and pursue additional complaints
2 that may be received in the future regarding this licensee.
3 2.3 In establishing the violations alleged above, the Agency may rely on one or more
4 of the definitions contained in ORS 696.010.

5 STIPULATION & WAIVER

6 I have read and reviewed the above findings of fact and conclusions of law which have
7 been submitted to me by the Agency and further, the order which follows hereafter. I
8 understand that the Findings of Fact, Conclusions of Law and this Stipulation and Waiver
9 embody the full and complete agreement and stipulation between the Agency and me. I
10 further understand that if I do not agree with the draft Stipulated Final Order that I have the
11 right to request a hearing on this matter and to be represented by legal counsel at such a
12 hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter
13 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney
14 General of the State of Oregon. Having no dispute with this Stipulated Final Order as drafted
15 herein, I freely and voluntarily waive my rights to a hearing, to representation by legal counsel
16 at such a hearing, and to judicial review of this matter. In so doing:

17 **I hereby agree and stipulate to the above findings of fact and conclusions**
18 **of law and understand that the order which follows hereafter may be**
19 **completed and signed by the Real Estate Commissioner or may be rejected**
20 **by the Real Estate Commissioner. I understand that, in accordance with**
21 **the provisions of ORS 696.445(3), notice of this order shall be published in**
22 **the Oregon Real Estate News Journal.**

23 **I agree once the Commissioner executes this stipulated order, I will**
24 **accept service of the final order by email, and hereby waive the right to**
25 **challenge the validity of service.**

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ORDER

IT IS HEREBY ORDERED that Brian James' broker license be, and hereby is reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:



DocuSigned by:
Brian James
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BRIAN JAMES

DocuSigned by:
Steven Strobe
D141D267DDE14A0...
STEVEN STRODE

Real Estate Commissioner

Date 4/1/2021 | 9:51 AM PDT

Date 4/1/2021 | 10:47 AM PDT

Date of Service: 04/01/2021

c. Catriona McCracken, Sr. AAG