

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of)
JOHN ERICK KUHLMANN) FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY

1.

1.1 On June 15, 2021, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke* the principal real estate broker license of John Erick Kuhlmann (Kuhlmann). The Oregon Real Estate Agency (Agency) sent the *Notice of Intent* to Kuhlmann’s last known address of record with the Agency. The *Notice of Intent* was also mailed to Kuhlmann by regular first class mail.

1.2 The notice was also emailed to Kuhlmann at his email address of record.

1.3 Neither the certified mailing nor the first class mailing has been returned to the Agency. Over 20 (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 OREA.

2.2 Kuhlmann’s last known address of record with the Agency was 3434 SW Salmon Ave. Redmond, OR 97756.

2.3 A certified mailing of the notice of intent was mailed to Kuhlmann at his last known address of record on June 15, 2021. 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 to the above address for Kuhlmann. The mailing in the handwritten envelope have not been returned to OREA. 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 9 of the *Notice of Intent to Revoke*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Kuhlmann and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 On September 1, 2019, Kuhlmann's principal broker license became inactive due to his failure to renew registered business name, Smart Housing & Land, with the Agency. Kuhlmann failed to renew his principal broker license during the month of October 2019 and on November 1, 2019, Kuhlmann's principal broker license expired. On November 1, 2020, Kuhlmann's principal broker license lapsed.

3.2 In March 2020, the Agency received a complaint from Lisa Methvin (Methvin) against Kuhlmann that was forwarded to the Agency by the State of Oregon Department of Consumer Business Services. The Agency opened an investigation.

3.3 On October 29, 2020, Methvin entered into an agreement to purchase a vacant lot located at 1270 SW Salsify Ln., Redmond, OR 97756, Lot 81 (subject property) with Kuhlmann. The Vacant Land Real Estate Sales Agreement (Sale Agreement #102920JK indicates Methvin agreed to by the subject property for \$80,000.00 from the seller, Smart Housing LLC, with Kuhlmann as the seller acting on behalf of Smart Housing LLC.

3.4 The Sale Agreement #102920JK states Kuhlmann, as an agent of "Smart Housing and Land," was also the selling and listing licensee in the subject property transaction. The agreement shows Kuhlmann represented both the buyer and seller in the transaction. At the time Kuhlmann entered into the sales agreement, his real estate license was expired.

3.5 As of September 17, 2020, Oregon Secretary of State records show Smart Housing LLC as inactive due to administrative dissolution. Kuhlmann was listed as the registered member of the entity.

(1) Violation: By entering into Sale Agreement #102920JK for the subject property on October 29, 2020, as the listing broker and broker representing the buyer, Methvin, while Kuhlmann's principal broker license was expired, Kuhlmann violated ORS 696.301(3) as it incorporates ORS 696.020(2) and ORS 696.990(9) (2019 Edition). ORS 696.020(2) states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter. Per ORS 696.990(9) for the purposes of subsection (4) of this section, any violation of ORS 696.020(2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after the expiration of the license during which the individual engages in professional real estate activity.

3.6 When Kuhlmann's license was active, it had been associated with

registered business name, Smart Housing & Land. The registered business name, Smart Housing & Land was not renewed by August 31, 2019, and became void with the Agency on September 1, 2019. When the registered business name became void this caused Kuhlmann's license to become inactive on September 1, 2019 and as previously mentioned above, Kuhlmann's license expired on November 1, 2019.

(2) Violation: By entering into Sale Agreement #102920JK on October 29, 2020, when his real estate license was expired and when the registered business name was void (from failing to renew it), Kuhlmann violated ORS 696.301(3) as it incorporates OAR 863-014-0097(4) (01/01/2020 Edition), which states if a registered business name is not renewed on or before the registration expiration date, all real estate licensees authorized to conduct professional real estate activity under the name will be inactivated and may not engage in any professional real estate activity until transferred under OAR 863-014-0063.

3.7 Methvin provided Kuhlmann with \$10,000.00 in earnest money funds on October 29, 2020. The \$10,000.00 earnest money check was issued to the seller, "Smart Housing LLC," as check #1002. The check was deposited at Selco Community Credit Union account ending on #7856 on November 19, 2020.

3.8 After signing the purchase agreement and accepting the earnest money, Methvin said Kuhlmann ceased all contact with her, despite her attempts to reach him.

(3) Violation: By ceasing communication with Methvin (buyer) after accepting Methvin's \$10,000.00 (check #1002) in earnest money funds on October 29, 2020, to be placed toward 1270 SW Salsify Ln. Redmond, OR 97756 Lot 81, the subject property identified in Sale Agreement 102920JK, Kuhlmann violated ORS 696.301(14) (2019 Edition), which states a licensee's real estate license may be disciplined if they have committed an act of fraud or engaged in dishonest conduct substantiality related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

3.9 Methvin said Kuhlmann represented himself as the owner and the seller of the subject property. Methvin later discovered the subject property was not owned by Smart

Housing LLC and under the control of Kuhlmann as he had presented it. Instead the subject property was owned by Aspen Creek MHC C/O Investment Property Group.

(4) Violation: By presenting himself to Methvin as the owner of the subject property when the subject property was not in his possession and was owned by another party, Aspen Creek MHC C/O Investment Property Group, Kuhlmann violated ORS 696.301(12), and (15) (2019 Edition), which states a licensee's real estate license may be disciplined if they have: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license. (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.

3.10 All of the above violations demonstrate incompetence and untrustworthiness in performing any act for which Kuhlmann is required to hold a license.

(5) Violation: ORS 696.301(12) (2019 Edition) which states a licensee's real estate license may be disciplined if they have: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

STATEMENT OF LAW

4.

4.1 ORS 696.020(2) states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

4.2 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.

4.3 ORS 696.301(12) which states a licensee's real estate license can be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

4.4 ORS 696.301(14) which states a licensee's real estate license may be disciplined if they have committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

4.5 ORS 696.301(15) which states a licensee's real estate license may be disciplined if they have 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.

4.6 ORS 696.990(9) for the purposes of subsection (4) of this section, any violation of ORS 696.020(2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after the expiration of the license during which the individual engages in professional real estate activity.

4.7 ORS 696.301(3) as it incorporates: OAR 863-014-0097(4) (01/01/2020 Edition), which states if a registered business name is not renewed on or before the registration expiration date, all real estate licensees authorized to conduct professional real estate activity under the name will be inactivated and may not engage in any professional real estate activity until transferred under OAR 863-014-0063.

ULTIMATE FINDINGS OF FACT

5.

5.1 Kuhlmann entered into Sale Agreement #102920JK for the subject property on October 29, 2020, as the listing broker and broker representing the buyer, Methvin, while Kuhlmann's principal broker license was expired.

5.2 Kuhlmann entered into Sale Agreement #102920JK on October 29, 2020, when his real estate license was expired and when the registered business name was void (from failing to renew it).

5.3 Kuhlmann ceased communication with Methvin (buyer) after accepting Methvin's \$10,000.00 (check #1002) in earnest money funds on October 29, 2020, to be placed toward

1270 SW Salsify Ln. Redmond, OR 97756 Lot 81, the subject property identified in Sale Agreement 102920JK.

5.4 Kuhlmann presented himself to Methvin as the owner of the subject property while the subject property was not in his possession and owned by another party, Aspen Creek MHC C/O Investment Property Group).

5.5 In all of the above Kuhlmann demonstrated incompetence and untrustworthiness in performing any act for which Kuhlmann is required to hold a license.

5.6 In summary, the facts above establish grounds to revoke Kuhlmann's principal broker license.

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Kuhlmann is in default.

6.2 The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Revoke*.

6.3 Based on these violations, the Agency may revoke Kuhlmann's principal broker license.

6.4 Specifically, Kuhlmann is subject to discipline pursuant to ORS 696.301(3), (12), (14) and (15). A revocation of Kuhlmann's principal broker license is appropriate for violations of ORS 696.301(3), (12), (14) and (15), which states in part a 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; (12) demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license; (14) committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or real estate 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.

6.5 A revocation of Kuhlmann's principal broker license is appropriate under ORS 696.396(2)(c)(A),(B) and (C). According to ORS 696.396(2)(c)(A),(B), and (C): (2)(c) the Agency may revoke a real estate license if the material facts establish a violation of a ground of discipline under ORS 696.301 that: (A) results in significant damage or injury; (B) exhibits incompetence in the performance of professional real estate activity; or (C) exhibits dishonesty or fraudulent conduct.

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the revocation of Kuhlmann's principal broker license.

6.7 The Agency may therefore, revoke Kuhlmann's principal broker license.

6.8 Pursuant to ORS 696.775 the lapsing of Kuhlmann's license does not prohibit the Commissioner from proceeding with this, or further action.

OPINION

7.

The Agency takes its consumer protection role very seriously. In this real estate transaction, Kuhlmann falsely represented himself as the owner and seller of the subject property to the buyer, Methvin. The sale agreement showed Kuhlmann representing both the buyer, Methvin, and the seller in the transaction. Kuhlmann accepted \$10,000 in earnest money funds from Methvin, to be placed towards the purchase of the subject property. Once he accepted the funds, Kuhlmann ceased all communication with the buyer, despite her attempts to contact him. Kuhlmann took financial advantage of the buyer and enjoyed economic gain from his dishonest conduct. Kuhlmann's actions caused financial harm to the buyer by taking all of the \$10,000 in earnest money and not applying it to the purchase of the subject property.

Kuhlmann's actions demonstrate incompetence or untrustworthiness in performing any act for which Kuhlmann is required to hold a license and Kuhlmann committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the real estate licensee to conduct professional real estate activity. Lastly, Kuhlmann engaged in 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.

The specific violations are repeated here below:

(1) By entering into Sale Agreement #102920JK for the subject property on October 29, 2020, as the listing broker and broker representing the buyer, Methvin, while Kuhlmann's principal broker license was expired, Kuhlmann violated ORS 696.301(3) as it incorporates ORS 696.020(2) and ORS 696.990(9) (2019 Edition). ORS 696.020(2) states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter. Per ORS 696.990(9) for the purposes of subsection (4) of this section, any violation of ORS 696.020(2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after the expiration of the license during which the individual engages in professional real estate activity.

(2) By entering into Sale Agreement #102920JK on October 29, 2020, when his real estate license was expired and when the registered business name was void (from failing to renew it), Kuhlmann violated ORS 696.301(3) as it incorporates OAR 863-014-0097(4) (01/01/2020 Edition), which states if a registered business name is not renewed on or before the registration expiration date, all real estate licensees authorized to conduct professional real estate activity under the name will be inactivated and may not engage in any professional real estate activity until transferred under OAR 863-014-0063.

(3) By ceasing communication with Methvin (buyer) after accepting Methvin's \$10,000.00 (check #1002) in earnest money funds on October 29, 2020, to be placed toward 1270 SW Salsify Ln. Redmond, OR 97756 Lot 81, the subject property identified in Sale Agreement 102920JK, Kuhlmann violated ORS 696.301(14) (2019 Edition), which states a licensee's real estate license may be disciplined if they have committed an act of fraud or engaged in dishonest conduct substantiality related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

(4) By presenting himself to Methvin as the owner of the subject property when the subject property was not in his possession and was owned by another party, Aspen Creek MHC C/O Investment Property Group, Kuhlmann violated ORS 696.301(12), and (15) (2019 Edition), which states a licensee's real estate license may be disciplined if they have: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license; (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.

(5) All of the violations above demonstrate incompetence and untrustworthiness in performing any act for which Kuhlmann is required to hold a license. ORS 696.301(12) (2019 Edition) which states a licensee's real estate license may be disciplined if they have: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

ORDER

IT IS HEREBY ORDERED that John Erick Kuhlmann's principal broker license is revoked.

Dated this 20th day of July, 2021.

OREGON REAL ESTATE AGENCY

DocuSigned by:

Steven Strode

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Steven Strode

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.

Certificate of Service

On July 20, 2021, I mailed and emailed the foregoing Final Order by Default issued on this date in Agency Case No. 2021-186.

By: First Class Mail

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