

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of	}	FINAL ORDER BY DEFAULT
MELISSA K. LAPPIN		

PROCEDURAL HISTORY

1.

1.1 On April 22, 2021, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke License No. PM 201210106 and To Assess A Civil Penalty: Notice of Opportunity for Hearing*. The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Lappin’s last known address of record with the Agency (17550 NW Rolling Hill Ln. Beaverton, OR 97006). The Notice of Intent was also mailed certified to another possible address for Lappin (3925 SW Pinewood Way, Aloha, OR 97078). The Notice of Intent was also mailed to Lappin by regular first class mail to the above two addresses.

1.2 The Notice of Intent was also emailed to Lappin at her email address of record.

1.3 Neither the certified mailings nor the first class mailings have 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 the Agency.

2.2 Lappin's last known address of record with the Agency was 17550 NW Rolling Hill Ln., Beaverton OR 97006.

2.3 A certified mailing of the Notice of Intent was mailed to Lappin at Lappin's last known address of record on April 22, 2021. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was mailed certified to another possible address for Lappin at 3925 SW Pinewood Way, Aloha, OR 97078. This certified mailing of the notice has not been returned to the Agency.

2.5 The notice was also mailed regular first class mail in a handwritten envelope to both of the above addresses for Lappin. The mailings in the handwritten envelope have 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.

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

2.7 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.

2.8 As noted in paragraph 9 of the *Notice of Intent to Revoke License No. PM 201210106 and to Assess a Civil Penalty*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Lappin and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 Lappin's property manager license became active on February 24, 2020. She is the sole licensee associated with Front Door Property Management, LLC (Front Door).

3.2 Agency records show two clients' trust account registered with Front Door, clients' trust account ending in #8896, and a clients' trust account security deposits account ending in #8904.

3.3 On September 10, 2020, Front Door was selected for a reconciliation review for security deposits account ending in #8904. The reconciliation documents requested were due within 30 days. Lappin failed to respond to the September 10, 2020 email request.

3.4 On October 19, 2020, Agency Compliance Specialist, Roger McComas (McComas) sent a second email to Lappin. Lappin did not respond. On October 28, 2020, McComas sent a third email to Lappin stating the Agency must receive the requested reconciliation documents by noon on October 29, 2020, and that failure to comply may result in a civil penalty of up to \$1,000 a day per ORS 696.990(6).

3.5 Lappin responded with a phone call to McComas that day and followed up with an email explaining, in part, that this was her first clients' trust account review. Per Lappin's response, she misread the October 19, 2020 email and thought she had 30 days from that day to submit the reconciliation documents. Lappin explained she was dealing with personal issues but would send the requested documents by November 3, 2020.

3.6 On November 6, 2020, Lappin emailed McComas explaining she was having technical issues and needed to re-reconcile a couple of months.

3.7 On November 9, 2020, Lappin called Agency Compliance Specialist Jenifer Wetherbee (Wetherbee) and asked if she could drop off the reconciliation documents at the office because she was having difficulty uploading them to the Agency's licensing database. Wetherbee gave Lappin the option of either emailing or faxing the documents.

3.8 On November 10, 2020, Lappin emailed Wetherbee referring to attached documents; however, there was no attachment. Wetherbee responded to Lappin, stating no attachment was received. Lappin stated she would resend them when she got home. Wetherbee received no further communication.

3.9 On January 15, 2021, an investigation was opened.

3.10 On January 29, 2021, Agency Financial Investigator/Auditor Liz Hayes (Hayes) called Lappin at her personal number and business number. Hayes left voicemails at both numbers asking for responses. That same day Hayes sent an email to Lappin's business email address and Lappin's personal email requesting the following documents due to the Agency by February 5, 2021:

- June 2020 3-way reconciliation report for account ending in #8904, including a copy of the supporting bank statement, register, and report showing total security deposits held.
- July 2020 3- way reconciliation report for account ending in #8904, including a copy of the supporting bank statement, register, and report showing the total security deposits held.
- August 2020 3-way reconciliation report for account ending in #8904 including a copy of the supporting bank statement, register, and report showing the total security deposits held.
- December 2020 3-way reconciliation report for account ending in #8904 including a copy of supporting bank statement, register and report showing total security deposits held.

3.11 Receiving no response from her previous February 8, 2021 email, additional attempts at contact were made by Hayes on February 8, 2021, and February 23, 2021.

3.12 Lappin's failure to respond and produce the property management records requested by the Agency demonstrates incompetence and untrustworthiness and is conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

STATEMENT OF LAW

4.

4.1 ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: 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

4.2 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.

4.3 ORS 696.990(6)(a) and (b). ORS 696.990(6)(a) and (b) states: (a) Except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280. (b) A civil penalty imposed under this subsection may not exceed \$10,000.

4.4 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0035(2)(a) and (c) (1-1-2021 Edition), which states: (2) a property manager must produce records required under section (1) of this rule for inspection by the Agency as follows: (a) when the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days; (c) failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

ULTIMATE FINDINGS OF FACT

5.

5.1 Lappin failed to produce the requested property management records to the Agency.

5.2 Lappin demonstrated incompetence and untrustworthiness, and conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

5.3 Lappin's complete failure to produce the requested records constitutes grounds to impose a civil penalty as per ORS 696.990(6)(a) and (b).

5.4 In summary, the facts above establish grounds to revoke Lappin's property manager license and impose a \$10,000.00 civil penalty.

CONCLUSIONS OF LAW

6.

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

6.2 The material facts establish violations of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Revoke License No. PM 201210106 and To Assess A Civil Penalty: Notice of Opportunity for Hearing*.

6.3 Based on these violations, the Agency may revoke Lappin's property manager license.

6.4 Specifically, Lappin is subject to discipline pursuant to ORS 696.301(3), (12) and (15). A revocation of Lappin's property manager license is appropriate for violations of ORS 696.301(3), (12) 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; (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 Lappin's property manager license is appropriate under ORS 696.396(2)(c)(B). According to ORS 696.396(2)(c)(B) 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 (B) exhibits incompetence in the performance of professional real estate activity.

6.6 The *Notice of Intent to Revoke License No. PM 201210106 and To Assess A Civil Penalty: Notice of Opportunity for Hearing* also established grounds to assess a \$10,000.00 civil penalty pursuant to ORs 696.990(6)(a) and (b) for violations of OAR 863-025-0035(2)(a) and (c) for failure to produce requested property management records to the Agency.

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the revocation of Lappin's property manager license and assessment of a \$10,000.00 civil penalty for failing to produce property management records.

6.7 The Agency may therefore, revoke Lappin's property manager license. The Agency may also assess a civil penalty in the amount of \$10,000.00.

OPINION

7.

The Agency takes its consumer protection role very seriously. On September 10, 2020, the Agency selected Lappin's company, Front Door Property Management, LLC, for a Clients' Trust Account Reconciliation Review. The reconciliation documents were due within 30 days from September 10, 2020. As of November 10, 2020, Lappin had not provided the requested reconciliation records, and in January 2021, the Agency opened an investigation. The investigator assigned to the case made multiple attempts to contact Lappin. However, Lappin failed to respond to these attempts and never provided the requested records.

Property managers hold owner and tenant funds in clients' trust accounts, and proper accounting for these funds is a necessary and fundamental requirement for all property managers. By failing to respond to the Agency's multiple records requests, Lappin could not demonstrate that she adequately maintained and accounted for the trust funds held.

Property managers have access to large amounts of money belonging to others. In regards to consumer protection, the Agency must act when a property manager is not responsive and fails to produce records. This license revocation and civil penalty result from Lappin's non-responsiveness and failure to produce requested records.

The specific violations are repeated here below:

(1) By failing to produce the requested property management records, Lappin violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) and (c) (1-1-2021 Edition), which states: (2) a property manager must produce records required under section (1) of this rule for inspection by the Agency as follows: (a) when the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days; (c) failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

(2) 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.

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ORDER

IT IS HEREBY ORDERED that Melissa Lappin's property manager license is revoked.

IT IS FURTHER ORDERED, that pursuant to ORS 696.990(6)(a) and (b) and based upon the violation of Lappin failing to produce property management records, Lappin pay a civil penalty in the sum of \$10,000.00 and said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 18th day of May, 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 May 18, 2021, I mailed and emailed the foregoing Final Order by Default issued on this date in Agency Case No. 2021-17.

By: First Class Mail

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Beaverton, OR 97006

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By Email:

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Nenah Darville
Licensing Specialist