

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Unlicensed Professional
Real Estate Activity of

BRIAN J. MAHON

FINAL ORDER BY DEFAULT AND ORDER
TO CEASE AND DESIST

PROCEDURAL HISTORY

1.

1.1 On December 29, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist (Notice of Intent)*. The Oregon Real Estate Agency (Agency) sent the *Notice of Intent* to Mahon’s last known address of record with the Agency (8 N 11th St. Pottsville, PA 17901-2807). The *Notice of Intent* was also mailed to Mahon by regular first class mail in a handwritten envelope to the above address. The notice was also emailed to Mahon at his email address of record.

1.2 On January 21, 2021, the regular first class mailing in handwritten envelope of the *Notice of Intent* was returned to the Agency marked, “Return to Sender Not Deliverable as Addressed Unable to Forward.”

1.3 On February 2, 2021, the certified mailing of the *Notice of Intent* was returned to the Agency with a box “Other” checked and written on the label was “Unclaimed.”

1.4 On February 9, 2021, the Real Estate Commissioner issued by certified mail, an *Amended Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist (Amended Notice of Intent)*. The Agency sent the *Amended Notice of Intent* to Mahon’s last known address of record with the Agency (8 N 11th St. Pottsville, PA 17901-2807) along with three other possible mailing addresses for Mahon (8 N 11th St Fl 2, Pottsville, PA 17901-2807, 399 Peacock St, Pottsville, PA 17901-1121, and 502 W Market St., Pottsville, PA 17901).

1.5 The *Amended Notice of Intent* was also mailed regular first class mail in a handwritten envelope to Mahon’s address of record and three other possible mailing

addresses for Mahon. The *Amended Notice of Intent* was also emailed to Mahon at his email address of record.

1.6 On March 9, 2021, the regular first class mailing in the handwritten envelope of the *Amended Notice of Intent* addressed to Mahon at 399 Peacock St, Pottsville, PA 17901 was returned to the Agency marked, "Return to Sender No Such Number Unable to Forward."

1.7 On March 11, 2021, the certified mailing of the *Amended Notice of Intent* addressed to Mahon at 399 Peacock St, Pottsville, PA 17901 was returned to the Agency marked, "Return to Sender No Such Number Unable to Forward."

1.8 The certified mailings of the *Amended Notice of Intent* and the first class mailings addressed to Mahon at his address of record (8 N 11th St, Pottsville, PA 17901-2807) and the other possible address for Mahon (8 N 11th St Fl 2 Pottsville, PA 17901-2807 and 502 W Market St., Pottsville, PA 17901) have not 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 Mahon's last known address of record with the Agency was 8 N. 11th St. Pottsville, PA 17901-2807.

2.3 A certified mailing of the *Notice of Intent* was mailed to Mahon at his last known address of record on December 29, 2020. On February 2, 2021, the certified mailing of the *Notice of Intent* was returned to the Agency with a box "Other" checked and written on the label was "Unclaimed."

2.4 The *Notice of Intent* was also mailed regular first class mail in a handwritten envelope to Mahon's address of record and on January 21, 2021, it was returned to the Agency marked, "Return to Sender Not Deliverable as Addressed Unable to Forward."

2.5 On February 9, 2021, the Real Estate Commissioner issued by certified mail, an *Amended Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist (Amended Notice of Intent)*. The Agency sent the *Amended Notice of Intent* to Mahon's last known address of record with the Agency (8 N 11st St. Pottsville, PA 17901-2807). The same day, February 9, 2021, the Agency also sent the *Amended Notice of Intent* by certified mail to three other possible mailing addresses for Mahon (8 N 11st St Fl 2, Pottsville, PA 17901-2807, 399 Peacock St, Pottsville, PA 17901-1121, and 502 W Market St., Pottsville, PA 17901). The *Amended Notice of Intent* was also emailed to Mahon at his email address of record.

2.6 On February 9, 2021, the *Amended Notice of Intent* was also mailed regular first class mail in a handwritten envelope to the same four address as the certified mailings (8 N 11st St. Pottsville, PA 17901-2807, 8 N 11st St Fl 2, Pottsville, PA 17901-2807, 399 Peacock St, Pottsville, PA 17901-1121, and 502 W Market St., Pottsville, PA 17901).

2.7 On March 9, 2021, the regular first class mailing in the handwritten envelope of the *Amended Notice of Intent* addressed to Mahon at 399 Peacock St, Pottsville, PA 17901 was returned to the Agency marked, "Return to Sender No Such Number Unable to Forward."

2.8 On March 11, 2021, the certified mailing of the *Amended Notice of Intent* addressed to Mahon at 399 Peacock St, Pottsville, PA 17901 was returned to the Agency marked, "Return to Sender No Such Number Unable to Forward."

2.9 The certified mailings of the *Amended Notice of Intent* addressed to Mahon at Mahon's address of record (8 N 11st St. Pottsville, PA 17901-2807) and the other two possible address for Mahon (8 N 11st St Fl 2, Pottsville, PA 17901-2807, and 502 W Market St., Pottsville, PA 17901) have not been returned to the Agency.

2.10 The first class mailings in the handwritten envelope of the *Amended Notice of Intent* addressed to Mahon at Mahon's address of record (8 N 11st St. Pottsville, PA 17901-2807) and the other two possible address for Mahon (8 N 11st St Fl 2, Pottsville, PA 17901-2807, and 502 W Market St., Pottsville, PA 17901) 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.

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

2.12 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.

2.13 As noted in paragraph 9 of the *Amended Notice of Intent* Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Mahon and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 At all times mentioned herein, Mahon was not licensed to conduct professional real estate activity in Oregon.

3.2 In November 2019, the Agency received a complaint against Mahon.

3.3 Ruth Biscardi and her sister Gertrude Simone owned a property located at 904 Clark Street, The Dalles, Oregon (Clark Street). Biscardi had allowed Mahon to live in the Clark Street home, rent free, while he fixed it up.

3.4 Clark Street had multiple living units. Mahon rented out the Clark Street units to various tenants. Wasco County court records show Mahon filed Residential Eviction Complaints in the following instances:

- On February 28, 2017, Mahon filed a Residential Eviction Complaint against tenants April Wilcox, and David and Loretta Lockard. In the notice Mahon stated they paid no rent.
- On August 11, 2017, Mahon filed a Residential Eviction Complaint against tenants Devlin and Heather Slone for nonpayment of rent.
- On May 5, 2018, Mahon filed a Residential Eviction Complaint against tenant Carl Ackley. The cause for eviction noted was promoting drug sales and theft.

3.5 On November 8, 2019, Marcus Swift, Biscardi's attorney, took a picture of a For Sale sign that was on the Clark Street house. The sign included Mahon's personal cell phone number along with the company name, ESP Realty Corp.

3.6 ESP Realty Corp, the company featured on the sign, was not registered with the Oregon Secretary of State.

3.7 Mahon owned a construction company in Pottsville, Pennsylvania, Brian Mahon Enterprises, which also operated under the name ESP Construction.

3.8 Mahon admitted putting up the For Sale sign on the Clark Street House. He said he later took the sign down. Mahon told Agency Investigator/Financial Auditor Cidia Nanez that he was going to sell Biscardi's house. He said he had done it before. He mentioned it was going to be a For Sale By Owner.

Violation: By engaging in the management of rental real estate and attempting to sell Clark Street and posting a For Sale sign on the property without a license, Mahon engaged in the professional real estate activity as described in ORS 696.010(14)(b)(h)(i)(j) (2015 Edition), and 696.010(17)(b)(h)(i)(j) (2017 and 2019 Editions), in violation of ORS 696.020(2) (2015, 2017 and 2019 Editions). 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 in this chapter.

STATEMENT OF LAW

4.

4.1 ORS 696.020(2) (2015, 2017 and 2019 Editions) 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 696.010(4) (2015 Edition) defines “compensation” as: any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

4.3 ORS 696.010(6) (2017 and 2019 Editions) defines “compensation” as: valuable consideration for services rendered or to be rendered, whether contingent or otherwise.

4.4 ORS 696.010(11)(a)(A)-(M) and (b)(A)-(F) (2015 Edition) and ORS 696.010(14)(a)(A)-(M) and b(A)-(F) (2017 and 2019 Editions) defines “Management of rental real estate.”

4.5 ORS 696.010(14)(b)(h)(i)(j) (2015 Edition) and ORS 696.010(17)(b)(h)(i)(j) (2017 and 2019 Editions) defines “Professional real estate activity” as: any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who: (b) offers to sell exchange, purchase, rent or lease real estate; (h) engages in management of rental real estate; (i) purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate; (j) assists or directs in the procuring of prospects, calculated to result in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate.

4.6 ORS 696.010(16) (2015 Edition) and ORS 696.010(19) (2017 and 2019 Editions) defines “real estate” as: includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

4.7 ORS 696.397 states if the Agency has reason to believe that a person has engaged, is engaging or is about to engage in a violation of ORS 696.020(2) the Agency may, issue an order directing a person to cease and desist from the violation or threatened violation.

4.8 ORS 696.990(4)(a) and (b) (2015, 2017 and 2019 Editions) any person that violates ORS 696.020(2) may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of: (a) not less than \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity; and (b) not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed professional real estate activity.

4.9 In establishing the violations alleged above, the Agency may rely on one or more definitions contained in ORS 696.010.

ULTIMATE FINDINGS OF FACT

5.

5.1 Mahon engaged in unlicensed professional real estate activity.

5.2 Mahon's actions constitute grounds to impose a civil penalty per ORS 696.990(4)(a) and (b) and ORS 696.990(5), as well as entry of an order to cease and desist from engaging in any professional real estate activity under ORS 696.397.

CONCLUSIONS OF LAW

6.

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

6.2 The material facts establish grounds to impose a civil penalty per ORS 696.990(4)(a) and (b) and ORS 696.990(5), as well as entry of an order to cease and desist from engaging in any professional real estate activity under ORS 696.397.

6.3 Based on the violations of ORS 696.020(2), the Agency may assess a civil penalty against Mahon and as well as an entry of an order to cease and desist from engaging in any professional real estate activity.

6.4 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the civil penalty against Mahon and an entry of an order to cease and desist from engaging in any professional real estate activity.

6.5 The Agency may therefore assess a civil penalty against Mahon and enter an order to cease and desist from engaging in any professional real estate activity.

OPINION

7.

The Agency takes its consumer protection role very seriously. To protect consumers, an individual must have an active license to engage in professional real estate activity in Oregon (ORS 696.020(2)). A license is issued to individuals who meet the requirements in Oregon (ORS 696.022), which include passing a criminal background check, successfully completing the basic real estate broker's educational courses required by rule, and passing an examination. Mahon did not have an Oregon real estate license, yet he engaged in several acts constituting professional real estate activity including: offering to sell the subject property, engaging in management of rental real estate; purporting to be engaged in the business of buying, selling, exchanging, renting or leasing real estate; and lastly assisting or directing in the procuring of prospects, calculated to result in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate.

Mahon received compensation for his actions by staying in the subject property for free and from his renting out of the subject property for rent payments.

The specific violation is repeated here below:

(1) **Violation:** By engaging in the management of rental real estate and attempting to sell Clark Street and posting a For Sale sign on the property without a license, Mahon engaged in the professional real estate activity as described in ORS 696.010(14)(b)(h)(i)(j) (2015 Edition), and 696.010(17)(b)(h)(i)(j) (2017 and 2019 Editions), in violation of ORS 696.020(2) (2015, 2017 and 2019 Editions). 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 in this chapter.

ORDER

IT IS HEREBY ORDERED that pursuant to ORS 696.397, Mahon immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(14)(a) to (n) (2015 Edition), and 696.010(17)(a)-(n) (2017 and 2019 Editions) unless Mahon first obtains a real estate license from the Agency. The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED, pursuant to ORS 696.990 and based upon the violation set forth above, Mahon pay a civil penalty in the sum of \$500.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 6th day of April, 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 April 6, 2021, I mailed and emailed the foregoing Final Order by Default issued on this date in Agency Case No. 2019-591.

By: First Class Mail

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Pottsville, PA 17901-2807

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