

person to be notified. *Stroh v. SAIF*, 261 OR 117, 492 P2d 472 (1972) (footnote 3 in this case misquotes the cited treatise and contradicts the text of the opinion; treatise and cited case law support the proposition stated in the text.) Also, notice is effective even though the addressee fails or refuses to respond to a postal service “mail arrival notice” that indicates that certified or registered mail is being held at the post office. See *State v. DeMello*, 300 Or App 590, 716 P2d 732 (1986) (discussing use of certified mail to effectuate notice of driver’s license suspension under ORS 482.570). See also *El Rio Nilo, LLC v. OLCC*, 240 Or App 362, 246 P3d 508 (2011) (Notice by certified mail effective even though addressee did not pick up in time to file request for hearing timely).(Oregon Attorney General’s Administrative Law Manual and Uniform Model Rules Of Procedure Under the Administrative Procedures 2019 Edition at pages 97-98.

2.2 Floeck’s last known addresses of record with the Agency were PO Box 157, Junction City, OR 97448 and 584 Greenwood St. Junction City, OR 97448.

2.3 A certified mailing of the *Notice of Intent* was mailed to Floeck at her last known addresses of record on October 25, 2022. The certified mailings of the notice have not been returned to the Agency.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to both of the above possible addresses for Floeck. The mailings in the handwritten envelope have not been returned to OREA. The OAH Rules contain a rebuttable presumption that documents sent by regular mail are received by the addressee. ORS 137-003-0520(10). If the regularly mailed notice is actually received, it is effective on the date received, rather than the date of mailing.

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 section 9 of the *Notice of Intent to Revoke* and section 2 above, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Floeck 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, Floeck was licensed as a property manager with Five Star Property Management LLC (Five Star PM). Floeck is the only licensee associated with Five Star PM.

3.2 On July 8, 2022, the Agency received a complaint from property owners, Michael and Vivian Buehler (Buehlers), against Tony Rojas (Rojas) from Five Star PM. The Agency opened an investigation.

3.3 On April 29, 2022, the Buehlers, as members of Safara LLC, and Floeck signed a property management agreement for properties located at 427 and 447 Goodyear St., Eugene (subject properties).

3.4 According to the property management agreement, the property manager was granted authority to collect rents and required to monthly remit the proceeds less disbursements to the owners. These owner funds were to be disbursed generally between the 20th and 25th day of each month. However, per the agreement, the distribution could occur as late as the last business day of any given month.

3.5 At the time of their July complaint, Buehlers had only received one check for the month of May 2022. According to the Buehlers, Five Star PM had informed them that both tenants paid their June 2022 rent and that the Buehlers would be receiving their rental funds. In the complaint, Buehlers wrote since the beginning of June 2022, no one from Five Star PM would return phone calls, text or emails.

3.6 On August 9, 2022, Vivian Buehler told Agency Investigator/Financial Auditor Aaron Grimes (Grimes) that Five Star PM told her the June check was in the mail two Thursdays prior, but she had never received anything.

3.7 The Buehlers did not receive their June or July 2022 rental income for the subject properties.

3.8 On August 9, 2022, Grimes called Flock at the phone number on file with the Agency. He received a message stating the number was no longer in service. That same day, Grimes emailed Flock at the email address listed in Agency records. The email was returned to the Agency with a message that stated, "The email account that you tried to reach is disabled." A review of Agency records shows no other current email address for Floeck on file.

3.9 On August 12, 2022, Grimes left a voicemail on Five Star PM's business line for Floeck. On August 23, 2022, Grimes left another voicemail for Floeck at the Five Star PM business line. Floeck failed to respond to all of Grimes' contact attempts.

3.10 All of the above demonstrates incompetence or untrustworthiness in performing any act for which Floeck is required to hold a license; conduct below the standard of care for the practice of professional real estate activity in Oregon; and fraud or dishonest conduct.

STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT

4.

4.1 ORS 696.301(3) 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) 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.

4.3 ORS 696.301(14) (2021 Edition) states a licensee's real estate license may be disciplined who has (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.

4.4 ORS 696.301(15) (2021 Edition) states a licensee's real estate license may be disciplined who has 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.

4.5 ORS 696.301(3) as it incorporates:

a. OAR 863-024-0062(1) (1-1-2021 Edition) which states (1) each active, inactive and expired property manager licensee must maintain on file with the Agency a current mailing address and email and notify the Agency within 10 calendar days of a change of mailing or email address.

b. ORS 696.890(4)(a),(c),(d),(e), and (f) (2021 Edition) which states (4) a real estate property manager owes the property owner the following affirmative duties: (a) to deal honestly and in good faith; (b) to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner; (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

ULTIMATE FINDINGS OF FACT

5.

5.1 Floeck failed to disburse the June and July 2022 rental income to the Buehlers for the subject properties, as required by the property management agreement.

5.2 Floeck failed to maintain a current email address on file with the Agency.

5.3 Floeck demonstrated incompetence or untrustworthiness in performing any act for which Floeck is required to hold a license; engaged in conduct below the standard of care for the practice of professional real estate activity in Oregon; and committed an act fraud or engaged in dishonest conduct.

5.4 In summary, the facts above establish grounds to revoke Floeck's property manager license.

CONCLUSIONS OF LAW

6.

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

6.2 The material facts establish a violation of a ground for discipline, by preponderance of the evidence, under ORS 696.301 as set forth in the *Notice of Intent to Revoke License No. PM 201234196*. ORS 696.396(1),(2)(c)(B) and (C).

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

6.4 Specifically, Floeck is subject to discipline pursuant to ORS 696.301(3), (12), (14) and (15) for: (3) disregarding or violating 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) demonstrating incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license; (14) committing an act of fraud or engaging 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; and (15) engaging 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 Floeck's property manager license is appropriate for violations of ORS 696.301(3), (12), (14), and (15).

6.6 A revocation of Floeck's property manager license is appropriate under ORS 696.396(2)(c)(B) and (C). According to ORS 696.396(2)(c)(B) and (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: (B) exhibits incompetence in the performance of professional real estate activity; (C) exhibits dishonesty or fraudulent conduct.

6.7 Based on the evidence in the record, the preponderance of the evidence supports the revocation of Floeck's property manager license.

6.8 The Agency may therefore, revoke Floeck's manager license.

6.9 The specific violations are repeated here below:

(1): By failing to disburse the June and July 2022 rental income to the Buehlers for the subject properties, as required by the property management agreement, Floeck violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a),(c),(d),(e), and (f) (2021 Edition).

(2): By failing to maintain a current email address on file with the Agency, Floeck violated ORS 696.301(3) as it incorporates OAR 863-024-0062(1) (1-1-2021 Edition).

(3): In all of the above, Floeck demonstrated incompetence or untrustworthiness in performing any act for which Floeck is required to hold a license; engaged in conduct below the standard of care for the practice of professional real estate activity in Oregon; and committed an act of fraud or dishonest conduct substantially related to the fitness of the applicant or real estate licensee to conduct professional real estate activity, in violation of ORS 696.301(12), (14), and (15) (2021 Edition).

ORDER

IT IS HEREBY ORDERED that Laura Lee Floeck's property manager license is revoked.

Dated this 2nd day of December, 2022.

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 Mailing

On December 2, 2022, I mailed and emailed the foregoing Final Order by Default issued on this date in Agency Case No. 2022-422.

By: First Class Mail

Laura Lee Floeck
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Junction City, OR 97448

Laura Lee Floeck
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By Email:

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Rick Marsland
Licensing Specialist