

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

PATRICIA A. HARMON



FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On May 18, 2022, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Reprimand* the principal broker license of Patricia A. Harmon (Harmon). The Oregon Real Estate Agency (Agency) sent the *Notice of Intent* to Harmon’s last known address of record with the Agency (PO Box 642, Oakridge, OR 97463). The *Notice of Intent* was also mailed to Harmon by regular first-class mail to the above address in a handwritten envelope. And *The Notice of Intent* was emailed to Harmon at her email address of record.

1.2 The email was not returned as undeliverable. And per DocuSign Certificate of Completion, the document was viewed by Harmon at 3:05 PM on May 19, 2022.

1.3 On May 26, 2022, the return receipt was returned to the Agency for the certified mailing. The return receipt showed the *Notice* was received and signed for by LuAnn Harmon. Neither the certified mailing nor the first-class mailing have been returned to the Agency. Over twenty days (20 days) have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received by the Agency.

2.

Based upon the foregoing, and upon the Agency’s investigation reports, documents and files that, pursuant to Section 9 of the *Notice of Intent*, automatically become part of the evidentiary record of this disciplinary action upon default (for the purpose of proving a prima facie case (ORS 183.417(4)), the Real Estate Commissioner finds:

2.1 A notice of intent is properly served when deposited in the United States mail, registered or certified mail, and addressed to the real estate licensee at the licensee's last known address of record with OREA. (ORS 183.415(2); OAR 137-003-0505; OAR 863-001-0006. If correctly addressed, such a notice is effective even though it is not received by the 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 Harmon's last known address of record with the Agency was PO Box 642, Oakridge, OR 97463.

2.3 A certified mailing of the *Notice of Intent* was mailed to Harmon at her last known address of record on May 18, 2022. The certified mailing of the notice has not been returned to the Agency. On May 26, 2022, the return receipt was returned to the Agency for the certified mailing. The return receipt showed the *Notice* was received and signed for by LuAnn Harmon.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to the above address for Harmon. The mailing in the handwritten envelope has 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 Reprimand*, 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 Harmon 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, Harmon was licensed as a principal broker with Oakridge Real Estate Co.

3.2 In September 2021, Harmon called the Agency explaining she had identified approximately \$8,000 to \$8,500 in her clients' trust account and she wasn't sure who the funds belonged to. At that time, Harmon had not notified the Agency of the clients' trust account. The Agency opened an investigation.

3.3 Previously, Harmon was issued an Educational Letter of Advice dated October 30, 2020, stating clients' trust account ending in #0580 (CTA #0580) was not registered with the Agency. In the letter Harmon was reminded of the requirement to register clients' trust accounts with the Agency within 10 days of opening the account.

3.4 In a phone call on December 1, 2021, Harmon told Agency Financial Investigator/Auditor Aaron Grimes (Grimes) she had switched banks and that was how she discovered there were remaining funds in CTA #0580. In a follow-up email that same day, Grimes urged Harmon to identify and remove funds that were not clients' trust funds from CTA #0580. Grimes asked Harmon to notify the Agency of the clients' trust account. Additionally,

Grimes requested an accounting of the identification and resolution of the funds. Harmon has not provided this documentation to the Agency.

3.5 CTA #0580 was held at Banner Bank. On December 23, 2021, Harmon emailed Rustie Aukland (Aukland) at Banner Bank asking for a formal letter opening CTA #0580. Harmon included the Notice of Clients' Account & Authorization to Examine form for CTA #0580, which was dated and signed on December 23, 2021, by Harmon.

3.6 On December 27, 2021, Aukland replied to Harmon, "I have looked through the documents we have and I am not able to find anything regarding the opening of the Clients Trust account [sic]. As you stated, the account was opened in 1996 and at that time I would venture to guess there was not a requirement in place. Your accounts were "grandfathered" over with each change of banks therefore you would not have been required to provide anything. Sorry I am not able to help."

3.7 On December 28, 2021, Harmon replied to Aukland and wrote she needed to re-apply for a clients' trust account with First Tech to comply with the state's clients' trust account rules.

3.8 In a telephone call with Grimes on January 3, 2022, Harmon explained she had already closed CTA #0580 at Banner Bank. She had transferred \$8,534.99 on September 2, 2021, from CTA #0508 at Banner Bank into its own account at First Tech. She disbursed \$1,000 in earnest money funds but didn't know what to do with the remaining \$7,000 in the new account at First Tech.

3.9 Harmon did not register CTA #0580 with the Agency and later failed to notify the Agency of the closing of this account. She also failed to notify the Agency of the opening of the second clients' trust account at First Tech.

3.10 Initially, when Harmon called the Agency on September 23, 2021, she reported she had found \$8,000 to \$8,500 in the clients' trust account but didn't know to whom the funds belonged. Later, Harmon stated she returned \$1,000 that belonged to a "purchasing client" who disappeared to California. At the time of the investigation, Harmon thought the rest of the funds were most likely commissions that should have been placed in the general account instead of the clients' trust account.

3.11 Harmon stated she had no records to back up why she was holding the funds as if they belong to others. Harmon has not provided an accounting the funds, as requested by the Agency on December 1, 2021.

3.12 On February 27, 2022, Harmon explained she could not provide accounting records to the Agency as requested because she was not reconciling CTA #0580 monthly and could not recall when she last performed a monthly reconciliation.

3.13 All of the above violations demonstrate incompetence in performing acts for which Harmon is required to hold a license.

3.14 Since February, 2022, Agency staff made attempts to obtain mitigation documentation from Harmon. Harmon offered, multiple times, to provide mitigating documentation; however, she ultimately failed to provide any to the Agency.

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: 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) states a licensee's real estate license may 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(3) as it incorporates:

a. ORS 696.241(5) (2021 Edition) states a principal real estate broker or licensed real estate property manager may not commingle any other funds with the trust funds held in a clients' trust account.

b. ORS 696.245(2) (2019 and 2021 Editions) requires within 10 business days from the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker to notify the Real Estate Agency that the account has been opened.

c. ORS 696.245(3) (2019 and 2021 Editions) states within 10 business days from the date a clients' trust account is closed or transferred, a licensed real estate property manager or principal real estate broker shall notify the agency that the account has been closed or transferred and shall include in the notice the date on which the account was closed or transferred.

d. ORS 696.280(1),(3),(4)(d), and (5) (2021 Edition) states: (1) a licensed real estate property manager or principal real estate broker shall maintain within this state, except as provided in subsection (6) of this section, complete and adequate records of all professional real estate activity conducted by or through the licensed real estate property manager or principal broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a licensed real estate property manager's or principal real estate broker's professional real estate activity. The only documents the agency may require by rule a licensed real estate property manager or principal real estate broker to use or generate are documents that are otherwise required by law or are voluntarily generated in the course of conducting professional real estate activity. (3) Records maintained under this section must at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. (4) Except as provided in subsection (2) of this section, records under this section must be maintained by the real estate licensee for a period of not less than six years after the following date: (d) For all other records, the date the record was created or received, whichever is later. (5) Records under this section may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as prescribed by rule of the Agency.

e. OAR 863-015-0250(1)(g) (1-1-21 Edition) states (1) complete and adequate records of professional real estate activity include complete, legible, and permanent copies of all documents required by law or voluntarily generated during a real estate transaction, including all offers received by or through real estate brokers or principal brokers to the client, including, but not limited to, the following: (g) all financial records as required in OAR 863-015-0255 and 863-015-0275.

f. OAR 863-015-0255(2),(3), and (4) (1-1-20 and 1-1-21 Editions) states: (2) Within 10 business days from the date a clients' trust account is opened, the principal broker must notify

the Agency using an online process established by the Agency. The notification will include the information required in ORS 696.245, including a copy of the completed and signed “Notice of Clients’ Trust Account and Authorization to Examine.” (3) Within 10 business days from the date a clients’ trust account is closed or transferred, the principal broker must notify the Agency using an online process established by the Agency. (4) Principal brokers must retain and store the records described in this rule as required by OAR 863-015-0250 and 863-015-0260. However, where clients’ trust accounts are maintained at branch offices, the financial records described in this rule may be maintained and located either at the principal broker’s main office, or if the principal broker or branch office manager conducts the real estate business from that branch office, at that branch office.

g. ORS 863-015-0257(9) (1-1-21 Edition) states if any forfeited earnest money, earnest money or other money is being paid to the principal broker for compensation and is being held in the client’s trust account at the time the transaction is completed or terminated, the money must be disbursed to the principal broker within ten calendar days from the date the transaction is completed or terminated.

h. OAR 863-015-0259(4)(a),(b),(c),(d),(e), and (5) (1-1-21 Edition) states: (4) Principal brokers must maintain a complete ledger account and record all funds received in their professional real estate activity. This ledger account must show: (a) from whom the funds were received, (b) the date the funds were received, (c) the date the funds were deposited, (d) where the funds were deposited, and (e) when the transaction has been completed or the offer has failed, the final disposition of the funds. (5) Principal brokers must record and track the transfer of promissory notes and other forms of consideration by a ledger account or by other means including, but not limited to, written proof of transmittal or receipt retained in their offer or transaction file.

i. OAR 863-015-0275(1),(2)(a),(b),(c),(4), and (6) (1-1-21 Edition) states: (1) A principal real estate broker must reconcile each clients’ trust account at least once each month. The reconciliation must comply with all of the following conditions: (2) The reconciliation must have three components: (a) the bank statement balance, adjusted for outstanding checks and other reconciling bank items; (b) the balance of the receipts and disbursements journal or check book register as of the bank statement closing date; and (c) the sum of all the balances of the

individual trust account ledgers as of the bank statement closing date. (4) The principal broker must verify, sign, and date the reconciliation when completed. (6) The principal broker must preserve and file in logical sequence the reconciliation worksheet, bank statement, and all supporting documentation, including but not limited to, copies of the receipts and disbursement journal or check book register and a listing of each individual clients' trust account with a balance as of the reconciliation date. If these records are computerized, they must be printed out for filing with the reconciliation.

ULTIMATE FINDINGS OF FACT

5.

5.1 Harmon failed to register CTA #0580 and notify the Agency of the account. Harmon later closed CTA #0580 and opened a second clients' trust account with First Tech. Harmon failed to notify the Agency of the closing of CTA #0580 or the opening of the second clients' trust account at First Tech.

5.2 Harmon commingled her own funds with the funds of others maintained in CTA #0580.

5.3 Harmon failed to maintain her professional real estate records.

5.4 Harmon admitted she had not reconciled CTA #0580 monthly and could not recall the last time she had done so.

5.5 Harmon demonstrated incompetence in performing acts for which Harmon is required to hold a license.

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

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Harmon 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 Reprimand*.

6.3 Based on these violations, the Agency may reprimand Harmon's principal broker license.

6.4 Specifically, Harmon is subject to discipline pursuant to ORS 696.301(3), and (12) 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; and (12) demonstrating incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

6.5 A reprimand of Harmon's principal broker license is appropriate for violations of ORS 696.301(3) and (12).

6.6 Based on the evidence in the record, the preponderance of the evidence supports the reprimand of Harmon's principal broker license.

6.7 The Agency may therefore, reprimand Harmon's principal broker license.

6.8 The specific violations are repeated here below:

- (1) Harmon failed to register CTA #0580 and notify the Agency of the account. Harmon later closed CTA #0580 and opened a second clients' trust account with First Tech. Harmon failed to notify the Agency of the closing of CTA #0580 or the opening of the second clients' trust account at First Tech in violation of ORS 696.301(3) as it incorporates ORS 696.245(2) and (3) (2019 and 2021 Editions) and OAR 863-015-0255(2), (3), and (4) (1-1-20 and 1-1-21 Editions).
- (2) By commingling her own funds with the funds of others maintained in CTA #0580 Harmon violated ORS 696.301(3) as it incorporates ORS 696.241(5) (2021 Edition) and OAR 863-015-0257(9) (1-1-21 Edition).
- (3) Harmon failed to maintain her professional real estate records in violation of ORS 696.301(3) as it incorporates ORS 696.280(1),(3),(4)(d), and (5) (2021 Edition), and OAR 863-015-0259(4)(a),(b),(c),(d),(e), and (5) (1-1-2021 Edition).
- (4) Harmon admitted she had not reconciled CTA #0580 monthly and could not recall the last time she had done so, in violation of ORS 696.301(3) as it incorporates OAR 863-015-0250(1)(g), and OAR 863-015-0275(1),(2)(a),(b),(c),(4), and (6) (1-1-2021 Edition).

(5) The above violations demonstrate incompetence in violation of ORS 696.301(12) (2019 and 2021 Editions).

ORDER

IT IS HEREBY ORDERED that Patricia A. Harmon's principal broker license be, and hereby is reprimanded.

Dated this 14th day of July, 2022.

OREGON REAL ESTATE AGENCY

DocuSigned by:
Steven Strobe
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Steven Strobe
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 July 14, 2022, I mailed and emailed the foregoing Final Order by Default issued on this date in Agency Case No. 2021-677.

By: First Class Mail

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By Email:

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Rick Marsland
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