

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Unlicensed Professional
Real Estate Activity of
BARBARA BUSHMAN

FINAL ORDER BY DEFAULT AND ORDER
TO CEASE AND DESIST

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On May 3, 2022, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist*. The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Barbara Bushman’s (Bushman) last known address of record with the Agency (PO Box 534, Baker City, OR 97814) and (1917 Clark St, Baker City, OR 97814). The *Notice of Intent* was also mailed to Bushman by regular first-class mail to the above addresses. And the Notice of Intent was also emailed to Bushman at her email address of record.

1.2 The email was not returned as undeliverable.

1.3 On May 20, 2022, the Agency received a hearing request from Bushman.

1.4 On June 3, 2022, the DocuSign envelope of NOI that was sent to Bushman as needs to view was voided for expiration.

1.5 On June 15, 2022, the certified mailing sent to 1917 Clark St, Baker City, OR 97814 was returned to the Agency as unclaimed and unable to forward.

1.6 On July 21, 2022, the Agency issued an Amended Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist. The Amended Notice of Intent was mailed certified to Bushman’s two addresses of record, and also mailed regular first-class mail in handwritten envelopes. It was also emailed to Bushman’s address of record.

1.7 On July 22, 2022, a Notice of In-Person Hearing in OAH Case No. 2022-ABC-05398 was sent to Bushman's PO Box 534 notifying her that the hearing was scheduled for September 29, 2022, at 9:00 AM

1.8 On August 9, 2022, the first class mailing to the 1917 Clark St, Baker City, OR 97814 address was returned to the Agency. Handwritten on the envelope was "Return to Sender not at this address" and stamped was "return to sender unclaimed unable to forward".

1.9 On August 22, 2022, the Amended Notice of Intent DocuSign email was voided for expiration.

1.10 On August 22, 2022, the certified mail domestic return receipt was received by the Agency. The first name is illegible, but the last name is Bushman.

1.11 On August 23, 2022, Assistant Attorney General Lauren E. Rauch (Rauch) requested a hearing postponement due to a scheduling conflict. On August 31, 2022, a ruling was issued granting the request for postponement. The hearing was scheduled for December 7, 2022.

1.12 On December 7, 2022, Bushman did not appear at the scheduled hearing.

2.

Based upon the foregoing, and upon the Agency's investigation reports, documents and files that, pursuant to Section 7 of the Amended *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 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. (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 Bushman's last known address of record with the Agency was PO Box 534, Baker City, OR 97814.

2.3 A certified mailing of the amended notice of intent was mailed to Bushman at Bushman's last known address of record on July 21, 2022. The certified mailing of the amended notice has not been returned to the Agency.

2.4 The notice was also mailed to another possible address for Bushman at 1917 Clark St, Baker City, OR 97814. This certified mailing has not been returned to the Agency.

2.5 The notice was also mailed regular first-class mail to both of the above possible addresses for Bushman. The first class mailing to the PO Box has not been returned to the Agency. The first class mailing to 1917 Clark St, Baker City, OR 97814 was returned. Handwritten on envelope is "Return to Sender Not at this address." stamped is "return to sender unclaimed unable to forward". 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.

2.6 As noted in section 7 of the Amended Notice of Intent to Cease and Desist, and section 2 above, the Agency's entire investigation file was designated as the record of purposes of presenting a prima facie case upon default, including submissions from Bushman 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, Bushman was not licensed to conduct professional real estate activity in Oregon.

3.2 Bushman, formerly known as Barbara Miller, was first licensed as a real estate broker on December 29, 2000. On October 1, 2010, Bushman's license expired, and a year later, on October 1, 2011, the license lapsed. After her license lapsed Bushman has not had an active Oregon real estate license.

3.3 On September 28, 2021, the Agency received a complaint from Allen Hamilton (Hamilton) against Bushman.

3.4 Hamilton owned property located at 2520 Myrtle Street, Baker City, Oregon (subject property). Donna Ward rented the subject property from Hamilton and moved in late August 2019.

3.5 When Hamilton later decided to sell the subject property, Ward told Hamilton her mother, Bushman, was a realtor and could sell the property for him. Hamilton agreed and hired Bushman.

3.6 Hamilton stated he and Bushman made a verbal agreement he would pay her a \$3,000 cash commission after she sold the subject property. According to Hamilton, Bushman told him she had been a realtor up in Sumpter working for a woman up there.

3.7 Hamilton stated they set an asking price of \$189,000 for the subject property and Bushman advertised it.

3.8 An offer of \$167,000.00 was received for the subject property. The buyer's agent, Mary Sjogren (Sjogren), was representing her father who had a VA loan. Sjogren had seen the subject property listed on Zillow.com as "For Sale by Owner."

3.9 According to Sjogren, Bushman acted as a go-between Sjogren and Hamilton with the initial offer because only Bushman had Hamilton's information.

3.10 When Sjogren came to the subject property for the home inspection she told Hamilton's cousin that Bushman claimed to be Hamilton's sister who was just helping out a family member. Hamilton's cousin informed Sjogren that it was not true.

3.11 Hamilton's daughter discovered Bushman was not licensed.

3.12 Hamilton contacted Sjogren who agreed to deal directly with him and leave Bushman out of the transaction.

3.13 Sjogren said Bushman terminated the transaction the day after the appraisal because Sjogren requested an extension and Bushman wouldn't allow it. Sjogren stated Bushman never represented herself as an agent or said she was getting a commission until after they terminated. After they terminated, Bushman messaged Sjogren asking how she could get her commission. Sjogren said Bushman claimed she was getting a \$5,000 commission.

3.14 Hamilton stated he and Bushman had agreed to a \$3,000.00 commission, then after he discovered she wasn't licensed and terminated their agreement, Bushman demanded \$5,000.00.

3.15 Text messages from Bushman to Hamilton stated in part, the following:

"Allen it has come to my attention that you do not wish to sell your home. I would like to remind you that you are in a contract with a buyer. I have worked for and completed our agreement for my commission. Someone claiming to speak for you has said that you will not be paying me."

3.16 Another text message from Bushman stated in part, the following:

"I was told you're bad mouthing me as well as my daughter you can be upset with Donna all you want but I'm the one who sold your house I'm the one that's been trying to get everything lined out for you I'm the one who made sure that Donna left her water and electricity on for your inspection we had a verbal agreement that you were going to pay me \$5000 for me selling your house and I came through and I did it."

3.17 Agency staff located a for sale by owner listing on www.zillow.com for the subject property and the contact phone number was the same phone number that Hamilton had used to communicate with Bushman. Another advertisement/listing was located on a www.losetheagent.com with a different phone number. When Agency staff contacted that number and asked to speak with Bushman, a male answered and stated that it was no longer Bushman's phone number.

STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT

4.

4.1 ORS 696.020(2) (2021 Edition) 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 696.990(4)(a) and (b) (2021 Edition) states 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.

4.3 ORS 696.010(6) (2021 Edition) defines “compensation” as: valuable consideration for services rendered or to be rendered, whether contingent or otherwise.

4.4 ORS 696.010(17)(b)(h)(i)(j) (2021 Edition) 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.

4.5 ORS 696.010(19) (2021 Edition) 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.

4.6 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.

4.7 The Agency may rely on one or more definitions contained in ORS 696.010.

ULTIMATE FINDINGS OF FACT

5.

5.1 Bushman engaged in unlicensed professional real estate activity.

5.2 Bushman engaged in professional real estate activity with the intention or expectation or promise of being compensated.

5.3 Bushman's actions constitute grounds to impose a civil penalty per ORS 696.990(4)(a) and (b), 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 Bushman is in default.

6.2 The material facts establish grounds to impose a civil penalty, by preponderance of the evidence, under ORS 696.990(4)(a) and (b) as well as entry of an order to cease and desist from engaging in any professional real estate activity under ORS 696.397, as set forth in the Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist: Notice of Opportunity for Hearing.

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

6.6 The specific violation is repeated here below:

(1) **Violation:** By entering into an agreement to sell the subject property, advertising the subject property, and facilitating communication about an offer between the seller and buyer's agent, with the expectation of compensation, Bushman engaged in unlicensed professional real estate activity as described in ORS 696.010(17)(b), (c), (d), (i), and (k). Engaging in unlicensed professional real estate activity is a violation of ORS 696.020(2) (2021 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 for in this chapter. Bushman is subject to a civil penalty under ORS 696.990(4)(a)(b) (2021 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 in this chapter.

ORDER

IT IS HEREBY ORDERED that pursuant to ORS 696.397, Bushman immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a)-(n) (2021 Edition) unless Bushman 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, Bushman pay a civil penalty in the sum of \$100.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 25th day of January, 2023.

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.