

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Unlicensed Professional
Real Estate Activity of

DEBORAH KING

FINAL ORDER BY DEFAULT AND ORDER
TO CEASE AND DESIST

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On July 6, 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 King’s last known address of record with the Agency (4607 Lakeview Canyon Rd Ste 583, Westlake Village, CA 91361). The *Notice of Intent* was also sent by certified mail to (276 Running Ridge Trail, Ojai, CA 93023). The *Notice of Intent* was also mailed to King by regular first-class mail to the above address. And the *Notice of Intent* was also emailed to King at her email address of record.

1.2 In response to the emailing of *The Notice of Intent* to King’s email address of record, King replied on July 14, 2022, stating, “Please be advised we, myself and my partner, Eric Gignoux, request a hearing in this matter”.

1.3 On August 11, 2022, the Agency issued, by first-class mail, a *Notice of Hearing Referral Packet*. The Agency sent the *Notice of Hearing Referral* to 4607 Lakeview Canyon Rd Ste 583, Westlake Village, CA 91361 and the *Notice of Hearing Referral* was also emailed to King at her email address of record. Neither the first-class mailing nor the email was returned to the Agency as undeliverable.

1.4 OREA file was forwarded to the Office of Administrative Hearings. A hearing date was set for February 22, 2023, at 9:00 AM. King did not appear at the hearing, nor did King notify the Agency or the Office of Administrative Hearings that King would 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 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 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 King's last known address of record with the Agency was 4607 Lakeview Canyon Rd Ste 583, Westlake Village, CA 91361.

2.3 A certified mailing of the notice of intent was mailed to King at King's last known address of record on July 6, 2022. The certified mailing of the notice has not been returned to the Agency. The notice was also mailed to another possible address for King at 276 Running Ridge Trail, Ojai, CA, 93023. This certified mailing has been returned to the Agency as return to sender, refused and unable to forward.

2.4 The notice was also mailed regular first-class mail to both of the above possible addresses for King. The first-class mailing to King's last known address of record has not

been returned to the Agency. The first-class mailing to 276 Running Ridge Trail, Ojai, CA 93023 has been returned to the Agency as return to sender, not deliverable as addressed and 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.

2.5 As noted in paragraph 9 of the *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist* 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 King 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, King was not licensed to conduct professional real estate activity in Oregon.

3.2 On January 20, 2022, the Agency received a complaint against King. The Agency opened an investigation. A LoopNet listing for an Oregon property, 3250 Beach Loop Dr-Windermere on the Beach, Bandon, Oregon (subject property), accompanied the complaint. The listing showed Deborah King and Eric Gignoux with Western Hotel Brokers, Inc, 4607 Lakeview Canyon, Suite 583, Westlake Village, CA, 91361 displayed for the contact information. The Executive Summary section noted in part, "Western Hotel Brokers, as the sole exclusive agent, offers for sale this fantastic 25-unit inn on the Oregon coast."

3.3 According to the California Department of Real Estate, King holds an active broker license in California. The office address associated with King's license is 4607 Lakeview Canyon Rd #583, Westlake Village, California 91361. Western Hotel Brokers is listed as a corporation with Deborah King as the designated officer.

3.4 On March 3, 2022, a review of LoopNet's advertisement still showed the subject property's listing. The contact person listed was Deborah King (805) 425-2880. Under the Executive Summary section, it noted in part, "Deborah King, Esq., offers for sale this fantastic 25-unit inn on the Oregon coast."

3.5 As of April 14, 2022, a review of the LoopNet website indicated King still advertised the subject property through Western Hotel Brokers.

3.6 As of April 14, 2022, a review of the Western Hotel Brokers' website showed the subject property was still advertised for sale by King through Western Hotel Brokers.

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)(d)(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; (d) Lists, offers, attempts or agrees to list real estate for sale; (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 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 King engaged in unlicensed professional real estate activity.

5.2 King had the expectation or promise of receiving or collecting compensation for the professional real estate activity performed.

5.3 King's actions constitute grounds to impose a civil penalty for each violation 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 King is in default.

6.2 The material facts establish grounds to impose civil penalties, by preponderance of the evidence, under 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, as set forth in the Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist.

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

(1) **Violation:** By advertising the subject property on LoopNet.com, King engaged in professional real estate activity as defined in ORS 696.010(17)(b)(d)(i)(j), without an active Oregon real estate license, in violation of ORS 696.020(2) (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.

(2) **Violation:** By advertising the subject property on Western Hotel Brokers' website, King engaged in professional real estate activity as defined in ORS 696.010(17)(b)(d)(i)(j), without an active Oregon real estate license, in violation of ORS 696.020(2) (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, King immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a)-(n) (2021 Edition) unless King 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 violations set forth above, King pay civil penalties as follows:

\$500 civil penalty for violation 1 above as the first offense

\$1000 civil penalty for violation 2 above as the second offense.

The total sum of civil penalties King must pay is \$1,500, to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 17th day of March, 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.