

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Unlicensed Professional
Real Estate Activity of

MELISSA K LAPPIN

FINAL ORDER BY DEFAULT AND ORDER
TO CEASE AND DESIST

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On June 8, 2023, 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 Melissa Lappin’s (Lappin) last known address of record with the Agency 17550 NW Rolling Hill Ln, Beaverton, OR 97006. The *Notice of Intent* was also mailed to Lappin by regular first-class mail to the above address. And the Notice of Intent was also emailed to Lappin at her email address of record.

1.2 The email was not returned as undeliverable.

1.3 On July 5, 2023, the certified mailing was returned to the Agency as Return to Sender, Unclaimed, Unable to Forward. The first-class mailing has 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 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 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 Lappin’s last known address of record with the Agency was 17550 NW Rolling Hill Ln, Beaverton, OR 97006.

2.3 On June 8, 2023, a certified mailing of the notice of intent was mailed to Lappin at Lappin’s last known address of record. On July 5, 2023, the certified mailing was returned to the Agency as Return to Sender, Unclaimed, Unable to Forward.

2.4 The notice was also mailed regular first-class mail to the above possible address for Lappin. The first-class mailing has not been returned to the Agency. 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 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 Lappin 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, Lappin was not licensed to conduct professional real estate activity in Oregon.

3.2 The Agency revoked Lappin's property manager license in May 2021.

3.3 On January 4, 2023, the Agency received a complaint from Jason Furgison (Furgison) against Lappin. The Agency opened an investigation.

3.4 On February 3, 2023, the Agency received another complaint against Lappin from Sundaram Gopalan (Gopalan) and another investigation was opened.

Facts Related to Furgison's Complaint/Investigation:

3.5 On February 27, 2020, Furgison signed a property management agreement (PMA) with Front Door Property Management (Lappin's business), to manage their property located at 6537 NE Forest Lane, Hillsboro OR (Forest Ln property).

3.6 A tenant ledger provided by Furgison shows rent was collected from the tenant each month from March 2020 until December 2022.

3.7 Furgison provided screenshots of owner deposits from June 2022 through December 2021 paid by Front Door Property Management. Furgison also provided screenshots of owner deposits from January 2022 through October 2022. The screenshots show Front Door Property Management paid the deposits until May 2022 when Bank of America is listed in the description for the deposit.

3.8 Lappin continued to manage the Forest Ln property for 19 months, from May 2021 when her license was revoked through December 2022, when Furgison terminated the PMA with Front Door Property Management.

3.9 Furgison stated Lappin owes him approximately \$8,000 in back rents, security deposits, maintenance reserves and unpaid landscaping fees.

Facts Related to Gopalan's Complaint/Investigation:

3.10 Gopalan's complaint stated that Lappin managed their property located at 16652 NW Oak Creek Dr, Beaverton, OR (Oak Creek, property) starting March 1, 2020.

3.11 Gopalan stated due to issues with Lappin not paying the rental income as agreed in the PMA they allowed her to drop off the rental income to their address monthly and that Lappin continued to deliver the rental income from April 2022 through November 2022.

3.12 Gopalan stated Lappin owes them \$6,600 for December 2022 and January 2023 rent and for the tenant security deposit.

3.13 Gopalan provided copies of checks received from Lappin from April 2022 through November 2022. Gopalan also provided a copy of a check from Lappin dated January 6, 2023, that bounced.

3.14 Two of the checks had Melissa Lappin's name as the account name and the other checks had Front Door Property Management, LLC as the account name. Neither check indicated that the account was a clients' trust account.

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(14)(a) and (b) (2021 Edition) defines “Management of rental real estate” as: (a) Representing the owner of real estate under a property management agreement in the rental or lease of the real estate and (b) Representing a tenant or prospective tenant when renting or leasing real estate for which a real estate property manager has a property management agreement with the owner of the real estate.

4.4 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.

4.5 ORS 696.040 states one act or transaction of professional real estate activity is sufficient to constitute engaging in professional real estate activity, within the meaning of this chapter.

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

ULTIMATE FINDINGS OF FACT

5.

5.1 Lappin engaged in unlicensed professional real estate activity.

5.2 Lappin’s actions constitute grounds to impose a civil penalty for each violation 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 Lappin 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), 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 Lappin for each violation and as well as 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 Lappin 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 Lappin for each violation and enter an order to cease and desist from engaging in any professional real estate activity.

(1) **Violation:** By continuing to conduct property management activity while her license was revoked, from May 2021 through December 2022, Lappin engaged in unlicensed professional real estate activity as defined in ORS 696.010(14)(a) and(b) (2021 Edition), 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.

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ORDER

IT IS HEREBY ORDERED that pursuant to ORS 696.397, Lappin immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a)-(n) (2021 Edition) unless Lappin 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, Lappin pay a civil penalty in the sum of \$18,500.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 18th day of August, 2023.

OREGON REAL ESTATE AGENCY

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Steve 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.