

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

VALERIE LYNN WHITE



FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On July 21, 2023, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Suspend* the real estate property manager license of Valerie White (White). On July 21, 2023, the Agency received communication from attorney David W. Cramer (Cramer), with MB Law Group, who was representing White, to send all correspondence to him alone. The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Cramer at the known address of record with the Agency (117 SW Taylor, Suite 200, Portland, OR 97204). The *Notice of Intent* was also mailed to Cramer by regular first-class mail to the above address in a handwritten envelope. And *The Notice of Intent* was emailed to Cramer at his email address of record.

1.2 The email was not returned as undeliverable.

1.3 On July 28, 2023, the return receipt was returned to the Agency for the certified mailing. The return receipt showed the Notice was received and signed for by Sonya Kuehn. Neither the certified mailings nor the first-class mailings 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 On July 21, 2023, the Agency received communication from the attorney representing White, David Cramer, requesting that all correspondence be sent to him alone.

2.3 A certified mailing of the *Notice of Intent* was mailed to Cramer at his known address of record on July 21, 2023. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to the above address for Cramer. The mailing in the handwritten envelope 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.

2.6 Over twenty (20) days have elapsed since the mailing of the notice and no written request for a hearing has been received.

2.7 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.

2.8 As noted in section 8 of the *Notice of Intent to Suspend*, 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 White 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, White was licensed as a Property Manager with Encompass Management & Consulting, LLC (EMC).

3.2 On April 27, 2023, the Agency received a complaint from a licensed property manager associated with EMC, Nicole Sherrod (Sherrod) against White. The complaint alleged that White had not disbursed funds in a timely manner to multiple property owners. The agency opened an investigation.

3.3 On May 11, 2023, White responded to the Agency via email and requested additional time to respond to the allegations and informed the Agency she was seeking legal counsel.

3.4 On May 22, 2023, the Agency received a second complaint from a property owner against White. The complaint alleges EMC failed to disburse funds in a timely manner;

failed to respond to email requests; and disbursed funds for repair without approval as required by the property management agreement (PMA). The Agency opened a second investigation.

3.5 On May 23, 2023, the Agency received a third complaint from a property owner against White. The complaint alleges that EMC failed to disburse funds timely and failed to make a disbursement for April 2023. The Agency opened a third investigation.

3.6 On June 5, 2023, the Agency received a fourth complaint from a property owner against White. The complaint alleges that EMC failed to respond to owner requests for information and failed to disburse funds timely. The Agency opened a fourth investigation.

3.7 On June 7, 2023, the Agency received a fifth complaint from a property owner against EMC and White. The complaint alleges that EMC failed to disburse funds in a timely manner. The Agency opened a fifth investigation. On July 10, 2023, the same complainant notified the Agency that January 2023 was the last owner statement received and estimated he was owed \$150,000.00 or more.

3.8 On June 7, 2023, Agency Investigator Aaron Grimes (Grimes) emailed Sherrod and requested additional supporting documentation, including Client Trust Accounts verification and bank statements.

3.9 On June 14, 2023, the Agency received a sixth complaint from a property owner against White. The complaint alleges that EMC was delinquent on payment and has failed to disburse funds in a timely manner. The Agency opened a sixth investigation. On July 14, 2023, the same complainant notified the Agency he had not received payments and is owed over \$20,000.00.

3.10 On June 21, 2023, Grimes called EMC. White was unavailable and Grimes left a message to contact the Agency.

3.11 On June 23, 2023, Grimes called White and notified her that a request for records would be issued via email from the Agency.

3.12 On June 23, 2023, Agency Case Resolution Coordinator Amanda Moser (Moser) emailed White requesting required records and documentation in response to the second through sixth cases referenced in 3.4 through 3.9 above. To comply with rule, a due date of June 30, 2023, was provided unless an extension request was received. The documents White was requested to provide included:

a. For the second case referenced above, the Agency requested White provide the property management agreement, the Annual Ledger Report for the years 2021-2022, as well as verification of payment to a vendor.

b. For the third case referenced above, the Agency requested White provide a response to the complaint received from the property owner, the property management agreement, as well as the most recent CTA reconciliation for the property.

c. For the fourth case referenced above, the Agency requested White provide a response to the complaint received from the property owner, the property management agreement, as well as the final accounting for the property.

d. For the fifth case referenced above, the Agency requested White provide a response to the complaint received from the property owner, the property management agreement, final accounting for the property, as well as the most recent CTA reconciliation for the property.

e. For the sixth case referenced above, the Agency requested White provide a response to the complaint received from the property owner, the property management agreement, as well as the Annual Owner Report beginning in 2023.

3.13 White did not produce the requested records and documentation by the deadline, and she did not request an extension.

3.14 On July 7, 2023, Moser followed up with White via email notifying her that the Agency is continuing the investigation without her response for requested records, and the Agency could begin issuing applicable civil penalties of \$1,000.00 per day, per statute for failure to provide records. White was requested to provide records immediately, per administrative rule.

3.15 On July 7, 2023, White responded to the Agency's email stating she needed more time to respond to the Agency's records request due to having been in the hospital. In response, the Agency requested supporting documentation to consider the request for an extension. No response was received thereafter.

3.16 Not all the requested records have been received by the Agency from White to date.

a. For the second case referenced above, the Agency did receive the PMA. The Agency did not receive the annual ledger report for the years 2021-2022, or verification of payment to a vendor,

b. For the third case referenced above, the Agency did receive a PMA for one property but did not receive a PMA for a second property. The Agency did not receive a response to the complaint received, or a complete copy of the most recent CTA reconciliation for the property.

c. For the fourth case referenced above, the Agency did receive a PMA. The Agency did not receive a response to the complaint received, or the final accounting for the property.

d. For the fifth case referenced above, the Agency did receive a PMA. The Agency did not receive a response to the complaint received, the final accounting for the property, or a complete copy of the most recent CTA reconciliation.

e. For the sixth case referenced above, the Agency did receive the PMA for one property but did not receive a PMA for a second property. The Agency did not receive the annual owner report for one of the properties and did not receive a response to the complaint received.

3.17 Real estate licensees are required to maintain and produce records to the agency. White's failure to produce records that she is required to maintain and provide to the agency when requested demonstrates incompetence in White's performance of professional real estate activity.

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 696.396(2)(c)(B) and (D) states the rules adopted by the commissioner under this section: (c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that: (B) Exhibits incompetence in the performance of professional real estate activity; (D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

4.3 ORS 696.280(1)(3)(4)(a)(b)(c)(d) and (5) states that 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 real estate 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: (a) For a notice of clients' trust account and authorization to examine under ORS 696.245, the date the account was closed; (b) For real estate transactions, the date a transaction closed or failed, whichever is later; (c) For management of rental real estate, the date on which the record expired, was superseded or terminated, or otherwise ceased to be in effect; and (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.

4.4 ORS 696.990(6)(a). According to ORS 696.990(6)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management

of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280.

4.5 OAR 863-025-0035(2)(a)(b) and (c) states: (2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows: (a) When the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days; (b) if the Agency has reasonable grounds to believe the funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

4.6 OAR 863-027-0020(1) defines the goal of progressive discipline and OAR 863-027-0020(2) sets out all factors the Real Estate Commissioner will consider when determining the level of discipline for licensees.

4.7 In establishing the violations alleged above, the Agency may rely on one or more definitions contained in ORS 696.010.

4.8 And, in accordance with 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.

CONCLUSIONS OF LAW

5.

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

5.2 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 Suspend*.

5.3 Based on these violations, the Agency may suspend White's property manager license.

5.4 Specifically, White is subject to discipline pursuant to ORS 696.301(3), 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.

5.5 A suspension of White's property manager license is appropriate for violations of ORS 696.301(3).

5.6 A suspension of White's property manager license is appropriate under ORS 696.396(2)(c)(B) and (D). According to ORS 696.396(2)(c)(B) and (D) the Agency may suspend a real estate license if the material facts establish a violation of discipline under ORS 696.301 that (B) exhibits incompetence in the performance of professional real estate activity; (D) repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

5.7 Based on the evidence in the record, the preponderance of the evidence supports the suspension of White's property manager license.

5.8 The Agency may therefore, suspend White's property manager license.

5.9 Pursuant to ORS 696.775 the expiration/lapsing of White's license does not prohibit the Commissioner from proceeding with this, or further action.

(1) Violation: By failing to produce records as requested by the Agency, White violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a)(b)(c) (1/1/2023 Edition).

ORDER

IT IS HEREBY ORDERED that pursuant to ORS 696.301 and based upon the violation set forth, White's property manager license is suspended. This suspension is indefinite and will continue for a minimum of *two weeks* or until White fully complies with the Agency's records request. The Agency in its sole discretion will determine compliance with its records request.

Dated this 28th day of August, 2023.

OREGON REAL ESTATE AGENCY

DocuSigned by:
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.