

BEFORE THE BOARD OF REALTY REGULATION
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2015-RRE-LIC-113 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 2296-2016
TREATMENT OF THE LICENSE OF)	
RYAN MIX,)	
Salesperson, License No. 18567.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

On June 17, 2016, the Montana Board of Realty Regulation (Board) issued a Notice of Proposed Disciplinary Treatment of the License of Ryan Mix. In the Notice, the Board asserted that Mix's conduct in a real estate transaction one of his companies was involved in amounted to unprofessional conduct for which disciplinary action would be taken. On June 28, 2016, Mix requested a hearing regarding the proposed board action.

On July 1, 2016, the Department transferred the matter to the Office of Administrative Hearings for the purposes of conducting the hearing and issuing a recommended order. On July 7, 2016, OAH issued a Notice of Hearing. On July 25, 2016, the hearing officer and the parties held a telephone scheduling conference and agreed that the hearing would be held on October 28, 2016.

On October 3, the Department filed a Motion for Partial Summary Judgment. On October 21, 2016, the hearing was rescheduled for November 17, 2016. On November 14, 2016, the hearing officer denied the Department's Motion for Partial Summary Judgment.

The contested case hearing was held on November 17, 2016 in Helena Montana. Doug Jensen, Ryan Mix, Rita Reichert, and Virginia Niles presented sworn testimony. Exhibits 2, 7, 11, 12, 13, 14, 15, 16, 18, and 22 were admitted into the

evidentiary record. Exhibit 21 was not admitted because it had not been disclosed by the Department prior to hearing.

II. STIPULATED FACTS

1. Mix holds a real estate salesperson license, License No. 18567, issued on or about March 9, 2012.

2. At all times relevant to the facts in this matter, Mix acted as a buyer/investor under his property investment company, Cascade Property Investments (CPI), in Billings, Montana. CPI is a business operated separately from Mix's real estate practice.

3. The Christiansens needed to sell their property located at 317 Westchester South in Billings, Montana (the "Property"), and Virginia Niles, a licensee who worked out of the same Keller Williams office as Mix, was assisting them with finding a buyer.

4. CPI offered Dennis and Sarah Christiansen \$84,000.00, with the understanding that \$74,000.00 would be used to pay off existing loans and the Christiansens would be presented with \$10,000.00 at closing.

5. On December 15, 2014, the Christiansens met with Mix and Niles at the Keller Williams office in Billings, Montana, to sign the final documents and complete the transaction. At that meeting, the Christiansens signed a Limited Power of Attorney with Mix, a Quitclaim Deed to CPI, a Letter of Agreement and Addendum, Notices to Lender/Mortgage Companies, a Notice of Personal Transaction, a Real Estate Purchase Agreement (Purchase Agreement) with CPI, a Bill of Sale to CPI, and authorizations to release information. Exhibits 3, 4, 5, 6, 7, 10 and 11.¹ The Real Estate Purchase Agreement called for the closing to occur on or about December 31, 2014.

6. In the Letter of Agreement and Addendum, the Christiansens acknowledged that their loan contains a "due on sale" clause, allowing the lender to demand the entire loan due upon transfer of title. The Christiansens further acknowledged the loan would stay in their name, and that CPI had no intentions of assuming the loan and made no promises to seller that the loan would be assumed or

¹ The Bill of Sale and Authorizations were not offered into the evidentiary record.

paid off. The Christiansens agreed to hold CPI harmless in the event the loan was called due or went into default.

7. The Notices to Lender/Mortgage Company advised the Christiansens' lenders that the Christiansens had obtained a management company to collect the rents and make the loan payments. One of the notices contains a loan number, identified in the Purchase Agreement as the Stockman Bank loan; the other notice did not identify a lender or a loan number.

8. The management company is identified as Cascade Property Assistance in the Notices to Lender/Mortgage Company. According to the Notices to Lender/Mortgage Company, Cascade Property Assistance has the address of P.O. Box 80451, Billings, MT 59108.²

9. CPI furnished the Notices to Lender/Mortgage Company document to the Christiansens.

10. The Notice of Personal Transaction advised the Christiansens that the broker or salesperson was entering into a personal transaction. Mix's signature appears on the line for Broker/Salesperson.

11. The Real Estate Purchase Agreement contained multiple references to Mix's licensee status, but further noted that Mix is "a Real Estate Investor who buys and sells real estate for a profit, and may make a profit from this transaction in the renting or selling of this property."³

12. The Purchase Agreement is signed by both Christiansens and Ryan Mix, member Cascade Property Investments, LLC.

13. Between December 15 and December 31, 2014, Mix became aware of two additional liens against the property, increasing the payoff amount by \$19,000.00 for a total payoff amount of \$93,000.00.

14. On December 31, Mix informed the Christiansens, via email, that CPI was still continuing with the sale.

² Cascade Property Assistance was at that time in the legal process of becoming Cascade Property Investments, LLC.

³ The hearing officer could find but one reference to Mix's status as a real estate salesperson.

15. On April 29, 2015, Christiansen emailed Mix, questioning whether the way the property was transferred “might set a foreclosure in action.”

16. On the same date, Mix responded to the email, stating he had explained from the beginning of the transaction that the loans contained a due on sale clause and that transferring a deed could trigger the lenders to call the loan due. He further stated both of the Christiansens had acknowledged understanding the due on sale clause and the risks they were taking.

17. On July 30, 2015, Mix emailed the Christiansens. In the email, Mix offered \$1,000.00 to each Christiansen if they would allow Mix to pay off the outstanding loans. Mix intimated that a failure of sellers to accept could expose the Christiansens to foreclosure if the banks invoked a “due on sale” clause, requiring payment of outstanding debt at the time of sale.

18. CPI recorded the quitclaim deed on January 5, 2015, at the Clerk and Recorder’s Office in Yellowstone County.

19. The Christiansens last made a mortgage payment in December 2014. CPI made all subsequent mortgage payments.

20. Keller Williams Real Estate Agent Virginia Niles was involved in the transaction and present at the signing of the Purchase & Sale Agreement on December 15, 2014.

21. On or about June 17, 2016, CPI paid the property’s first mortgage holder, Stockman Bank, \$64,306.22. Mix Ex. 2. Stockman issued a Deed of Reconveyance on August 6, 2016. Mix Ex 2.

22. On or about June 17, 2016, CPI paid the property’s second mortgage holder, Key Bank, \$10,725.74. Mix Ex. 2. Key Bank issued a letter stating the loan was paid in full on June 22, 2016. DPSJ Ex. 20.

23. On or about June 17, 2016, CPI paid the City of Billings \$10,000.00 to satisfy outstanding liens on the property. Mix. Ex. 2.

III. FINDINGS OF FACT

24. At all times during the purchase and sale of the property, Mix was acting on behalf of CPI and not as a real estate salesperson.

25. The Christiansens did not “hire” Mix to collect rents and make payments to the mortgage companies. As the owners of the property at the time the documents for the transaction were signed, they obtained the services of Cascade Property Assistance to collect the rents and make mortgage payments.⁴

26. CPI originally offered the Christiansens \$84,000.00 for their property. Of that amount, \$74,000.00 would be used to pay off two mortgages on the property and \$10,000.00 in cash would go to the Christiansens. During due diligence, Mix learned of two other liens on the property, bringing the total debt on the property to \$93,000.00. CPI modified the buy-sell agreement, as was its right under its terms, to reflect this change in circumstances. Mix was unwilling to pay more than this amount which resulted in the Christiansens not receiving any cash from the sale but they did get the benefit of having these additional liens paid off. The Christiansens were not in a position to pay any of these liens in December 2014 so having them paid off was a benefit to their finances and their credit ratings.

27. There were a number of documents involved in the transaction. At the December 15, 2014 signing, Mix read or summarized them for the Christiansens and asked if they had any questions. They did not. Tr. p. 38, 93.

28. One of the documents is entitled Notice to Lender. The purpose of the document was to clear up any confusion the lenders might have when they began receiving payments from CPI and secondly to provide an address to any escrow companies in the event of any changes to the escrow payments. The Notice to Lender identified the Christiansens as owners because they were, at the time this document was signed, still the owners. Tr. p. 50-51.

29. The Notice to Lenders document was never sent to any lender, and Mix had no legal duty to do so. Tr. p. 49. In December, prior to the quit claim deed being filed, Mix was in contact with all the lenders in an attempt to first see if they would allow a short sale and then to work with them as his efforts to refinance the property took place. Tr. pp. 24-25.

30. Mix had the Christiansens sign the documents in mid-December because he was going to be out of town visiting family during the holidays. Mix was unable

⁴ In real property law, “rents” refers to income from the property and not necessarily rent from a tenant. For example, a lender might have a provision entitling it to all rents in the case of default. If Christiansen was in default on his loan and had rented a room to a boarder, the bank would be entitled to that income from the property.

to have the Christiansens sign an updated Purchase Agreement indicating the change in the amount of the purchase and how the proceeds would be distributed because they were very difficult to reach. Mix had Niles make numerous efforts to contact them. Tr. p. 92. On December 31, 2014, Mix sent the Christiansens an email telling them that not going through with the sale would likely ruin them financially. Tr. p. 52.

31. The Christiansens could not make payments on the property, Mrs. Christiansen was restrained from entering the property, their lenders would not allow them to rent the property,⁵ and they could not sell it for what it was potentially worth because of the poor condition of the property. They were stuck. Tr. p. 54.

32. Doug Jensen is a Program Specialist with the Montana Board of Housing (MBOH). He oversaw the primary mortgages involved in this case. Tr. p. 16. On December 23, 2014, Christiansen contacted Jensen with concerns about the transaction he had entered into with CPI.

33. As a result of the transfer of the property and the failure to occupy the dwelling, the MBOH could have foreclosed on its loans. Tr. p. 22. It decided to wait and see what would happen with the transaction because at the time no recording of the transfer had taken place. *Id.* Had MBOH foreclosed, the junior lien holders would likely have received nothing on the sale of the property because in its condition it would not have brought in enough to cover all four liens. Tr. p. 27-28.

34. During this time, the loans continued to be paid by CPI. CPI eventually paid off the loans in full. No one that was a part of the transaction lost money. Tr. p. 29.

IV. DISCUSSION

The parties to the transaction at issue here were Dennis and Sarah Christiansen and Cascade Property Investments. Mix is a shareholder of CPI, he did not conduct this transaction in his individual capacity. The complaint in this matter was not offered into evidence in this proceeding but Paragraph 4 of the Board's Notice of Proposed Board Action states:

⁵ When the Christiansens bought the property, Stockman Bank issued a Deed of Trust securing the loan. Ex. 17. There was a rider to that instrument that required the Christiansens to occupy the premises as their principal residence. Ex. 18.

The Department conducted an investigation into allegations that the Respondent (Mix) misled two sellers into signing documents transferring ownership of the Property to Respondent with the promise that Respondent would assume mortgage payments until Respondent completed home repairs and sold the home.

The sellers did not testify at hearing so the Department could not prove they were misled. On the contrary, the evidence offered at hearing was that Mix, on behalf of CPI, explained each and every document and asked them whether they had any questions to which they both said “no.” The only lender involved testified that he was not misled. He had not been sent the Notice to Lender document and Mix had discussed the details of the transaction with him. Tr. p. 25.

No evidence was offered to establish the standard of care for real estate salespersons under the circumstances of this case. Nor was any evidence offered that Mix violated the standard of care.

At some point the complaint in this matter became more about Mix allegedly misleading the lenders. How it did that is unclear to this hearing officer because there is neither a complaint from any of the lenders nor an indication that the Board generated a second complaint to such effect. The only banking official who testified did not say he was misled by the documents CPI provided for the transaction because he never received the Notice to Lenders and because Mix, again acting on behalf of CPI, was in contact with him about the transaction from its inception.

There seems to be a concern here that Mix was unprofessional because his company, CPI, purchased a distressed property from a divorcing couple who no longer could make the mortgage payments and who had done substantial damage to the property making it unsaleable. They were indeed stuck, and they would have taken a huge hit to their credit ratings if the house had gone into foreclosure. They weren't “promised” \$10,000.00, they were offered \$10,000.00 if all their assertions about the indebtedness of the property were true. They weren't. If they had been, CPI would have paid \$84,000.00 with \$74,000.00 going to the lenders and \$10,000.00 going to the Christiansens. Instead, CPI discovered additional liens against the property which brought the total amount of the liens to \$93,000.00. The property didn't get any more valuable, but CPI agreed to pay off these liens. But paying \$103,000.00 for a property in the condition it was in so that the Christiansens could have \$10,000.00 to split would not have been a good business decision. So instead of \$10,000.00 cash, the Christiansens got \$19,000.00 of their debt paid off. There was no evidence that the Christiansens were hoodwinked into

the transaction. It appears the Christiansens might have tried to back out, but the deal was struck and although the Christiansens didn't get the cash they were hoping for, there was no evidence offered that CPI or Mix violated the law in going forward with the transaction. CPI, through Mix, tried to work with the Christiansens but they were uncommunicative. It is unfortunate that the Christiansens were in financial trouble and their marriage had broken but this cannot in any way be attributed to CPI or Mix. Without his involvement, it appears they would have had far worse troubles than they had already experienced.

V. CONCLUSIONS OF LAW

1. The Board of Realty Regulation has jurisdiction of this matter. The Board of Realty Regulation is empowered to bring disciplinary action against a licensed realtor for unprofessional conduct. Mont. Code Ann 37-1-307, 37-1-312.

2. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Ulrich v. State ex rel. Board of Funeral Service, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part that the following is unprofessional conduct:

* * *

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

4. The Department put on no testimony that Mix misled anyone regarding the sale and purchase of the Christiansens' property. It also failed to put on any evidence of the appropriate standard of care for real estate salespersons involved in a transaction like the one at issue in this case or that Mix violated the standard of care for real estate salespersons. Because the Department did not offer such proof, it failed to meet its burden to prove that Mix committed unprofessional conduct.

5. No person or entity was misled by Mix's conduct in CPI's purchase of the Christiansens' property.

6. Mix, acting alone, or on behalf of CPI in this transaction, did not violate the standard of care for real estate salespersons.

7. Mix did not have a legal duty to notify the lenders of CPI's purchase of the property.

VI. RECOMMENDED ORDER

Based on the foregoing, the hearing officer recommends that the Board of Realty Regulation enter its order dismissing the allegations contained in Docket No. 2015-RRE-LIC-113 as the Department failed to prove any alleged violation.

DATED this 20th day of January, 2017.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Officer

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.