

BEFORE THE BOARD OF REALTY REGULATION
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-08-0312-RRE REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1136-2008
TREATMENT OF THE LICENSE OF)	
JEFFREY ROGERS, a Licensed Real Estate)	
Property Manager, License No. 223.)	
)	

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

I. INTRODUCTION

In this matter, the Business Standards Division (BSD) seeks to revoke the license of Jeffrey Rogers based on his failure to timely return security deposits to a property owner, conduct which violates both Montana administrative rules (Admin. R. Mont. 24.210.805(5)) and Montana statute (Mont. Code Ann. § 37-1-316(18)).

Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on April 4, 2008. Don Harris, agency legal counsel, represented BSD. Mr. Rogers agreed to the date and time for hearing in this matter. Nonetheless, despite adequate written notice of the time, place, and date of the hearing, he failed to appear for the hearing. Accordingly, this matter proceeded in his absence. BSD's Exhibits 1 through 8, 10 through 15, and 18 through 21 were admitted into evidence. Terry Ray, BSD compliance specialist, Colleen Hill, a Montana licensed property manager, and Grace Berger, executive director of the Board of Realty Regulation, all testified under oath.

As explained below, BSD has demonstrated by a preponderance of the evidence that Rogers' conduct in this case violated both Montana statute and Montana administrative rules. BSD has also preponderantly shown that Mr. Rogers has been plagued by this problem in the past, having been sanctioned for similar conduct as recently as 2005 and having been on probation for such conduct until

October 2006, just two months before the events which precipitated the instant complaint against his license. Based upon the following findings of fact and conclusions of law, the hearing examiner recommends that Rogers' license be revoked.

II. FINDINGS OF FACT

1. At all times pertinent to this matter, Rogers has been a Montana licensed property manager holding License No. 223.

2. In 2004, Norm Close, Inc. (Close, Inc.), which holds several rental properties, employed Rogers to manage the properties. Simultaneously, Christina Close, vice president of Close, Inc., transferred to Rogers a total of \$1,700.00 in security deposits. This transfer was effected by providing Rogers a check for \$1,700.00 (Exhibit 6). Among these deposits were deposits received from Carol Vetsch in the amount of \$350.00. Vetsch occupied a Close, Inc. property.

3. On October 20, 2006, Rogers, as agent for Close, Inc., rented a Close, Inc. property to Kim Gregorie and Lisa Burns (Exhibit 2). The agreement provided that Gregorie and Burns would provide a security deposit of \$625.00 for the property. *Id.* In addition, the agreement provided that the security deposit could be retained by the landlord to cover damages caused by the tenants to the premises (Exhibit 2, page 3, section 7).

4. Close, Inc. became unhappy with Rogers' property management and decided on December 13, 2006 to terminate its agreement with him by providing Rogers a 30-day notice terminating the property management agreement. On December 19, 2006, Christina Close provided Rogers with a letter indicating that the property management agreement was terminated immediately (Exhibit 3, December 19, 2006 letter from Christina Close to Montana Property Management).

5. Close, Inc. retained Property Management Solutions to manage the properties that Rogers had previously managed. To this end, the proprietor of Property Management Solutions, Colleen Hill, a Montana licensed property manager, sent a letter to Rogers on February 26, 2007, advising him that he still had not returned the Vetsch, Christianson, and Gregorie/Burns deposits to Close, Inc. (Exhibit 7).

6. Despite receiving Hill's letter, Rogers still did not return the Vetsch, Christianson, and Gregorie/Burns deposits. On April 5, 2007, some 107 days after Close, Inc.'s request, Rogers returned the Vetsch deposit (Exhibit 11). He disputed that a deposit had ever been paid on the property Christianson had rented. He also never forwarded the Gregorie/Burns deposit.

7. The Board of Realty Regulation sanctioned Rogers' license in 2005. The basis for the sanctions were Rogers' admissions (as demonstrated by his entering into a stipulated disposition of the previous complaint) (Exhibit 21) that he had failed to return a security deposit within 30 days as required by administrative rule after a rental property had been

transferred from one owner to another and Rogers' property management agreement had expired.

8. The sanctions imposed upon Rogers' license pursuant to the stipulation required that Rogers would attend a four hour course of continuing education, two of those hours to be taken in the area of trust accounts and two of the hours to be taken in the area of the Landlord-Tenant Act. Rogers presumably took this course because he successfully completed his probation in October 2006, just two months before the incidents that culminated in the instant complaint.

9. The protection of the public in this matter cannot be guaranteed in any manner short of the revocation of Rogers' license. This is the second time in less than two years that Rogers has been sanctioned for failing to return security deposits to property owners within 30 days as required by statute. Of equal concern is the fact that he engaged in the conduct in the instant case just two months after the probationary period placed upon his license had expired. The probationary period was imposed upon his license for engaging in the very same conduct. Indeed, he undertook additional training but apparently still does not see the need to timely return security deposits. Security deposits are held in trust for the benefit of the landlord and the tenant. Rogers' cavalier attitude about returning other people's property to them when it is due, and his repeated refusal to timely return such deposits despite the mandates of rules of conduct that apply to property managers, renders it necessary, for the protection of the public, to revoke his license.

III. CONCLUSIONS OF LAW

A. *The Licensee Has Violated Both Rule And Statute.*

1. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *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.

2. Mont. Code Ann. § 37-1-316 provides in pertinent part:

* * *

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

3. Admin. R. Mont. 24.210.805(5) requires that if the property agreement by which a licensee is managing property is terminated for any reason while the licensee is holding funds deposited by a tenant, the licensee must advise the tenant in writing that the funds will be transferred to the property owner within 30 days of the notification.

4. The preponderant evidence in this matter demonstrates that the licensee failed to return security deposits for over 90 days despite repeated requests from both the property

owner and her new property manager, Property Management Solutions. No reason was advanced by the licensee for his failure to do so. His failure to timely return the security deposits (or, as in the case of the Gregorie/Burns deposit, failure to return the deposit at all) demonstrates a violation of Mont. Code Ann. § 37-1-316(18) and a violation of Admin. R. Mont. 24.210.805(5).

B. The Appropriate Sanction, In Light of the Aggravating Factors, Is Revocation.

5. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may revoke a licensee's license.

6. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

7. Aggravating circumstances exist here which merit the imposition of a harsher sanction in this case. Within the last two years, the licensee's license was placed on probation for substantially similar conduct. In 2005, the licensee admitted that he failed to return a security deposit within 30 days as required by rule. This resulted in his license being placed on probation for one year and in his having to undergo additional remedial education to learn how to properly handle clients' trust accounts. His probation on this earlier matter ended just a matter of weeks before the problem in the instant case arose.

There is no doubt in the hearing examiner's mind that the licensee knew exactly what was required of him with respect to the Close, Inc. deposits when his services were terminated. Yet, inexplicably, he failed to return the deposits until several months later, and only after receiving numerous letters from both Close, Inc. and its new property manager. The fact that the licensee once again failed to comply with the rule in the face of the previous sanctions and his remedial education shows that the licensee has no concern about complying with applicable regulations. It further shows that he cannot be trusted to faithfully execute his fiduciary duties with respect to clients' trust accounts. Under these circumstances, nothing short of revocation will serve to protect the public.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board of Realty Regulation enter its order revoking the property management license of Jeffrey Rogers until such time as he can demonstrate to the satisfaction of the Board that he is minimally competent to safely engage in property management.

DATED this 21st day of April, 2008.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

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.