

BEFORE THE BOARD OF REALTY REGULATION
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2011-RRE-LIC-195 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 172-2013
TREATMENT OF THE LICENSE OF)	
ROBERT STEVENS, Real Estate Broker,)	
License No. 13792.)	
)	

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

I. INTRODUCTION

In this matter, the Business Standards Division of the Department of Labor and Industry (BSD) alleged that Robert Stevens violated Mont. Code Ann. § 37-1-316(13), (14), (16) and (18), Mont. Code Ann. § 37-51-321(1)(e), (q), and (s), Mont. Code Ann. § 37-51-607, Admin. R. Mont. 24.210.426(4)(b), (c), (f), (h)(i-viii), (j), (k), Admin. R. Mont. 24.210.426(5), Admin. R. Mont. 24.210.426(7), Admin. R. Mont. 24.210.426(8), (9), Admin. R. Mont. 24.210.641(5)(i), (z), (aj), (ar), Admin. R. Mont. 24.210.805(1), (3), (4), (8), (9), (10)(c), (11), (12), (13), (14), (15), and Admin. R. Mont. 24.210.828(3)(a), (3)(b), (3)(n), (3)(s), (3)(x), and (3)(aa).

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on January 9, 2013. Don Harris, agency legal counsel, represented BSD. John Tabaracci, attorney at law, represented the licensee. Prior to hearing, Stevens admitted that he violated the above enumerated statutes and rules. As he admitted these violations, the focus of the hearing was narrowed to the issue of the appropriate sanctions to be imposed upon his real estate broker's license number 13792. Stevens and Teri Smith both testified under oath. Exhibits 1 through 10 were admitted by stipulation. Based on the evidence adduced at the hearing, the hearing officer makes the following findings of fact, conclusions of law, and recommended decision regarding the appropriate sanctions to be imposed in this case.

II. FINDINGS OF FACT

1. At all times pertinent to this matter, Stevens has been a licensed Montana real estate broker holding license number 13792.

2. Stevens was the proprietor and designated broker of a Century 21 Real Estate franchise operating in the Flathead Valley. At its peak, his franchise operated two offices, one in Kalispell and one in Whitefish, and employed approximately 29 full and part time agents. The business closed approximately 90 to 100 transactions per year equating to approximately \$30,000,000.00 in sales volume per year during the peak of the market.

3. The real estate market across the United States essentially collapsed beginning in 2008. The Flathead Valley was severely impacted by the collapse and Stevens' business suffered as a result.

4. Stevens maintained an operating account for his business, Account Number *****1450, a savings account, Account Number *****3508, and another account, Account Number *****1515, which he opened after he closed Account Number *****3508. None of these accounts was labeled as a trust account. In failing to maintain properly labeled trust accounts, Stevens repeatedly commingled the business's funds with trust fund amounts. This went on for a period of at least three years.

5. Stevens did maintain one trust account, numbered *****1469. On many occasions, Stevens transferred funds from this trust account into the business operating account, *****1450.

6. Stevens engaged in property management as well as real estate sales.

7. When the market collapsed, Stevens dipped into his trust accounts in order to cover his business expenses. As he stated at the hearing, he used these funds to cover overhead operating costs which included paying for the electric bills and other office expenses. These funds were also used to cover overdraft charges, returned check charges, and expenses for ordering checks. Exhibit 7, page 10. As he has acknowledged, he committed multiple violations of professional standards in doing so.

8. In some instances, the funds available in the trust account fell below the amount of money that should have been available to cover trust money being held in trust in the trust account. In addition, there were several times where Stevens'

transferring money out of the trust fund resulted in the trust fund going into a negative balance situation.

9. In certain instances, real estate transactions fell through and Stevens had to return earnest money that had been deposited to be held in trust. On four of those occasions, the checks that he returned to clients could not be paid due to insufficient funds in the account against which they were drawn. Stevens eventually made good on all the checks. With respect to one of those checks, however, the auditor's report notes that the auditor could not, at the time of the audit, confirm that particular check had been reimbursed to the client. Exhibit 7, page 6.

10. On two occasions, Stevens also failed to timely deposit escrow funds.

11. On several occasions, Stevens failed to properly account for and document the receipt of escrow funds. Specifically, he failed to keep running ledgers, running balances, and proper documentation regarding receipts and disbursements. He also failed to conduct monthly reconciliations of ledgers.

12. Stevens' conduct came to light when a licensed broker in his office contacted the Board of Realty Regulation to report the conduct. It appears that the conduct went on for a period of at least three years.

13. Stevens has been under a summary suspension for a period of several months and his income has completely dried up.

14. Stevens agreed at hearing that appropriate sanctions include a requirement that he engage in remedial education, that he no longer engage in property management until such time as the realty regulation Board finds he is competent to do so, a two-year suspension of his supervision capabilities, and that he be required to escrow all funds received in connection with any real estate transaction in which he is professionally involved. The hearing officer agrees and finds that imposition of these sanctions is necessary not only to insure the protection of the public but also to rehabilitate the licensee.

15. The hearing officer also finds that the protection of the public requires a period of suspension to impress upon Stevens the need to properly maintain trust accounts. While Stevens' conduct in dipping into his trust accounts is somewhat mitigated by the financial circumstances he found himself in due to the crashing real estate market, the length of time of the conduct and the fact that his conduct might have continued unabated but for another broker who discovered it and reported it is cause for concern. A period of suspension is appropriate in this case to impress upon Stevens the need to maintain trust accounts according to statutory and

administrative requisites. While there is no evidence that Stevens defrauded any client, serious irregularities in Stevens' trust account practices were found in the audit. These irregularities included improperly using client trust account funds to pay property management bills, commingling funds, and failing to properly identify client trust funds. In order to protect the public, it is imperative that Stevens be impressed with the need to properly execute his fiduciary duties. In light of Stevens' protracted conduct, nothing short of a period of suspension will impress upon him the need to strictly adhere to his fiduciary duties. Accordingly, imposition of a period of suspension is appropriate.

16. Other than the instant matter, Stevens has no other disciplinary action that has been taken against his license.

III. CONCLUSIONS OF LAW¹

1. The licensee conceded that he violated statutes and regulations as alleged in the complaint. Having conceded such violations, analysis of the type of sanctions that should be imposed is appropriate.

2. The Board of Realty Regulation may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f), Admin R. Mont. 24.210.646. Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may impose a license suspension, probation with terms, and a fine not to exceed \$1,000.00 per occurrence. In addition, the Board may limit the scope of the licensee's practice or license. Admin R. Mont. 24.210.646.

3. 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). The Board of Realty Regulation shall decide on a case by case basis the appropriate sanctions to be imposed. Admin R. Mont. 24.210.646. In imposing sanctions, the Board must consider the seriousness of the infraction, the detriment to the health, safety and welfare of the people of Montana, and past or pending discipline against the licensee. Admin R. Mont. 24.210.646(1).

4. BSD has requested that Stevens' license be suspended for a period of one year and that numerous other sanctions such as probation, auditing, restrictions on

¹ Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

the use of his license which include not practicing property management, not permitting the licensee to act as a supervising broker, and imposition of a fine of \$1,000.00 for two of his numerous violations (a total of \$2,000.00 in fines) are appropriate. Stevens agrees that probation for a period of time, prohibiting him from property management and acting as a supervising broker, a requirement that he escrow all funds received in connection with real estate transactions, remedial education, and periodic auditing are appropriate sanctions to ensure the protection of the public. He objects to imposition of a suspension, however, arguing that such a sanction requires the Board to reinstate his license before he can practice.

5. Under the circumstances that exist in this case, the hearing officer believes that a six-month suspension is both necessary and adequate to protect the public as it will impress upon Stevens the need to fulfill fiduciary duties in strict compliance with the applicable statutes and rules. *See, e.g., Matter of the Disciplinary Treatment of the License of Fraker*, Hearings Bureau Case Number 1247-2007 (finding that imposition of six month license suspension was appropriate where property manager commingled trust account funds with operational funds and used trust funds to pay business expenses). Given the nature and duration of the violations in this case, a probationary period of three years with the following restrictions is appropriate in light of the considerations articulated in Mont. Code Ann. § 37-1-312(2) and Admin R. Mont. 24.210.646: that (1) Stevens' license be suspended for a period of six months, (2) Stevens complete remedial education as directed by the Board, (3) Stevens shall not supervise any brokers or real estate sales persons for a period of two years, (4) Stevens shall not engage in any property management until such time as the Board shall approve him doing so, (5) Stevens shall hold no funds of clients in any accounts of his own and instead shall place any funds received by clients into escrow accounts with title companies properly licensed to engage in business in Montana, and (6) Stevens shall submit to any audits required by the Board and shall submit quarterly accountings to the Board of all client funds he receives.

6. While the hearing officer agrees that Stevens' license should be suspended and placed on probation, he is not persuaded that a fine is appropriate in this case. If the following recommended order is approved by the Board, Stevens will be enrolling in remedial education at his own expense and paying for auditing and monitoring of his work for a period of three years. This sanction will be far more beneficial to the protection of the public and is much more likely to rehabilitate the licensee than a fine under the circumstances of this case.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing officer recommends that the Board enter its order placing Stevens' license on probation for a period of three years from the date the Board's order becomes final with the terms that:

(1) Stevens' broker's license number #13792 shall be suspended for a period of six months beginning January 9, 2013 until June 8, 2013;

(2) Stevens shall enroll in and successfully complete any remedial education as required by the Board which shall include at least 24 hours of education which shall be undertaken in addition to and not in lieu of the continuing education requirements contained in Admin R. Mont. 24.210.667;

(3) Stevens' license shall be restricted in that he shall not engage in any property management during the period of his probation and he shall not engage in any supervision of brokers, real estate sales persons, or property managers for a period of two years;

(4) Stevens shall deposit all monies received from clients with regard to any real estate transaction in which he is involved as a licensed broker in an escrow fund maintained by a duly licensed title company or other entity as directed by the Board;

(5) Stevens shall submit to the Board or Board's designee at least quarterly or more frequently as directed by the Board all documentation and all records related to any real estate transaction in which he is involved as a licensed broker and Stevens shall pay all costs associated with the production, review, or audit of any documentation or records that he provides;

(6) Stevens shall at all times comport with the requirements of Montana Codes Annotated Title 37, Chapter 1 and Montana Codes Annotated Title 37, Chapter 51, and Administrative Rules of Montana 24, Chapter 210; and

(7) In the event that Stevens fails to comport with any of the terms or conditions of his license probation, his broker's license shall be REVOKED.

DATED this 1st day of February, 2013.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU
By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer

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.