

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX, BLDG 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
	:	
Michael F. (“Coach”) Howard,	:	DBR No.: 2017RE004
	:	
Respondent.	:	
	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why Order Should Not Issue to Revoke License; Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued to Michael F. (“Coach”) Howard (“Respondent”) by the Department of Business Regulation (“Department”) on September 21, 2017. The Respondent holds a real estate salesperson’s license (“License”) pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.* A hearing was scheduled for October 18, 2017 at which time the Respondent did not appear at hearing. Pursuant to Section 2.9 of the 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing* (“Rules”), service may be made by hand-delivery or first class mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Order to Show Cause was sent to the Respondent’s last known address by first class and certified mail and emailed to his known email address.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 18, 2017.² Additionally, Section 2.21 of the Rules provides that a default

¹ The Respondent confirmed receipt of the Order to Show Cause. See Department’s Exhibit 15 (September 21, 2017 email from Respondent to Department indicating receipt of Order to Show Cause).

² Pursuant to a delegation of authority by the Director of the Department of Business Regulation.

judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party. The Department was represented by counsel who rested on the record.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-20.5-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Rules.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 5-20.5-1 *et seq.*, and/or *Commercial Licensing Regulation 11 Real Estate Brokers and Salespersons* (“CLR11”) and if so, what should be the sanction(s).

IV. MATERIAL FACTS AND TESTIMONY

William DeLuca, Real Estate Administrator, testified on behalf of the Department. He testified that a complaint was received from the Respondent’s principal broker regarding money taken by the Respondent. He testified that the complaint indicated that the Respondent had created two (2) purchase and sales agreements for the same property: one that had the client give him a \$1,500 deposit and one that had the client give a \$1,000 deposit to the agency. He testified that the complaint indicated that the Respondent only gave the \$1,000 purchase and sales agreement to the agency and when the sale fell through, the agency refunded the \$1,000 to the client, but the Respondent refused to refund the \$1,500 to the client. He testified that the complaint also indicated that the Respondent had falsified the broker’s electronic signature by using her “dotloop” account and that the broker was out of state when the signature was made and the security video showed the Respondent at the agency at that time the signature was made. He testified that the complaint indicated that no permission was given by the broker to the Respondent to sign her name and only she and the office manager could access the dotloop account and neither were in the

office when it was accessed. He testified that the Respondent emailed the broker to say “he messed up” in reference to the use of the dotloop account. He testified that Nevada revoked the Respondent’s real estate license held in that state for misuse of funds. He testified that the Respondent should have notified Rhode Island within 60 days of Nevada’s final action taken in April, 2016 and the Respondent did not notify the Department of Nevada’s revocation of his Nevada real estate license. He testified that the State police investigated the \$1,500 deposit that the Respondent had retained and only then did the Respondent refund the deposit. See Department’s Exhibits Two (2) (complaint received from Respondent’s supervising real estate broker by the Department on June 13, 2017); Three (3) (the Respondent’s response to the complaint); Four (4) (the complainant’s response to the Respondent’s response); Five (5) (copy of the two (2) checks from the client on the two (2) purchase and sales agreements, one made out for \$1,000 to the agency, and one made out for \$1,500 to the Respondent); Seven (7) (dotloop account signature); Eight (8) (Respondent’s email to the agency indicating that he messed up regarding the dotloop signature); 14 (State police email to the Complainant regarding the \$1,500 which Respondent repaid to avoid criminal charges – see Department’s Exhibit Four (4)); and 17 (copy of the purchase and sales agreement with the \$1,000 deposit for the agency). See also Department’s Exhibits Nine (9) through 13 and 16 (Nevada’s information and records on Respondent’s Nevada real estate license including the final decision revoking his Nevada real estate license on March 16, 2016 for deceitful, fraudulent or dishonest dealing, making false promises, and breaching his obligation of absolute fidelity to his client in relation to the misuse of client funds).

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statute and Regulation

R.I. Gen. Laws § 5-20.5-14 provides in part as follows:

Revocation, suspension of license – Probationary period – Penalties.

(a) The director may upon his or her own motion, and shall, upon the receipt of the written verified complaint of any person initiating a cause under this section, ascertain the facts and, if warranted, hold a hearing for the suspension or revocation of a license. The director has power to refuse a license for cause or to suspend or revoke a license or place a licensee on probation for a period not to exceed one year where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned in this chapter, is found to have committed any of the following acts or practices:

(1) Making any substantial misrepresentation;

(5) Failing to deposit money or other customers' funds received by a broker or salesperson into an escrow account maintained by the broker which complies with the requirements set forth in § 5-20.5-6, upon execution of a purchase and sales agreement;

(12) Accepting a commission or any valuable consideration by a salesperson for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is affiliated;

(15) Violating any rule or regulation promulgated by the department in the interest of the public and consistent with the provisions of this chapter;

(20) Any conduct in a real estate transaction, which demonstrates bad faith, dishonesty, untrustworthiness, or incompetence;

(30) As a licensed salesperson, failing upon termination of his or her employment or affiliation with a real estate broker and upon demand by the broker to immediately turn over to the broker any and all information, records or other materials obtained during his or her employment whether the information or records were originally given to him or her by the broker or copied from the records of that broker or affiliation or acquired by the salesperson during his or her employment;

CLR11 provides in part as follows:

Section 13. Reporting Convictions and Disciplinary Actions Any licensee convicted of, or otherwise pleads guilty or *nolo contendere* to, any felony or misdemeanor, or is disciplined by any governmental agency in connection with any other occupational license, shall file with the Department a written report of such conviction or disciplinary action within sixty (60) days of the final judgment or final order in the case.

Section 18. Client Funds

(A) *Escrow Accounts.*

(6) A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(B) *Salespersons Prohibited from Holding Client Funds.* An affiliated licensee shall turn over all deposit monies received promptly to his or her principal broker or, at the direction of the principal broker, deposit the funds in the principal broker's escrow account.

D. Whether the Respondent Violated R.I. Gen. Laws § 5-20.5-1 *et seq.* and/or CLR11

Based on the pleadings and exhibits and testimony, it is undisputed that the Respondent prepared two (2) purchase and sales agreements for the same property and pocketed a \$1,500 deposit for himself and that without authorization from his broker, he signed his broker's signature using the dotloop account and that he failed to reimburse the client the \$1,500 deposit except to avoid criminal prosecution, and failed to notify the Department within the statutory time of the revocation by Nevada of his real estate license.

In engaging in such actions, the Respondent violated R.I. Gen. Laws § 5-20.5-14(1) (making substantial misrepresentations), (5) (failing to deposit customer funds into an escrow account), (12) (accepting valuable consideration from someone not a licensed broker), (15) (violating CLR11), (20) (demonstrating bad faith, dishonesty, and untrustworthiness), and (30) (failing to turn over records upon his termination). In addition, the Respondent violated Section 13 of CLR11 (failing to report final disciplinary action within 60 days of final action) and Section 18(A)(6) and (B) (converting money to his own use and failing to turn over deposit money to his broker).

E. The Respondent's License Should be Revoked

It is undisputed that the Respondent violated R.I. Gen. Laws § 5-20.5-14(a)(1), (5), (12), (15), (20), and (30) and Sections 13 and 18(A)(6) and B of CLR11. The evidence demonstrated that the Respondent has committed numerous violations of the law including such actions as lying to his client (e.g. the two (2) purchase and sales agreements) and his supervising broker, placing his supervising broker's signature on a document when unauthorized do so, and retaining deposit money and converting it to his own use and only refunding it order to avoid criminal prosecution. Such violations merit the revocation of the Respondent's License.

VI. FINDINGS OF FACT

1. The Respondent holds a License pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*
2. On September 21, 2017, the Department issued an Order to Show Cause to Respondent.
3. A hearing was held on October 18, 2017. The Respondent did not appear at the hearing. As the Respondent was adequately notified of the hearing, the hearing was held. The Department was represented by counsel who rested on the record.
4. Pursuant to Section 2.21 of the Rules, the Respondent is declared to be in default for failing to appear at the hearing.
5. Pursuant to Section 2.21 of the Rules, the allegations in the Order to Show Cause are found to be true.
6. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW


Based on the testimony and facts presented:

1. The Department has jurisdiction pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 5-20.5-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*
2. The Respondent violated R.I. Gen. Laws § 5-20.5-14(a)(1), (5), (12), (15), (20), and (30) and Sections 13 and 18(A)(6) and B of CLR11.

VIII. RECOMMENDATION

Based on the forgoing, pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*, the undersigned recommends that the Respondent’s License be revoked because he violated R.I. Gen. Laws § 5-20.5-14(a)(1), (5), (12), (15), (20), and (30) and Sections 13 and 18(A)(6) and B of CLR11.

Entered this day 26th October, 2017.

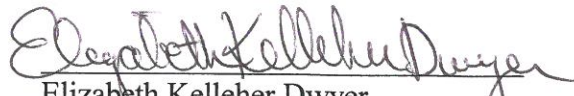

 Catherine R. Warren, Esquire
 Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 10-27-17


 Elizabeth Kelleher Dwyer
 Interim Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 27 day of October, 2017, that a copy of the within decision was sent by first class mail, postage prepaid and certified mail to Mr. Michael F. Howard, 251 Thames Street, Bristol, R.I. 02809 and by electronic delivery to Mr. Michael F. Howard at his email address on record with the Department and by electronic delivery to Sara Tindall-Woodman, Esquire, and Maria D'Allessandro, Deputy Director, and Donna Costantino, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, RI.