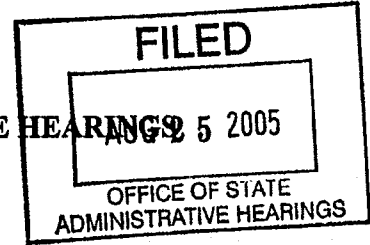


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



GEORGIA REAL ESTATE
COMMISSION,

Petitioner,

v.

SAMUEL P. LECCIMA
Classification No. S253545

Respondent.

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:
: DOCKET NUMBER:
: OSAH-GREC-SAN-0523779-60-KENNEDY
:
: GREC #040834 AND #031595
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INITIAL DECISION

I. INTRODUCTION

The hearing in this matter was held on August 12, 2005, before the Office of State Administrative Hearings (OSAH). The Georgia Real Estate Commission requested the hearing to determine whether the Commission should sanction the Real Estate Salesperson's License of Samuel P. Leccima. For the reasons indicated below, Respondent's Real Estate Salesperson's License is **HEREBY REVOKED**.

II. FINDINGS OF FACT

1.

Respondent was initially licensed as a real estate salesperson in the State of Georgia on July 26, 2002, and has had the following license activity since then:

| DATE | LICENSE STATUS | AFFILIATED WITH |
|----------------------|----------------|--|
| 7-26-02 to 11-13-02 | Active | Morris & Raper Intown, Inc. |
| 11-13-02 to 04-17-03 | Active | Premier Atlanta LLC d/b/a Keller Williams Realty Premier Atlanta |
| 04-18-03 to 07-28-03 | Inactive | N/A |
| 07-29-03 to 10-05-03 | Active | Platinum Real Estate Enterprises LLC |
| 10-05-03 to 10-06-03 | Inactive | N/A |
| 10-07-03 to 07-12-05 | Active | Real Estate Investments (REI) |
| 07-12-05 to 08-12-05 | Inactive | N/A |

(Testimony of Investigator Audrey Brown; Exhibits P-1 and P-1A).

2.

Respondent was a real estate licensee involved in two transactions between G. Coleman, seller, and F. Guinn, purchaser, that never closed. (Testimony of Investigator Diane Keys and F. Guinn; Exhibits P-8, P-10, P-11, and P-12).

3.

On December 4, 2002, G. Coleman, seller, and F. Guinn, purchaser, entered into a contract for the purchase and sale of certain real property located at 1951 Penelope Street, Atlanta, Georgia. On December 7, 2002, G. Coleman, seller, and F. Guinn, purchaser, entered into a contract for the purchase and sale of certain real property located at 1440 Belmont Avenue, S.W., Atlanta, Georgia. F. Guinn submitted \$4,500 in earnest money in connection with the two contracts. F. Guinn's earnest money was never refunded to him even though the transactions failed to close. (Testimony of Investigator Keys and F. Guinn; Exhibits P-8, P-10, P-11, and P-12).

4.

The contract in the Penelope transaction incorrectly referenced the address of the property as 1059 Penelope Street, Atlanta, Georgia. Additionally, on or after December 4, 2002, Respondent altered the contract in the Penelope Transaction to represent that the purchaser was John Billingsley. (Testimony of Investigator Keys and F. Guinn; Exhibits P-10, P-11 and P-15).

5.

Respondent failed to deliver a copy of the contracts in the Penelope Transaction and the Belmont Transaction to the real estate broker holding his real estate salesperson's license. (Testimony of Investigator Keys).

6.

Prior to F. Guinn entering into contracts with G. Coleman, in November 2002, Respondent signed a document that purported to be a promissory note drafted as part of an "earnest money loan program" and delivered the document to L. Ramchandani. The document represented that "the home buyer you will be working with is Frederick Guinn" and provided that if Ramchandani loaned \$4,500 to Guinn to be used as earnest money in connection with real estate contracts that "will be written on December 4, 2002," then at the closing of those transactions, Ramchandani would be paid \$9,000, of which \$4,500 was reimbursement of the loan and the other \$4,500 was profit on the loan. The document also provided that Respondent would take responsibility for the payout if F. Guinn does not make Ramchandani's investment whole. (Testimony of Investigator Keys, F. Guinn and L. Ramchandani; Exhibit P-13).

7.

In December 2002, F. Guinn delivered an additional \$1,000 to Respondent as earnest money in

connection with the purchase and sale of undetermined real property in the State of Georgia not connected to the Penelope or Belmont Transactions. No transaction ever resulted in a closing and Respondent failed to refund the money to F. Guinn. (Testimony of F. Guinn).

8.

In an unrelated transaction to the ones described in Findings of Fact 2 – 7, Respondent was the real estate licensee involved in another transaction that failed to close. On June 19, 2003, A. Tate, purchaser, and T. Kelly, seller, entered into a contract for the purchase and sale of certain real property located at 421 Griffin Street, Atlanta, Georgia. (Testimony of Investigator Brown, A. Tate, and E. McMillan; Exhibits P-3, P-3A, P-3B, P-3C, and P-4).

9.

On the contract in the Griffin Transaction, Respondent represented that his real estate license was affiliated with Platinum Real Estate Enterprises, LLC. In fact, Respondent's real estate salesperson's license was not affiliated with Platinum Real Estate Enterprises, LLC at that time, but instead was on inactive status. (Testimony of Investigator Brown, A. Tate and E. McMillan; Exhibits P-1, P-1A, P-3, P-3A, P-3B, and P-3C).

10.

The contract in the Griffin Transaction did not include an acceptance date. Additionally, Respondent failed to deliver a copy of the executed contract to the purchaser, Ms. Tate. (Testimony of Investigator Brown and A. Tate; Exhibits P-3, P-3A, and P-3B).

11.

On or about June 19, 2003, A. Tate and E. McMillan paid \$1,000 to T. Kelley as earnest money in the Griffin Transaction. Respondent represented to Ms. Tate and Ms. McMillan that their earnest money would be refunded if the transaction failed to close. The transaction did not close and the earnest money was not refunded. Respondent failed to include a stipulation providing that the earnest money was refundable in the Griffin Transaction contract. In fact, Respondent added the language "After inspection, earnest money is nonrefundable" to the contract after it had been signed by Ms. Tate and without her authorization or consent to do so. (Testimony of Investigator Brown, A. Tate, and E. McMillan; Exhibits P-3, P-3A, P-3B, P-3C, and P-4).

12.

In June 2004, Respondent represented on an internet website that his real estate salesperson's license was affiliated with Platinum Real Estate Enterprises, LLC when in fact it had not been affiliated with the real estate brokerage firm since October 2003. (Testimony of Investigator Brown; Exhibit P-1, P-1A, and P-6).

13.

The Office of State Administrative Hearings (OSAH) mailed Petitioner notice of a hearing scheduled for June 21, 2005, by certified mail. The Notice was received and signed for by

Respondent on May 10, 2005. The hearing was then continued to July 15, 2005, and notice was sent to both parties. A second continuance was granted on July 11, 2005, and the parties were notified by mail and telephone. At no time has Respondent contacted OSAH.

III. CONCLUSIONS OF LAW

1.

The Real Estate Commission "shall have the full power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees". *O.C.G.A. § 43-40-14*.

2.

Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. Additionally, the conduct provided for in subsections (a), (b), (c), (d), and (h) of Code section 43-40-15 which relates to the denial of a real estate license to an applicant shall also be grounds for imposition of any sanction permitted by this chapter when the conduct is that of a licensee. *O.C.G.A. §§ 43-40-15(a), (f)*.

3.

Respondent does not bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a real estate licensee in such manner as to safeguard the interest of the public. Furthermore, Respondent is incompetent to act as a real estate licensee in such manner as to safeguard the interest of public.

4.

Respondent committed the following violations of the Georgia Real Estate License Law:

- Respondent made substantial misrepresentations to interested persons in real estate transactions.
- In various transactions, Respondent failed to include required items in an offer to purchase real estate such as (1) dates as were necessary to determine whether the parties had acted timely in meeting their responsibilities under the offer and resulting contract; (2) a correct description of the real property involved, and (3) a stipulation or addenda required by the terms of the offer.
- Respondent was or became a party to the falsification of contracts used in real estate transactions.
- Respondent failed to deliver a copy of a real estate contract to the purchaser and/or the real estate broker holding his real estate salesperson's license.
- Respondent intentionally advertised material that was misleading or inaccurate.
- Respondent engaged in real estate brokerage activity at a time when his real estate salesperson's license was on inactive status with the Commission, and after his license had

been released by the real estate broker holding it but before he had affiliated his real estate salesperson's license with another broker.

- Respondent represented to interested persons in real estate transactions an artifice, contrivance, or machination with the intent to deceive.
 - Respondent failed to account for the real estate trust funds of others.
 - Respondent guaranteed future profits that would be realized upon the resale of real property.
- O.C.G.A. § 43-40-25(b)(2), (3), (4), (10), (19), (21), (23), (25), (28).*

5.

Additionally, Respondent's actions violated the following Substantive Regulations:

- Respondent engaged in the activities of a real estate broker after having been released by a broker and before affiliating his license with a new broker and mailing a Change Application to the Commission.
- Respondent performed real estate brokerage activity on real estate during a period when his license was inactive.
- Respondent failed to place the money he received in connection with a real estate transaction into the custody of the broker holding his license as soon after receipt as was practicably possible.
- Respondent advertised misleading and inaccurate information through his website that indicated he was affiliated with a brokerage company in June 2004, when in fact he had not been affiliated with that company since October 2003.
- Respondent failed to promptly tender A. Tate a signed offer to sell property to her, and he further failed to provide a copy of documents utilized in a real estate transaction to the individuals who signed the document.
- Respondent falsified, or was a party to the falsification of a document involved in a real estate transaction, or knowingly represented to an interested party in a real estate transaction an artifice, contrivance, or machination with the intent to deceive that interested party.
- Respondent made misleading representations to A. Tate and E. McMillan, among others, in connection with real estate transactions.

Substantive Regulation #520-1-.05(2)(d), (g); 520-1-.08(1)(b); 520-1-.09(2); 520-1-.10(1), (2), (4), and; 520-1-.10(4)(e).

6.

Petitioner has the burden of proof as to whether the Commission should sanction Respondent's Real Estate Salesperson's License. OSAH Rule 616-1-2-.07(1)(c). The standard of proof on all issues before OSAH is the preponderance of evidence standard. OSAH Rule 616-1-2-.21(4).

7.

Based upon the foregoing, it is concluded that there are sufficient grounds for the imposition of sanctions against Respondent's Real Estate Salesperson's License in the State of Georgia. *O.C.G.A. §§ 43-40-14; 43-40-15(a), (f).*

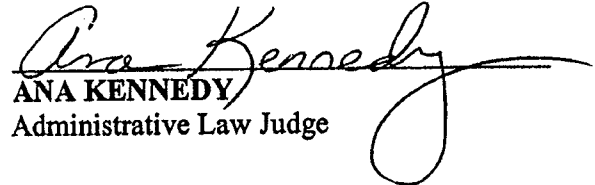
8.

Respondent received reasonable notice of the hearing in accordance with O.C.G.A. § 43-40-26, but failed to appear.

IV. DECISION

Respondent's Real Estate Salesperson's License is **HEREBY REVOKED.**

This 26th day of August 2005.


ANA KENNEDY
Administrative Law Judge