

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Matthew Harvey Jones **ORDER DENYING MOTION TO DISMISS
AND GRANTING CONTINUANCE**

This matter is pending before Administrative Law Judge Jeffery Oxley. The hearing date has been set for March 30, 2016. Michael Tostengard, Assistant Attorney General, represents the Minnesota Department of Commerce (Department) and Mathew Harvey Jones (Respondent) appears on his own behalf without counsel.

On March 22, 2016, Respondent filed a Motion for a Continuance and a Motion to Dismiss.

Based upon the submissions of counsel and the record in this proceeding,

It is hereby ordered:

1. The Motion for a Continuance is **GRANTED**. By 4:30 p.m. on March 30, 2016, parties shall provide dates after May 16, 2016 when they are available for a hearing to the Administrative Law Judge's assistant, Denyse Johnson at denyse.johnson@state.mn.us or (651) 361-7888 and so that a new hearing date may be set.

2. The Motion to Dismiss is **DENIED**.

Dated: March 23, 2016



JEFFERY OXLEY
Administrative Law Judge

MEMORANDUM

On August 13, 2015, the Minnesota Department of Commerce served Respondent with an Order to Show Cause why Respondent should not have his real estate license revoked and be fined \$2,000 for failing to respond to a request from the Department for information under Minn. Stat. § 45.027, subds. 1(a) and 7(a)(3) (2014). Respondent timely requested a hearing on August 17, 2015. On November 25, 2015, the Department served Respondent with its Notice and Order for Hearing.

On January 19, 2016, the Administrative Law Judge held a prehearing conference at which Mr. Tostengard and Respondent both appeared. The parties agreed to a hearing date of March 30, 2016.¹

On February 22, 2016, the Department served Respondent with its Amended Statement of Charges. The added charges stemmed from a November 19, 2015, Minnesota Supreme Court order suspending Respondent's attorney license. The additional counts added to the Statement of Charges include Respondent's failure to notify the Department of his suspension, three counts stemming from Respondent's misuse of client funds and his client trust account, and one count of making false statements. The additional counts describe Respondent's behavior with respect to his clients as "fraudulent, deceptive and dishonest" and further describe Respondents as incompetent, untrustworthy, and financially irresponsible.²

On March 22, 2016, Respondent filed two motions. Respondent requested a continuance of the hearing date for at least 45 days to allow him to prepare to respond to the Department's additional charges at the hearing. Respondent argues that because the amended charges concern Respondent's trustworthiness and competence, he requires additional time to arrange for the attendance of witnesses who can testify as to his competence and trustworthiness. He also asserts that his defense will require him to produce "materials from all of his Real Estate Transactions."³

Respondent also moved for dismissal of the proceeding on the basis that the Department's Notice and Order for Hearing was untimely. Respondent cites to Minnesota Statutes section 45.027, subd. 7(b)(1)(A) which states: "the commissioner shall, within 15 days of receiving the request, set the date and time for the hearing and notify the licensee or applicant of those facts." Respondent requested a hearing on August 17, 2015 but the Department did not serve its Notice and Order for Hearing until November 25, 2016.

Although the Department did not timely serve its Notice and Order for Hearing, Respondent did not raise the issue of timeliness until now, after the prehearing conference and after the Department has filed its exhibits and witness list. The ostensible purpose of the requirement for the Commissioner to set a hearing day within 15 days is to assure a licensee of a prompt hearing. Respondent has not shown any concern that a prompt hearing be held. Further, until November 19, 2016, Respondent

¹ First Prehearing Order (January 19, 2016).

² Amended Statement of Charges at 2-3 (February 22, 2016).

³ Motion for Continuance at 2 (March 22, 2016).

was a licensed attorney. As an attorney, Respondent was or should have been aware of the Department's untimely notice of hearing months ago yet Respondent proceeded to agree to a March 30, 2016 hearing date in January and only now raises this issue. The Administrative Law Judge finds that Respondent waived the requirement that the Department set a hearing date within 15 days of Respondent's hearing request.

The Administrative Law Judge is more sympathetic to Respondent's request for a continuance, although it could have been made some weeks earlier as the Amended Complaint was filed a month ago. Still, the request for a continuance has been made within the time limit specified in the First Prehearing Order. The additional charges against Respondent are not related to the initial charge of failing to respond to an information request. Therefore, it is reasonable to allow Respondent additional time to prepare his defense. Respondent is cautioned that any future request for a continuance will only be granted upon a showing of good cause.⁴

⁴ See Minn. R. 1400.2500 (2015).