8-1005-10121-2

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

In the Matter of the Real Estate Brokers License of James E. Streitz, License No. 696029, d/b/a Home Leasing and Sales, License No. 140682, and the Real Estate Salespersons License of Susan M. Streitz, License No. 623571.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

The above-captioned matter came on for hearing before Administrative Law Judge Jon L. Lunde commencing at 9:30 a.m. on Thursday, November 9, 1995 in the first floor hearing room at the Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101. The hearing was held pursuant to a Order to Show Cause, Order Summarily Suspending License and Notice and Order For Hearing dated October 13, 1995.

Michael A. Sindt, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul MN 55101-2130 appeared on behalf of the Minnesota Department of Commerce (Department). The Respondents, James E. Streitz and Susan M. Streitz, were not present at the hearing and no appearance was entered on their behalf or on behalf of Home Leasing and Sales. The record closed upon the Respondents' default on November 9, 1995.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James E. Ulland, Commissioner of Commerce, 133 East Seventh Street, St. Paul, MN 55101, Telephone (612) 296-6694 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues in this case are whether adverse licensing action should be taken against the Respondents as a result of their failure, as property managers, to remit money due to clients, and their failure, after inquiry by the Department, to provide information requested by Department staff, under Minn. Stat. §§ 82.27, subd. 1 (b), (e),

and (f), and 45.027, subds. 1a and 7 (1994), and Minn. Rules Pts. 2805.0500 and 2805.2000K (1993).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 23, 1995 a copy of the Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing was served upon the Respondents by first class mail as appears from an affidavit of service on file herein.

2. The Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing contain the following warning:

> If Respondents fail to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, the allegations herein may be deemed true without further proof, Respondents shall be deemed in default and Respondents' real estate brokers and salespersons licenses may be revoked or suspended. Respondents may be censured and/or a civil penalty may be imposed upon Respondents without further proceedings.

3. The Respondents did not appear at the hearing on November 9, 1995. The Respondents did not have the Administrative Law Judge's consent for failing to appear, and Respondents did not make any pre-hearing request for a continuance or any other relief.

4. James E. Streitz and Susan M. Streitz, both personally, and James E. Streitz, d/b/a Home Leasing and Sales (herein "Respondents") are currently and were at all times relevant hereto real estate brokers or salespersons licensed by the Commissioner pursuant to Minn. Stat. ch. 82 (1994).

5. While licensed as real estate brokers and salespersons, Respondents failed in a reasonable time to account for or remit money which was paid to Respondents and which belongs to clients.

6. On July 14, 1995, the Department received a complaint that Respondents were acting as property managers and had failed to keep meetings or return phone calls, and had failed to remit money due a client, Mr. Jeffrey Williamson, on rents for the months of February, May, June and July of 1995.

7. On July 17, 1995, Commerce Investigator Annette Storm sent letters to Respondents individually, enclosing a copy of the Complaint and asking for a response. No response was received by Storm.

8. On August 21, 1995 a follow-up letter was sent to Respondents individually, again asking for a response to the Complaint. No response was received by Storm.

9. On September 18, 1995, an Order to Appear was sent to Respondents individually, ordering that they appear at the Department on September 27, 1995 at 9:45 a.m. for an interview. Respondents did not appear at the Department as required.

10. On October 2, 1995 the Department received information that Respondents were managing property for Mr. McEphrem Mesheska and that Respondents had failed to return phone calls and remit money in the form of rents collected on behalf of Mr. Mesheska by the Respondents for the months of August and September of 1995.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Commerce have authority to consider the issues raised in the Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing. Under Minn. Stat. §§ 82.27, 45.027, subd. 7 and 14.50 (1992).

2. The Respondents received timely and proper notice of the hearing and of the charges against them.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. Rules pt. 1400.6000 (1993) Respondents are in default herein as a result of their failure, without the Administrative Law Judge's prior consent, to appear at the hearing.

5. Upon default, the allegations of and the issues set out in the Notice of Order for Hearing or other pleading may be taken as true or deemed true without further evidence. Id.

6. Under Minn. Stat. § 82.27 the Commissioner may by order deny, suspend or revoke any license or may censure a licensee if the Commissioner finds that the order is in the public interest and that the applicant or licensee:

> (b) has engaged in a fraudulent, deceptive, or dishonest practice,
>
> * * *
>
> (e) has violated or failed to comply with any provision of this chapter [82] or any rule or order under this chapter;
>
> (f) has, in the conduct of the licensee's affairs under the license, been shown to be incompetent, untrustworthy or financially irresponsible. . . .

7. Under Minn. Stat. § 45.027, subd. 7, the Commissioner may by order deny, suspend or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, or censure a person, if the commissioner finds that:

(1) The order is in the public interest; and

(2) The person has violated any law, rule, or order related to the duties and responsibilities entrusted to the Commissioner; or

(3) The person has provided false, misleading, or incomplete information to the Commissioner or has refused to allow a reasonable inspection of records or premises.

8. Minn. Rules pt. 2805.0500 requires that trust funds be dispersed within a reasonable time following the consummation or termination of a transaction.

9. Minn. Rules Pt. 2805.2000K states that the failure within a reasonable time to account for or to remit any money coming into a licensee's possession which belongs to another constitutes a fraudulent, deceptive and dishonest practice for purposes of Minn. Stat. § 82.27, subd. 1 (b).

10. The Respondents have failed to remit, within a reasonable time, money belonging to another; have engaged in fraudulent, deceptive or dishonest practices; have been shown to be incompetent, untrustworthy or financially irresponsible; have failed to respond to the Department's request for information; and have provided false, misleading or incomplete information or have refused to allow a reasonable inspection of records in violation of Minn. Stat. §§ 82.27, subd. 1 (b), (e), (f), 45.027, subd. 1a and 7 (1994) and Minn. Rules pts. 2805.0500 and 2805.2000K (1993).

11. Disciplinary action is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of the Minnesota Department of Commerce take adverse licensing action against the Respondents as a result of their statutory and rule violations.

Dated this 14th day of November, 1995

/s/

JON L. LUNDE
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

JLL