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15-1005-15202-2

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

In the Matter of the Mortgage Originator
License of BlackDiamond Mortgage &
Real Estate Consultants Corp., d/b/a
ProTech Enterprise Investment Properties
Trust, License No. 20225862

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on January 27, 2005 for hearing. The hearing was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference, dated December 3, 2002.

Michael J. Tostengard, 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 Respondent, BlackDiamond Mortgage & Real Estate Consultants Corp. ("Respondent"), did not appear in person or by counsel. The record closed upon the Respondent's default on January 27, 2005.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) 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 Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

1. Did Respondent conduct business when its license was inactive?
2. Did Respondent conduct business under a name different from its license?
3. Did Respondent's license application contain a false or misleading statement?
4. Did Respondent fail to maintain a trust account used solely for trust funds?
5. Did Respondent engage in acts that were financially irresponsible?
6. Did Respondent misrepresent the amount paid to a third party?
7. Did Respondent fail to maintain proper records and provide them to the Department?
8. Did Respondent provide false and misleading information to the Commissioner?

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

FINDINGS OF FACT

1. On December 12, 2002, a copy of the Notice of and Order for Hearing and Notice of Prehearing Conference was delivered via first class to Berry Willis, CEO, BlackDiamond Mortgage & Real Estate Consultants Corp., 4204 83rd Avenue North, Brooklyn Park, MN 55443.

2. The Respondent filed several prehearing motions, including a Motion to Dismiss, filed on April 18, 2003. On May 13, 2003, the Administrative Law Judge issued an Order Denying Motion to Dismiss or for Summary disposition.

3. The matter was scheduled for hearing on July 14, 2003. On July 14, 2003, Berry Willis, CEO of BlackDiamond Mortgage & Real Estate Consultants Corp., d/b/a/ ProTech Enterprise Investment Properties Trust filed a complaint in United States District Court *sub nom* Berry Willis v. Centennial Mortgage & Funding, Inc., *et al* (Civ. No. 03-3641). Mr. Willis also filed a Notice of Removal pursuant to 28 U.S.C. §§ 1442 and 1443. The Administrative Law Judge issued an Order Staying Proceedings on July 16, 2003.

4. On September 16, 2004, the United States District Court, Judge Richard H. Kyle, issued a Memorandum Opinion and Order dismissing Willis v. Centennial Mortgage & Funding, Inc., *et al*. On October 6, 2004, the Administrative Law Judge vacated the stay issued on July 16, 2003, and scheduled the matter for hearing on December 1, 2004. However, the Notice and Order for Hearing was sent to the Respondent at an incorrect address.

5. On December 9, 2004, the Notice and Order for Hearing was sent to Berry Willis, Chief Executive Officer, BlackDiamond Mortgage & Real Estate Consultants Corporation, 4202 83rd Avenue North, Brooklyn Park, MN 55443. Mr. Willis received the notice. See his written submission dated January 23, 2005.

6. Mr. Willis called the Administrative Law Judge prior to January 3, 2005, and left a message that he did not intend to appear at the hearing. The Administrative Law Judge sent a letter dated January 3, 2005, notifying Mr. Willis that absent a stay of Judge Kyle's Order, or other federal court order affecting this proceeding, the hearing would be held on January 27, 2005, as scheduled.

7. By letter dated January 23, 2005, Mr. Willis advised the Administrative Law Judge that he did not believe that the matter was within the jurisdiction of the Administrative Law Judge and he would not attend the hearing. He also notified the Administrative Law Judge of a new address where correspondence should be sent.

8. Mr. Willis has filed an appeal of Judge Kyle's Order in the Eighth Circuit Court of Appeals and has an order from Judge Kyle permitting him to proceed on appeal *in forma pauperis*. However, there is no stay of Judge Kyle's Order in effect, and no federal court order removing these proceedings to federal court.

9. The Respondent did not appear at the hearing, did not obtain prior approval to be absent, and did not request a continuance or any other relief.

10. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or the hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's mortgage originator's license may be revoked or suspended, Respondent may be censured, and/or a civil penalty may be imposed against Respondent without further proceedings.

11. Because Respondent failed to appear, it is in default.

12. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.027, subd. 1, 45.024, 58.12, and 14.50 (2000).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the hearing.

6. Respondent conducted business when its license was inactive, in violation of Minn. Stat. § 58.04, subds. 1(a) and 3.

7. Respondent conducted business under a name different from its license, in violation of Minn. Stat. §§ 58.04, subd. 3 and 58.13, subd. 1(10).

8. Respondent's application contained a false or misleading statement, in violation of Minn. Stat. § 58.12, subd. 1 (b)(2)(ii).

9. Respondent failed to maintain a trust account used solely for trust funds, in violation of Minn. Stat. § 58.13, subd. 1 (1) and (2).

10. Respondent engaged in acts that were financially irresponsible, in violation of Minn. Stat. §§ 58.12, subd. 1(b)(2)(v) and 45.027, subd. 7 (a)(4).

11. Respondent misrepresented the amount paid to a third party, in violation of Minn. Stat. § 58.13, subd. 1(6).

12. Respondent failed to maintain proper records and provide them to the Department, in violation of Minn. Stat. §§ 58.13, subd. 1 (16), 58.14, subds. 4 and 5, 45.027, subd. 1a.

13. Respondent provided false and misleading information to the Commissioner, in violation of Minn. Stat. § 45.027, subd. 7 (a)(3).

14. Disciplinary action against the Respondent 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 action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent. A copy of this Recommendation shall be served on the Respondent at all three of the addresses that have been provided to the Administrative Law Judge.

Dated this 31st day of January, 2005

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER

Administrative Law Judge

Reported: Default (no tapes)

NOTICE

Under 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.