

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

In the Matter of the Real Estate
Broker's License of Steven Vonseg

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on January 5, 2006, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Steven Vonseg, 2806 – 66th Street North, Brooklyn Center, MN 55430. The OAH record closed on January 5, 2006.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation set forth in this Report. Under 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 the office of the Commissioner of Commerce, 85 East Seventh Place, Suite 500, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

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. 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. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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 ISSUES

The issues presented in this case are whether the Respondent, Steven Vonseg, allowed a client to enter into a purchase agreement prior to the cancellation of a prior purchase agreement, and thereby engaged in a fraudulent, deceptive, or dishonest practice and demonstrated that he is incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 82.35, subd. 1(b) and (f); whether the Respondent failed to respond to the Department's investigation and failed to appear before the Department when ordered to do so, in violation of Minn. Stat. § 45.027, subd. 1a; and if so, whether the Respondent's real estate broker's should be disciplined.

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

FINDINGS OF FACT

The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Steven Vonseg, via first class mail on December 5, 2005, at his last known address on file with the Department: 2806 – 66th Street North, Brooklyn Center, MN 55430.¹

The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges set a prehearing conference for January 5, 2006, at 1:30 p.m.²

The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges included the following notice:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.³

The envelope containing the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges was not returned to the Department as undeliverable. However, general information on hearing procedures sent to the Respondent by the Administrative Law Judge on December 28, 2005, was returned to the Office of Administrative Hearings on January 3, 2006, marked "moved – left no address – unable to forward."

The Respondent did not file any Notice of Appearance or make any request prior to the January 5, 2006, prehearing conference for a continuance or any other relief. No one appeared at the prehearing conference on January 5, 2006, on behalf of the Respondent.

¹ Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges.

² Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, p. 1.

³ *Id.* at p. 4, ¶ 1.

Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges are hereby taken as true and incorporated 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 have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 45.027.

2. Minn. Stat. § 45.016 authorizes the Commissioner of Commerce to serve orders or other papers required or permitted to be issued relating to the duties and responsibilities entrusted to the Commissioner by several alternative methods, including “first class United States mail, including certified United States mail, or overnight express mail service, postage prepaid and addressed to the party at the party’s last known address.”

3. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant procedural requirements of law and rule.

4. Pursuant to Minn. Rules 1400.6000, a default occurs when a party “fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.”

5. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

6. By allowing a client to enter into a purchase agreement prior to the cancellation of a prior purchase agreement, the Respondent engaged in a fraudulent, deceptive, or dishonest practice and has been shown to be incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 82.35, subd. 1(b) and (f).

7. By failing to respond to the Department’s investigation of a complaint stemming from the above incident and by failing to appear before the Department as ordered, the Respondent violated Minn. Stat. § 45.027, subd. 1a.

8. The Respondent’s real estate broker’s license is subject to discipline under Minn. Stat. § 45.027, subd. 7, as a result of these violations, and the Respondent is subject to appropriate civil penalties under Minn. Stat. § 45.027, subd. 6. The imposition of sanctions 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 Commerce take appropriate disciplinary action against the real estate broker's license of Steven Vonseg and impose appropriate civil penalties.

Dated: January 10, 2006

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.