

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

In the Matter of Real Estate
Salespersons' Licenses of Colleen Pearl
Cole (f/k/a Wallin) and Renee M.
Manning; the Real Estate Licenses of
DMW Properties, also known as DMW
Homestead LLC; Progressive Homes
Services, Inc.; Homestead of Delano LLC;
and Homestead of Brooklyn Park LLC

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

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on November 17, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, 1200 Bremer Tower, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce ("Department"). The Respondents did not appear in person or by counsel. The record closed on November 30, 2009, upon the expiration of the time for Respondent to respond to the Department's written default motion.

STATEMENT OF THE ISSUE

The issue is whether the Department should revoke, suspend, and/or subject to civil penalties the real estate licenses of the Respondents as provided for in Minn. Stat. § 45.027, subd. 6 (2006).

Based on the evidence in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of or the issues set out in the Notice of Administrative Hearing or other pleading may be taken as true or deemed proved without further evidence. The Respondents are in default herein as a result of the

failure to appear at the hearing. Findings 2 through 7 are deemed true and proved without further evidence.¹

2. Respondent Colleen Wallin is currently licensed as a real estate salesperson, license no. 20077580. Respondent Renee Manning was licensed as a real estate salesperson, license terminated as of January 23, 2008. Respondent DMW Properties has a corporate real estate license, license no. 20051400. Respondents Wallin and Manning own and control DMW Properties. Respondents Homestead of Delano LLC and Homestead of Brooklyn Park LLC are not licensed. These companies are also owned and controlled by Wallin and Manning. At all material times, Respondents acted in concert with Joseph Cole and IPM Realty, whose licenses were revoked by the Department in 2006.²

3. In April 2004, Homestead of Brooklyn Park purchased eight acres of property in the City of Brooklyn Park for \$1.7 million, with a \$300,000 earnest money payment. In May 2005, Homestead of Brooklyn Park entered into a \$19 million construction loan with Dougherty Funding, LLC, a portion of which was apparently used to pay off the remaining debt with S&T Development. In spring 2004, Respondents began soliciting investors for senior housing projects at the Brooklyn Park location and also in Delano, Minnesota. One letter generated by DMW Properties indicated that 107 investors had invested \$6,000 each. Some of the funds obtained were intended to be applied to the sale of condominium units. Other funds were raised for investment purposes and were not strictly in connection with the sale of condominium units. The funds thus constitute investment contracts and are securities pursuant to Minn. Stat. § 80A.15 (2006). The investment opportunities offered by the Respondents were not registered as securities with the Department.³

4. Numerous other investors paid what were intended to be the full amount to purchase condominium units. Those investors are summarized as follows:

Name of Investor	Amount Invested
Eileen Nygard	135,000
Richard and Vivian Gwin	\$540,000
Ron and Sandy Stone	\$135,000
Scott and Patty Olson	\$270,000
Tim Johnson	\$270,000

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

² *Id.*

³ *Id.*

Kaufman/Cole/Nissi	\$135,000
Dan Randunz	\$135,000
Eric Ostigaard	\$135,000
Jim Gillen	\$135,000
Peter Skupeko	\$135,000
David Johnson	\$270,000
Total	\$2,295,000

Numerous purchase agreements, however, were fraudulent because they listed non-existent units for purchase.⁴

5. The Respondents failed to complete the condominium development project and defaulted on their loan with Dougherty Funding in Spring 2007, at which point Dougherty Funding foreclosed on the property. None of the investors have had their monies refunded nor have any of the purchasers had any interest in any of the units recorded.⁵

6. Another complainant, L-Car-LLC of Bradenton, Florida, invested \$145,000 in Homestead of Delano LLC. DMW Properties also entered property management contracts with 2H Properties of Coon Rapids, Minnesota, and Crystal Corporation of Manassas, Virginia, and failed to fulfill its obligations on these property management contracts. DMW Properties has ceased operations, is insolvent and no longer conducting operations.⁶

7. On December 19, 2007, the Department issued an Order to Appear to Respondents. Respondents failed to appear at the Department as ordered.⁷

8. On December 17, 2008, the Department issued an Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, requiring Respondents to appear before an Administrative Law Judge for a Prehearing Conference on February 6, 2009. None of the correspondence sent to Respondent was returned as undeliverable. Respondent Progressive Home Services, Inc., failed to attend the Prehearing Conference or notify the Department or the Administrative Law Judge that it would be unable to attend.⁸

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* December 17, 2009, Affidavit of Service by First Class Mail of Jean-Ann Gates.

9. Respondent Progressive Home Services, Inc., failed to respond to the Department's February 10, 2009, Motion for a Default Order, which was mailed to its last known address and not returned.⁹

10. On February 13, 2009, June 17, 2009, and September 25, 2009, Prehearing Orders and Orders for Continued Hearing ("Orders") were sent via first class mail to Respondents, the last of which set the date of the hearing for November 17, 2009, all by agreement of the parties not in default.¹⁰ These were sent to the last known addresses of Respondents on file with the Department and the Administrative Law Judge. None were returned as undeliverable.

11. The Third Prehearing Order and Order for Hearing set certain deadlines for discovery, documents and responses, none of which were met by the Respondents.

12. On November 4, 2009, the Department and Respondent Renee M. Manning entered into a Consent Order, wherein Ms. Manning admitted to none of the charges set forth in Findings 2 – 7 herein and Ms. Manning's Real Estate Salesperson's License was retroactively revoked.¹¹

13. On the afternoon of November 16, 2009, Respondent Colleen P. Cole f/k/a Wallin faxed to the Administrative Law Judge a request for another continuance because of her: "severe lack of finances and dealing with a severe illness I was unable to seek council"; and because she "also need the time to summons seven boxes of evidence still in the bankruptcy trustee possession since my chapter 7 Bankruptcy discharge."

14. The Respondents did not appear at the hearing.

15. The Respondents did not request any relief after the hearing.

16. The Notice contained the following informational warning:

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

2. If any party has good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative law Judge at least five days before the prehearing conference. A copy of the request must be served on the other party.

⁹ February 11, 2009, Aff. of Service of J. Gates.

¹⁰ Order for Prehearing Conference and Order for Continued Hearing, Second Prehearing Order and Order for Hearing, Third Prehearing Order and Order for Hearing.

¹¹ Consent Order.

17. Because Respondents Colleen Pearl Cole f/k/a Wallin, DMW Properties, Progressive Home Services, Inc., Homestead of Delano LLC, and Homestead of Brooklyn Park LLC all failed to appear at the hearing, they are in default.

18. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Administrative Hearing or any other pleading may be taken as true and incorporated by reference into these Findings of Fact.

19. On November 20, 2009, the Department served Respondents with its letter motion for default. Respondents did not respond to the Department's motion.

20. The allegations contained in the Notice are deemed to be and are taken as true and correct, and are incorporated as Findings 1 through 9.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Department of Commerce have jurisdiction in this matter based upon Minn. Stat. §§ 14.50, 148.262, 214.03 and 214.10.

2. The Department gave proper notice of the prehearing conference in this matter, and has fulfilled all relevant substantive and procedural requirements of statute and rule. This matter is, therefore, properly before the Department and the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of or the issues set out in the Notice of Administrative Hearing or other pleading may be taken as true or deemed proved without further evidence. The Respondents are in default herein as a result of the failure to appear at the hearing.

4. Minn. R. 1400.7500, regarding the granting of continuances, provides in applicable part:

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the judge and shall be served upon all parties of record and the agency if it is not a party. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. **A request for a continuance filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained . . .** (emphasis added).

5. Respondents' November 16, 2009, request for a fourth continuance was untimely and for reasons that could have been ascertained weeks, if not months, before it was sent.

6. The Respondents have offered for sale unregistered securities in violation of Minn. Stat. § 80A.08 (2006).¹²

7. By failing to return the invested monies, the Respondents violated Minn. Stat. § 82.41, subd. 13(11) (2006).¹³

8. By promising a return on the purchase of real estate, the Respondents violated Minn. Stat. § 82.41, subd. 11 (2006).¹⁴

9. The Respondents have engaged in a fraudulent, deceptive or dishonest practice in violation of Minn. Stat. § 82.35, subd. 1(b) (2006).¹⁵

10. The Respondents have demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 82.35, subd. 1(f) (2006).¹⁶

11. The Respondents have made material misrepresentations in violation of Minn. Stat. § 82.41, subd. 13(9) (2006).¹⁷

12. The Respondents have made false or misleading statements in violation of Minn. Stat. § 82.41, subd. 13(10) (2006).¹⁸

13. By failing to appear as ordered by the Department, the Respondents violated Minn. Stat. § 45.027, subs. 1, 1a and 2 (2006)

14. An order by the Department taking disciplinary action against the Respondents Colleen Pearl Cole f/k/a Wallin and DMW Properties licenses is in the public interest.

15. An order by the Department imposing civil penalties against Respondents Colleen Pearl Cole f/k/a Wallin, DMW Properties, Progressive Home Services, Inc., Homestead of Delano, LLC, and Homestead of Brooklyn Park, LLC is in the public interest.

16. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

¹² Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges.

¹³ Minn. Stat. § 148.265 (2008).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Based upon these Conclusions the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully RECOMMENDS that the Commissioner take such adverse licensure action against and impose such civil penalties on each of the Respondents as may be appropriate under the circumstances.

Dated: December 18, 2009

s/M. Kevin Snell

M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. 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 Glenn Wilson, Commissioner of Commerce, 85th Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, to learn the procedure for filing exceptions or presenting argument.

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.

Under Minn. Stat. § 14.63, 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.