

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

In the Matter of the Residential Real  
Estate Salesperson's License of  
Michael W. Peterson and the  
Unlicensed Property Management  
Activities of Regents Park Investment

**PROTECTIVE ORDER**

This matter is pending before Administrative Law Judge Kathleen D. Sheehy pursuant to a Notice and Order for Prehearing Conference from the Minnesota Department of Commerce. To expedite the discovery process, the parties have stipulated to the issuance of this Protective Order, which governs discovery of data classified as private, confidential, nonpublic or protected nonpublic (collectively "not public") under the Minnesota Government Data Practices Act. See Minn. Stat. Ch. 13 (2008).

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared for the Department; James W. Moen, Wentzell Law Office, PLLC, 2812 Anthony Lane South, Suite 200, St. Anthony, MN 55418, appeared on behalf of the Respondent.

Pursuant to Minn. Stat. § 13.03, subd. 6 (2008), and the files and proceedings herein, the Administrative Law Judge finds that data that is classified as "not public" may be discoverable in this regulatory action and that the benefit to Respondent generally outweighs any harm to the confidentiality interests of the Department in maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. Therefore, in order to assure the proper handling of the data by the parties,

IT IS HEREBY ORDERED:

1. Data that is classified as "not public" under Minn. Stat. Ch. 13, or other applicable law, contained in the Department's investigative/complaint files produced in the course of discovery shall not be disclosed to any persons except as follows:

- a. To the parties in this matter or attorneys representing the parties or their employees assisting counsel in the preparation of the case; and
- b. To witnesses subpoenaed or otherwise called to testify at the hearing.

2. “Not public” data may be used only for purposes of this litigation, including discussion with investigators, employees and witnesses as necessary to prepare for or conduct the hearing, and shall not be disclosed to individuals or for purposes not set forth herein.

3. All persons having access to “not public” data herein shall be informed of the Protective Order and are bound by its terms. Each party bears full responsibility for compliance with this Order by persons to whom they have disclosed “not public” information.

4. The Department shall clearly designate “not public” information to avoid inadvertent disclosure. “Not public” documents shall be kept in a separate file or envelope so marked. The originals and copies of deposition or hearing transcripts, or portions thereof, containing “not public” data shall bear the legend “CONFIDENTIAL - CONTAINS NOT PUBLIC DATA” and shall be maintained in a separate file or envelope. In lieu of segregating documents that contain not public data, the Department may redact the not public data, but it must clearly mark any redacted documents with the legend “NOT PUBLIC DATA REDACTED,” and it must identify the nature of the redacted data.

5. Should any party seek to use the information subject to this Order in a manner inconsistent with this Order, that party shall bring a motion before the Administrative Law Judge, with notice to the other party, requesting permission to use the information in the manner proposed.

6. This Protective Order is general in its application and is designed to expedite the discovery of the Department’s investigative/complaint file to Respondent. By stipulating to this Protective Order, the Department does not waive its right to object to disclosing privileged or other non-discoverable data, or to disclosing data where the benefit to Respondent does not outweigh the harm to the confidentiality interests of the Department in maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. Production of not public data under this paragraph shall be adjudicated upon appropriate motion by any party.

7. Notwithstanding this Protective Order, “[a]ny civil investigative data presented as evidence in court or made part of a court record shall be made public.” Minn. Stat. § 13.39, subd. 3 (2008). In cases involving licensing data, “[t]he entire record concerning a disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action.” Minn. Stat. § 13.41, subd. 5 (2008). Upon appropriate motion by any party, portions of the hearing in this matter may be closed or the hearing record may be sealed or redacted to the extent needed to permit free discussion of data that is otherwise private or confidential.

8. This Protective Order may be modified or amended by agreement of the parties and notice to the Administrative Law Judge, or upon application to the Administrative Law Judge for good cause shown.

9. Nothing in the Order is intended to limit the availability of judicial review of the final order as provided by Minn. Stat. §§ 14.63-.69 (2008).

Dated: July 2, 2010

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge