



**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA REAL ESTATE)	
COMMISSION,)	
Petitioner,)	DOCKET NO.
)	OSAH-GREC-SAN-1504621-60-Teate
)	
v.)	GREC # 12C0261
)	
TINA N. BATTLE,)	
License No. S314642,)	
Respondent.)	


FILED
OSAH
OCT 15 2014

INITIAL DECISION

I. Introduction



Kevin Westray, Legal Assistant

Petitioner, Georgia Real Estate Commission (“Commission”), seeks to impose sanctions against the real estate salespersons license of Respondent, Tina N. Battle, a/k/a Tina N. Mitchell (“Ms. Battle”). An evidentiary hearing took place on September 16, 2014. Based upon the evidence presented at the hearing, it is the initial decision of the undersigned Administrative Law Judge that Ms. Battle’s real estate salespersons license be REVOKED.

II. Findings of Fact

1. Ms. Battle is a licensed real estate salesperson (#S314642) in the State of Georgia. She was first licensed as a real estate salesperson in Georgia on October 30, 2006. From August 13, 2008 through August 16, 2011, Ms. Battle’s real estate salespersons license was affiliated with Brown Associated Brokers, Inc. (“Brown Associated Brokers”) (#H36115), a corporate broker. Jacinth Brown is Brown Associated Brokers’s owner and principal officer. Since July 31, 2013, Ms. Battle’s real estate salespersons license has been affiliates with First United Realty, Inc. (#H60096), a corporate broker. (Testimony of Bess Buckley, Investigator; Testimony of Jacinth Brown; Petitioner’s Exhibits 1 and 4).
2. While Ms. Battle was affiliated with Brown Associated Brokers, she provided real estate brokerage services through her own company, The Battle Group, Inc. Taxation and Real Estate f/k/a Battle Management, Inc. (“the Battle Group”). However, the Battle Group has never been licensed by the Commission. (Testimony of Bess Buckley; Petitioner Exhibits 2 and 3).
3. On or about November 1, 2009, B. Perkins (“Perkins”), owner of real property located at 170 Boulevard SE #H424, Atlanta, Georgia (the “Boulevard Property”), signed an “Exclusive Leasing

Agreement” and an “Exclusive Leasing/Management Agreement for the Boulevard Property. Ms. Battle prepared the agreements on forms provided by Brown Associated Brokers authorizing Brown Associated Brokers to lease and manage the Boulevard Property for a period of at least a year for which Brown Associated Brokers was to receive a commission. Ms. Battle neither notified nor provided a copy of said agreements to Brown Associated Brokers. (Testimony of Jacinth Brown; Petitioner Exhibits 2 and 8).

4. On or about December 10, 2009, M. Davidson signed a lease for the Boulevard Property (the “Davidson Transaction”). Ms. Battle signed the lease as an affiliate of Brown Associated Brokers, the listing broker. Ms. Battle neither notified nor provided a copy of said lease to Brown Associated Brokers. (Testimony of Jacinth Brown; Petitioner Exhibit 8).

5. On or about February 3, 2011, Perkins signed another “Exclusive Leasing Listing Agreement and Exclusive Leasing Management Agreement for the Boulevard Property. Ms. Battle again prepared the agreements that provided for Brown Associated Brokers to lease and manage the Boulevard Property for a period of eighteen months. The agreements provided that Brown Associated Brokers receive a commission for leasing and managing the real property. Ms. Battle did not provide Brown Associated Brokers with a copy of said agreements until June 9, 2011, after Jacinth Brown discovered the listing for the Boulevard Property on GAMLS and made repeated requests for the agreements. (Testimony of Jacinth Brown; Petitioner Exhibit 8).

6. On or about June 17, 2011, W. Cannon signed a lease for the Boulevard Property (the “Cannon Transaction”). Ms. Battle signed said lease as the affiliated licensee of Brown Associated Brokers, the listing broker. Again, Ms. Battle neither notified nor provided a copy of the lease to Brown Associated Brokers. (Testimony of Jacinth Brown; Petitioner Exhibit 8).

7. For the Davidson Transaction and the Cannon Transaction, Ms. Battle collected payments on behalf of Perkins. Ms. Battle deposited the payments into The Battle Group’s business checking account and then deducted the commission due to Brown Associated Brokers before forwarding the remaining balance to Perkins. Ms. Battle never turned over any funds collected to Brown Associated Brokers, including the commission due to Brown Associated Brokers. (Testimony of Jacinth Brown; Petitioner Exhibit 4).

8. Perkins copied Jacinth Brown on an email on August 16, 2011, that Perkins sent to Ms. Battle requesting the status of Perkins’s rent funds. Having received no notification or funds from Ms. Battle, Ms. Brown filed a request for investigation with the Commission on August 18, 2011. The investigation was assigned to Bess Buckley, one of the Commission’s investigators. During the course of the investigation, on or about April 16, 2012, Ms. Buckley requested that Ms. Battle supply the Commission with a copy of all bank statements reflecting deposits and disbursements of rent payments collected since January of 2009. Ms. Battle failed to comply with this request although she did produce bank statements at the hearing that she tendered as exhibits. All such statements are for the Battle Group, an entity unlicensed by the Commission. All deposit and payment transactions for the Davidson Transaction and the Cannon Transaction are reflected in those statements. Further, the statements indicate a routine banking account rather than a trust account in which client funds are

held in escrow prior to disbursement. (Testimony of Jacinth Brown; Testimony of Bess Buckley; Testimony of Tina Battle; Petitioner's Exhibits 4, 8 and 9; Respondent Exhibits 1 through 16).

9. After reviewing its investigator's report, the Commission concluded in its "Matters Asserted" that during and following the Davidson Transaction and the Cannon Transaction; Ms. Battle violated the following statutes and substantive rules and regulations for reasons indicated:

- O.C.G.A. § 43-40-30 (b) by engaging in or conducting business of a licensee through a company for which she did not obtain a license;
- Ga. Comp. R. & Regs. 520-1-.10 (3), by failing to deliver a copy of a document utilized in a real estate transaction to the real estate broker holding her license;
- O.C.G.A. § 43-40-25 (b) (23) and Ga. Comp. R. & Regs. 520-1-.08 (1) (b) by failing to place all cash, checks, or other items of value received in a brokerage capacity into the custody of the broker holding her license as soon after receipt as was practically possible;
- O.C.G.A. § 43-40-25 (b) (3) by failing to account for and remit money coming into her possession which belonged to others;
- O.C.G.A. § 43-40-25 (b) (4) by comingling the money of her principals with her own;
- O.C.G.A. § 43-40-25 (b) (8) by receiving a commission or other valuable consideration from someone other than the broker holding her license without the consent of that broker; and
- O.C.G.A. § 43-40-25 (b) (27), Ga. Comp. R. & Regs. 520-1-.10 (4), and Ga. Comp. R. & Regs. 520-1-.08 (5) (c) by failing to keep for a period of three years a true and correct copy of all documents relating to real estate transactions or failed to produce such documents at the reasonable request of the Commission or its agent for their inspection.

(Matters Asserted 9 through 15).

10. The Commission concluded that Ms. Battle's actions: (1) demonstrate incompetence to act as a real estate licensee as required to safeguard public interest and that her conduct constituted dishonest dealing in violation of O.C.G.A. § 43-40-25 (b) (25); (2) that Ms. Battle does not bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a real estate licensee as required to safeguard public interest in violation of O.C.G.A. § 43-40-15 (a); and (3) Ms. Battle's actions support the revocation of her real estate salesperson license. (Matters

Asserted 16 through 18).

11. Ms. Battle did not refute the Commission's allegations. Although she argued that she felt she was authorized by her broker to collect her share of commissions as she did, the broker acknowledged no such authorization and Ms. Battle presented no documentation that would support such a conclusion. Ms. Battle's argument that she lacked knowledge of the requirements for licensing her company, The Battle Group, is not persuasive. Although Ms. Battle did produce her records at the hearing, she clearly failed to produce requested records within a reasonable time of the Commission's request. Ms. Battle opines that revocation is too harsh a sanction for her actions. (Testimony of Ms. Battle; Testimony of Bess Buckley).

III. Conclusions of Law

1. A licensee is any person licensed by the Commission as a community association manager, salesperson, associate broker, or broker. O.C.G.A. § 43-40-1 (5). A salesperson is any person who acts on behalf of a real estate broker. O.C.G.A. § 43-40-1 (10). In part, the term "broker" includes any person who for a fee, commission, or other valuable consideration "collects rents, assessments, or other trust funds or attempts to collect rents, assessments, or other trust funds." O.C.G.A. § 43-40-1 (2) (C).

2. Any person who acts as a broker by collecting rents, assessments, or other trust fund or attempts to collect rents, assessments, or other trust funds as indicated in O.C.G.A. § 43-40-1 (2) (C), shall be deemed a licensee within the meaning of Title 43, Chapter 40. O.C.G.A. § 43-40-30 (a). Even a single such act without a license is a statutory violation. O.C.G.A. § 43-40-30 (a) and (b). As applied, Ms. Battle committed multiple such violations.

3. Any licensee who does not bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in a manner that safeguards public interest is subject to sanctions. O.C.G.A. § 43-40-15 (a) and (b). Whenever a licensee is determined to have violated the rules and regulations of the Commission, the Commission is authorized to impose various sanctions such as revocation, suspension, reprimands, or monetary assessment. O.C.G.A. § 43-40-25 (a). The Commission may impose any permitted sanction if the licensee violates any of the provisions of O.C.G.A. Chapter 43-40 and its attendant rules and regulations. O.C.G.A. § 43-40-25 (d). As applied, the record supports a conclusion that Ms. Battle violated all statutes and substantive rules and regulations cited by the Commission in its Matters Asserted. More specifically,

- Ms. Battle violated O.C.G.A. § 43-40-30 (b) by engaging in or conducting business of a licensee through the Battle Group, a company for which she did not obtain a license;
- Ms. Battle violated Ga. Comp. R. & Regs. 520-1-.10 (3), by failing to deliver copies of documents utilized in a real estate transactions to Brown Associated Brokers, the real estate broker holding her license;

- Ms. Battle violated O.C.G.A. § 43-40-25 (b) (23) and Ga. Comp. R. & Regs. 520-1-.08 (1) (b) by failing to place all cash, checks, or other items of value received in a brokerage capacity into the custody of Brown Associated Brokers, the broker holding her license, as soon after receipt as was practically possible;
- Ms. Battle violated O.C.G.A. § 43-40-25 (b) (3) by failing to account for and remit money coming into her possession, which belonged to others;
- Ms. Battle violated O.C.G.A. § 43-40-25 (b) (4) by comingling the money of her principals with her own;
- Ms. Battle violated O.C.G.A. § 43-40-25 (b) (8) by receiving a commission or other valuable consideration from someone other than Brown Associated Brokers, the broker holding her license, without the consent of that broker; and
- Ms. Battle violated O.C.G.A. § 43-40-25 (b) (27), Ga. Comp. R. & Regs. 520-1-.10 (4), and Ga. Comp. R. & Regs. 520-1-.08 (5) (c) by failing to produce true and correct copy of all documents maintained for three years relating to real estate transactions at the reasonable request of the Commission or its agent for their inspection.

The Commission's conclusions that Ms. Battle lacks the honesty, trustworthiness, integrity, and competence to transact the business of a licensee in a manner that safeguards public interest is supported by the record. Its conclusion that revocation is the appropriate sanction is entirely reasonable under circumstances presented.

4. An agency bears the initial burden of proof except that a licensee has such a burden regarding any affirmative defenses raised. Ga. Comp. R. & Regs. 616-1-2-.07 (1) (a). The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The Commission met its burden with evidence showing that Ms. Battle violated all statutes and substantive rules identified. Ms. Battle failed to refute that evidence.

IV. Decision

For reasons indicated above, Ms. Battle violated multiple statutory and substantive rules provisions clearly demonstrating her incompetence to conduct the business of a licensee in a manner that safeguards public interest. Accordingly, Ms. Battle's real estate salesperson's license is **REVOKED**.

SO ORDERED, this 10th day of October 2014.


 Steven W. Teate
 Administrative Law Judge