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12-16-2010

TENNESSEE DEPARTMENT OF COMMERCE & INSURANCE, Petitioner, v. LORI D. BARLOW, Respondent.

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BEFORE THE TENNESSEE REAL ESTATE COMMISSION

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF COMMERCE & INSURANCE,** ***Petitioner,*** ***v.*** **LORI D. BARLOW**, ***Respondent.***	**DOCKET NO: 12.18-109380A**

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on December 16, 2010, before Lynn M. England, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division (APD), to sit on behalf of the Tennessee Real Estate Commission. The Petitioner, the Tennessee Department of Commerce and Insurance, Division of Regulatory Boards, was represented by Assistant General Counsel Robyn Lynne Ryan. The Respondent did not appear and was not represented by counsel.

ENTRY OF DEFAULT

Pursuant to TENN. CODE ANN. §§ 4-5-307 and 62-13-313(b), on September 16, 2010, the Petitioner filed a NOTICE OF HEARING AND CHARGES. The Respondent failed to appear for the hearing. Based upon the Respondent's failure to appear for the hearing on December 16, 2010, the Petitioner moved for a default pursuant to TENN. CODE ANN. § 4-5-309.

In support of the motion for default, the Petitioner presented evidence demonstrating that attempts were made to serve the Respondent with the NOTICE OF HEARING AND CHARGES. Service attempts were made at the Respondent's last known business address as found in the Regulatory Board System (RBS), where this address was recorded based on information provided by the Respondent. Pursuant to TENN. CODE ANN. § 62-13-309, the Respondent is required to maintain a current business address with the Commission. The certified mail along with the green return receipt card that accompanied the NOTICE OF HEARING AND CHARGES was returned signed but the signature was not that of the Respondent. (HEARING

EX. 1). Further evidence presented showed additional mail attempts by the Tennessee Real Estate Commission and telephone calls to the telephone number listed with RBS by Mandy Spencer, paralegal for the Tennessee Regulatory Boards, Tennessee Real Estate Commission. Ms. Spencer did speak with Respondent by telephone and notified her of the hearing. Therefore, Respondent did receive actual notice of the hearing.

It is determined that the Petitioner made sufficient attempts of service of the NOTICE OF HEARING AND CHARGES in compliance with RULE 1360–04–01–.06 of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360–4–01–.06 (June 2004 (Revised)). The Respondent did not appear for the hearing. Accordingly, pursuant to TENN. CODE ANN. § 4-5-309 and RULE 1360–04–01–.15, the Respondent is held in Default for failure to appear at the hearing. Pursuant to RULE 1360–04–01–.15(2)(b), the hearing was held as an uncontested hearing.

FINDINGS OF FACT

1. Respondent was at all times pertinent hereto licensed as a real estate agent by the Tennessee Real Estate Commission.

2. Respondent, between January 1, 2009, and March 25, 2009, failed to maintain an error and omissions (E&O) insurance policy.

ANALYSIS *and* CONCLUSIONS OF LAW

1. Respondent's acts and conduct, as found above in the FINDINGS OF FACT, are in violation of TENN. CODE ANN. § 62-13-112(a), which requires:

> (a) Each licensee who is licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all activities contemplated under this chapter. The requirements of this section shall not apply to acquisition agents.

Respondent's violation of TENN. CODE ANN. § 62-13-112 constitutes grounds for the discipline of the Respondent pursuant to TENN. CODE ANN. § 62-13-312; the imposition of civil penalties pursuant to TENN. CODE ANN. § 56-1-308(a) and RULE 1260–02–.32 of the Rules of the Tennessee Real Estate Commission, TENN. COMP. R. & REGS. ch. 1260–02–.32 (June 2010

(Revised)); and the imposition of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and RULE 0780–05–11–.01 of the Rules of the Department of Commerce and Insurance, Division of Regulatory Boards, TENN. COMP. R. & REGS. ch. 0780–05–11–.01 (Jan. 2005 (Revised)).

2. The Respondent's acts and conduct, as found above in the FINDINGS OF FACT, are in violation of RULE 1260–1–.15, which provides:

> It shall be a requirement for an active licensee to carry errors and omissions insurance to cover all activities contemplated under the Tennessee Real Estate Broker License Act unless the Commission is unable to obtain coverage pursuant to T.C.A. § 62-13-112(g) which would void the requirement of coverage under the applicable contract period. . . .

The Respondent's violation of RULE 1260–1–.15 constitutes grounds for the discipline of the Respondent pursuant to TENN. CODE ANN. § 62-13-312; the imposition of civil penalties pursuant to TENN. CODE ANN. § 56-1-308(a) and RULE 1260–02–.32; and the imposition of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and RULE 0780–05–11–.01.

It is hereby **ORDERED** that the Respondent shall pay a civil penalty in the amount of **$300.00**, which is the amount requested by the Petitioner.

It is further **ORDERED** that the Respondent shall pay the actual costs of the investigation, prosecution and hearing of this matter including the costs billed by APD and by the court reporter.

The Respondent shall make the payment for the penalty in addition to the assessed costs to the Tennessee Real Estate Commission, which is located at 500 James Robertson Parkway, Nashville, Tennessee 37243-1151.

POLICY REASONS FOR DECISION

This ORDER is issued to protect the health, safety and welfare of the citizens of the State of Tennessee.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the ____ day of _____ 2010.

_____
LYNN M. ENGLAND
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2011.

_____
THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE