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February 2016

Martina Bohanan vs. COMMERCE AND INSURANCE

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State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

February 17, 2016

Commissioner Julie Mix McPeak
TN Dept. of Commerce & Insurance
5th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243-5065

Shilina Brown, Esq.
Dept of Commerce & Insurance
12th Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN 37243

Martina Bohanan
1035 Murphy Road
Sevierville, Tennessee 37862

Martina Bohanan
1805 Pine Haven Way
New Market, Tennessee 37820

RE: In the Matter of: Martina Bohanan Docket No. 12.18-133504J

Enclosed is an *Notice of Default and Initial Order* rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/llp
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

DOCKET NO.: 12.18-133504J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **March 3, 2016.**

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472.** PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

BEFORE THE TENNESSEE REAL ESTATE COMMISSION

IN THE MATTER OF:

MARTINA BOHANAN,

Respondent.

Docket No: 12.18-133504J

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on December 16, 2015, before Leonard Pogue, Administrative Judge, sitting for the Tennessee Real Estate Commission in Nashville, Tennessee. Shilina Brown, Assistant General Counsel, Department of Commerce and Insurance, represented the State. Respondent, Martina Bohanan, was not present at the hearing nor did an attorney appear on her behalf. The subject of this hearing was the State's Notice of Hearing and Charges requesting civil penalties against the Respondent for violations of T.C.A. § 62-4-101, *et seq.*

ORDER OF DEFAULT

The State moved that a default be entered against Respondent for failure to participate in the hearing after due notice. The State provided proof that service, at one of the addresses listed for Respondent, of the notice of hearing scheduled for November 12, 2015 was made on October 21, 2015. On October 26, 2015, a representative of the Department spoke with Respondent and Respondent acknowledged receipt of the notice of hearing. The hearing date was continued to December 16, 2015 and Respondent was sent notification of the continued hearing date. Further, the State telephoned Respondent (at the same number as on October 26, 2015) on two occasions the week before the December 16, 2015 hearing advising of the December 16, 2015 hearing and

Respondent did not answer the calls nor return the calls. It appearing that proper notice was sent to Respondent, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309(a). *See also* RULE 1360-4-1-.15(1) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. Ch. 1360-4-1 (June 2004 (Revised)).

INITIAL ORDER

After consideration of the argument of counsel and the record in this matter, it is determined that the **Respondent should be assessed a civil penalty of eight thousand dollars (\$8,000.00) and costs of this action.** This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent does not currently hold and has never held any license issued by the Tennessee Real Estate Commission for vacation lodging services or otherwise. Tip Top Cleaning Service, operated by Respondent, is also unlicensed with the Tennessee Real Estate Commission for vacation lodging services or otherwise.
2. The Commission received two complaints regarding Respondent attempting to or providing unlicensed vacation lodging services.
3. Lynda Maides provides licensed vacation lodging services. Ms. Maides retained Respondent to provide cleaning services for some of the units rented by Ms. Maides' company. Ms. Maides testified that she later discovered (the end of 2013) that Respondent attempted to undertake the management of one of the rental homes formerly handled by Ms. Maides' vacation lodging service and solicited another of Ms. Maides' owners regarding managing overnight rentals of that individual's property. Ms. Maides estimates that she lost 4-5 bookings because of Respondent's actions.

4. An undated advertisement for Tip Top Cleaning Service & Rental Service states, in part, that it manages all sizes of overnight rentals, advertises cabins and rental units online, and its fee covers all expenses to maximize income for the owner. The Facebook page for Tip Top Cleaning Service stated in 2013-14 that the company has a rental program and solicits overnight rentals.

5. In 2013, Respondent approached Tami Conti regarding rental management of Ms. Conti's property, Sunset Cove, in Dandridge, Tennessee. Respondent told Ms. Conti that Respondent was licensed and handled other rental property in the area. Ms. Conti agreed to allow Respondent to provide rental services for Sunset Cove in October, 2013.

6. Soon thereafter, Respondent failed to provide Ms. Conti with monthly rental payments for October, November, December, 2013 and January, 2014. Respondent refused to tell Ms. Conti where future security deposits were banked. On some occasions Respondent double booked the property.

7. Ms. Conti honored the rentals made by Respondent and returned the deposits although Ms. Conti never received the deposits from Respondent. Ultimately, Ms. Conti, due to Respondent's acts, lost \$1,800.00 in rental payments, \$500.00 in linens, and \$5,206.50 in security deposits, which was collected from renters for future bookings.

CONCLUSIONS OF LAW

1. TENN. CODE ANN. § 62-13-104, states in relevant part:
62-13-104. Exemptions -- Firm licenses for vacation lodging services.

(b)(1) As used in this section, unless the context otherwise requires:

(C) "Vacation lodging service" means any person that engages in the business of providing the services of management, marketing, booking and rental of residential units owned by others as sleeping accommodations furnished for pay to transients or travelers staying no more than fourteen (14) days.

(b)(2) Each vacation lodging service shall be required to have a vacation lodging service firm license but shall not be required to have a licensed real estate broker supervising the business. The application for the license shall be filed in the office of the real estate commission on forms that the commission may prescribe and shall be accompanied by a fee for the issuance of the license as specified in § 62-13-308.

(b)(3)(A) Vacation lodging service firm licenses for vacation lodging services shall be granted to all applicants who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of providing vacation lodging services in a manner to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin, handicap or familial status.

(b)(3)(B)(i) Upon application for a firm license for a vacation lodging service and each renewal of the license, the firm shall designate one (1) individual from that firm who shall be individually licensed as a designated agent through the Tennessee real estate commission. Such designated agent shall be responsible for the completion of training programs to be taught by an individual in the vacation lodging services business or other person who meets qualifications set by the Tennessee real estate commission. Such training programs shall consist of instruction in the fundamentals of this subsection (b) and related topics. No person shall be licensed by the commission as a designated agent until such person completes the required eight-hour introductory course.

(ii) Every two (2) years, as a requisite for the reissuance of a firm license for a vacation lodging service and for reissuance of the designated agent license, the firm shall furnish certification that the designated agent for the firm has completed eight (8) classroom hours in training programs approved by the commission.

(iii) No examination shall be required for the issuance or renewal of a firm license for a vacation lodging service.

(b)(3)(C) Upon application for a firm license for a vacation lodging service and each renewal of the license, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission. Every firm shall, in accordance with the rules promulgated by the commission under § 62-13-203, keep an escrow or trustee account of funds deposited with the firm relating to vacation lodging services. The vacation lodging service shall

maintain for a period of at least three (3) years accurate records of the account showing:

- (i) The depositor of the funds;
- (ii) The date of deposit;
- (iii) The payee of the funds; and
- (iv) Other pertinent information that the commission may require.

(b)(5) Each vacation lodging service shall have an office at a fixed location with adequate facilities located to conform with zoning laws and ordinances. Within ten (10) days after any change of location of the office, the vacation lodging service shall notify the commission in writing of the new business address.

2. TENN. COMP. R. & REGS. 1260-02--32, CIVIL PENALTIES, provides that the Commission may, in a lawful proceeding against any person required to be licensed by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission. TENN. CODE ANN. § 56-16-308 provides that the penalty may not exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to the Commission. In determining the amount of a civil penalty, the Commission may consider such factors as the following:

- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
- (b) the circumstances leading to the violation;
- (c) the severity of the violation and the risk of harm to the public;
- (d) the economic benefits gained by the violator as a result of non-compliance; and
- (e) the interest of the public.

3. TENN. CODE ANN. § 56-1-311(a) provides as follows:

ASSESSMENT OF INVESTIGATORY AND HEARING COSTS – RULES AND REGULATIONS. -

(a) Notwithstanding any contrary law, the division of regulatory boards or any board, commission or agency attached to the division of regulatory boards may assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and in which sanctions of any kind are imposed on any person required to be licensed, permitted registered or otherwise authorized by the division or respective board, commission or agency. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges and any other persons involved in the investigation, prosecution and hearing of the action.

4. TENN. COMP. R. & REGS. 0780-5-11-.01(1) provides as follows:

0780-5-11-.01 ASSESSMENT OF INVESTIGATORY AND HEARING COSTS. -

(1) The Division of Regulatory Boards (“Division”) or any board, commission or agency attached thereto is authorized to assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Tenn. Code Ann. Title 4, Chapter 5, Part 3 in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Division or any board, commission or agency attached thereto.

5. Respondent’s acts and conduct constitute a violation of TENN. CODE ANN. § 62-13-104 and subject Respondent to an assessment of civil penalties and costs. It is determined that Respondent shall be assessed a civil penalty of eight thousand dollars (\$8,000.00) and costs.


It is therefore **ORDERED** that Respondent be assessed a civil penalty of eight thousand dollars (\$8,000.00) and costs of this action.

This Initial Order entered this 17th day of February, 2016.



Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, this 17th day of February, 2016.



J. Richard Collier, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.