

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE, BLDG. 68-1  
CRANSTON, RHODE ISLAND 02920

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ELLIOT F. DAVIS,  
Complainant,

v.

GILBERT F. ROY, JR.,  
Respondent.

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DBR No.: 06-L-0146

**DECISION**

Hearing Officer: Michael P. Jolin, Esq.

Hearing Held: January 23, 2007

Appearances:

For Complainant: Elliot F. Davis, *Pro se*

For Respondent: Gilbert F. Roy, *Pro se*

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation (“Department”) as the result of a complaint filed by Elliot Davis (“Complainant”) against Gilbert Roy (“Respondent”), a real estate broker licensee. Based on the evidence presented at hearing and the applicable law, Complainant has failed to preponderate any basis for sanctioning Respondent’s license pursuant to R.I. Gen. Laws § 5-20.5-14(a).

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 5-20.5-1, *et seq.*, 42-14-1, *et seq.*, and 42-35-1, *et seq.*

### III. BACKGROUND AND ISSUES PRESENTED

Respondent is licensed as a real estate broker pursuant to R.I. Gen. Laws § 5-20.5-1, *et seq.* Complainant engaged Respondent to sell his house at 40 Becker Avenue, East Providence, Rhode Island. The parties executed a listing agreement outlining Respondent's representation and compensation on October 5, 2005.

In his initial complaint ("Complaint"), filed on January 30, 2006, Complainant makes two (2) allegations. First, he averred that Respondent failed to provide him a copy of the listing agreement at the time of its execution. Complainant states that he did not receive a copy of it until twenty-seven (27) days after he signed it. Second, he contends that Respondent failed to honor an oral agreement between them that concerned the sale of two appliances located in the house Complainant was selling. Complainant asserts that he wanted to keep them for another property but allowed them to be sold with the house after Respondent and the buyer's agent, Maureen Gustafson ("Gustafson"), each offered to give Complainant a \$200 credit from the commission, for a total of \$400. According to Complainant, Gustafson wrote a check to Respondent in the amount of \$200 but Respondent failed to pass along that money to him and never gave him his share of the \$400 credit. As a result, Complainant in his letter to the Department dated January 29, 2006 claims that Respondent did not act in Complainant's best interest and "conspired with the other agent, never intending to pay me four hundred dollars from the start."

Respondent provided a response to the Complaint, dated February 28, 2006. In it, he asserts that Complainant signed the purchase and sale agreement ("P&S"), which included the appliances, and initialed each page. Respondent claims that Complainant made no mention of his intention to keep the appliances before then. Moreover, after he procured the buyers and had

them sign the P&S for the full asking price, Respondent contends that Complainant refused to sign it unless Respondent lowered his commission. Respondent would not lower it so Complainant went to Respondent's principal broker and entered into an agreement with him to reduce the commission on November 8, 2005. Later that day, when Complainant signed the P&S, Respondent avers that he made it clear that he would not provide Complainant a credit for the appliances because of the reduced commission.

The Department received Complainant's rebuttal to Respondent's response on March 24, 2006. Complainant disputes that the appliances were part of the sale price for the Becker Avenue property. He maintains that Respondent and the buyer's agent agreed to credit him \$200 each for them for a total of \$400. Complainant also states that his wife, a real estate broker licensed by the Department, negotiated the reduction of the commission with Respondent's principal broker and that he did not participate in those discussions. Even so, Complainant confirmed that his wife was negotiating this commission reduction on his behalf.

An order appointing hearing officer was issued on August 9, 2006 and a pre-hearing conference was held on September 28, 2006. At the pre-hearing conference, the issues were clarified and the parties made an initial agreement to resolve the matter by having Respondent's former principal broker pay \$200 to Complainant. A status conference was held on October 19, 2006, where it was revealed that no settlement payment had been made to Complainant because the agreement had fallen through. Respondent stated that he would not personally pay the \$200 in order to settle the case and invoked his right to a hearing on the merits, which was held on January 23, 2007.

The issues are further clarified here and presented as follows:

A. Whether or not Respondent failed to furnish a copy of the listing agreement at the time of its execution in violation of R.I. Gen. Laws § 5-20.5-14(a)(9), and if so, whether or not such violation warrants an administrative sanction against his license;

B. Whether or not Respondent engaged in any conduct in a real estate transaction that demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in violation of R.I. Gen. Laws § 5-20.5-14(a)(20) and if so, whether or not such violation warrants an administrative sanction against his license;

C. Whether or not Respondent failed to adhere to the laws of agency governing fiduciary relationships in violation of Rule 20(A) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons*, and if so, whether or not such violation warrants an administrative sanction against his license;<sup>1</sup> and

D. Whether or not Complainant’s own conduct was improper, and if so, whether or not this conduct causes Complainant’s claim to fail under the doctrine of “unclean hands.”

**IV. MATERIAL FACTS AND TESTIMONY**

**A. Complainant’s Case in Chief**

Complainant provided the only testimony on his behalf. In so doing, he explained that he listed his property at 40 Becker Avenue, East Providence, Rhode Island with his wife, Beatriz Davis, a licensed real estate broker. Mrs. Davis, in turn, retained the services of Full Service Realty to assist with selling the home. On October 10, 2005, Complainant signed an “exclusive right to sell” listing agreement with Respondent, a licensed real estate broker affiliated with Full Service Realty. Mrs. Davis did not sign the listing agreement.

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<sup>1</sup> R.I. Gen. Laws § 5-20.5-14(a)(15) authorizes the Department to suspend or revoke a license where a licensee violates any rule or regulation promulgated by the [Real Estate C]ommission or the Department.

When Complainant entered into the listing agreement with Respondent, he testified that he clearly communicated his intention that the stove and the refrigerator would not be part of the sale. Complainant said he wanted to keep those appliances because he believed they were in good condition and could be used at another property. Nonetheless, he stated that Respondent advised him to leave them in the P&S as a “bargaining chip” that could be used as leverage in order to seek a better price on the property. Complainant testified that he acquiesced and allowed the appliances to be discussed but continued to insist that they not be included in the final sale unless the prospective buyer agreed to purchase them separately.

Complainant also alleged in his testimony that Respondent took all of the copies of the listing agreement back to his office after they signed the agreement and failed to leave him a copy. Complainant averred that Mrs. Davis called Respondent to get a copy of the listing agreement but that Respondent did not provide one until several weeks later. Additionally, Complainant testified that when his wife called about getting a copy of the listing agreement, she also requested that Respondent lower the 4% commission but Respondent refused. As a result, Complainant stated that Mrs. Davis contacted Lee Abbott, Respondent’s principal broker at Full Service Realty. He testified that Abbott agreed to lower the commission to 2%. Complainant went to the office of Full Service Realty to sign the new commission agreement.

Complainant also testified that the buyers and the closing attorney refused to pay for the stove and refrigerator separately at the closing because both appliances had been included in the P&S. Complainant alleged that, at that point, Respondent and the buyers’ agent, Maureen Gustafson, negotiated a deal in which Respondent and Gustafson would each pay the Complainant a \$200 credit in exchange for leaving the appliances with the home. Complainant said he agreed to those terms and left the appliances at the property. However, Complainant

contends that Respondent subsequently refused to pay him the credit for the appliances after learning that his commission had been reduced. Complainant denied that he agreed to forego the appliance credit after the commission was lowered.

**B. Respondent's Case in Chief**

Respondent presented the testimony of two witnesses at the hearing. First, he testified on his own behalf regarding his representation of Complainant as his seller's agent. Second, he presented the testimony of Lee Abbott ("Abbott"), Respondent's principal broker at the time that these events transpired.

1. Testimony of the Respondent, Gilbert Roy

Respondent testified that Complainant contacted his principal broker about selling his home at 40 Becker Avenue in East Providence. The principal broker assigned Respondent to represent Complainant. He and Complainant signed an exclusive listing agreement for the sale of the property on October 10, 2005. The listing agreement stipulated that Respondent's brokerage would receive a 4% commission. Respondent did not know that Mrs. Davis would also be a broker for the property and would list it under her brokerage as well.

After the listing agreement was signed, Respondent testified that the only interaction he had with Mrs. Davis was in a telephone conversation after Respondent had procured a prospective buyer. According to Respondent, Mrs. Davis first claimed that there was no listing agreement between Respondent and Complainant. Respondent said that Mrs. Davis then admitted knowing about the listing agreement but thought that the 4% commission was too high for the services being provided. Although Respondent stated that he had shown the property on numerous occasions, neither Mrs. Davis nor Complainant had raised any concern about the commission until Respondent found a buyer that was interested in purchasing the property.

Respondent admitted that Mrs. Davis expressed her intent to exclude the refrigerator and stove from the sale when the listing agreement was signed on October 10, 2005, but Respondent recommended that they should offer them as part of the sale and use them for negotiation purposes. When the P&S was drafted, the appliances were included as part of the sale. After the buyers signed this P&S, Complainant refused to sign it unless he received extra compensation for the appliances. To remedy the situation, Respondent testified that he and Gustafson, the buyers' broker, each agreed to give Complainant a \$200 credit from the commission to leave the appliances in the house. Respondent stated that Complainant was satisfied with the \$400 and signed the P&S.

Although the renegotiation of the commission with Abbott occurred before the closing on the property, Respondent testified that he did not find out about it until after the closing. He believed that Complainant obtained the lower commission unfairly and betrayed him. After losing part of his commission earnings, Respondent testified that he felt that he no longer was obligated to provide the \$200 credit for the appliances.

## 2. The Testimony of Lee Abbott

Abbott is a licensed real estate broker and was the Respondent's principal broker at Full Service Realty during the period at issue. He testified that at some point in October 2005 he received a call from Complainant seeking a listing agent for his property at 40 Becker Avenue. Abbott claims to have spoken directly with Complainant about the potential listing and not with Mrs. Davis. He assigned Respondent as the listing agent for Complainant's Becker Avenue property because he handled properties in Pawtucket and East Providence for the brokerage.

Abbott did not recall talking to Mrs. Davis during the initial contact. He also did not remember any subsequent conversations with Mrs. Davis. Contrary to the Complainant's

testimony, Abbott testified that he did not recall Mrs. Davis negotiating the reduced commission. It was his recollection that he only dealt with Complainant on the issue. In addition to having no memory of Mrs. Davis's involvement, Abbott did not recall any mention of excluding the appliances from the sale.

Abbott also testified as to his present relationship with Respondent. He explained that they were once co-workers but have since parted ways. As such, he felt no particular loyalty to Respondent, but expressed strong negative feelings about Complainant. Abbott characterized Complainant as a "terrorist" and accused him of acting in bad faith regarding the listing agreement.

### **C. Documentary Evidence**

Eleven documents were presented at hearing and were admitted as full exhibits without objection. Exhibit 1 is the real estate complaint form submitted by Complainant against the Respondent on January 20, 2006.

Exhibit 2 is a letter dated January 29, 2006 that accompanied the complaint form.

Exhibit 3 is a letter, dated January 16, 2006, from Complainant to Respondent, in which Complainant demanded the \$400 he believed Respondent owed him.

Exhibit 4 is Respondent's rebuttal to the complaint, dated February 28, 2006.

Exhibit 5 is Complainant's letter, dated March 22, 2006, sent to the Department in response to Respondent's rebuttal.

Exhibit 6 is the exclusive listing agreement allowing Respondent and Full Service Realty to represent Complainant in the sale of his property at 40 Becker Avenue. It set the initial sales price at \$244,900 and provided for a total commission of 4% for Respondent or, if there was a



buyer's agent involved with the sale, 2% to Respondent and 2% to the other agent. The form is dated October 10, 2005.

Exhibit 7 is the P&S for the home at 40 Becker Avenue, East Providence, Rhode Island. It indicates that the total purchase price was the initial listing price of \$244,900. Complainant and the buyers initialed every page. The buyers signed and dated this document on November 6, 2005. Complainant signed and dated it two days later on November 8, 2005.

Exhibit 8 is the agreement signed by Complainant and Lee Abbott on November 8, 2005 that reduced the commission from \$9,796 to \$7,500.

Exhibit 9 is the settlement statement for the Becker Avenue property, signed and dated December 20, 2005 by Complainant and the buyers.

Exhibit 10 is the Order Appointing Hearing Officer and Providing Notice of Complaint Hearing, dated August 9, 2006.

Exhibit 11 is a copy of the top page of the listing agreement with the handwritten words, "Received on 11/06/05." Underneath it are the initials of Respondent, "GR."

## **V. STANDARD OF REVIEW FOR AN ADMINISTRATIVE HEARING**

It is well settled that in formal or informal adjudications modeled on the federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 at 759 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* at 763-766; see also, *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases); *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) ("satisfaction by a 'preponderance of the evidence' [is] the recognized burden [of proof] in civil actions"). This means that for each element to be proven, the fact-

finder must believe that the facts asserted by the proponent are more probably true than false. See *Parker*, 238 A.2d at 60. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

Here, the proponent of this action is Complainant. As such, he bears the burden for establishing why it is more likely than not that Respondent conducted himself in a manner that violated the statutes and regulations under which he holds his real estate broker's license.

## **VI. DISCUSSION**

R.I. Gen. Laws § 5-20.5-6(b) provides that the Department, after a due and proper hearing, may suspend, revoke, or refuse to renew any license upon proof that the holder of the license has violated the statutes pertaining to real estate licensure or any rule or regulation promulgated thereunder. In addition, R.I. Gen. Laws § 5-20.5-14(b) authorizes the Department to levy an administrative penalty not exceeding one thousand dollars (\$1,000) for any violation of these laws.

The facts alleged in the Complaint and during the hearing, if preponderated, implicate three (3) statutory provisions of the Rhode Island laws and rules pertaining to real estate licensure. Each will be addressed in turn.

The first statutory provision to be discussed is R.I. Gen. Laws § 5-20.5-14(a)(9), which provides that the Department may sanction a licensee for “[f]ailing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories of the contract at the time of execution.” Complainant alleges that Respondent did not leave a seller's copy of the listing agreement with Complainant after they signed the document. Respondent

denies this allegation and states unequivocally that he did leave Complainant a copy of the listing agreement at the time the agreement was signed.

The conflicting testimony of the two parties provides the only evidence on the record pertaining to this possible violation. As such, it is important to scrutinize the behavior of the parties to determine their credibility. In this transaction, Complainant and Mrs. Davis engaged in a pattern of conduct that is troublesome and casts doubt on their account. Whenever it suited them, they seemed willing to undermine the exclusive listing agreement.

For example, Mrs. Davis continued to keep a sign on the property identifying her real estate company as the listing brokerage despite the fact that this conduct violated the terms of the listing agreement. Then, after Respondent found a buyer for the house, Mrs. Davis called Respondent and told him that the commission was too high and threatened to breach the agreement unless he lowered it. After Respondent rebuffed Complainant's demands, Complainant then contacted Respondent's principal broker and successfully obtained a lower commission without Respondent's knowledge. Such behavior raises questions on Complainant's version of the facts and without further evidence supporting his claim, there can be no finding that Respondent violated R.I. Gen. Laws § 5-20.5-14(a)(9).

The second and third statutory provisions that may have been implicated are R.I. Gen. Laws § 5-20.5-14(a)(20) and R.I. Gen. Laws § 5-20.5-14(a)(15). They will be discussed together given their relationship to each other and the mitigating facts presented by Respondent.

Section 5-20.5-14(a)(20) authorizes the Department to suspend or revoke a license where a licensee engaged in any conduct in a real estate transaction that demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. Section 5-20.5-14(a)(15) also authorizes the Department to suspend or revoke a license where a licensee violates any rule or regulation

promulgated by the commission or the Department. In this case, the rule applicable to the facts alleged in the complaint is Rule 20(A) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons*. It provides, in pertinent part:

All Licensees are subject to and shall strictly comply with the laws of agency and the principals governing fiduciary relationships. Thus, in accepting employment as an agent, the Licensee pledges him/herself to protect and promote, as he/she would his own, the interests of the principal he/she has undertaken to represent.

Together, these provisions further the purpose of licensing real estate salespersons and real estate brokers by ensuring professional standards within the real estate business. See R.I. Gen. Laws § 5-20.5-1, *et seq.*, and CLR11; *Gallo v. Smith*, DBR No. 98-L-0058 4/19/00 at 12. The statutory and regulatory duties imposed upon licensees serve to maintain these standards and ensure that the public receives a certain level of service. *Id.* As held in a Department decision,

A [real estate] licensee's honesty, trustworthiness, integrity and reputation affect his or her ability to conduct all real estate transactions fairly. If one of these character traits are [sic] compromised, then the stability and integrity of the transaction is compromised. *D'Orsi v. Santilli*, DBR No. 99-L-0086 (July 18, 2000).

Thus, "[t]he statutory and regulatory scheme of licensing real estate salespersons and brokers ensures a system where consumers can rely on licensed professionals to handle real estate sales in a trustworthy and competent manner." *Altomari v. Clark and Shirley*, DBR No. 01-L-0160 at 24.

In the instant matter, it is undisputed that Respondent owed Complainant a fiduciary duty as the listing agent for the sale of Complainant's home. In addition, § 5-20.5-14(a)(20) requires him to act honestly and in good faith. Here, the record developed may very well support a finding that Respondent violated both of these statutory provisions. However, while there are some inconsistencies with respect to the timelines provided by the parties, there is enough

evidence that mitigates Respondent's refusal to pay the \$200 credit to Complainant and supports the dismissal of the Complaint.

Notwithstanding the conflicting timelines presented by some of the initial correspondence submitted to the Department, the parties did not dispute how the events transpired in their testimony at the hearing. The buyers of Complainant's home signed a P&S that included the refrigerator and stove in the sale on November 6, 2005. At the closing, on November 8, 2005, Complainant objected to the inclusion of the refrigerator and stove in the sale of the home, and refused to go forward with the transaction unless he received additional compensation for them. In order to make the sale happen, Respondent and Gustafson, the buyers' broker, agreed to credit Complainant \$400 for the appliances, with each broker contributing \$200 to the credit. Complainant accepted this deal.

Complainant stated in his Complaint that he only signed the P&S when he was satisfied that he would receive additional compensation for the refrigerator and stove in his oral agreement with Respondent. As a result, Complainant believes that Respondent "acted fraudulently" when he refused to pay \$400 to Complainant for the appliances once the deal closed. While it is not clear if the parties made this oral agreement when Complainant signed the P&S or at the closing, there is no doubt that the parties made this agreement. Additionally, there is no dispute that Respondent failed to uphold his part of the agreement by refusing to pay his share of the credit. Thus, the question to resolve is whether or not Complainant's conduct in this transaction provides a legal defense for Respondent's failure to honor this oral agreement.

First, the evidence presented at hearing makes clear that Respondent did not make the agreement to compensate Complainant for the appliances in bad faith. While there is no dispute that Respondent refused to tender the credit, there was no dispute that he only did so after he

discovered that Complainant had re-negotiated a lower commission rate with Respondent's principal broker and without Respondent's knowledge. From his testimony, it was readily apparent that he had every intention of paying Complainant his \$200 share for the appliances. However, this intention was premised on the knowledge and understanding of the original terms of Respondent's compensation under the listing agreement. When Respondent learned of the deal to lower the commission after the closing, he understandably felt that this unexpected reduction in his commission justified a refusal to pay for the appliances.

Second, there is no evidence to support Complainant's claim that Respondent "did more to serve the interests of the buyers than to serve [his] interest" or otherwise violated the "professional standards within the real estate business." See *Gallo v. Smith*, supra. When representing a seller, a real estate broker owes that client a duty "to secure as large a price as he is able for his principal and to inform his principal of all material facts." *Normandin v. Gauthier*, 2005 R.I. Super. LEXIS 89 (May 27, 2005); see also *Rushton v. Anderson*, 47 R.I. 441, \*\*\* (1926) and *Caswell v. Coy*, 50 R.I. 221, 222 (1929). Respondent accomplished these tasks.

By successfully negotiating a credit for the appliances that allowed the sale to proceed, Respondent acted in accordance with his fiduciary duties to Complainant. In addition, according to Complainant's testimony, Respondent kept Complainant informed of all developments throughout the transaction and, notably, obtained the full listing price for Complainant. If anything, it was Complainant who failed to uphold his part in the relationship by essentially holding the transaction hostage to renegotiate a lower commission. By doing so, Complainant brings "unclean hands" to the complaint he filed against Respondent. As such, Respondent should not be held liable for any potential violation of the laws pertaining to real estate licensure.

The doctrine of unclean hands provides that when a person's own improper conduct is the source or part of the source of his or her claim, he or she is barred from recovery because of this conduct. *Rodrigues v. Santos*, 466 A.2d 306, 311 (R.I. 1983). A court applies this doctrine not for the protection of the parties, but for its own protection. *Mas v. Coca-Cola, Inc.*, 163 F.2d 505, 507 (4th Cir. 1947). In other words, whenever a party who seeks to obtain some legal remedy has violated conscience, good faith, or some other equitable principle, by his own prior conduct, then the court will shut its doors against that person and refuse to acknowledge his or her right or award him or her any remedy. *Id.* at 508. Importantly, it is not only fraud or illegality, but also any unconscientious conduct connected with the controversy in which the complaining party is engaged that will prevent a remedy from being awarded in a forum whose very foundation is good conscience. *Id.*

Here, the conduct of Complainant and his wife precludes a finding against Respondent. They engaged in a consistent pattern of behavior that exhibits an intention to undermine the exclusive listing agreement they had signed with Respondent. With her husband's permission, Mrs. Davis continued to keep a sign identifying her real estate company as the listing brokerage on the property despite the fact that this conduct violated the terms of the listing agreement with Respondent. In addition, after Respondent found a buyer for the house, Mrs. Davis called Respondent and attempted to renegotiate the listing agreement. She argued that the commission to which she and her husband had previously agreed was too high and threatened to breach the listing agreement unless Respondent lowered the commission. When Respondent refused to renegotiate the compensation terms, Complainant went to Respondent's principal broker without Respondent's knowledge and repeated his threat to breach the listing agreement. This last

attempt proved successful. Respondent's principal broker, without consulting Respondent, agreed to accept a lower commission.

"It is fundamental to actions predicated on the theory of deceit that the party claiming deceit present evidence that shows that he or she was induced to act because of his or her reliance upon the alleged false representation." *LaFazia v. Howe*, 575 A.2d 182, 185 (R.I. 1990). The question is not whether the representation is knowingly false, but whether the other party believed it to be true and thus was misled by such a representation into making the agreement. *Id.* In this case, Respondent believed that he was receiving a commission rate of four percent when he agreed to pay Complainant \$200 for the refrigerator and stove in Complainant's house. He relied on that false knowledge in making this deal. When Respondent realized that the terms of his compensation were changed without his knowledge or consent prior to the deal for the appliance credit, he felt he had been misled and believed he was no longer was bound by that oral agreement.

The evidence presented at hearing strongly supports a finding that that Complainant and his wife engaged in bad faith in this transaction that triggered Respondent's refusal to pay the credit for appliances. Complainant renegotiated a lower commission without Respondent's knowledge and then extracted further concessions by threatening to walk away from the sale. Such unconscionable behavior constitutes "unclean hands" and precludes any finding against Respondent.

## **VII. FINDINGS OF FACT**

1. On or about January 30, 2006, Complainant filed a complaint against the Respondent with this Department.
2. A full, evidentiary hearing was held on January 23, 2007.



3. The facts contained in Sections III, IV, and VI, are incorporated by reference herein.

## VIII. CONCLUSIONS OF LAW


Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra*.
2. Under the standard set forth in Section V and the statutory framework and analysis set forth in Section VI, there is insufficient evidence to establish by a preponderance that Respondent failed to leave a copy of the listing agreement with Complainant in violation of R.I. Gen. Laws § 5-20.5-14(a)(9).
  3. Under the standard set forth in Section V and the statutory framework and analysis set forth in Section VI, Respondent did not engage in any conduct in a real estate transaction that demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in violation of R.I. Gen. Laws § 5-20.5-14(a)(20) because Complainant's own improper conduct is the source or part of the source of his Complaint.
  4. Under the standard set forth in Section V and the statutory framework and analysis set forth in Section VI, Respondent did not fail to adhere to the laws of agency governing fiduciary relationships in violation of Rule 20(A) of *Commercial Licensing Regulation 11 – Real Estate Brokers and Salespersons* because Complainant's own improper conduct is the source or part of the source of his Complaint.

**IX. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the Director of the Department dismiss the instant matter because Complainant failed to meet his burden that Respondent violated any provision of R.I. Gen. Laws § 5-20.5-14(a).

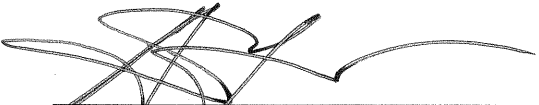
Dated: 7-29-08

  
\_\_\_\_\_  
Michael P. Jolin, Esq.  
Hearing Officer

I have read the Hearing Officer's Decision and Order in this matter, and I hereby take the following action:

ADOPT  
 REJECT  
 MODIFY

Dated: 7-29-2008

  
\_\_\_\_\_  
A. Michael Marques  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION AND DECLARATORY RULING CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify on this 29<sup>th</sup> day of July, 2008, that a copy of the within Decision was sent by first class mail, postage prepaid to:

Elliot Francis Davis  
2033 West Shore Road  
Warwick, Rhode Island 02889

Gilbert F. Roy  
Full Service Realty, Inc.  
110 Armistice Boulevard  
Pawtucket, Rhode Island 02860-3208

and by hand-delivery to:

William DeLuca  
Department of Business Regulation  
1511 Pontiac Avenue, Bldg. 69-1  
Cranston, Rhode Island 02920

A Brooke Ellison