BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL FROM THE REAL ESTATE COMMISSION

In the Matter of	)	
	)	
DAVID H. KEATING	)	OAH No. 10-0474-REC
	)	Agency Case No. 3000-09-011
	)	
In the Matter of	)	
	)	
KELLY D. GRIEBEL	)	OAH No. 10-0475-REC
	)	Agency Case No. 3004-08-003

DECISION AND ORDER

I. INTRODUCTION

A. Overview

The respondents in this case are a broker and a salesperson who listed a home in Soldotna, Alaska in 2005-2006. The home was sold without any disclosure of the fact that the steel frame of a trailer had been incorporated in its structure. All parties to this case agree that this unusual structural component was a condition material to the transaction.

The Division of Corporations, Business and Professional Licensing (division) alleges that the broker and salesperson ought to have made sure that the condition was disclosed to the buyer. The division also alleges that one of the respondents, when renewing his license, improperly failed to disclose a lawsuit that arose from the same transaction.

This decision concludes that while the circumstances surrounding the nondisclosure of the trailer frame were not as starkly improper as has been claimed, the respondents' handling of the issue was nonetheless a significant breach of their duties. The nondisclosure of the lawsuit was likewise wrongful. Discipline is appropriate.

B. Evidence Admitted

In addition to several days of testimony, the record for decision includes division exhibits 1 through 24 and respondents' exhibits A through Z, AA, and FF, all of them admitted without objection. Exhibits 1 through 8, 11 through 14, and 17 through 24 were admitted subject to a hearsay limitation: that is, where they appear to be hearsay not within an exception to the hearsay rule used in court, they may be used to supplement or explain direct evidence but are not

sufficient on their own to support a finding of fact.[1] It was stipulated that division exhibit 1 has been offered and admitted only for procedural context.

II. BACKGROUND FACTS

A. Nondisclosure of Trailer Parts in Structure

David H. Keating has been a broker in Alaska since 1973.[2] Since 1992 he has been the sole owner of Freedom Realty, a leading real estate brokerage on the Kenai Peninsula.[3] His daughter, Kelly D. Griebel, has been a licensed salesperson working for Freedom Realty since 2001.[4]

This case concerns a home on Tischer Avenue in Soldotna, beautifully sited on a bluff looking southward across the Kenai River basin. The initial construction on this home took place in 1984.[5]

In the winter of 2001-2002, David Keating handled a listing and sale of the Tischer Avenue home and an adjacent tract. The seller was a bankruptcy trustee. The eventual purchasers were Gregory and Jennifer Wilbanks, who were also represented by Freedom Realty through salesperson Myla McFarland.[6]

At the time of this transaction, the home was a crudely-constructed one-bedroom dwelling of 1624 square feet, sitting on piers, that looked to Mr. Keating as though it had been put together in a few weekends.[7] Mr. Keating and Ms. McFarland were aware that it had steel beams visible under the house, and they seem to have had the impression that these came from, or at least might have come from, a mobile home frame.[8] The Wilbankses bought the home "as is," without receiving a disclosure statement from the trustee. The limited appraisal done in connection with the transaction indicated that the home would not qualify for conventional financing.[9] The Wilbankses had an engineer's inspection done, which listed the construction type as "mixed."[10] From the purchase price of $129,900, which encompassed not only the

---

1 *See* AS 44.62.460(d). The limitation was discussed immediately following the testimony of Michele Wall-Rood.
2 Ex. 23.
3 Direct testimony of David Keating.
4 Ex. 22. Mr. Keating supervises the office to which she is assigned.
5 *See* Ex. 20 at REC 1778.
6 *See* Ex. Z.
7 *Id.*; Ex. V; Direct testimony of Keating.
8 Direct testimony of Keating and McFarland; Ex. 18 at REC 1466. *See also* Ex. 16 at REC 1343.
9 Ex. V.
10 Direct testimony of Jerry Herring.

dwelling but a 1900-square-foot shop and 18 acres of land that appears to have had more than one building location, one may infer that little value was ascribed to the existing dwelling.

During the two years after the purchase, Mr. and Mrs. Wilbanks lifted the existing home, put a new slab and walls below it to create a lower floor, and installed new windows, doors, siding, roof, and plumbing.[11] A one-bedroom, 1624-square-foot home became a four-bedroom, 3644-square-foot home.[12] Although it incorporated a structure built 30 years earlier, the home had the appearance of new construction.[13]

Notwithstanding its new appearance, the home created by Mr. and Mrs. Wilbanks was shoddily constructed. One of the problems with the new structure was that trailer components—the steel trailer frame supporting part of the upper floor and wood trailer wall components within one wall of the house—had been left in place, and these trailer components were inadequate for some of the loads imposed on them. However, there were other problems that, at least in the aggregate, appear to have been more serious. A framework of two by six floor joists had been installed in a manner that was adequate to support only a quarter of the load assigned to them. The underlying "VERSA-LAM" laminated veneer beams were free-spanned with no bracing, and were likewise potentially overloaded. The half basement walls did not extend all the way to the second floor, creating a risk of structural failure if they were deflected inward by soil pressure. Short walls connecting the basement walls to the second story were unstable with respect to wind or seismic loading. One corner of the house sloped downward because it had been constructed with a slope.[14]

In 2005, Mr. and Mrs. Wilbanks listed the property for sale for $465,000 with Kelly Griebel of Freedom Realty.[15] Ms. Griebel did a walk-through of the property in connection with this listing, and during the walkthrough Mr. Wilbanks indicated that there were steel beams of some kind present in the house.[16] The listing expired without a purchase. The following year the Wilbankses listed the property with Ms. Griebel again, eliminating most of the acreage and reducing the asking price to $375,000.[17] In connection with both listings, Mr. Wilbanks

---

11 Direct testimony of Gregory Wilbanks.

12 *Compare* Ex. 20, REC 1776 *with* Ex. 20, REC 1778.

13 Cross-examination of Cindy Jones.

14 Direct and cross-examination of Michael Tauriainen, P.E.

15 *See, e.g.*, Ex. 20 at REC 1776. As shown on that document, the asking price was subsequently reduced to $439,000.

16 Cross-exam of Griebel; Ex. 9 at REC 1229-10.

17 *Id.* at REC 1774.

prepared the statutorily-required Residential Real Property Transfer Disclosure Statement.[18] Each of these disclosures included the following line:

Construction Overview: □ Wood Frame □ Manufactured or Modular Construction □ Other: _____

On each disclosure, Mr. Wilbanks put an X in the box for "Wood Frame" and placed no other marks or information regarding the type of construction. Each disclosure indicated that the home had been "completely" reconstructed. For "Year Property Built," Mr. Wilbanks wrote "2005" on his first disclosure and "2002" on his second. Neither disclosure gave any indication that part of the home dated back to 1984, nor that steel trailer parts formed a portion (albeit a small portion) of the home's structure.

In the summer of 2006, Wayne and Cindy Jones were house-hunting in the Soldotna area, represented by licensed real estate salesperson Glenda Feeken.[19] After visiting the Tischer Avenue property with Ms. Feeken, Mr. and Mrs. Jones made an offer which, after some negotiation, resulted in a firm agreement to purchase the property.[20] In connection with these negotiations, the Joneses received both disclosure statements mentioned above.[21]

In discussions surrounding the sale, Mr. and Mrs. Jones seem to have become aware that the house contained an older component that had been "jacked up" and then remodeled and added to.[22] They would also have known from the MLS listing of the house (as well as from the later report of their home inspector) that it was originally constructed in 1984, not in 2002 or 2005 as indicated on the disclosures.[23] They did not, however, learn that the structure contained trailer parts.[24]

Prior to the closing, and probably prior to the time the Joneses made their offer, Kelly Griebel became aware that the home had at one time had a trailer frame in it. She learned this from two sources: an inquiry from another licensee who participated in a walk-through of the home, and a discussion with David Keating based on his recollections from the 2002 transaction.[25]

---

[18] The 2005 disclosure is at Ex. O; the 2006 at Ex. 4 beginning at REC 782.

[19] Ms. Feeken has recently been licensed as a broker, but at the time of the Tischer Avenue transaction she was still a salesperson. She had about 15 years of experience in the business. Direct testimony of Glenda Feeken.

[20] Direct testimony of Wayne Jones; direct testimony of Cindy Jones.

[21] *Id.*

[22] Direct testimony of Wayne Jones.

[23] *See* Ex. 20 at 1774; Ex. B.

[24] Direct testimony of Wayne Jones; direct testimony of Cindy Jones. This fact is not disputed.

[25] Direct testimony of Griebel; Ex 16 at REC 1343-4; Ex. 10 at REC 1288-9.

Mr. and Mrs. Jones had the property inspected by Jerry Herring, P.E. Mr. Herring had inspected the home twice before, and he was well aware of its history.[26] In 2002, he had inspected the property and characterized its type of construction as "combination."[27] In connection with the Jones purchase, he prepared a report listing the type of construction as "Wood Framed 2″ by 6″."[28] He told the Joneses that the home was "constructed of good materials with good craftsmanship used throughout."[29]

The transaction closed in late October of 2006. The following month, while trying to ascertain the source of a plumbing leak, Mr. Jones opened the downstairs ceiling and discovered the trailer parts embedded in the house.[30] He called Glenda Feeken and told her there was a trailer embedded in the house.[31] Ms. Feeken in turn called Kelly Griebel and told her there was a trailer frame in the house, asking if she had known anything about that. Kelly Griebel responded that she did know something about that (to her credit, Ms. Griebel does not deny making this statement) and that she would need to talk to her seller.[32] Ms. Griebel indicated to Ms. Feeken that she pays little attention to her clients' disclosures.[33]

The discovery that the building contained elements of a manufactured home made the property uninsurable under a conventional homeowner's policy, and the Joneses' policy was terminated.[34] The mortgage holder obtained a substitute policy, increasing the annual premium to the Joneses from $2400 to $4730.[35]

Mr. and Mrs. Jones sold the home in 2010 at a substantial loss. Part of the reason for the loss was the presence of the trailer frame, which made the house ineligible for conventional financing. Another cause of the loss was the presence and disclosure of a number of other serious structural defects unrelated to the trailer frame and not at issue in this case.[36] The amount

---

26 Direct testimony of Jerry Herring.

27 *Id.*

28 Ex. B.

29 *Id.* Mr. Herring's report contained a limiting statement excluding from its scope all conditions "concealed from view at the time of the inspection," as well as "structural stability." Ex. 1 at REC 118.

30 Direct testimony of Wayne Jones.

31 *Id.*; direct testimony of Feeken.

32 Testimony of Feeken and Griebel.

33 Testimony of Feeken.

34 Direct testimony of Wayne Jones; Ex. 1 at REC 031, 111.

35 Direct testimony of Wayne Jones; Ex. 1 at REC 109.

36 These findings are made from a combination of the testimony of Wayne Jones and Michael Tauriainen. *See also* Ex. 1 at REC 133. Based on the testimony of Mr. Tauriainen, I reject Mr. Jones's belief that the trailer frame made the house unsafe.

of loss attributable to the trailer frame alone was at least $10,000.[37] The dispute over the trailer frame was also a major contributor to very large litigation expenses for all involved.

B. Nondisclosure of Lawsuit

The nondisclosure of the trailer frame in the 2006 transaction was one of the bases for a civil lawsuit filed in July, 2007 entitled *Wayne and Cindy Jones v. Greggory* [sic] *and Jennifer Wilbanks, Kelly D. Griebel and David H. Keating dba Freedom Realty*.[38] While the caption of the suit referred to "David H. Keating dba Freedom Realty" as a single phrase, the body of the complaint referred separately to "Defendant Freedom Realty" and "Defendant David Keating."[39] The lawsuit alleged breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and fraudulent misrepresentation on the part of all of the defendants.[40] Forms of the word "fraud" appeared three times in the complaint, and forms of the word "misrepresentation" appeared six times, in paragraphs applicable to all defendants. David Keating and Kelly Griebel were served with the complaint, and they answered it (through their attorney) on August 20, 2007.[41]

In December of 2007, David Keating applied for renewal of his real estate license on the Web. The online application asked, "Since the date of your last application, have you had a lawsuit filed against you alleging deceit, fraud, misrepresentation, conversion of funds?" Mr. Keating answered "NO."[42] Mr. Keating answered "YES" to a similar question on his next renewal application, in January of 2010.[43]

When David Keating filled out his renewal application in December of 2007, the Jones lawsuit had been pending for several months, but no Real Estate Commission investigation of either Mr. Keating or Ms. Griebel had been initiated. There was no reason to suppose that the Commission had been informed of the lawsuit though other channels.

Mr. Keating does not contend that he mindlessly checked all the "no" boxes on the application, nor that he misunderstood the question. Instead, he claims to have a very specific recollection of answering it. He says he reasoned as follows:

---

37 *See* Ex. 1 at REC 133.
38 Ex. 5 at REC 150.
39 *Id.* at REC 151.
40 Ex. 5.
41 Ex. 6. Mr. Keating answered as "David H. Keating dba Freedom Realty."
42 Ex. 23 at 1822.
43 *Id*. at REC 1792. Between the date of the 2007 application and that of the 2010 application, an amended complaint had been filed in the Jones lawsuit. *Id.* at REC 1807.

> But anyway, I looked at the number, number 5, and it said alleged deceit, fraud, misrepresentation, and comingling of funds. I'm sorry that I'm Irish but I'm not sorry that I'm Irish. I looked at those personally and said, I am not being accused of deceit, fraud, misrepresentation, or comingling of funds. I looked at it as, my name was there because it said dba David Keating. I didn't see it as a charge that I was being charged of those items. I would never even think about trying to commit fraud on something like that. That's just not who I am or who the office is.[44]

In other words, Mr. Keating reports that he made a deliberate decision to omit disclosure of the Jones lawsuit from his renewal application because he decided that he had been sued only in his capacity as a business owner. This admission, which is by no means exculpatory, has not been challenged by the division and will be accepted.

On January 31, 2008, Kelly Griebel filed a paper application for renewal of her real estate license. The paper application asked, "Since the date of your last application, have you had a lawsuit filed against you alleging deceit, fraud, misrepresentation or conversion of funds?" She answered "YES," attaching a letter referencing the Jones lawsuit and indicating that she had consulted with her attorney about making the disclosure.[45] Like the Keating application, the Griebel application was filed before there was any basis to suppose the Commission already knew about the suit. Because of the "yes" answer she gave, there is no allegation that Ms. Griebel failed to disclose the suit to the Commission.

III. DISPUTED FACTS

A. Witness Credibility

There was divergent testimony regarding a few of the facts important to this case. In addressing these factual issues, I have had to assess the credibility of several of the witnesses. My observations are summarized below.

1. Gregory Wilbanks

Gregory Wilbanks, the seller whose disclosure statements gave rise to this case, was in Anchorage on the day of his hearing, staying at the Captain Cook Hotel. However, he did not walk the few blocks to the hearing room, instead choosing to make himself available only by phone. He did not seem to take his testimony as seriously as one might hope, and one could hear him using the plumbing in his room while he was testifying.

---

[44] Hearing Recording, 10-0474 REC HRG CONT4 071511 Keating.mp3, at 1:02:00 – 1:03:00.

[45] Ex. 22 at REC 1701, 1703. Ms. Griebel's 2010 renewal is not part of the record.

In his hearing testimony, Mr. Wilbanks gave a vivid description of a conversation that allegedly took place when David Keating happened to drive by his house in 2004 or earlier. Mr. Wilbanks related that Mr. Keating asked him what he had done with the trailer frame, to which Mr. Wilbanks claims he replied that he had left it in the house. If this conversation had taken place, it would have been quite significant both in the civil lawsuit and in this case. The trouble with Mr. Wilbanks's 2011 account, however, is that he had never described such a conversation in the preceding years of investigation and litigation, and indeed the account is directly contradictory to a sworn interrogatory answer he gave in 2008 in the civil case.[46]

The testimony Mr. Wilbanks gave was self-serving, tending to divert blame from himself to others. Some of what he said may be true, but his lack of respect for the proceeding and the inconsistency of his sworn accounts make it impossible to rely on his testimony with any confidence.

2. Glenda Feeken

Glenda Feeken, the salesperson who represented Mr. and Mrs. Jones in the 2006 transaction, gave matter-of-fact testimony that was fully credible. Much of her testimony was independently corroborated by other witnesses whose testimony was accepted by both sides. In some cases she had made surmises or had drawn inferences from casual hearsay, but when probed about these matters she made no attempt to embroider and was frank about the limitations of her knowledge. She had no apparent motive to fabricate in connection with this investigation; her willingness to report concerns about the dominant real estate firm in her area seems to have been motivated by genuine shock at what she experienced.

3. Kelly Griebel

Kelly Griebel testified in person, and I had an extended opportunity to observe her demeanor. Her testimony and the consistent accounts she has given in the past seemed unembellished and frank. Notably, she admitted a number of things that she could plausibly have denied, such as the key acknowledgement attributed to her by Glenda Feeken. Her testimony differed significantly from only one other witness, Gregory Wilbanks, and Mr. Wilbanks was not a credible witness.

[46] *See* Ex. 8 at REC 1179-80.

4. David Keating

Based on personal observation, I had less confidence in David Keating's testimony than I did in his daughter's. For example, there was a conversation between father and daughter at some point prior to closing regarding the existence of a trailer frame in the past. Kelly Griebel's accounts of that conversation were consistent with a relatively casual, offhand discussion. For his part, Mr. Keating had previously confirmed that the conversation took place but had only a general recollection of it. He had not been able to recall whether he gave Ms. Griebel any direction about following up regarding the trailer.[47] At the hearing, Mr. Keating belatedly appeared to have a detailed recollection of this 2006 interchange, describing a number of specific items he and his daughter had talked over, claiming that he had gone and consulted certain specific Alaska Statutes at the time, and recalling that he made a specific determination that no further inquiry was needed.[48] My impression was that he was inclined to embroider his actual recollections with additional surmises about what he would have, or might have, or ought to have said and done in the circumstances, and I had limited confidence in these accounts.

B. Additional Findings

With the above credibility assessments in mind, the questions below can be answered despite the somewhat conflicting testimony on these matters:

How did the two respondents address the issue of disclosing the trailer frame? Broadly, one is left with the firm impression that accurate, conscientious disclosure was not a focus or a priority of Freedom Realty. The brokerage's practice, followed in this case, was to let sellers fill out the disclosure on their own and then drop it off, without discussion and without much, if any, review, at the brokerage.[49] This approach did not provide an opportunity for sellers to be counseled about particular matters that might require special handling in the disclosure, unless the sellers identified and raised the issue on their own initiative.

When Gregory Wilbanks filled out the disclosure form in 2005, he did so on his own, without Kelly Griebel or David Keating present.[50] He dropped the completed form off at

47 *See* Ex. 16 at REC 1343-4, 1346-7; Ex. 10 at REC 1288-9.
48 Hearing Recording, 10-0474 REC HRG CONT4 071511 Keating.mp3, at 52:00 – 56:00.
49 Direct testimony of Griebel and Feeken.
50 Testimony of Griebel and Keating.

Freedom Realty.[51] The same procedure was followed with the 2006 disclosure: Mr. Wilbanks dropped it off after filling it out by himself.[52]

As has been noted previously, during the course of the listing Kelly Griebel became aware through a comment from another agent that the house had once had a trailer frame in it. She asked Mr. Wilbanks about it. She recalls that he responded, in a stern tone, "This entire home is remodeled from top to bottom."[53] She appears to have been somewhat intimidated by his tone, and she did not pursue the inquiry any further. Later in the course of the listing, she had a conversation with her father, who likewise remembered a trailer frame.[54] Ms. Griebel and Mr. Keating report that they then looked at the disclosure statement (this would most likely have been the 2005 statement, not the update just before sale), and noted that it said nothing about a trailer frame. They report that they then supposed the frame was gone, and they took no further action.[55]

When Ms. Feeken called her about the trailer frame's discovery, Ms. Griebel had advance notice of what the call would be about, since Ms. Feeken had left a series of voice mails. Nonetheless, Ms. Griebel was frank enough to admit that she had indeed known something about a trailer frame. Apart from the self-serving and unreliable testimony of Wilbanks, however, there is no evidence that she knew with certainty that it was still there.

Did Ms. Griebel conspire to reject a conscientious inspector so as to conceal the trailer frame? At times in its questioning and argument, the division has sought to suggest the following scenario: That the Joneses wanted to have a home inspection done by Steve Wisdom, but Kelly Griebel vetoed Wisdom and insisted on a less meticulous inspector; from this sequence of events, one is meant to infer that Griebel knew there was something to hide and, in concert with her client, was actively trying to conceal it. I was entirely unconvinced by this line of argument. First, Ms. Griebel readily admitted that she had discouraged Glenda Feeken from using Steve Wisdom, but she had a completely plausible explanation. She had found Wisdom to be a picky inspector who would ask for many repairs, and she had a seller who would refuse to make the repairs, so she discouraged Feeken from going to Wisdom in the interest of avoiding an impasse between buyer and seller.[56] Second, discouraging Wisdom led to the substitution—with

---

51 Direct testimony of Griebel.
52 *Id.*
53 *Id.*
54 *Id. See also* Ex 15 at REC 1264.
55 Testimony of Griebel and Keating.
56 Cross-exam of Griebel.

no objection from Griebel—of Jerry Herring as an inspector. Since Herring had inspected the property when the trailer parts were readily visible, and had also inspected it during the upgrade process, substitution of Herring for Wisdom could not have reduced the likelihood that the presence of trailer parts would be revealed (unless Herring was a conspirator himself, a notion for which there is no evidence whatsoever). The most likely explanation for this sequence of events is that Kelly Griebel was not thinking about the trailer frame at all in connection with the choice of inspectors.

IV. DISCUSSION

A. Nondisclosure of Trailer Parts in Structure

The presence of a trailer frame in the Tischer Avenue property was a material defect. It was a defect because it made the house ineligible for conventional financing, because it interfered with insurability, and because it created structural weakness. The parties have stipulated to its materiality.[57]

When Gregory Wilbanks filled out the disclosure statements required by AS 34.70.010, he described the "Construction Overview" as "Wood Frame." This was not a misstatement of fact on its face. The home was, in fact, primarily of wood frame construction.[58] Nonetheless, in the context of the rest of his disclosure statement (which did not even acknowledge the existence of a pre-2002 component of the structure) and in the context of this transaction (in which the undisclosed frame components created a material defect with respect to such fundamental matters as financing and insurability), the Wilbanks disclosure was incomplete and misleading. If made by a person with full knowledge, it would be in the category of statements defined as misrepresentations by the Alaska Supreme Court even though they are "literally true," because of "failure to state additional or qualifying matter."[59]

It is important to note that it might not be obvious to a seller without real estate expertise that the disclosure was incomplete and misleading as to a material defect. A seller might not realize that a literally correct answer to a question on the disclosure form can nonetheless be inadequate. A seller might not realize that the form is not intended to, and does not, comprise an exhaustive list of conditions that must be disclosed.[60] A seller might be unaware that having

---

[57] The stipulation occurred during the direct examination of Charles Sandburg.

[58] Indeed, Jerry Herring, P.E., continues to stand by his 2006 report flatly characterizing the home as "Wood Framed."

[59] *Lightle v. State, Real Estate Comm'n,* 146 P.3d 980, 986 (Alaska 2006)(quoting prior authority).

[60] *See* AS 34.70.070.

mobile home components in a residential structure would interfere with financing and insurability, and would therefore be material. Finally, a seller might not realize that failing to disclose a condition can open the seller to lawsuits, from which the seller would be immune if the condition had been disclosed.[61] One of the roles of a trained real estate professional is to provide guidance on such matters.

There is no dispute in this case that the presence of the trailer frame should have been disclosed. Both respondents acknowledged as much in their testimony. They agree that if they had known there was a trailer frame in the structure, they would have had to advise Mr. and Mrs. Wilbanks to disclose it forthrightly, and that if the sellers refused, Freedom Realty would have needed to withdraw from the listing or make the disclosure itself.

Conversely, both the division and the respondents are in agreement that Freedom Realty had no duty to ferret out hidden conditions, and that in the absence of contrary knowledge a real estate licensee is entitled to rely on a client's word. Thus, division expert Charles Sandberg opined that "we have a right to believe our buyers and sellers."[62] The Real Estate Commission has likewise held in the past that "the licensee has no duty to investigate the matters covered in the disclosure."[63]

In the present case, the respondents had neither certain knowledge of a defect nor a clear statement by their client that the defect was not present. Instead, both Mr. Keating and Ms. Griebel had reason to believe that trailer parts *might* be incorporated in the structure, because they understood that to have been the case four years earlier, prior to the remodel. Both knew that Ms. Griebel had asked Mr. Wilbanks about the trailer, and both knew he had given an equivocal answer: "This entire home is remodeled from top to bottom." The vagueness of the answer troubled them enough that they say they pulled out the disclosure form to follow up on the issue.

This is where the respondents' account is unsatisfying. If they looked at the disclosure with any care, Mr. Keating and Ms. Griebel must have seen that it did not answer the question: It stated only that the house was "wood frame" as a matter of "overview." In the absence of contrary counseling by a professional, that is an entry literally consistent with having trailer parts

---

61 *See* AS 34.70.030.

62 Direct testimony of Sandberg. This opinion accords with AS 08.88.630 (no duty to own client to verify client's or others' word if reasonably believed to be reliable) and AS 08.88.670(b) (client's undisclosed knowledge not imputed to licensee).

63 *Hall v. Erkins*, OAH No. 06-0353-RES (Alaska Real Estate Commission, adopted Dec. 14, 2006), at 10.

still in the structure. Moreover, the disclosure claimed a few lines above that the house was first built in 2002 or 2005, an entry Mr. Keating and Ms. Griebel would have known to be in error and one that might suggest their client was making a disclosure only as to the new structural components. The disclosure could not answer the doubts that the two licensees—by their own admission—still harbored. *The only reasonable conclusion, therefore, is that Mr. Keating and Ms. Griebel went forward with the sale with essentially the state of knowledge they started with: knowledge that there had been a trailer frame in the premises a few years before, and uncertainty about whether it had been removed.* They also knew that they had never counseled their client about his disclosure obligations on this issue.

The legal standard most directly relevant to this conduct is a Commission regulation, 12 AAC 64.130(14),[64] which makes it grounds for discipline for a licensee to "fail[] to disclose to a prospective buyer a known material defect regarding the condition of . . . the offered real estate."[65] The central question in this case is whether, when a licensee knows that a material defect did exist in the past, and has not obtained an answer from the seller as to whether it still exists or not, that defect is "known" to the licensee.

The answer to this question must be yes, for two reasons. First, it is a settled principle of law that willful blindness equates to knowledge. Thus, in trademark cases where the literal legal standard is whether a merchant sold a counterfeit product "knowing" that it was counterfeit, the courts will find civil liability for infringement where the merchant had reason to suspect counterfeiting but consciously decides not to investigate.[66] Likewise, in litigation surrounding the collapse of Madoff Securities, participants in the enterprise who "turned a blind eye" to indications of possible fraud can be liable as though they had actual knowledge.[67]

---

[64] This provision is a regulatory interpretation and application of AS 08.88.071(a)(3)(D), and a violation of the regulation is likewise a violation of that statute.

Although at first glance it appears even more relevant, the parties stipulated in closing argument that the standard in AS 08.88.615(a)(4) does not apply in this situation, because it creates a duty only to the licensee's own client, not to the other party to the transaction.

The division has also relied on provisions in AS 08.88 that prohibit fraud and misrepresentation by licensees. These provisions are difficult to apply here because the representation at issue is in a statutory disclosure assigned by law to the seller, not the licensee, and because there is no credible evidence of collusion between the licensees and the seller to conceal disclosable matters. 12 AAC 64.130(14) is the provision best fitted to this set of facts.

[65] 12 AAC 64.130 has been amended once since the events at issue in the Tischer Avenue transaction, but the quoted language has not changed. *See* Alaska Administrative Code, Reg. 146.

[66] *Hard Rock Café Licensing Corp. v. Concession Services, Inc.*, 955 F.2d 1143, 1149 (7th Cir. 1992); *see also Louis Vuitton, S.A. v. Lee*, 875 F.2d 584, 590 (7th Cir. 1989).

[67] *Picard v. Katz*, 2011 WL 4448638, *4 (S.D.N.Y. 2011).

Second, such a licensee does "know" of a material defect, albeit only with respect to an earlier time period rather than the present. Knowledge of a prior defect should continue to be viewed as knowledge until negated by more current information. To interpret the regulation otherwise would encourage sharp practice, with licensees tempted to avoid current knowledge.[68]

Since the respondents failed to disclose a "known" material defect, they committed a violation subject to discipline.[69]

B. Nondisclosure of Lawsuit

When Mr. Keating completed his renewal application in 2007 and flatly denied that there had been any "lawsuit filed against [him] alleging deceit, fraud, [or] misrepresentation," he gave an untrue answer. In defending this case, Mr. Keating has not denied that the answer was wrong. He has instead explained that he thought—mistakenly—that a suit making allegations against David Keating dba Freedom Realty was not a suit making allegations against David Keating, the individual filling out the license application. He looked at the question, thought about it, and made a deliberate decision to check the "no" box.

Mr. Keating is correct in conceding that his reasoning was in error. A suit against a sole proprietorship is a suit against the proprietor.[70] The "no" answer was therefore false. A Commission regulation, 12 AAC 64.160(a), prohibits any license renewal applicant from making a "false … representation or material misstatement" on an application. Mr. Keating violated this standard.

V. DISCIPLINE

The division has proven that both respondents violated 12 AAC 64.130(14). Additionally, the division has proven that Mr. Keating violated 12 AAC 64.160(a). Both regulations provide by their own terms that violations are grounds for revocation or suspension of a license. In addition, the Commission has broad discretion to fashion an appropriate

---

[68] Such a result would not further the policy behind the real estate laws. By requiring that disclosure statements be amended with current information as circumstances change, the Legislature has indicated a preference that real estate transactions be based on real present conditions, not outdated information. *See* AS 34.70.040(a). The Commission's regulations should, where possible, be interpreted in congruity with that policy.

[69] It has also been suggested in this case that Mr. Keating, as the supervising broker, violated his additional duty to "adequately provide for the supervision of the activities" of licensees in his office. 12 AAC 64.125(a). The problem with Mr. Keating's conduct is not that he failed to oversee his salesperson, however. On the contrary, he took a personal and direct interest in the disclosure issue and raised it with his salesperson. The level of supervision he gave was exemplary; it is the decision he made that subjects him to discipline. *Cf. In re Bartos*, OAH No. 08-0054-REC (Alaska Real Estate Commission, adopted June 18, 2009) (illustrating the kind of lack of oversight with which 12 AAC 64.125 is concerned).

[70] *See, e.g., State v. ABC Towing*, 954 P.2d 575, 579 (Alaska App. 1998).

disciplinary response that may include censure, reprimand, license limitations, peer review requirements, remedial education, probation, or civil fines up to $5000.[71] In assessing discipline for violations of the statutes and regulations it administers, the Commission is required to "seek consistency."[72] The Commission may depart from what it has done in the past, but only if it explains any significant departure in its decision.[73]

Some prior decisions from lower courts or administrative boards have taken the view that, in "seek[ing] consistency" as required by law, boards and commissions need not consider the settlements they have approved and may confine their comparison solely to prior fully-adjudicated cases.[74] However, a recent order of the Alaska Supreme Court directing a board to consider prior settlements as part of a consistency evaluation casts doubt on whether that is the correct approach.[75] The discussion below will address comparable cases of both types insofar as they exist.

A. Ms. Griebel

Ms. Griebel committed a single violation, a failure to disclose a material defect that was known to her. The following prior Commission decisions involve conduct with some parallels to hers:[76]

In re Phillip Stephens[77] (hearing decision, 1988): In representing sellers, broker Phillip Stephens made a "serious" misrepresentation by omission to buyers, but the misrepresentation appeared "to stem from miscommunication and negligence rather than fraud." For this misconduct coupled with one other (unethical business practice through failing to explain disposition of earnest money), the Real Estate Commission suspended the broker's license for two years.

---

[71] AS 08.01.075(a).

[72] AS 08.01.075(f).

[73] *Id.*

[74] *See, e.g., Hawthorne v. State, Board of Nursing,* No. 3AN-04-10154 CI (Alaska Superior Ct., Gleason, J, 2006) (holding that "the term 'decision' as set forth in AS 08.01.075(f) applies only to contested cases").

[75] *State, Board of Dental Examiners v. Ness,* No. S-13129 (Alaska 2010) (published at http://aws.state.ak.us/officeofadminhearings/Documents/DEN/DEN040250%20Supreme%20&%20Superior%20Ct%20dec.pdf) (remanding case to Dental Board to consider nine prior cases, some of them settlement approvals, in the comparison required by AS 08.01.075(f)).

[76] These decisions have been collected from a review of all Real Estate Commission orders in the OAH library.

[77] No. C-86-10 (Alaska Real Estate Comm'n, adopted June 23, 1988).

In re Darlene Stephens[78] (disciplinary settlement after full Surety Fund hearing, 1996): In representing sellers, broker Darlene Stephens made a deliberate misrepresentation by nondisclosure to a buyer regarding the degree of avalanche hazard for the marketed property, as well as an affirmative misrepresentation to a bank regarding a claim she did not know to be false but for which she had no basis. The Commission imposed a reprimand, a $5000 fine, and a one year license suspension, but stayed the entirety of the suspension and half of the fine provided Stephens complied with the terms of a two-year probation. These terms included eight hours of ethics education, a requirement to give every party to every transaction a special written avalanche disclosure, and periodic interviews with the Commission.

In re Green[79] (disciplinary settlement after full Surety Fund hearing, 2001): Salesperson Jerry Green engaged in "calculated and egregious" fraud through multiple misrepresentations to a buyer. The Commission imposed a reprimand and a $1000 fine. The fine was stayed, to be vacated if Green complied with the terms of a six-month probation. The sole term of the probation was that he not violate any real estate laws for six months.

In re Yoon[80] (hearing decision, 2003): Salesperson Tae Yoon deliberately concealed from buyers a serious flooding issue of which he was specifically aware. Immediately after a Surety Fund award was made against him in connection with that transaction, Mr. Yoon engaged in a complex fraud in a second transaction, rendering promises he did not intend to keep and engaging in an undisclosed dual agency. He was "unrepentant" at his discipline hearing. The Commission revoked his license.

In re Lightle[81] (disciplinary settlement after full Surety Fund hearing, 2006): Representing a seller, broker Craig Lightle intentionally led an offeror and her agent to believe there was no pending offer on a property, causing the offeror to take steps she would not have taken had she known she was only in backup position. The financial damage from this misconduct was comparatively slight. The Commission imposed a reprimand and a $2000 fine, but stayed half of the fine provided Lightle complied with the terms of a one-year probation. These terms consisted of nine hours of ethics education and compliance with all real estate laws.

---

[78] No. 3000-94-01 (Alaska Real Estate Comm'n , adopted April 4, 1996). The related Surety Fund findings are in *Danitz v. Stephens*, No. S94-005 (Alaska Real Estate Comm'n, adopted Jan. 20, 1995).

[79] No. 3004-98-006 (Alaska Real Estate Comm'n, adopted March 15, 2001). The Office of Administrative Hearings does not have the related Surety Fund decision.

[80] No. 3004-95-11 (Alaska Real Estate Comm'n , adopted Sept. 10, 2003). For additional background facts, *see also Yoon v. Alaska Real Estate Comm'n*, 17 P.3d 779 (Alaska 2001).

[81] No. 3004-99-004 (Alaska Real Estate Comm'n, adopted Dec. 14, 2006). For additional background facts, *see also Lightle v. State, Real Estate Comm'n*, 146 P.3d 980 (Alaska 2006).

The three older cases (*Phillip Stephens, Darlene Stephens, and Green*) are simply impossible to reconcile with one another. The *Phillip Stephens* case is comparable to this one in the culpability of the conduct, involving lack of professionalism and negligent miscommunication resulting in nondisclosure of a defect, and it resulted in very severe discipline—a multi-year suspension. On the other hand, the repeated, "calculated and egregious" fraud in the *Green* case drew no discipline beyond a reprimand, provided Green obeyed the law for six months, and the calculated nondisclosure of a life-threatening condition in *Darlene Stephens* drew a suspension that was wholly stayed. The best course for the Commission is to focus its comparison primarily on its two more recent decisions, *Yoon and Lightle*, made at a time when efforts to maintain consistency may have become more systematic.

To begin this comparison, one should note that Ms. Griebel's violation was toward the less-serious end of the spectrum of nondisclosure violations. Mr. Griebel did not affirmatively misrepresent any fact. She also did not know for certain that the buyers in her transaction were being misled. Her error was in not counseling her client about the need for full disclosure and in not getting an unambiguous response from him to be sure she was not a party to concealment of a defect. In doing this, she fell well below the professional standard she should maintain, but she did not connive in trickery. Moreover, a mitigating factor in her case is that she had consulted with her broker and was proceeding as he deemed appropriate.

Ms. Griebel's conduct was wholly unlike that of Mr. Yoon, who was caught in a serious, premeditated fraud and immediately committed a second one. Her conduct is more akin to that of Mr. Lightle, who engaged in unprofessional sharp practice. It is aggravated in comparison to Mr. Lightle's conduct in that it caused significantly more financial harm, but it is mitigated in comparison to his conduct in that she did it under the direction of a superior. Unless the Commission makes a policy decision to alter its discipline levels for cases of this kind, her sanction should be at the same level as Lightle's: a reprimand, a $2000 fine and one year of probation, with half the fine to be stayed and vacated upon successful completion of the probation. The terms of the probation should be completion of nine hours of ethics education and compliance with all real estate laws.

B. Mr. Keating

1. Nondisclosure of Trailer Frame

Mr. Keating committed the same violation as Ms. Griebel regarding the failure to disclose a material defect in the Tischer Avenue property. The same comparable cases apply to

him. However, he is more culpable than Ms. Griebel because he was in charge, and he ultimately made or concurred in the decision not to inquire further about the trailer frame, not to counsel the client on the issue, and not to disclose. He guided a subordinate to do something unprofessional and unethical.

In comparison to Mr. Lightle's conduct, Mr. Keating's role exhibits the aggravating factor mentioned above for Ms. Griebel, but lacks the mitigating factor. In light of the severe and foreseeable financial consequences of his unprofessionalism, it is appropriate to impose the same sanction outlined above for Ms. Griebel, but to add an additional sanction of a license suspension of 45 days (which will be consecutive with the further license suspension discussed in Part V-B-2 below).

In imposing a suspension, the Commission would be returning to the principle it followed in *Phillip Stephens*, which was that a serious omission to make a required disclosure can justify a license suspension even if the nondisclosure was not part of a conscious plan to deceive. However, the Commission would impose a mix of sanctions, in accord with its practice in more recent years, rather than the simple, one-dimensional discipline (a long suspension) that was used in *Phillip Stephens*. The Commission would be departing from the relatively mild response to nondisclosure issues found in the *Green* and *Darlene Stephens* cases. The basis for this departure would be a determination that conscientious attention to disclosure requirements is so important to the integrity of the profession and protection of the public that a firm message must be sent to brokers who fall below this standard.

2. Nondisclosure of Lawsuit

Essentially unchallenged evidence shows that Mr. Keating consciously decided to draw a distinction between a suit against his real estate sole proprietorship and a suit against him, and based on that distinction he elected not to tell the Commission about a suit alleging fraud in his real estate business. To his credit, Mr. Keating has not contended at the hearing that the distinction he drew was a valid one.

Mr. Keating's explanation for his original decision is unsatisfactory. He is a gentleman who in other contexts counsels his licensees to "disclose, disclose, disclose,"[82] and yet he consciously tried to cut a fine distinction and thereby avoid telling the Commission about the Jones lawsuit. If he had any doubt about the correct answer to the question, he could have

[82] Direct testimony of Keating.

consulted with his attorney (Ms. Griebel did exactly that and was advised to disclose the suit[83]), inquired of the licensing staff, or submitted an explanation with his application. He chose to do none of these things.

To perform its licensing function, the Commission must have accurate information from applicants. This Commission has taken the submission of false licensing information very seriously in one prior case. In *In re Moser,*[84] after a fully-litigated hearing, the Commission addressed a fact pattern quite similar to the one in this case: broker Erwin Moser had deliberately submitted a renewal application denying that he had been sued for alleged fraud, whereas in fact he had been. The Commission noted that the misrepresentation was particularly serious because the lawsuit was one "directly bearing on his real estate activities" and because, even in the hearing, Mr. Moser was not completely forthcoming with the Commission.[85] Similar aggravating circumstances are present here.[86] In *Moser,* the Commission imposed a 60-day suspension, a $2000 fine, a year of probation, and a requirement for a two-hour ethics class.

In one respect, this case is less serious than *Moser*. In that case there was a finding that Mr. Moser intended to deceive the Commission, whereas in this case Mr. Keating's wishful thinking about whether a suit against his real estate sole proprietorship was a suit against him may fall just short of outright deceit.

In a different case from the same time period, *In re Prabucki*,[87] the Commission was faced with a salesperson who had lied about a prior felony conviction (regarding a drug matter) on seven separate applications over a six-year period. The Commission found him to have exhibited "chronic dishonesty over an extended period of time." Nonetheless, it approved a settlement with Mr. Prabucki with relatively mild punishment: a $2000 fine and a reprimand. There was no suspension, no education, and no probation.

Settled cases are often given less weight because the penalty may have been discounted by factors such as scarce enforcement resources or difficulty in proving the allegations at issue.[88] However, the *Prabucki* settlement was approved at a time when the Commission was able to pursue vigorous enforcement against licensee misconduct, and the fact that someone had felony

---

83 Ex. 22 at REC 1715).

84 OAH No. 04-0294-REC (Alaska Real Estate Comm'n, adopted June 14, 2005).

85 *Id*. at 14.

86 However, the area in which Mr. Keating was less than forthright was his embroidery of the facts surrounding his decision not to explore the uncertainty regarding the trailer frame; there is no particular reason to doubt Mr. Keating's account of the renewal application.

87 Case No. 3004-04-002 (Alaska Real Estate Comm'n, adopted June 10, 2004).

88 *See, e.g., In re Sykes*, OAH No. 08-0475-MED (Alaska State Medical Board, adopted Jan. 29, 2009), at 10.

convictions and failed to disclose them on an application is very easy to prove. The distinction between *Prabucki* and *Moser* lies elsewhere. Instead, what made Mr. Moser's misconduct more serious than Mr. Prabucki's seems to have been the fact that Mr. Moser's concealment related to a legal proceeding "directly bearing on his real estate activities," whereas Mr. Prabucki's did not. This special feature of the *Moser* case is present in Mr. Keating's case.

Two more recent settlement approvals by the Commission are marginally relevant and need to be considered as well: *In re Crowley*[89] and *In re Caro.*[90] This pair of essentially identical cases involved a broker and a salesperson who had entered into disciplinary consent agreements with the Commission, and then later answered "no" to a question on a subsequent application about disciplinary proceedings. Each licensee was fined $2000 with $1000 suspended, reprimanded, and required to complete three hours of ethics training. Each had already served a short summary suspension, imposed by the licensing staff, for the alleged misconduct.[91] There was no motive or opportunity for these licensees to deceive the Commission (the prior disciplinary proceedings having been with the Commission itself), and so the wrong answer was an oversight and the discipline imposed was essentially for carelessness. This is a key distinction from the present case, where Mr. Keating made a *deliberate* choice to withhold information from the Commission that the Commission did not otherwise know about.

Mr. Keating's counsel has argued that he "self-reported" his violation by correctly answering the question about lawsuits on his next biennial application, and that this supposed self-reporting should mitigate his discipline. The argument is unconvincing. By the time of his next renewal cycle, the suit against Mr. Keating had been reported by Ms. Griebel and Ms. Griebel was already under an intensive licensing investigation, an investigation of which Mr. Keating was well aware. The Commission already knew about the suit against Mr. Keating, and Mr. Keating knew that it knew. Reporting under those circumstances is not "self-reporting."

A common theme of all four cases is a $2000 fine coupled with a reprimand, and such a fine and reprimand should be applied to Mr. Keating. Ethics training is also commonly required in false application cases (it is not clear why it was omitted for *Prabucki*), and would be beneficial in this case. As to the more significant sanctions of suspension and probation, Mr. Keating's conduct equates most closely to that of Mr. Moser but is marginally less culpable; a

---

89 No. 3002-10-005 (Alaska Real Estate Comm'n, adopted March 17, 2010).

90 No. 3004-10-008 (Alaska Real Estate Comm'n, adopted March 17, 2010).

91 *See In re Bevington*, OAH No. 10-0110-REC (Alaska Real Estate Comm'n, adopted May 27, 2010), at 4 n.28 (describing the ancillary *Caro* and *Crowley* suspensions).

45-day suspension with a year of probation would fit with the Commission's prior handling of similar matters. The suspension and probation periods should be consecutive to those ordered for the independent and distinct violation discussed in Part V-B-1.

VI. CONCLUSION AND ORDER

A. Kelly Griebel

Upon adoption of this Decision, the Commission imposes the following disciplinary sanctions against licensed salesperson Kelly Griebel:

1. CIVIL FINE

Kelly Griebel is assessed a civil fine of $2000. The payment of $1000 shall be in cash, certified check, or money order payable to "State of Alaska," delivered to counsel for the Division of Corporations, Business and Professional Licensing within 90 days of adoption of this Decision and Order. The remaining $1000 of the civil fine is suspended and will be due within 30 days of any determination that Ms. Griebel has failed to comply with a term of her probation. If the probation is completed with no such determination, the obligation will be discharged.

2. REPRIMAND

The following reprimand shall be placed in Kelly Griebel's license file in the form of this Decision and Order:

> **The Real Estate Commission hereby reprimands you, Kelly Griebel, for failing to disclose a material defect in a real estate transaction as required by law. Your conduct is considered a serious violation and detracts from the integrity and professionalism you must maintain in order to practice real estate in Alaska.**

3. ADDITIONAL EDUCATION

In addition to the continuing education/competency requirements under Alaska law for her license, Kelly Griebel shall within one year of adoption of this Decision and Order attend and satisfactorily complete no less than nine hours of education dealing with ethics for real estate professionals that includes significant instruction on the topic of disclosure requirements in real estate transactions. The course curricula must be approved by the Commission's agent prior to Ms. Griebel registering for the course or courses. After completion of the course or courses, the certificates of satisfactory completion are to be provided to the Commission's agent. All costs are the responsibility of Ms. Griebel.

4. PROBATION

Kelly Griebel's license shall be on probation for one year from the effective date of this order. If Ms. Griebel fully complies with all of the terms and conditions of this license probation, the probationary period will end upon the expiration of one year. The one-year probationary period excludes (i) any absence from the state in excess of 30 consecutive days; (ii) any absence from the state in excess of 60 aggregate days in one year; (iii) any period in which the respondent is not a legal resident of Alaska; or (iv) any period in which Ms. Griebel does not hold an active real estate license in Alaska. Ms. Griebel shall inform the Commission's agent in writing of all absences or moves covered by items (i), (ii), or (iii).

During the term of her probation, Kelly Griebel shall comply with all provisions of this order, including payment of $1000 and completion of additional education, and shall comply with all laws relating to the real estate profession.

If, after notice and an opportunity for hearing, it is determined that Kelly Griebel has failed to comply with any requirement herein, her license shall be automatically suspended for a period not less than the unexpired term of her probation. This provision does not limit the authority of the Commission to impose additional sanctions as appropriate.

B. David Keating

Upon adoption of this Decision, the Commission imposes the following disciplinary sanctions against licensed broker David Keating:

1. CIVIL FINE

David Keating is assessed a civil fine of $4000. The payment of $3000 shall be in cash, certified check, or money order payable to "State of Alaska," delivered to counsel for the Division of Corporations, Business and Professional Licensing within 90 days of adoption of this Decision and Order. The remaining $1000 of the civil fine is suspended and will be due within 30 days of any determination that Mr. Keating has failed to comply with a term of his probation. If the probation is completed with no such determination, the obligation will be discharged.

2. REPRIMAND

The following reprimand shall be placed in Mr. Keating's license file in the form of this Decision and Order:

> **The Real Estate Commission hereby reprimands you, David Keating, for failing to disclose a material defect in a real estate transaction as**

required by law and for submitting a falsified application for license renewal. Your conduct is considered a serious violation and detracts from the integrity and professionalism you must maintain in order to practice real estate in Alaska.

3. ADDITIONAL EDUCATION

In addition to the continuing education/competency requirements under Alaska law for his license, David Keating shall within one year of adoption of this Decision and Order attend and satisfactorily complete no less than twelve hours of education dealing with ethics for real estate professionals that includes significant instruction on the topic of disclosure requirements in real estate transactions and compliance with licensing requirements. The course curricula must be approved by the Commission's agent prior to Mr. Keating registering for the course or courses. After completion of the course or courses, the certificates of satisfactory completion are to be provided to the Commission's agent. All costs are the responsibility of Mr. Keating.

4. PROBATION

David Keating's license shall be on probation for two years from the effective date of this order. If Mr. Keating fully complies with all of the terms and conditions of this license probation, the probationary period will end upon the expiration of two years. The two-year probationary period excludes (i) any absence from the state in excess of 30 consecutive days; (ii) any absence from the state in excess of 60 aggregate days in one year; (iii) any period in which the respondent is not a legal resident of Alaska; or (iv) any period in which the Mr. Keating does not hold an active real estate license in Alaska. Mr. Keating shall inform the Commission's agent in writing of all absences or moves covered by items (i), (ii), or (iii).

During the term of his probation, David Keating shall comply with all provisions of this order, including payment of $3000 and completion of additional education, and shall comply with all laws relating to the real estate profession.

If, after notice and an opportunity for hearing, it is determined that David Keating has failed to comply with any requirement herein, his license shall be automatically suspended for a period not less than the unexpired term of his probation. This provision does not limit the authority of the Commission to impose additional sanctions as appropriate.

5. LICENSE SUSPENSION

David Keating's real estate license is suspended for 90 days. The period of suspension will commence on the sixtieth day after this Decision and Order becomes effective as provided in AS 44.62.520.

Dated this 8th day of November, 2011.

Signed
Christopher Kennedy
Administrative Law Judge

Adoption

The Alaska Real Estate Commission adopts this Decision and Order as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this Decision and Order.

DATED this 7th day of December, 2011.

By: *Signed*
Signature
Bradford Cole
Name
Chairman
Title

[This document has been modified to conform to the technical standards for publication.]