

In the
Supreme Court of Ohio

RICK E. STARR,	:	Case No. 2021-1004
	:	
Appellant,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
OHIO DEPT. OF COMMERCE,	:	
DIV. OF REAL ESTATE &	:	Court of Appeals
PROFESSIONAL LICENSING,	:	Case No. 20AP-47
	:	
Defendant-Appellee.	:	

**MEMORANDUM OF APPELLEE
OHIO REAL ESTATE COMMISSION**

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PARTY EXPLANATION

Although Appellant Rick E. Starr named the Ohio Department of Commerce, Division of Real Estate as the Appellee at every step of the judicial review of the administrative decision, the adjudicatory order was issued by the Ohio Real Estate Commission, which is the true Appellee in this action.

INTRODUCTION

A real estate salesperson holds a position of trust. The sale of real property is a complicated process and the sellers and the buyers depend on the expertise of a salesperson to guide them through the process. Appellant Rick E. Starr violated this trust with both a client and Mr. Starr's sublessees. After an evidentiary hearing, the Ohio Real Estate Commission believed the violations were severe enough to merit revocation of his real estate salesperson license and a civil fine. On appeal, the Courts of Common Pleas and of Appeals agreed. Now, Mr. Starr asks this Court to find that the Commission and both courts committed errors significant enough to merit this Court's review. But this case is merely about the Commission acting appropriately in administering a regulatory program consistent with the facts specific to Mr. Starr's violations of state law and the Canons of Ethics for real estate professionals, and the reviewing Courts unanimously agree. Mr. Starr merely seeks a fourth bite at the apple, not the establishment of new law or clarifying controversies of general importance. This Court should decline jurisdiction over this appeal.

STATEMENT OF CASE AND FACTS

- A. Mr. Starr and Mr. Easley executed the Exclusive Right to Sell Listing Contract and two days later an Agency Disclosure Statement and a Real Estate Purchase Contract.**

On April 25, 2016, Appellant Rick Starr, a licensed real estate salesperson, met with Ricardo Easley, who was interested in selling his home. At this meeting, Mr. Easley and

Mr. Starr discussed short-selling Mr. Easley's property and the repairs that needed to be done on the home prior to selling. They signed an Exclusive Right to Sell Listing Contract and a Multiple Listing Service Residential Work Sheet. Notably, the Exclusive Right to Sell Listing Contract was missing both a description of the property to be sold and a proposed listing price.

Two days later, on April 27, 2016, Mr. Starr sent to Mr. Easley, via the electronic document signing system Dotloop, an Agency Disclosure Statement and a Real Estate Purchase Contract. According to the Disclosure Statement, Mr. Starr now purportedly represented exclusively as buyer TRST, LLC, a company Mr. Starr himself owned. Mr. Starr never terminated or revoked the Exclusive Right to Sell Listing Contract with Mr. Easley.

Pursuant to the Real Estate Purchase Contract, buyer TRST, LLC's right to inspect terminated on the date of closing. The Purchase Contract further provided that, until closing, TRST, LLC could lease the property for \$1.00 from Mr. Easley, and then in turn, TRST, LLC could sublease the property for any amount with those rental proceeds going to TRST, LLC, not to Mr. Easley.

Mr. Starr, on behalf of TRST, LLC, then sublet the condominium to Jarod Gibbons and Rosa Krichbaum. The lease agreement required a monthly rent of \$1,070 from them. The renters paid a security deposit of \$1,070, and one month's rent in that same amount

to Real Estate Stars Property Management (another company owned by Mr. Starr, which purportedly managed the property). Mr. Easley did not receive any of this rent.

B. Mr. Starr wrongly represented that he was the owner of the property.

On May 1, 2016, Mr. Starr, on behalf of TRST, LLC, signed, as a co-owner with Mr. Easley, a Residential Property Management Agreement that purported to employ Real Estate Stars Property Management as the property manager for Mr. Easley's property and required that repairs to the property be performed by members of the Realty Alliances network. Mr. Starr owns both Real Estate Stars Property Management and the Realty Alliances network. He signed a second property management agreement on May 26, 2016, also listing TRST, LLC as a co-owner with Mr. Easley of the property.

Mr. Starr and his agent, Kim Forrester, represented to the sublessees Mr. Gibbons and Ms. Krichbaum that Mr. Starr owned the property. In addition, Mr. Starr did not tell Mr. Gibbons and Ms. Krichbaum that Mr. Starr had contracted with Mr. Easley to sell the property, and he did not reveal to the sublessees that they would be responsible for showing the property.

C. The Real Estate Commission revoked Mr. Starr's license and the Courts of Common Pleas and Appeals upheld the Order.

After investigating these practices, the Ohio Department of Commerce, Division of Real Estate and Professional Licensing (Division) issued a Notification of Formal Hearing, alleging four separate violations. A hearing was held before a hearing examiner,

who issued a report recommending that the Real Estate Commission (Commission) find that Mr. Starr had violated the provisions charged by the Division. On May 15, 2019, via certified mail, the Division sent Mr. Starr a notice stating that the Commission would consider the report and recommendation in his case on June 5, 2019 at 10:45 a.m. The return receipt shows a signature at the address Mr. Starr had provided to the Division. On June 5, 2019, the Commission held its review of the hearing examiner's report and adopted the Findings of Fact and Conclusions of Law. For each of the four charges, the Commission revoked Mr. Starr's license and fined him \$1,000, a total of \$4,000.

Upon appeal, the Franklin County Court of Common Pleas upheld the Commission's Order, finding it was supported by reliable, probative, and substantial evidence, and was in accordance with law. The Tenth District Court of Appeals affirmed the Court of Common Pleas' Decision, finding that that Court did not abuse its discretion in upholding the Commission's Final Order.

THIS IS NOT A CASE OF GREAT GENERAL INTEREST

In his attempted appeal to this Court, Mr. Starr simply seeks a different result for the same set of facts, not a review of issues of great general interest or substantial constitutional concern. The issues concerning the merits of a revocation of a real estate professional license for ethics violations are specific to the real estate industry and therefore not of great public or general interest. The Commission's order is based upon a plain reading of State law.

Mr. Starr asks this Court to reverse as erroneous the Commission's determination of what should or should not be included in an agreement between a property owner and the owner's real estate agent. These requirements are set by State law and rule which require that the agreement grant the salesperson the exclusive right to represent the seller in the sale of "the seller's property," R.C. 4735.01(U), and Mr. Starr asks this Court to simply reverse the holding of the Court of Appeals that "the seller's property" must be described—a request for error correction, not a proposition of law. Likewise, Mr. Starr takes issue with the holding of the Court of Appeals that, by first signing an agreement to represent the seller, and then proposing to represent a company he owns as purchaser of the property, Mr. Starr created an illegal dual agency in violation of R.C. 4735.71(C). Again, Mr. Starr asks this Court to re-review the Court of Appeals' decision, not to create new law, but, rather to correct alleged errors. Both of the reviewing courts thoroughly researched the applicable statutes and made reasoned conclusions based upon commonly accepted practices in the real estate sales industry that need not be reviewed once again.

The remainder of Mr. Starr's proposed propositions of law are mired in facts that are specific to this case and this administrative record. There are no universal themes. Mr. Starr complains of Due Process violations in the notice given him of the Commission's meeting at which the Report and Recommendation was reviewed and the Commission made its Final Order; however, the notice listed both the date and time the meeting would be held, and the signed return receipt showed that the notice was received

at the address provided by Mr. Starr. Mr. Starr showed up to the meeting, albeit after the Commission had voted on the outcome. This Court has numerous times held that service is perfected and Due Process is satisfied when a person at the proper address signs for the notice. *See, e.g., Mitchell v. Mitchell*, 64 Ohio St.2d 49, 51, 413 N.E.2d 1182 (1980). This case does not present any facts that would support a different holding.

Finally, Mr. Starr challenges that factual basis for the Commission's findings that Mr. Starr violated the Canons of Ethics for the Real Estate Profession. This Court has held many times that reviewing courts must review this question for an abuse of discretion. *Kennedy v. Marion Correctional Inst.*, 69 Ohio St.3d 20, 22, 630 N.E.2d 324 (1994). The Court of Common Pleas found that the record contained ample reliable, probative, and substantial evidence supporting the Commission's findings, and the Court of Appeals found that the Court of Common Pleas did not abuse its discretion in so finding. There is no reason for this Court to laboriously add its combing of the record to those that have been done before only to reverse a decision based on the facts presented.

The Commission found Mr. Starr violated four different provisions of State law and the Cannons of Ethics and, consistent with its statutory authority, revoked his license for *each* charge, in effect, revoking his license and levying a \$1,000 fine four times. Even if this Court were to accept jurisdiction over any one or more of Mr. Starr's proposed propositions of law, it would need to find sufficient error to reverse the Commission's Order as to all of the charges and their sanctions in order to change the ultimate outcome.

In other words, Mr. Starr's license will be revoked if the Commission's Order stands as to any one of the charges.

The ethical provisions against which Mr. Starr was charged holds real estate professionals to a higher degree of knowledge than the general public and to high standards of conduct. This Court recognizes these standards and should not accept Mr. Starr's invitation to review a case that presents no new novel questions.

ARGUMENT

Appellee's First Proposition of Law:

The Real Estate Commission, based upon its professional knowledge of the profession, may, in its discretion, determine the more obvious requirements for an exclusive right to sell listing agreement.

Pursuant to R. C. 4735.01(U), an exclusive right to sell listing agreement is an “agency agreement between a seller and broker that meets the requirements of section 4735.55 of the Revised Code and does both of the following: (1) [g]rants the broker the exclusive right to represent the seller in the sale or lease of *the seller's property*; (2) [p]rovides the broker will be compensated” if the property is sold outside of the agreement. (Emphasis added.) The Exclusive Right to Sell Listing Contract established Mr. Starr as the exclusive real estate salesperson permitted to sell Mr. Easley's property, and yet it did not identify the specific property to be sold or the proposed list price for the property. As noted by the Court of Appeals below, “an exclusive right to sell agreement grants the right to sell or lease the seller's property, not unidentified property.” June 30, 2021 Decision, p.12. Thus, contrary to Mr. Starr's assertion misapplying *Hughes v. Ohio Div. of Real Estate*, 86 Ohio App.3d 757, 762-763 (2nd Dist.1993) and alleging that the Commission did not give him advance notice that omitting this information would be considered misconduct, the General Assembly had mandated that the information be provided. Based on its statutory authority to insure standards in the industry, the Commission determined that Mr. Starr committed

misconduct in the real estate industry by executing an exclusive right to sell listing contract that was deficient in the exact information that forms the basis of the service Mr. Starr was to perform: selling a clearly identified property for an agreed-upon price. The Commissioners are members of the real estate industry and are in the best position to judge normal industry practice as that is compliant with applicable State law. *See*, R.C. 4735.03.

In this case, Mr. Starr failed to present any evidence that it was an acceptable practice in the real estate profession to omit the property description and list price in an exclusive right to sell listing contract. Rather, the fact that the preprinted form, developed by the Columbus Board of Realtors, Inc., provides blank spaces for that exact information to be provided, supports the Commission's view that industry practice requires the property description and list price be provided. Thus, the Commission's Final Order is supported by reliable, probative, and substantial evidence and is in accordance with law.

Appellee's Second Proposition of Law:

A real estate salesperson violates the prohibition against illegal dual agencies in R.C. 4735.71(C) when the salesperson presents to a selling client an Agency Disclosure Statement stating that the salesperson represents the buyer, a company wholly owned by the salesperson, after having earlier executed with the seller an Exclusive Right to Sell Listing Contract agreeing to represent the seller of the property.

A licensed salesperson may not represent a seller and, in the same transaction, become a party to the transaction as the buyer. R.C. 4735.71(C). That is what Mr. Starr did. Mr. Starr executed the Exclusive Right to Sell Listing Contract with Mr. Easley on

April 25, 2016, and then, *while continuing to represent* Mr. Easley, became a party to the transaction himself. Mr. Starr violated R.C. 4735.71(C) the moment he created “a dual agency relationship in which the licensee [Mr. Starr] is a party to the transaction, either personally or as an officer or member of a [business entity] that has an interest in the real property that is the subject of the transaction” R.C. 4735.71(C). To reiterate, Mr. Starr’s violation was not a question of inadequate notice—no amount of notice would have authorized Mr. Starr’s self-dealing. *See id.*

Mr. Starr asserts that a real estate salesperson may change the party he or she represents when written consent to the change is obtained from the parties to the transaction. R.C. 4735.59. He did not obtain that consent here. Contrary to Mr. Starr’s assertion, the plain language of the Agency Disclosure Statement he executed with Mr. Easley does not terminate the previously executed Exclusive Right to Sell Listing Contract. The Disclosure Statement simply states that Mr. Starr *also* represents the buyer. These documents provide ample reliable, probative, and substantial evidence that Mr. Starr, a representative of Mr. Easley, the seller, also was the purchaser, “either personally or as an officer or member of a . . . limited liability company . . . that has an intention of purchasing . . . the real property” that “is the subject of the transaction” R.C. 4735.71(C).

Appellee’s Third Proposition of Law:

An agency fulfills its constitutional requirement to notify an administrative respondent of an administrative hearing when the agency mails a letter with the date, time, and place

that the hearing will take place to the address the respondent provided to the agency. The certified receipt showing a signature is evidence of the perfection of service.

In Mr. Starr's Propositions Three and Four, he challenges the Court of Appeals' holding that the Commission properly notified him of the Commission's meeting at which it reviewed the Hearing Officer's Report and Recommendation. Notice must be sent via registered (or certified) mail to the licensee's last known address. R.C. 119.07. When an item is sent by certified mail, return receipt requested, and thereafter a signed receipt is returned to the sender, a rebuttable presumption of delivery to the addressee is established. *Mitchell v. Mitchell*, 64 Ohio St.2d 49, 51, 413 N.E.2d 1182 (1980). The recipient need not be an agent of the licensee. *Id.* at 51-52.

Here, the Division, consistent with its requirement in R.C. 119.07, sent Mr. Starr a notice stating both the date *and* time that the Commission would consider the report and recommendation in his case: June 5, 2019 at 10:45 a.m. The Division sent the notice to the address Mr. Starr himself provided to the Division for such mailings. A person at that address signed the return receipt. Mr. Starr contended that he knew the date of the meeting, but somehow not the time, when the only notice the Division sent had both pieces of information. The Division had previously sent numerous documents to that address throughout the proceeding without issue or complaint by Mr. Starr. Furthermore, Mr. Starr offered no evidence for who might signed for the notice and presented no evidence to rebut the presumption that he received the notice. *Compare, e.g., TCC Mgt. v. Clapp*, 10th Dist. Franklin No. 05AP-42, 2005-Ohio-4357, ¶ 16 (Defendant

rebutted presumption of valid service with testimony from person who signed the mail receipt and admitted that he did not tell her of the lawsuit, summons, or complaint.). Accordingly, the Division provided notice of the Commission's meeting that was reasonably calculated to give Mr. Starr notice of the hearing date and time and that was consistent with statutory requirements.

Mr. Starr also challenges the long-standing rule that estoppel cannot be asserted against the State in the exercise of a governmental function. The Court should not consider his claim, as it was not the basis for the decision below. The Court of Appeals affirmed the Court of Common Pleas' finding that Mr. Starr's affidavit asserting that he did not have knowledge of the hearing time was not credible. The Courts concluded, in other words, that the call Starr claimed he received never happened and that Mr. Starr was not misinformed about the hearing time.

Even if he had been misinformed, however, "[i]t is well-settled that, as a general rule, the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function." *Ohio State Bd. of Pharmacy v. Frantz*, 51 Ohio St.3d 143, 146, 555 N.E.2d 630, citing *Sekerak v. Fairhill Mental Health Ctr.*, 25 Ohio St.3d 38, 39, 495 N.E. 2d 14, 15 (1986). *See also, Sun Refining & Marketing Co. v. Brennan*, 31 Ohio St.3d 306, 307, 511 N.E.2d 112 (1987) (Licensee may not rely on statement from an Assistant Attorney General that service of notice of appeal by mail, rather than hand-delivery, would be sufficient.). Accordingly, even if an employee of the Division had given Mr. Starr

incorrect information, which he cannot establish, he could not have relied upon that information, but, rather, had to seek out the official notice of the Commission. The Court of Appeals correctly held that the Commission did not violate Mr. Starr's right to Due Process.

Appellee's Fourth Proposition of Law:

The record reflects that the Commission's Order finding Mr. Starr had violated State law was supported by reliable, probative, and substantial evidence and was in accordance with law.

The record contains ample reliable, probative, and substantial evidence supporting the Commission's finding that Mr. Starr violated numerous provisions of State law and the Real Estate Canons of Ethics. The Commission, based upon the documentation, the lack of a revocation of Mr. Starr's representation of Mr. Easley, and the fact that Mr. Starr owned the purchasing entity, correctly found that Mr. Starr had created a dual agency that violated R.C. 4735.71(C).

The Commission further properly found that Mr. Starr had violated the Canons of Ethics for the Real Estate Industry in multiple ways. The purchase contract did not allow Mr. Easley a reasonable opportunity to cure any defects and permitted Mr. Starr to lease the property from Mr. Easley for \$1.00 per month while subletting it at any price at Mr. Starr's profit. Mr. Starr's Property Management Agreements improperly identified him or his companies as the owner of the property and required Mr. Easley to use Mr. Starr's own companies to perform repairs, thus possibly increasing the price. Mr. Starr also

falsely asserted his ownership to the sublessees of the property. Mr. Starr had taken no affirmative steps towards that ownership such as making a down payment or contacting the bank in order to initiate a short sale and thus could not even be considered an “equitable” owner of the property. Finally, although the sublease agreement required the sublessees to allow Mr. Starr access to the property to show it to possible buyers, it did not detail that the sublessees themselves would be required to show the property on pain of eviction. There is ample reliable, probative, and substantial evidence supporting the Commission’s findings on each of these violations and thus the Court of Appeals properly affirmed the Court of Common Pleas’ decision to uphold the Commission’s Order.

CONCLUSION

There is no reason for this Court to undertake review of this case. It is a purely fact-based appeal seeking a new outcome and not a novel case of public interest, nor does it raise a substantial constitutional question. For the above reasons, Appellee Ohio Real Estate Commission urges the Court to deny jurisdiction.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Defendant-Appellee State of Ohio Opposing Jurisdiction was served via ordinary mail and via email this 13th day of September, 2021, upon the following counsel:

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