

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-1966

**Bureau of Commercial Services,
Petitioner**

Agency No. 65-00-2066-00

v

Agency: Bureau of Commercial Services

**R. J. Golden, Inc.,
d/b/a ReMax of Mt. Pleasant, Inc.,
Respondent**

Case Type: Sanction

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**Issued and entered
this 29th day of January, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Randy Golden appeared on behalf of Respondent, R.J. Golden, Inc.

This case stems from a July 20, 2001 Formal Complaint which discloses that Respondent, R. J. Golden, Inc., is licensed as a real estate broker under the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (the Code). The Complaint alleges that Respondent was the real estate broker for a parcel of land in Weidman, Michigan. The Complaint further alleges that on or about April 1, 1998 the closing of the sale of the property occurred at Isabella Bank and Trust in Mt. Pleasant, Michigan. The Complaint avers that Respondent failed to furnish the seller a signed closing statement at the closing, contrary to

1991 AACR R 339.22311(1). The Complaint further alleges that by violating this rule, Respondent also violated a rule of conduct in practicing an occupation, contrary to Section 604(c) of the Code.

The hearing in this matter was held as scheduled on January 23, 2002.

ISSUES AND APPLICABLE LAW

Rule 339.22311(1) provides:

R 339.22311 Closing transactions.

Rule 311. (1) The broker or associate broker who is involved at the closing of a real estate or business opportunity transaction shall furnish, or cause to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party. If the closing is conducted at a bank or other closing entity, the broker or associate broker is still responsible for the content of the closing statement and shall sign the final closing document.

(Emphasis supplied).

Section 604(c) of the Code provides for penalties for the holder of an occupational license who violates a rule of conduct of an occupation.

FINDINGS OF FACT

The only witness to testify at the hearing was Dennis Goff who has been licensed as a real estate broker since 1968 and is currently a member of Petitioner's Board of Real Estate Brokers and Salespersons. Mr. Goff has been involved in the present case since the compliance conference. He identified the unsigned closing statement at issue in this case, Exhibit 1. Mr. Goff testified that today most real estate closings are held at banks, mortgage or title companies. He alluded to the outmoded nature of Rule 339.22311(1) which

imposes a duty on brokers for the contents of closing statements that are usually prepared by lenders.

It was Mr. Goff's testimony that Respondent was not informed that the closing, which is the subject of the Complaint in this case, was going to be held. It was also conceded by Petitioner that there was no way Respondent could have discovered that the closing was scheduled.

As the emphasized portion of Rule 339.22311(1) indicates, the duty to furnish the seller of real estate a signed closing statement is only imposed on a broker who is involved at the closing. As conceded by Petitioner, Respondent was not notified of the closing and could not through the exercise of diligence have discovered that the closing was scheduled. The law does not generally require a person to do the impossible. Thus, I find as a matter of fact that Respondent was not involved at the closing of the sale of the real estate in this case and thus had no duty to furnish a signed closing statement to the seller.

CONCLUSIONS OF LAW

Based on the factual finding noted above, I find that Respondent did not violate Rule 339.22311(1) or Section 604(c) of the Code. This case clearly did not warrant the filing of a Formal Complaint. Based on the uncontested facts of this case the Complaint should be dismissed.

James L. Karpen
Administrative Law Judge

Docket No. 2001-1966

Page 4