

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

In the matter of

Docket No. 2000-711

**Bureau of Commercial Services,
Petitioner**

Agency No. 65-97-2170-00

v

**Agency: Bureau of Commercial
Services**

**Deeann Massey,
Respondent**

Case Type: Sanction

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**Issued and entered
this 24th day of January, 2001
by Erick Williams
Administrative Law Judge**

HEARING REPORT

Procedural History

DeeAnn Massey, a real estate agent, is accused of fraud in the sale of a house. Wane Bell, the buyer filed a complaint in September 1997. The Bureau of Commercial Services filed a complaint in February 2000. A hearing convened in December 2000. Kimball Smith represented the state. Ms. Massey participated without a lawyer. This opinion finds the complaint substantiated.

Issues and Applicable Law

MCL 339.604 (b) and (c); MSA 18.425(604)(b) and (c) read:

A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section

602: ...

b) Practices fraud, deceit, or dishonesty in practicing an occupation.

(c) Violates a rule of conduct of an occupation....

1991 AACRS R 339.22333(1) reads:

“A licensee shall not, directly or indirectly, misrepresent material facts.”

Findings of Fact

Wane Bell works for General Motors. In 1996, his company moved him from Ft. Wayne to Pontiac and referred his family to a real estate agent -- DeeAnn Massey.

DeeAnn Massey works for Real Estate One Promark in Ortonville, Michigan. Ms. Massey's husband, Jeff Massey, happens to build houses, operating as the Massey Building Company.

The Bells ultimately agreed to buy a house built by the Massey Building Company. The house they selected was already partly built. The Bells ordered some modifications, and they signed various documents, including a purchase agreement and addendums. They paid a deposit.

Problems intervened, and the Masseys were not able to deliver the house. A more complete story of the transaction appears in Mr. Bell's September 1997 complaint. Most of the issues he raised in his complaint are beyond the scope of this real estate licensing case. Presumably there is more than one lawsuit concerning this transaction.

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When the problems got big enough, the Bells consulted a lawyer who asked Ms. Massey and her real estate firm for paperwork concerning the transaction. Ms. Massey or Real Estate One provided some documents. Two documents are the focus of this case – the agency disclosure form, Exhibit 3, and the April 1997 purchase agreement addendum, Exhibits 4 and 5.

The agency disclosure form, Exhibit 3, acknowledges that DeeAnn Massey is acting as agent for the seller. It contains signatures of Mr. and Ms. Bell that are not genuine. They were forged, either by Ms. Massey or someone else in the Real Estate One office. A handwriting expert confirmed that the Bell's signatures were forged, but he made no effort to find who did it.

The April addendum to the purchase agreement describes some additions to the building specifications and changes the price and deposit. We have two versions of the document, Exhibit 5 has an extra sentence in paragraph 2. Catherine Bell testified that the extra sentence was not in the document when she and her husband signed it. The extra sentence reads: "This deposit is non-refundable."

Wayne Bell's September 1997 complaint describes the transaction in great detail from his point of view. It is clear from his complaint that the Bells knew the relationship between DeeAnn Massey, Jeff Massey, and Massy Building Company. Mr. Bell clearly knew that the seller and the real estate agent were close, if not identical.

Catherine Bell testified that she thought DeeAnn Massey was representing the buyers, not the seller. She says she would never have done the deal if she thought the real

estate agent was representing the seller. But I find that testimony incredible; surely the Bells understood the confluence of interest between the real estate agent and the seller.

Wayne Bell's September 1997 complaint also suggests that the Bells understood that the deposit was not refundable. On this point, the complaint reads:

... We signed a purchase agreement for \$350,000. We gave DeeAnn Massey a check for \$5,000 as an earnest money deposit. This \$5,000 was written into an addendum as a non-refundable deposit to cover the changes we made, which included moving one cabinet across the kitchen to make room for a second dishwasher, extending the island 30" to make room for a second oven, purchasing two additional kitchen cabinets, adding central air conditioning to the existing forced air system and adding some additional hardwood flooring.... [Wayne Bell complaint, September 1997, p 4, emphasis added]

Ms. Massey testified that the Bells had agreed that the deposit was non-refundable. Mr. Bell's complaint supports that testimony.

I think it is obvious and needs no handwriting expert to confirm that the same person who wrote the body of Exhibit 4 also added the extra sentence in Item 2 of Exhibit 5. And it was probably Ms. Massey.

Conclusions of Law

The disclosure regarding real estate agency relationships, Exhibit 3, was an entirely fictional document on which the names of Mr. and Ms. Bell were forged. We do not know whether Ms. Massey put the Bells' signatures on the document. If Ms. Massey did not actually do the forgery, she is just as responsible since she signed the document and must

have known it was fictional.

Also, Ms. Massey probably added the extra language to Exhibit 4, the April addendum. It is in her handwriting.

These alterations in the paperwork did not fool the Bells. The Bells knew they were buying a house from their real estate agent. They understood and agreed that the deposit was not refundable. There was no fraud perpetrated directly on the Bells. Furthermore, Ms. Massey did not directly profit from these alterations. The altered documents, however, may have fooled or confused other people trying to evaluate the transaction, such as the Bells' lawyer, creditors, or the government.

The state argued that paperwork is the essence of real estate transactions; people who falsify real estate papers endanger the integrity of the system. I agree. Even though the Bells were not tricked by these documents, such documents are widely-used. Someone else might have been tricked or confused.

Because her alterations to the paperwork misrepresented the transaction to people who might be called on to evaluate it, Ms. Massey violated MCL 339.604 (b) and (c); MSA 18.425(604)(b) and (c) and 1991 AACRS R 339.22333(1).

Decision

Ms. Massey violated MCL 339.604 (b) and (c); MSA 18.425(604)(b) and (c) and 1991 AACRS R 339.22333(1).

Proposed Sanctions

MCL 339.602; MSA 14.825(602), reads:

§ 602. A person, school, or institution which violates a section of this act or a rule or order promulgated or issued under this act shall be assessed one or more of the following penalties:

- (a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.
- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) A civil fine to be paid to the department, not to exceed \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made.

The state recommended that Ms. Massey's license be revoked and that she pay a \$10,000 fine.

Erick Williams
Administrative Law Judge