

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

In the matter of

Docket No. 2002-250

Bureau of Commercial Services,
Petitioner

Agency No. 65-01-4048-00

v
Robert Carl Orlaske,
Respondent

Agency: Bureau of Commercial
Services

Case Type: Sanction

_____ /

**Issued and entered
this 16th day of July, 2002
by C. David Jones
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint against Respondent on October 19, 2001. On or about January 29, 2002, a Notice of Hearing was mailed scheduling the hearing to commence on March 6, 2002, at 9:00 a.m. at 611 W. Ottawa Street, Lansing, Michigan.

On February 28, 2002, an Order Granting Adjournment was issued and entered adjourning the hearing at Petitioner's request and rescheduling it for May 1, 2002. On April 30, 2002, an Order Denying Telephone Testimony was issued and entered.

On May 1, 2002, the hearing commenced as scheduled. Lisa Funkhouser, Attorney, represented Petitioner. Respondent represented himself.

Anne-Marie Ruthrauff, Administrative Assistant to the owners of the condo, testified for Petitioner. The following exhibits offered by Petitioner were admitted into the record: Petitioner's Exhibit 1, July 17, 2000, letter from Ruthrauff; Petitioner's Exhibit 2, September 5, 2000, letter from Roizen, et al; Petitioner's Exhibit 3, September 5, 2000, letter from Roizen, et al; Petitioner's Exhibit 4, Ethics Complaint dated September 21, 2000; Petitioner's Exhibit 5, Decision of Ethics Hearing Panel; Petitioner's Exhibit 6, December 27, 2000, documents, Victim/Witness Services; Petitioner's Exhibit 7, February 8, 2001, letter from Assistant Prosecutor; Petitioner's Exhibit 8, Judgment and Order Amending Probation; Petitioner's Exhibit 9, Order Amending Probation dated May 31, 2001; Petitioner's Exhibit 10, June 19, 2001, letter and Judgment of Restitution; Petitioner's Exhibit 11, Statement of Complaint; and Petitioner's Exhibit 12, Defendant History Report.

Respondent, Mr. Orlaske, testified on his own behalf. The following exhibits offered by Respondent were admitted into the record: Respondent's Exhibit A, Special Power of Attorney; Respondent's Exhibit B, withdrawn exhibit; Respondent's Exhibit C, withdrawn exhibit; Respondent's Exhibit D, excluded exhibit; Respondent's Exhibit E, withdrawn exhibit; Respondent's Exhibit F, Buy and Sell Agreement; Respondent's Exhibit G, July 17, 2000, letter from Ruthrauff; Respondent's Exhibit H, July 17, 2000, statement of Johan; and Respondent's Exhibit I, Special Power of Attorney with fax cover sheet.

ISSUES AND APPLICABLE LAW

The applicable law in this case is the Occupational Code, 1980 PA 299 as amended, MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.*; 1979 AC, R338.1511-1553.

The issues in this case are as follows:

1. Has Respondent demonstrated a lack of good moral character in violation of Occupational Code Section 604(d)?
2. Has Respondent practiced fraud, deceit, or dishonesty in practicing an occupation in violation of Occupational Code Section 604(b)?
3. What are the appropriate penalties for the violations?

FINDINGS OF FACT

1. The complainant in this case is the administrative assistant to Dr. Roizen, Chair of the Department of Anesthesia and Critical Care at the University of Chicago. For some years Dr. Roizen and his colleagues had a contract to provide anesthesia services to the Lakeland Regional Health Facility in Berrien County, Michigan. Drs. Roizen, Schechter, and Aronson, acquired a condominium in St. Joseph so the physicians could reside there when providing anesthesia services. The administrative assistant managed the property for them.

2. Respondent is a licensed real estate salesperson. He provided real estate services for the physicians.

3. The condominium which is involved in this case is located at 240 Water Street, Suite B, St. Joseph, Michigan, in a condo association which is on the

Lake Michigan shoreline. The condominium had 1,200 square feet, two bedrooms, and two and a half baths.

4. The three doctors purchased 240 Water Street, Suite B through Respondent in the late fall of 1994. Because of the resulting contacts, Respondent sold about ten of their homes to various doctors.

5. In 1995 the owners decided to sell 240 Water Street, Suite B and buy another condo. They authorized Respondent to represent them. Respondent showed the property a few times but did not sell it.

6. In 1999 the contract with the Lakeland Regional Health Facility expired and the owners no longer needed the condominium. They leased it out for about five months, and then authorized Respondent to seek summer renters as well as buyers. A Buy Sell Agreement was signed for \$190,000 about April 10, 2000, contingent upon inspection. The planned closure and possession date was April 28, 2000. The condominium was to be sold unfurnished except for a few specified items. However, the sale did not close because a crack in the furnace heat exchanger was discovered. Respondent held about four sets of keys to the condominium.

7. By mid-July 2000 the owners were very dissatisfied that the condominium had not been sold. The owners and Respondent agreed it would be best that they change realtors. On or about July 14, 2000, the owners engaged ReMax Realty. The owners and administrative assistant requested Respondent return the keys. On July 17, 2000, Respondent returned about two sets of keys to the owners new realtor, ReMax. Respondent

retained at least one set of keys through at least July 18, 2000.

8. The new realtor found a tenant subsequently who rented the condo for six to seven months. The new realtor also sold the condominium in August 2001.

9. The weekend of July 15 and 16, 2000, the administrative assistant visited the condominium and discovered certain furnishings were missing from the condominium.

10. One or more criminal charges were filed against Respondent. On or about December 22, 2000, Respondent pled guilty and was found guilty of receiving or concealing stolen property (of the owners) with a value of \$200 or more but less than \$1,000 contrary to MCL 750.535(4)(a); MSA 28.803(4)(a).

11. On January 20, 2001, the Court sentenced Respondent in relevant part as follows: two years probation; 50 hours community service; fines, fees and costs of \$530; and restitution to be determined. On June 19, 2001, the Court issued a Judgment of Restitution and lien against property in the amount of \$1,250 restitution.

12. On September 21, 2000, the owners filed an Ethics Complaint against Respondent with the Southwestern Michigan Association of Realtors, Inc. On December 19, 2001, the Decision of the Ethics Hearing Panel of the Professional Standards Committee was issued, a Recommendation to the Board of Directors. The panel found that Respondent had been convicted of receiving and concealing stolen property and found other facts related to other issues not charged in the Formal Complaint here. The panel found Respondent had violated certain articles of the Code of Ethics and Standards of Practice. It recommended a \$1,600 fine, participation by Respondent in certain education, and that the Board of Directors

consider further action by the Department of Commerce. What final action was taken by the Board of Directors is not indicated on record.

13. On or about July 5, 2001, the administrative assistant on behalf of the owners filed a Statement of Complaint against Respondent with this Department.

14. On some date between December 1999 and July 15, 2000, Respondent removed almost all the furnishings from 240 Water Street, Suite B and took them into his possession. Respondent alleged he gave some away. Respondent returned none of the furnishings before July 18, 2000. Respondent did not inform the owners of the removal and did not receive their consent.

15. On or about July 15, 2000, the administrative assistant arrived at the condominium and discovered the missing furnishings. On or about July 15, 2000, she spoke with Respondent who claimed he did not recall the items being in the condominium. On or about July 15, 2000, the owners filed a police report over the missing property.

16. On July 18, 2000, Respondent returned some of the furnishings to the condominium. The owners were informed of this by another condominium owner. This was the first time they knew that Respondent had the furnishings.

17. The value of the furnishings not returned by Respondent and cost of damages are \$1,250.

18. Respondent lacks good moral character.

19. Respondent practiced deceit and dishonesty in practicing an occupation.

CONCLUSIONS OF LAW

A. Introduction

The Formal Complaint in this case only raised the issue of receiving and concealing stolen property. The hearing panel of the Southwestern Michigan Association of Realtors dealt with additional issues. However, since these additional issues were not raised in the Formal Complaint, they are not decided here.

B. Good Moral Character

Petitioner accused Respondent of the following violation:

A person who commits one or more of the provisions of an article which regulates that occupation or who commits one or more of the following shall be subject to the penalties prescribed in Section 602: . . .d. demonstrates a lack of good moral character.

MCL 339.604(d); MSA 18.425(604)(d); Occupational Code Section 604(d)

1974 PA 381 as amended defines good moral character and provides guidance for an agency in evaluating good moral character. It provides in relevant part as follows:

The phrase "good moral character," or words of similar import, when used as a requirement for an occupational or professional license. . .shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest and open manner.

MCL 338.401(1); MSA 18.1208(1)(1)

A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a persons lack of good moral character. It may be used as evidence in the determination and when so

used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to and is likely to serve the public in a fair, honest and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupational profession for which he or she seeks to be licensed.

MCL 338.42; MSA 18.1208(2)

The following criminal record shall not be used, examined or requested by a licensing board or agency in a determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by the state or pursuant to occupational professional licensure. . . c. Records of an arrest or conviction for a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest and open manner. . .

MCL 338.43(1)(c); MSA 18.1208(3)(1)(c)

Respondent was convicted of the following crime:

1. A person shall not buy, receive, possess, conceal or aid in the concealment of stolen, embezzled or converted money, goods or property, knowing the money, goods or property is stolen, embezzled or converted. . .

4. If any of the following apply, a person who violated subsection 1 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000 or three times the value of the property purchased, received, possessed or concealed, whichever is greater or both imprisonment and a fine:
a. the property purchased, received, possessed or concealed has a value of \$200 or more but less than \$1,000. . .

MCL 750.535; MSA 28.803

The weight of evidence on record indicates Respondent was convicted by a guilty plea. Respondent claimed it was by a no contest plea. However, the Court history

clearly indicates a guilty plea, Petitioner's Exhibit 12. In addition, the February 8, 2001, letter from the prosecuting attorney strongly implies that it was a guilty plea, Petitioner's Exhibit 7, page 2.

At hearing Respondent denied that he was really guilty of receiving or concealing stolen property. Respondent, however, is bound by the judicial determination of guilt.

In addition, there is ample evidence on this record to support Respondent's guilt. Whether or not Respondent's original intent on removing the furnishings was to facilitate the unsuccessful sale of the condominium unfurnished, Respondent's subsequent behavior amounted to receiving or concealing stolen property. Respondent did not inform the owners he had removed and was storing the furnishings and did not obtain their consent. The sale of the condominium collapsed in late April 2000, but by July 15, 2000, Respondent had still not returned the furnishings. On or about July 15, 2000, when asked about the missing furnishings, Respondent falsely claimed he did not recall the items being in the condominium. Contrary to instructions, Respondent kept a set of keys to the condominium. On July 18, 2000, with the administrative assistant gone, he tried to sneak the furnishings back into the condominium. In fact, he did not return all of the furnishings and several things he returned were damaged.

Respondent's conviction for receiving or concealing stolen property is related to his likelihood to serve the public in a fair, honest and open manner. Respondent stole property, tried to conceal it for several months, and lied about it. This is evidence that

Respondent lacks good moral character.

Respondent has not rebutted this evidence. The substance of his offense is clearly related to his occupation since he committed the crime in the course of his occupation and victimized clients.

In addition, Respondent has not shown that he currently has good moral character or is rehabilitated. At hearing Respondent falsely claimed that his conviction was by a no-contest plea, and falsely denied he was guilty of receiving or concealing stolen property. Respondent claimed the “only thing” he did wrong concerned a matter dealt with by the Southwestern Michigan Administrative Association of Realtors and not found in the Formal Complaint.

C. Fraud, Deceit or Dishonesty

Petitioner accused Respondent of the following violation:

A person who violates one or more of the provisions of an article which regulates an occupation or who commits one 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. . .

MCL 339.604(b); MSA 18.425(604)(b); Occupational Code Section 604(b)

Evidence on record establishes this violation. Respondent has at least engaged in deceit and dishonesty in practicing an occupation. He stole property of his clients', tried to conceal the theft and lied about it.

D. Penalty

A person who violates the Occupational Code shall be assessed one or more of certain penalties. These include limitation of license, suspension, revocation, fine, censure, probation and restitution. MCL 339.602; MSA 18.425(602); Occupational Code Section 602.

I make no recommendation on restitution. Petitioner has not requested restitution in the case. The Court ordered Respondent to pay restitution of \$1,250, but whether this was actually paid is unclear on this record.

The preferable penalty here is license revocation. As a real estate salesperson, Respondent would have frequent access to the personal property of others, so their property would be at risk. There is no evidence that Respondent is rehabilitated.

DECISION AND RECOMMENDED PENALTY

Based on the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge decides:

1. Respondent has demonstrated a lack of good moral character in violation of Occupational Code Section 604(d).
2. Respondent has practiced fraud, deceit or dishonesty in practicing an occupation in violation of Occupational Code Section 604(b).

The undersigned Administrative Law Judge recommends that Respondent's license be revoked.

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C. David Jones
Administrative Law Judge

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF REAL ESTATE BROKERS AND SALESPERSONS**

In the matter of :

**ROBERT CARL ORLASKE
Real Estate Salesperson
License No. 65-01-230069**

**Docket No. 2002-250
Complaint No. 65-01-4048-00**

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Real Estate Brokers and Salespersons, hereafter the “Board”, on October 1, 2002; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of C. David Jones, Administrative Law Judge, dated July 16, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and Robert Carl Orlaske, Licensed Real Estate Salesperson, License No. 65-01-230069, hereafter “Respondent”, having been found in violation of Sections 604(b); 604(d) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the “Code”, MCL 339.604(b); MCL 339.604(d) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

- 1. The Real Estate Salesperson License No. 65-01-108301 of Respondent shall be and hereby is REVOKED effective the date of mailing of this Final Order.**

- 2. No application for licensure, renewal, registration or reinstatement shall be considered by the Department unless proper application and/or petition is filed for relicensure, reregistration or reinstatement under Article 4/Article 5 of the Occupational Code, 1980 P.A. 299, *as amended*.**