

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

In the matter of

Docket No. 2002-587

**Bureau of Commercial Services,
Petitioner**

Agency No. 65-00-6591-00

v

Agency: Bureau of Commercial Services

**A & J Investment Co,
Respondent**

Case Type: Sanction

**Issued and entered
this 16th day of May, 2002
by James L. Karpen
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Tracey Hampton Yarborough, Attorney at Law, appeared on behalf of Petitioner, Bureau of Commercial Services. Neither a representative of Respondent, A & J Investment Company, nor an attorney on behalf of Respondent appeared at the hearing.

This proceeding commenced with the filing of a Notice of Hearing dated April 9, 2002, scheduling a hearing for May 15, 2002. The Notice of Hearing was mailed to the Respondent's last known address. Further, the Notice of Hearing informed the Respondent that if it failed to appear at the scheduled hearing, a default may be entered pursuant to Sections 72 and 78 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.* (APA).

The Notice of Hearing was issued pursuant to allegations by the Petitioner that the Respondent violated the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (Code).

At the hearing, Petitioner's representative requested that the Petitioner be allowed to proceed in the Respondent's absence pursuant to Section 72 of the APA and that a default be granted on behalf of the Petitioner pursuant to Section 78 of the APA.

Section 72 of the APA states, in pertinent part:

(1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

Further, Section 78 of the APA states, in pertinent part:

(2) Except as otherwise provided by law, disposition may be made of a contested case by...default... .

The Petitioner's motion for default was granted. As a result of the default, the factual allegations contained in the Petitioner's Formal Complaint dated January 9, 2002, are deemed true.

During the hearing the following two exhibits were accepted into the record:

Exhibit 1: Complainant's November 9, 2000 check to Respondent in the amount of \$1,000.00.

Exhibit 2: A receipt issued by Respondent to Complainant for the \$1,000.00 check.

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondent violated Section 2512(d) of the Code, which provides:

Sec. 2512. A licensee who commits 1 or more of the following is subject to the penalties set forth in article 6:

* * *

(d) Fails to account for or to remit money coming into the licensee's possession which belongs to others.

FINDINGS OF FACT

Based upon the record, I make the following findings of fact:

1. Respondent A & J Investment Company is licensed as a real estate broker under the Code.
2. On November 9, 2000, Respondent negotiated the sale of real property located on Allegan Road in Vermontville, Michigan and received an earnest money deposit of \$1,000.00 from the prospective purchasers of the property and Complainants John and Cindy Coontz.
3. The sale and purchase of the property was never completed.
4. The Respondent failed to return the earnest money deposit of \$1,000.00 to John and Cindy Coontz.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice, §60.48, at 230 (2d ed. 1994).

The burden of proof is upon the Petitioner to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Respondent. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist., 428 Mich 248, 406 NW2d 825 (1987). Based upon the facts described herein, the Petitioner has proven, by a preponderance of the evidence, that the Respondent violated Section 2512(d) of the Code.

RECOMMENDATIONS

I recommend that Respondent pay a Civil fine of \$1,000.00, make restitution to Complainants in the amount of \$1,000.00, and that its real estate broker's license be suspended if the fine and restitution are not paid within 60 days of a final order.

James L. Karpen
Administrative Law Judge