

1989

Juanita Taft Rogers v. The Division of Real Estate of the Department of Business Regulation of the State of Utah: Brief of Respondent

Utah Court of Appeals

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COURT OF APPEALS

JUANITA TAFT ROGERS,
Petitioner,
vs.
THE DIVISION OF REAL ESTATE
OF THE DEPARTMENT OF BUSINESS
REGULATION OF THE STATE OF
UTAH,
Respondent.

Petitioner for Judicial Review of the final order of the Utah Real Estate Commission and Executive Director of the Department of Business Regulation revoking the license of Petitioner to practice as a principal broker in the State of Utah. Administrative hearing held September 20, 1988 before J. Steven Ecklund, Administrative Law Judge.

Case No. RE-87-08-02.

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STATUTES REPRODUCED

Utah Code Ann. § 61-2-11 (Effective May 12, 1981)

The board or the commission may upon its own motion, and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the actions of any real estate broker or real estate salesman, or any person who shall assume to act as such, within this state, and may suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned in this chapter is found guilty of:

- (8) Being unworthy or incompetent to act as a real estate broker or salesman in such a manner as to safeguard the interests of the public;
- (15) Willful or deliberate violation or disregard of the provisions of this chapter or of the rules and regulations of the commission.

(Emphasis added.)

Utah Code Ann. § 78-12-1

Civil actions may be commenced only within the periods prescribed in this chapter, after the cause of action has accrued, except in specific cases where a different limitation is prescribed by statute.

Utah Code Ann. § 78-12-25(2)

Within four years:

- (2) an action for relief not otherwise provided by law.

Utah Code Ann. § 78-12-33

The limitations prescribed in this article shall apply to actions brought in the name of or for the benefit of the state in the same manner as to actions by private parties.

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Annotated §§ 63-46(b)-16 and 78-2a-3(2)(a) (1953 as amended).

NATURE OF PROCEEDINGS

This is a petition from the Final Order of the Utah Real Estate Commission and the Executive Director of the Department of Business Regulation revoking the license of Petitioner to practice as a principal broker in the State of Utah. Consistent with the provisions of Utah Code Annotated Section 61-2-12(1)(b), the Final Order in this matter issued December 15, 1988. Petitioner filed this petition for review with the instant court on January 12, 1989.

ISSUES PRESENTED FOR REVIEW

I. Whether the Administrative Law Judge erred in denying Petitioner's Motion to Dismiss based on his finding that no Statute of Limitations governed the initiation of an action in an administrative setting.

II. Whether the Order of the Utah Real Estate Commission was reasonable and rational.

STATUTES DETERMINATIVE OF THIS CASE

The following statutes are determinative of this case, and must therefore be considered by the Court:

1. Utah Code Ann. §§ 61-2-11, 61-2-11(8), 61-2-11(15) (1953, as amended).

2. Utah Code Ann. §§ 78-12-25(2), 78-12-33 (1953, as amended).

Due to the length of these statutes, they are reproduced in the appendix.

STATEMENT OF THE CASE

This is a Petition for Judicial Review of an order of the Utah Real Estate Commission ("Commission") revoking Juanita Taft Rogers' ("Petitioner's") license to practice as a real estate principal broker in the State of Utah. The administrative action against Petitioner's real estate license was filed by the Division of Real Estate ("Division") via a petition dated November 25, 1987, in Case No. RE-87-08-02. Petitioner subsequently filed a Motion to Dismiss on June 13, 1988, the original date for hearing, based upon a claim that the action of the Division of Real Estate was barred by a statute of limitations. Limited oral argument was taken on the motion at that time and counsel for the respective parties subsequently filed memoranda with the court. Petitioner's Motion to Dismiss was denied in an Order dated July 21, 1988. On September 20, 1988 the case against petitioner came on for hearing before J. Steven Ecklund, Administrative Law Judge of the Department of Business Regulation. This hearing was delegated to Judge Ecklund for hearing by the Utah Real Estate Commission as per Utah Code Annotated §61-2-5.5(1)(c). Based on the evidence taken in the hearing, Judge Ecklund made Recommended Findings of Fact

Conclusions of Law and a Recommended Order to the Utah Real Estate Commission on December 14, 1988. On December 14, 1988, the Utah Real Estate Commissioners, by unanimous action, adopted Judge Ecklund's Recommended Findings, Conclusions and Order as their own, and on December 15, 1988, William E. Dunn, Executive Director of the Department of Business Regulation confirmed and approved the order as provided by law.

STATEMENT OF FACTS

The following facts are from the Commission's findings and apparently are undisputed by Petitioner.

1. Sometime in 1973, Petitioner became licensed as a sales agent by the Division of Real Estate. As relevant herein, Petitioner was affiliated with principal broker David R. Harman as of January 1982. On September 1, 1982, she terminated her affiliation with Mr. Harman and became affiliated with principal broker A.J. Michaels.

2. By Order, dated August 17, 1983, Petitioner's license was suspended for one year and thereafter placed on probation for two years, subject to certain terms and conditions. Said order was based on conduct which occurred between December 10, 1981 and August 22, 1982. Petitioner's conduct in that regard was found to constitute gross incompetence and a violation of the fiduciary duty owed to her clients in that transaction. Petitioner subsequently became licensed as a principal broker on January 15, 1987.

3. In January, 1982, Barbara Homeyer contacted Petitioner to obtain her services in purchasing a home. Ms.

Homeyer, who was recently divorced resided in a home jointly owned by herself and her ex-husband. Since there had been no property settlement relative to her divorce and Ms. Homeyer's ex-husband was reluctant to cooperate as to the sale of their home, the only assets available to Ms. Homeyer to provide a down payment on the purchase of another home consisted of various items of inherited personal property.

4. During January 1982, Ms. Homeyer and Petitioner entered into a verbal agreement, whereby Respondent was to act as Ms. Homeyer's real estate agent and attempt to find a prospective seller who would accept Ms. Homeyer's personal property as down payment for the purchase of a home. On February 21, 1982, Petitioner and Ms. Homeyer inventoried her property. Ms. Homeyer then delivered that property to Petitioner, which was held in storage under Petitioner's control. The property was so transferred to Petitioner as the means to provide a safe place for its storage and facilitate Petitioner's access to that property if a prospective seller was located.

5. Between February and late-April 1982, Petitioner and Ms. Homeyer identified at least two properties for possible purchase. In one instance, an agreement could not be reached as to those items of Ms. Homeyer's personal property which would be acceptable in lieu of a cash down payment. When it became apparent to Ms. Homeyer that no other purchase on the above-described terms would be realized, she authorized Petitioner to sell certain items as the means to provide cash for the down payment necessary to purchase a home.

6. During March and April 1982, Petitioner had some of Ms. Homeyer's property appraised and certain items were sold in antique shows. However, as of late April 1982, no progress in locating a suitable home had been realized, Ms. Homeyer had received no monies from Petitioner relative to the sale of some of her property and Petitioner had taken certain property from storage and sold it without Ms. Homeyer's authorization. Further, Petitioner never advised her principal broker of her activities nor did she deliver to him any of the funds she obtained from the sale of Ms. Homeyer's property.

7. In late-April or early May 1982, Ms. Homeyer underwent foot surgery and was advised that her condition could be cancerous. At the time, it was unknown if a suitable home would be found and whether that would occur prior to her possible death. On May 5, 1982, Ms. Homeyer met with Petitioner and they executed a written agreement, whereby the former assigned all of her personal property to Petitioner for sale and/or exchange and authorized Petitioner to liquidate that property. The agreement further provided that if all property held by Petitioner was not liquidated prior to Ms. Homeyer's death, the remaining funds would be placed in trust for the benefit of her two minor children.

8. During the next two months, Ms. Homeyer was never advised as to the status of her property and was unable to contact Petitioner in that regard. In mid-July 1982, Ms. Homeyer retained counsel and made written demand that Petitioner return all personal property in her possession and provide an accounting

as to the sale or other disposition of the remaining property which had been in her possession.

9. By letter, dated October 21, 1982, Peitioner generally informed Ms. Homeyer as to efforts which had been undertaken to appraise, restore, and/or sell some of the property in her possession. Petitioner further mentioned various costs incurred as to the appraisal and restoration of that property. Petitioner also reiterated that her efforts had been undertaken to produce funds necessary for a down payment for a home or condominium, but she acknowledged that no suitable residence had yet been identified. Petitioner requested Ms. Homeyer to keep her posted "about what you want to do with the housing thing" and she advised Ms. Homeyer of a listing for a two bedroom townhouse duplex and pondered that Ms. Homeyer could live in one side and rent the other.

10. By letter, dated October 28, 1982, Ms. Homeyer advised Petitioner that purchase of the duplex would not be economically feasible and reiterated that no accounting had been received as to the status of her property or any disposition thereof. By letter, dated October 29, 1982, a second demand was made that Petitioner return all items of personal property entrusted to her. When compliance with that demand was not forthcoming, Ms. Homeyer initiated litigation. No accounting was provided to Ms. Homeyer until July 9, 1986, when Petitioner returned certain items pursuant to a writ of replevin.

11. By stipulation, dated October 7, 1986, Ms. Homeyer and Petitioner identified the status of some of the property

which had been in Petitioner's possession. That property consisted of guns, cameras, furs, clocks and watches, a coin collection, silver, jewelry, flatware, china, pewter, furniture, household and other miscellaneous items. The value of the property which Petitioner sold was agreed to have been \$6,530.50 and Petitioner received \$4,495.00 from the sale of that property. It was agreed that certain property, valued at \$6,799.50, was delivered by Petitioner to third parties and that said property had not been recovered by Ms. Homeyer. It was also agreed that certain property still in Petitioner's possession should be valued at \$4,820.50.

12. Some of the property which Ms. Homeyer had delivered to Petitioner was subsequently returned to her. However, in Findings of Fact and Conclusions of Law, dated October 30, 1986, the Court concluded that Petitioner had sold some of the property below fair market value, had interfered with Ms. Homeyer's possession and control of some of the property by intentionally refusing to return it and had converted the proceeds from the sale of some of the property to her own use. By reason thereof, the Court entered judgment on October 30, 1986 in favor of Ms. Homeyer totaling \$2,035.50 as a result of Petitioner's breach of contractual and fiduciary duties to Ms. Homeyer, \$4,495.00 as a result of Petitioner's conversion of proceeds from the sale of the property, \$6,799.50 as a result of result of Petitioner's conversion of property upon transferring that property to others and \$4,820.50 as a result of Petitioner's conversion of property still in her possession.

13. The record also reflects that Petitioner initiated bankruptcy proceedings in 1981 and that after entry of the October 30, 1986 judgment against her, an order was entered in those bankruptcy proceedings relative to Petitioner, whereby the just-stated judgment was discharged.

SUMMARY OF THE ARGUMENT

Administrative disciplinary actions are neither civil nor criminal, and are therefore not subject to general statutes of limitation governing those types of proceedings. Had the Utah Legislature intended for administrative disciplinary actions involving real estate licensees to be subject to a statute of limitations, it would have included one in the statutory scheme governing the real estate profession. However, not only did the Legislature elect not to impose a statute of limitations, but specified that disciplinary action could be taken "at any time" that a licensee was found guilty of licensing law violations.

This case is subject to the pre-Utah Administrative Procedures Act standard of review found in Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601 (Utah 1983). The Court must determine whether the Commission's conclusions of law and order of revocation were reasonable and rational, while according due deference to the Commission's specialized knowledge and expertise. The facts in this case clearly indicate that Petitioner did not act in her client's best interest, breached the fiduciary duty she owed as an agent to her principal, and caused considerable financial

damage to her client. Inasmuch as the Commission constitutes a "jury of Petitioner's peers," it was in the best position to determine that her actions were a violation of both rule and law governing the real estate profession, and that the best way to protect the public's welfare was to revoke Petitioner's real estate license. The Commission's actions were both reasonable and rational, and should therefore be upheld.

ARGUMENT

POINT I

THE GENERAL STATUTE OF LIMITATIONS URGED UPON
THE COURT BY PETITIONER DOES NOT APPLY TO AN
ADMINISTRATIVE DISCIPLINARY PROCEEDING

A. The General Statute of Limitations found in Utah Code Ann. § 78-12-2(2) has no application to a controversy not involving an "action" or a "cause of action".

The Petitioner would have this court accept that the administrative disciplinary action taken against her license was a "civil " proceeding, and therefore subject to the general statute of limitations found in Utah Code Annotated § 78-12-1, et seq. (1953, as amended). This position completely ignores the special position administrative actions have in the law. Administrative actions are neither civil nor criminal proceedings.

Petitioner places great emphasis on her position that administrative actions are "civil actions", and defines a "civil action" as "an adversary proceeding for redress, enforcement or protection of a right, or prevention of a wrong." (Respondent's Brief, p. 8, emphasis added.) However, a hearing before an

administrative board is not adversary. An administrative board represents "public interests entrusted to boards, whereas courts are concerned with litigating rights of parties with adverse interests." Black's Law Dictionary, Revised 5th Ed. 1979.

Administrative proceedings which involve possible disciplinary sanction as to licensees are neither strictly civil nor criminal in nature. The Washington Supreme Court addressed this issue in In re Kindschi, 52 Wash. 2d 8, 319 P.2d 824 (1958), when it held:

It is somewhat difficult to classify a medical disciplinary proceeding. It is characterized as civil, not criminal, in nature, yet it is quasi criminal in that it is for the protection of the public, and is brought because of alleged misconduct of the doctor involved. It's consequence is unavoidably punitive, despite the fact that it is not designed entirely for that purpose. It is not strictly adversary in nature. It is essentially a *special*, somewhat unique, statutory proceeding, in which the medical profession (under state authorization through the medical disciplinary board) inquires into the conduct of a member of the profession and determines whether disciplinary action is to be taken against him in order to maintain sound professional standards of conduct. . . (Emphasis in original.)

Kindschi, 319 P.2d at 825-26.

Other states have also addressed the issue of whether or not administrative proceedings before boards seeking disciplinary action against professional licensees are civil actions. They too have found that such proceedings are "neither civil nor criminal in nature." Nelson v. Real Estate Commission, 35 Md.App. 334, 370 A.2d 613 (1977); Commerce City Drug v. State Board of Pharmacy, 511 P.2d 935 (Colo. App. 1973).

Utah lawmakers have recognized the uniqueness of administrative proceedings by enacting the Utah Administrative

Procedures Act, Utah Code Annotated § 63-46b-1, et seq ("UAPA"). That act, rather than the Utah Rules of Civil Procedure currently governs administrative procedures in this state. The instant proceeding, filed prior to the effective date of the UAPA, was governed by the "Rules of Procedure for Hearings before the Department of Business Regulation" (Adopted June 23, 1983.) The Utah Rules of Civil Procedure, except as specifically referenced in those department rules, had no application to licensing matters filed in the administrative forum.

The Colorado Supreme Court has addressed the specific issue of whether or not, absent a specific statute of limitations, a general statute of limitations can be applied to administrative disciplinary actions. In Colorado State Board of Medical Examiners v. Jorgensen, 599 P.2d 869, the Court held that, "[T]he general statute of limitations applies to the commencement of legal actions-i.e., civil or criminal actions-not to the institution of an administrative disciplinary proceeding."

Applying Colorado's Jorgensen Rule to this case, it is clear that the action against Petitioner's license is not a legal action, being neither civil nor criminal, but is an administrative disciplinary action. Therefore, the general statute of limitation found in Utah Code Ann. § 78-12-25(2) does not apply.

Petitioner also argues that the general statute of limitations found in Utah Code Annotated § 78-12-25(2) should apply to the disciplinary proceeding filed against Petitioner because of the language of § 78-12-33, which says:

"The limitations prescribed in this article shall apply to the actions brought in the name of or for the benefit of the State in the same manner as to actions by private parties."

This statute clearly applies only to those actions wherein the state acts as a private party in a proprietary manner. It certainly does not apply to those situations when the state is acting in its exclusive governmental police power function of protecting the public welfare.

At common law, the state was immune from statutes of limitation under the rule of *nullum tempus occurrit regi* (time does not run against the king). Although the doctrine was originally established as a royal prerogative similar to sovereign immunity, its role under modern law is to prevent the public from suffering 'because of the negligence of its officers and agents' in failing to assert causes of action which belong to the public. The rule applies if the right which the governmental unit seeks to assert is in fact a right belonging to the general public. It does not apply if the right belongs only to the government.

Trimble v. American Sav. Life Ins. Co., 733 P.2d 1131, 1138 (Ariz.App. 1986).

When the state, or one of its agencies, is performing governmental functions, as opposed to proprietary functions not unlike those performed by private individuals, the state must specifically waive its immunity.

Governmental functions are those which are performed for the general public with respect to the common welfare and for which no compensation or particular benefit is received, while 'proprietary functions' are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit or advantage of a governmental unit conducting the activity.

State Ex Re. Schneider v. McAfee, 2 Kan. App. 2d 274, 578 P. 2d 281 (1978).

Certainly the action taken by the Division of Real Estate against the license of Petitioner to practice as a real estate broker was purely governmental, and in no way proprietary. The Division was seeking to protect the public from Petitioner's unprofessional conduct, and its action can in no way be interpreted as that of a "private party", inasmuch as the regulatory power exercised by the Division and the Commission is an exclusively governmental power.

B. Had the Legislature intended for there to be a statute of limitations for administrative licensing disciplinary actions, it would have established one within the specific statutes governing the Department of Business Regulations or the Division of Real Estate.

The Department of Business Regulations (now the Department of Commerce) is governed by chapter 1, Title 13 of the Utah Code. The Division of Real Estate was, and is, governed by Utah Code Annotated § 61-2-1, et seq. Neither of these two bodies of law restrict the filing of administrative actions by imposing a statute of limitations. In fact Utah Code Annotated § 61-2-11 says that the Real Estate Commission, with the concurrence of the Executive Director of the Department, may take disciplinary action against a license "at any time" if the licensee is found guilty of any of the enumerated violations of the licensing law. This statutory wording, given its plain meaning, certainly implies that the Commission's disciplinary actions may be taken without regard to any statute of limitations.

Inasmuch as the whole scheme of licensing professions in this state is undertaken for the protection of the public, as referenced in Utah Code Annotated § 13-1-1 (1953, as amended) it would surely be against public policy to allow licensees, such as the Petitioner, to elude accountability for bad acts by simply hiding the facts from the applicable regulatory body until after a specific time period passed.

POINT II

THE COMMISSION'S ACTION IN REVOKING THE LICENSE OF PETITIONER TO PRACTICE AS A PRINCIPAL BROKER IN THE STATE OF UTAH WAS REASONABLE AND RATIONAL

The Petition filed against Petitioner's license to practice as a Real Estate Principal Broker, in Case No. RE 87-08-02, was filed November 25, 1987, and is therefore a pre-UAPA case. The Court reviews pre-UAPA cases using the three pronged test found in Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601 (Utah 1983). Since Petitioner does not challenge the Commission's Findings of Fact in this case, and only touches upon the Conclusions of Law collaterally in her direct attack upon the sanction imposed by the Commission, it will only be necessary for the Division to address the standard of review for the conclusions of law and the order.

In reviewing the Commission's Order revoking Petitioner's license, this Court must, under the Administrative Services rationale, "afford great deference to the technical

expertise or more extensive experience of the responsible agency." Administrative Services, 658 P.2d at 610. Although, deference to the Commission's expertise is appropriate, the Court must also decide whether the Order of Revocation was within the bounds of reasonableness or rationality under the circumstances.

Plaintiff does not dispute the Commission's Findings of Fact and in her brief adopts them as the facts in this case. It is therefore unnecessary for this Court to determine whether there is "evidence of any substance whatever" to support the Commission's Findings of Fact. Administrative Services, 658 P.2d at 609. However, Petitioner does collaterally attack the Commission's Conclusions of Law. The Administrative Services standard of review for the application of licensing law to the facts, a mixed question of law and fact, requires the appellate court to decide whether the Commission's determination was within the limits of reasonableness and rationality. Administrative Services, 658 P.2d at 609-12; In re Topik, 761 P.2d 32, 36 (Utah App. 1988).

The Commission, composed of four professional real estate brokers and one lay person, determined that Petitioner was Barbara Homeyer's real estate agent from January to October 1982. Petitioner's attorney argues in her brief that absent a "listing agreement" or "earnest money agreement" there was no contractual relationship between Petitioner and Barbara Homeyer. (Petitioner's Brief p.12) This contention ignores the fact that Ms. Homeyer was a prospective buyer, not seller, therefore there was no house to be listed for sale. Earnest money agreements memorialize

offers and acceptances, and Petitioner's efforts in Ms. Homeyer's behalf never got to the point where a formal offer was tendered. It would be a rare event indeed for a buyer's agent to enter into a written contract with her principal prior to the point where an offer was tendered to a seller via an earnest money sales agreement.

The record clearly indicates that Petitioner was Ms. Homeyer's real estate agent, and that relationship existed from at least January to October, 1982. (Findings of Fact, nos. 4,9,10) Petitioner also took possession of much of Ms. Homeyer's personal property for the purpose of safeguarding that property and facilitating its use in the purchase of a home from a prospective seller. (Findings of Fact, no. 4) Petitioner had never undertaken a real estate transaction involving the amount of property owned by Ms. Homeyer, and she did not involve her broker either in the decision to use the personal property for a down-payment or in her taking possession of the property. (Transcript, pp. 166,167) Although, Ms. Homeyer made a number of demands for an accounting of her property and its disposition, as well as demands for the return of the unsold property, Petitioner failed to adequately answer those demands. (Findings of Fact, nos. 8,10) Ms. Homeyer was forced to initiate litigation against Petitioner, wherein by stipulation a value was placed on her property. Ms. Homeyer eventually won a judgment against Petitioner and recovered some of her property, but has never recovered any monies from Petitioner due to Petitioner's converting her pending Chapter 11 bankruptcy into a Chapter 7. (Findings of Fact, nos. 11,12,13)

It was to the facts above that the Commission had to apply the special body of law which governs the real estate profession. Certainly, there was evidence that Petitioner was Ms. Homeyer's agent for the purpose of aiding her in locating and purchasing a home. According to both Ms. Homeyer and Petitioner that relationship was established in January 1982. In Division Exhibit 7, an October 21, 1982 letter from Petitioner to Barbara Homeyer, there is very clear reference on the second page to Petitioner's past and current efforts to find some kind of home for Ms. Homeyer to purchase using proceeds from the sale of the Homeyer personal property. Therefore, there was adequate evidence of an ongoing real estate agent/principal relationship into October 1982. It was incumbent upon the Commissioners to use their knowledge and expertise in the real estate profession, as Petitioner's peers, to determine if Petitioner's conduct as a real estate agent violated the standards of the profession. The Commission found that Petitioner's actions in regards to Ms. Homeyer's property once she came into possession of it was patently wrong. First of all, she violated Rule 9(a)(7) of the Rules of the Commission, by failing to deliver the property to her broker. Secondly, Petitioner consistently acted in a manner inconsistent with the best interests of her principal, Ms. Homeyer, by: selling items without authorization and failing to remit sale proceeds to Ms. Homeyer; failing to return property upon demand; failing to account for property or monies in her possession; delivering property to third parties, which was unrecoverable by Ms. Homeyer; and selling property at below fair market value.

The end result of Petitioner's actions were that Ms. Homeyer never did get a house, and the property she had hoped to use as a down-payment was to a large extent dissipated and lost. Ms. Homeyer was forced to litigate her rights against Petitioner, and while she received a judgment against Petitioner, she never recovered a penny of the judgment due to Petitioner's bankruptcy. The Commission clearly found, based on the facts established in the hearing, that Petitioner's actions were inconsistent with her client's best interests, a serious breach of the fiduciary duty owed by an agent to her principal, and in fact resulted in serious harm to the client. Therefore, a conclusion that Petitioner was "unworthy or incompetent to act as a principal broker, associate broker, or sales agent in such a manner as to safeguard the interests of the public," was both reasonable and rational.

Petitioner argues that the revocation of her license was an unduly harsh sanction, and urges a lesser sanction on this Court. Again, the Court must review the sanction using the intermediate standard set forth above. Given the Commission's expertise and knowledge of the real estate profession, was the order revoking Petitioner's license reasonable or rational?

Petitioner would have this Court accept the premise that the aggravating circumstances of this case should somehow be mitigated by the simple passage of time. The fallacy of that premise is that time in no way mitigated the damage that Petitioner's actions caused. The fact of the matter is that during much of the intervening six years, Ms. Homeyer was

struggling through the litigation resulting from Petitioner's actions.

Petitioner also skirts the issue that this is the second disciplinary action taken against her license. In Case No. 1737, Petitioner was disciplined by the Commission for gross incompetence and violating the fiduciary duty she owed her clients. Interestingly, Petitioner's activity in the earlier case was contemporaneous with the Homeyer matter. In Case No. 1737, Petitioner's license was also revoked, but revocation was stayed in favor of a one year suspension of her license, followed by a two year period of probation. After an unsuccessful appeal to the Third District Court in that case, which resulted in the court's upholding the Commission's Order, Petitioner served her suspension during 1985-86.

Petitioner would have the Court believe that the Division of Real Estate thoroughly investigates each licensee, and therefore the issuance of broker's licenses or the absence of intervening disciplinary action is a "seal of approval." The Division's resources are such that only complaints which are brought to the Division's attention can be investigated, and there is no sweeping, ongoing investigation of the real estate industry. The complaint which resulted in the November, 1987 filing of Case No. RE-87-08-02 was made only several months prior to then. Had the Division been aware of this case prior to that point in time, it certainly would have taken earlier action. Petitioner did receive a broker's license in January 1987, prior to this complaint being made to the Division, based upon the information which she provided to the Division.

The Commission is in the best position to judge the appropriateness of sanctions, and how those sanctions will protect the public. Given the circumstances of this case-the egregious nature of Petitioner's breach of fiduciary duty to her client, the ongoing financial harm suffered by that client, and the prior disciplinary sanction-the Commission acted reasonably and rationally in ordering the revocation of Petitioner's license.

CONCLUSION

Administrative disciplinary proceedings are neither civil nor criminal actions and are therefore not subject to a general statute of limitations. If the Legislature had intended to limit disciplinary actions in the area of real estate licensing, it would have specified such a limitation in the statutes governing the Department of Business Regulation or the Division of Real Estate. But rather than providing a statute of limitations, the Legislature provided that the Commission and the Executive Director could take disciplinary actions "at any time" a licensee was found guilty of the enumerated violations.

The Commission's Conclusions of Law and Order were reasonable and rational under the facts of this case and the law applicable to it. The Commission is charged with assisting in the regulation of the real estate profession so as to protect the public welfare. Certainly as a group of Petitioner's peers, the Commissioners are in a much better position to judge her conduct and the effect that conduct has on the public and the profession.

THEREFORE, the Division respectfully asks the Court to affirm the Commission's Findings of Fact, Conclusions of Law, and Order revoking the license of Juanita Taft Rogers to act as a real estate principal broker in the State of Utah.

SUBMITTED this 5 day of October, 1989.

R. PAUL VAN DAM (#3312)
Attorney General of Utah

by: Sheila Page
SHEILA PAGE (#4898)
Assistant Attorney General
Tax & Business Regulation Div.
130 State Capitol
Salt Lake City, Utah 84145
Telephone: (801) 538-1019
Attorneys for Respondent

MAILING CERTIFICATE

I hereby certify that I caused four copies of the foregoing Brief of Respondent to be mailed, postage prepaid, on this 5 day of October, 1989, to:

Gary B. Weight, Esq.
Aldrich, Nelson, Weight & Esplin
43 East 200 North
P.O. Box "L"
Provo, Utah 84603-0200
Attorney for Petitioner

Sheila Page

APPENDIX

**BEFORE THE REAL ESTATE DIVISION
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH**

In the matter of the license of Juanita Taft Rogers to act as a Real Estate Principal Broker	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER
	:	Case No. RE-87-08-02

Appearances:

Sheila Page for the Division of Real Estate

Gary H. Weight for Respondent

By the Administrative Law Judge:

The above-entitled matter came on regularly for hearing on September 20, 1988 before J. Steven Eklund, Administrative Law Judge for the Department of Business Regulation. Thereafter, certain preliminary motions were presented by respective counsel.

Based thereon, Counts I and III set forth in the Petition, dated November 25, 1987, were dismissed. Further, Count IV was amended to reflect the rule to be properly designated therein. Respondent's motions to dismiss the instant proceeding on the basis that the hearing should be conducted by the Commission rather than the Administrative Law Judge and that the Division should be estopped to take any action on Respondent's license were denied.

Thereafter, evidence was offered and received. The Administrative Law Judge, being fully in the premises, now enters the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. Sometime in 1973, Respondent became licensed as a sales agent by the Division of Real Estate. As relevant herein, Respondent was affiliated with principal broker David R. Harman as of January 1982. On September 1, 1982, she terminated her affiliation with Mr. Harman and became affiliated with principal broker A. J. Michaels. In late 1982 or early 1983, she terminated her affiliation with Mr. Michaels and became affiliated with K. M. Woolley & Company.

2. By Order, dated August 17, 1983, Respondent's license was suspended for one year and thereafter placed on probation for two years, subject to certain terms and conditions. Said order was based on conduct which occurred between December 10, 1981 and August 22, 1982. Respondent's conduct in that regard was found to constitute gross incompetence and a violation of the fiduciary duty owed to her clients in that transaction. Respondent subsequently became licensed as a principal broker on January 15, 1987.

3. In January 1982, a Barbara Homeyer contacted Respondent to obtain her services in purchasing a home. Ms. Homeyer, who was recently divorced, resided in a home jointly owned by herself and her ex-husband. Since there had been no property settlement relative to her divorce and Ms. Homeyer's ex-husband was reluctant to cooperate as to the sale of their home, the only assets available to Ms. Homeyer to provide a down payment on the purchase of another home consisted of various items of inherited personal property.

4. During January 1982, Ms. Homeyer and Respondent entered into a verbal agreement, whereby Respondent was to act as Ms. Homeyer's real estate agent and attempt to find a prospective seller who would accept Ms. Homeyer's personal property as down payment for the purchase of a home. On February 21, 1982, Respondent and Ms. Homeyer inventoried her property. Ms. Homeyer then delivered that property to Respondent, which was held in storage under Respondent's control. The property was so transferred to Respondent as the means to provide a safe place for its storage and facilitate Respondent's access to that property if a prospective seller was located.

5. Between February and late-April 1982, Respondent and Ms. Homeyer identified at least two properties for possible purchase. In one instance, an agreement could not be reached as to those items of Ms. Homeyer's personal property which would be acceptable in lieu of a cash down payment. When it became apparent to Ms. Homeyer that no other purchase on the above-described terms would be realized, she authorized Respondent to sell certain items as the means to provide cash for the down payment necessary to purchase a home.

6. During March and April 1982, Respondent had some of Ms. Homeyer's property appraised and certain items were sold in antique shows. However, as of late April 1982, no progress in locating a suitable home had been realized, Ms. Homeyer had received no monies from Respondent relative to the sale

of some of her property and Respondent had taken certain property from storage and sold it without Ms. Homeyer's authorization. Further, Respondent never advised her principal broker of her activities nor did she deliver to him any of the funds she obtained from the sale of Ms. Homeyer's property.

7. In late-April or early May 1982, Ms. Homeyer underwent foot surgery and was advised that her condition could be cancerous. At the time, it was unknown if a suitable home would be found and whether that would occur prior to her possible death. On May 5, 1982, Ms. Homeyer met with Respondent and they executed a written agreement, whereby the former assigned all of her personal property to Respondent for sale and/or exchange and authorized Respondent to liquidate that property. The agreement further provided that if all property held by Respondent was not liquidated prior to Ms. Homeyer's death, the remaining funds would be placed in trust for the benefit of her two minor children.

8. During the next two months, Ms. Homeyer was never advised as to the status of her property and was unable to contact Respondent in that regard. In mid-July 1982, Ms. Homeyer retained counsel and made written demand that Respondent return all personal property in her possession and provide an accounting as to the sale or other disposition of the remaining property which had been in her possession.

9. By letter, dated October 21, 1982, Respondent generally informed Ms. Homeyer as to efforts which had been undertaken to appraise, restore and/or sell some of the property in her possession. Respondent further mentioned various costs incurred as to the appraisal and restoration of that property. Respondent also reiterated that her efforts had been undertaken to produce funds necessary for a down payment for a home or condominium, but she acknowledged that no suitable residence had yet been identified. Respondent requested Ms. Homeyer to keep her posted "about what you want to do with the housing thing" and she advised Ms. Homeyer of a listing for a two bedroom townhouse duplex and pondered that Ms. Homeyer could live in one side and rent the other.

10. By letter, dated October 28, 1982, Ms. Homeyer advised Respondent that purchase of the duplex would not be economically feasible and reiterated that no accounting had been received as to the status of her property or any disposition thereof. By letter, dated October 29, 1982, a second demand was made that Respondent return all items of personal property entrusted to her. When compliance with that

demand was not forthcoming, Ms. Homeyer initiated litigation. No accounting was provided to Ms. Homeyer until July 9, 1986, when Respondent returned certain items pursuant to a writ of replevin.

11. By Stipulation, dated October 7, 1986, Ms. Homeyer and Respondent identified the status of some of the property which had been in Respondent's possession. That property consisted of guns, cameras, furs, clocks and watches, a coin collection, silver, jewelry, flatware, china, pewter, furniture, household and other miscellaneous items. The value of the property which Respondent sold was agreed to have been \$6,530.50 and Respondent received \$4,495.00 from the sale of that property. It was agreed that certain property, valued at \$6,799.50, was delivered by Respondent to third parties and that said property had not been recovered by Ms. Homeyer. It was also agreed that certain property still in Respondent's possession should be valued at \$4,820.50.

12. Some of the property which Ms. Homeyer had delivered to Respondent was subsequently returned to her. However, in Findings of Fact and Conclusions of Law, dated October 30, 1986, the Court concluded that Respondent had sold some of the property below fair market value, had interfered with Ms. Homeyer's possession and control of some of the property by intentionally refusing to return it and had converted the proceeds from the sale of some of the property to her own use. By reason thereof, the Court entered judgment on October 30, 1986 in favor of Ms. Homeyer totalling \$2,035.50 as a result of Respondent's breach of contractual and fiduciary duties to Ms. Homeyer, \$4,495.00 as a result of Respondent's conversion of proceeds from the sale of the property, \$6,799.50 as a result of Respondent's conversion of property upon transferring that property to others and \$4,820.50 as a result of Respondent's conversion of property still in her possession.

13. In the above-referenced Findings of Fact, the Court also noted that Ms. Homeyer had initiated bankruptcy proceedings on July 22, 1985 and that Respondent had been listed as a creditor in said proceedings. The Court further noted that an order was entered in those proceedings on October 30, 1985, whereby Ms. Homeyer was discharged of all claims, including those of Respondent relative to expenses she incurred in her efforts to repair, restore and dispose of Ms. Homeyer's property. The instant record also reflects that Respondent initiated bankruptcy proceedings in 1981 and that after entry of the October 30,

1986 Judgment, an order was entered in those bankruptcy proceedings relative to Respondent, whereby the just-stated Judgment was discharged.

CONCLUSIONS OF LAW

Respondent urges that her May 5, 1982 agreement with Ms. Homeyer terminated the real estate agent/principal relationship which had previously existed between them. Respondent further asserts that her subsequent conduct pursuant to that contract had no relevance respecting her status as a licensed sales agent and provides no basis upon which to enter a sanction as to that licensure. Respondent further urges that there is no proper basis to now conclude she is incompetent or unworthy to practice as a principal broker, inasmuch as whatever occurred prior to May 5, 1982 does not reflect either a continuing or presently existing pattern of misconduct.

Section 61-2-11, Utah Code Annotated (1953), as amended, provides that a real estate license may be suspended or revoked if the licensee is found guilty of:

- (8) being unworthy or incompetent to act as a principal broker, associated broker, or sales agent in such manner as to safeguard the interests of the public;
* * * * *
- (15) violating or disregarding this chapter, an order of the commission, or the rules adopted by the commission and the division.

Rule 9(a)(7) further provides:

All consideration received by a salesman in connection with a real estate transaction in which he is engaged on behalf of his broker shall immediately be delivered by him to his broker . . .

Upon a considered review of the conflicting evidence presented, Respondent's assertion that the May 5, 1982 agreement transformed what had been a real estate transaction between a principal and an agent to that of a contract between private parties is not well founded. The May 5, 1982 agreement does not reference the previously existing relationship between Ms. Homeyer and Respondent and, importantly, does not explicitly sever or alter that relationship. If it were Respondent's intent to effect a shift in her existing relationship with Ms. Homeyer, it was incumbent upon Respondent to utilize language clearly reflective of that intent, particularly when Respondent had come into possession of Ms. Homeyer's property as her agent in a real estate transaction, Respondent had already disposed of some of that property, and it was anticipated that she would retain possession of the remaining property with the written authorization to liquidate it.

Nothing in the May 5, 1986 agreement reflects that Ms. Homeyer no longer desired to obtain another home or that Respondent would no longer attempt to locate a home for Ms. Homeyer. Significantly, Respondent's efforts in that regard did not cease after that agreement was executed. To the contrary, Respondent acknowledged in her subsequent correspondence with Ms. Homeyer that continuing efforts to locate a home had been made. As of October 21, 1982, possibilities in that regard were still being explored. Simply put, the May 5, 1982 agreement did not change the relationship between Ms. Homeyer and Respondent as it relates to the purpose for which possession of Ms. Homeyer's property was initially transferred to Respondent. Thus, the manner in which Respondent disposed of that property is a matter properly cognizable by the Commission as to whether any basis exists to enter a sanction on Respondent's licensure as a real estate principal broker.

Concededly, the transaction under review occurred approximately six years ago and there is no evidence that Respondent has engaged in any misconduct since that time. Nevertheless, a violation of Section 61-2-11(8) may be established upon sufficient evidence of aggravated misconduct by a licensee during the course of a single real estate transaction. The instant record clearly reflects that Respondent held, sold or otherwise disposed of Ms. Homeyer's property in a manner entirely inconsistent with Ms. Homeyer's interest in that property. In certain instances, Respondent acted without authorization from Ms. Homeyer and failed to safeguard the latter's interest in the property which had been entrusted to her. Although Respondent's conduct was not governed by an statutorily mandated fiduciary duty between herself and Ms. Homeyer, Respondent clearly owed such a duty as a sales agent to Ms. Homeyer throughout the time under review and she failed to properly discharge that duty.

In addition to Respondent's breach of the fiduciary duty which she owed to Ms. Homeyer, Respondent failed to deliver to her principal broker the consideration she received from the sale of Ms. Homeyer's property. Thus, Respondent violated Section 61-2-11(15) and Rule 9(a)(7) relative thereto. Furthermore, Respondent knew that she had been given the only assets available to Ms. Homeyer which could be used to effect the purchase of another home. Without explanation, Respondent failed to account for those assets when repeated requests to do so had been made between July 1982 and October 1982, yet

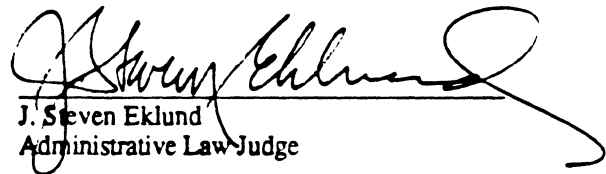
she ostensibly held herself out to Ms. Homeyer as being willing to continue to assist in the search for a home.

Arguably, the agreement between Ms. Homeyer and Respondent was somewhat unique and Respondent may have engaged in relatively unconventional efforts in her attempt to obtain a home for Ms. Homeyer. Respondent may also have encountered unforeseen difficulties in liquidating the property to generate cash and in her on-going relationship with Ms. Homeyer. Notwithstanding the foregoing, Respondent should have consistently acted in Ms. Homeyer's best interests and there is simply no evidence that she did so. To the contrary, the egregious nature of Respondent's misconduct operated to produce substantial financial harm to Ms. Homeyer. Based thereon, and given the disciplinary sanction which was entered in 1983, an appropriately severe sanction should now enter as to Respondent's licensure.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that Respondent's license to practice as a real estate principal broker be revoked, said revocation to become effective consistent with the provisions of Section 61-2-12(1)(f).

Dated this 14th day of December, 1988.

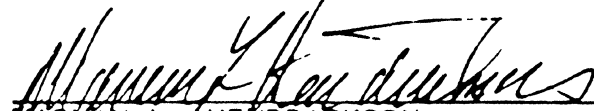

J. Steven Eklund
Administrative Law Judge

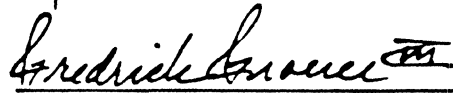
ORDER

The foregoing Findings of Fact, Conclusions of Law Recommended Order are accepted as written. It is hereby ordered that the Utah real estate license of Juanita Taft Rogers will be revoked effective February 14, 1989.

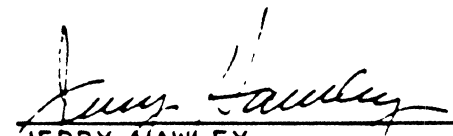
Dated this 14th day of December, 1988.

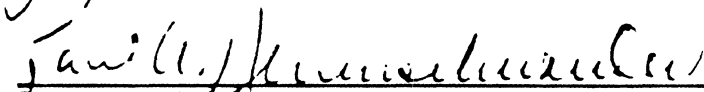
UTAH REAL ESTATE COMMISSION


MARVIN L. HENDRICKSON


FREDRICK FROERER, III


WILLIAM H. COLEMAN


JERRY HAWLEY


PAUL NEUENSCHWANDER

The above Order is confirmed and approved by the undersigned this 15 day of December, 1988.


WILLIAM E. DUNN, EXECUTIVE DIRECTOR
DEPARTMENT OF BUSINESS REGULATION

DIVISION OF REAL ESTATE
DEPARTMENT OF BUSINESS REGULATION
RICHARD M. MERCER, DIRECTOR
PO BOX 45802
160 EAST 300 SOUTH
SALT LAKE CITY, UT 84145
TELEPHONE: (801) 530-6747

BEFORE THE UTAH STATE REAL ESTATE COMMISSION

In the Matter of
JUANITA TAFT ROGERS to Act
as a Real Estate Principal Broker

PETITION
CASE NO. RE87-08-02

The Division of Real Estate of the Department of Business Regulation of the State of Utah (the Division), by and through its Director, Richard M. Mercer, upon knowledge and belief, hereby complains and alleges as follows:

PRELIMINARY STATEMENT

The cause of action was investigated by the Division upon complaints that Juanita Taft Rogers (Rogers) has engaged in acts and practices which constitute violations of Utah Code Annotated Section 61-2-1, et seq. (1953, as amended).

JURISDICTION

1. Utah Code Annotated Section 61-2-11 provides that the Utah Real Estate Commission may suspend or revoke the Real Estate license of any salesagent or broker who, while engaging in acts for which such a license is required, is found guilty of:

a. "... (6) Failing within a reasonable time, to account for or to remit any monies coming into his possession which belong to others, or commingling those funds with his own, or diverting those funds from the purpose for which they were received; "

b. "... (8) Being unworthy or incompetent to act as a principal broker, associate broker, or salesagent in such manner as to safeguard the interests of the public; "

c. "... (15) Violating or disregarding this chapter, an order of the Commission, or the Rules adopted by the Commission and the Division.

d. "... (16) Breaching a fiduciary duty owed by a licensee to his principal in a real estate transaction.

2. Rogers is a real estate principal broker duly licensed by the State of Utah under License No. PB 14700.

3. At all times material to this action, Rogers was acting in her capacity as a real estate licensee.

STATEMENT OF THE FACTS

4. In January, 1982, Rogers was a salesagent affiliated with principal broker David R. Harman. On September 1, 1982, she terminated her affiliation with Harman and became affiliated with principal broker A.J. Michaels. In late 1982 or early 1983, she terminated her affiliation with Michaels and became affiliated with K.M. Woolley & Company. Rogers' license was suspended from September 15, 1985 through September 15, 1986, and placed on probation from September 15, 1986 through September 15, 1988, as a result of case #1737, which involved a 1981-1982 real estate transaction. Rogers obtained a license as a principal broker on January 15, 1987.

5. In or about January, 1982, Homeyer and Rogers orally agreed that Homeyer would give Rogers some inherited personal property to hold. Rogers was to find a seller of a home who would accept personal property instead of cash for a down payment. If such a seller could not be found, Rogers was to arrange for the sale of some of the property to generate cash for a down payment. If a sale was consummated, Rogers would receive some of the personal property in an amount equal to a 6% commission.

* During February and March, 1982, Homeyer delivered numerous

units owned by a Mr. Miller. Miller had listed the storage units for sale with Rogers.

7. A seller who was willing to take personal property was not found. On or about May 5, 1982, Homeyer gave Rogers written authorization to liquidate the property.

8. Rogers sold a number of items for a total of \$4,495.00 which had a fair market value of \$6,530.50. Rogers did not deliver the sale proceeds to her principal broker to hold in trust for Homeyer. Rogers gave possession of certain items valued at \$6,799.50 to various individuals with instructions to repair, restore, or appraise the items.

9. In or about July, 1982, Homeyer orally demanded that Rogers give her the proceeds of the sales and return the balance of the personal property which had not been sold. In July, 1982 and on October 29, 1982, Homeyer's attorneys demanded that Rogers return all property still held, and account for all property which had been transferred, sold, or disposed of by Rogers. (Rogers refused to comply until ordered to do so by court order in July, 1986.)

10. Rogers did not turn over to Homeyer the \$4,495.00 in proceeds from the sale of items, nor did she retrieve the \$6,799.50 worth of items which had been given to others to repair, restore, or appraise. In addition, Rogers still had in her possession or had otherwise disposed of other items valued at \$4,820.50.

11. On October 30, 1986, Homeyer obtained a judgment in the amount of \$18,150.00 against Rogers based on conversion of personal property and sale proceeds and on breach of fiduciary duty. After the judgment was entered, Rogers converted her Chapter 11 bankruptcy, which had been pending since 1981, to a Chapter 7 bankruptcy. Homeyer has filed a \$10,000.00 claim against the Real Estate Recovery Fund.

12. The Division realleges and incorporates by reference its allegations set forth in paragraphs No. 1 through 11 as if specifically set out herein.

13. Utah Code Annotated Section 61-2-11 (1953, as amended), provides that a real estate license may be suspended or revoked if the licensee is found guilty of: "... (6) Failing within a reasonable time, to account for or to remit any monies coming into his possession which belong to others, or commingling those funds with his own, or diverting those funds from the purpose for which they were received;"

14. As outlined above, Rogers sold items of personal property and received \$4,495.00, which she did not remit to Homeyer or account for. Rogers commingled the funds with her own and expended them.

15. The above action(s) by Rogers constitute violation of Utah Code Annotated Section 61-2-11 (6) as amended.

COUNT 11

16. The Division realleges and incorporates by reference its allegations set forth in paragraphs No. 1 through 15 as if specifically set out herein.

17. Utah Code Annotated Section 61-2-11 (1953, as amended), provides that a real estate license may be suspended or revoked if licensee is found guilty of: "... (8) Being unworthy or incompetent to act as a principal broker, associate broker, or salesagent in such manner as to safeguard the interests of the public;"

18. As outlined above, Rogers received personal property from Homeyer which was to be used in connection with a real estate transaction, and failed to safeguard the property. Numerous items were delivered to parties who did not return them. Other items were kept Rogers or otherwise dissipated. Additional items were sold by Rogers below market value. Rogers did not give the sales proceeds to her

to Homeyer.

19. The above action(s) by Rogers constitute violation of Utah Code Annotated Section 61-2-11 (8) as amended.

✓ COUNT III

20. The Division realleges and incorporates by reference its allegations set forth in paragraphs No. 1 through 19 as if specifically set out herein.

21. Utah Code Annotated Section 61-2-11 (1953, as amended), provides that a real estate license may be suspended or revoked if the licensee is found guilty of: "... (16) Breaching a fiduciary duty owed by a licensee to his principal in a real estate transaction."

22. As outlined above, Homeyer entrusted Rogers with personal property in connection with a proposed real estate transaction. Rogers failed to protect the property, and refused to return it to Homeyer when requested to do so. Rogers sold a number of items at below market value and kept the proceeds.

23. The above action(s) by Rogers constitute violation of Utah Code Annotated Section 61-2-11 (16) as amended.

COUNT IV

24. The Division realleges and incorporates by reference its allegations set forth in paragraphs No. 1 through 23 as if specifically set out herein.

25. Utah Code Annotated Section 61-2-11 (1953, as amended), provides that a real estate license may be suspended or revoked if the licensee is found guilty of: "... (15) Violating or disregarding this chapter, an Order of the Commission, or the Rules adopted by the Commission and the Division."

26. Rule ^u~~4-2~~, adopted pursuant to Utah Code Annotated Section 5.5 (1953, as amended), requires that all funds received by a licensee in a real estate transaction must be delivered to the principal broker and deposited in the broker's trust account within three banking days.

27. As outlined above, Rogers sold Homeyer's personal property to generate funds for a down payment on a real estate purchase, but did not deliver the proceeds to her principal broker for deposit into the broker's real estate trust account.

28. The above action(s) by Rogers constitute violation of Rule 4.2 and Utah Code Annotated Section 61-2-11 (15) as amended.


WHEREFORE, the Division requests the following relief:

1. That Rogers be adjudged and decreed to have engaged in the acts alleged herein.

2. That by engaging in the above acts, Rogers be adjudged and decreed to be guilty of the provisions of Utah Code Annotated Section 61-2-11 (7), (8), (15), and (16) (1953, as amended).

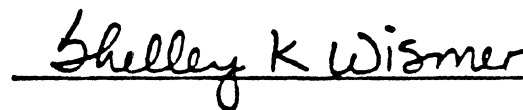
3. That Rogers license to act as a real estate licensee be suspended or revoked accordingly.

DATED this 25 day of November, 1987.


RICHARD M. MERCER, DIRECTOR
DIVISION OF REAL ESTATE
DEPARTMENT OF BUSINESS REGULATION

Appeared before me this 25th day of November, 1987,

who deposes and says that the information listed above is true to the best of his knowledge and belief.


NOTARY PUBLIC

My Commission Expires:

8-5-91

Residing at: Salt Lake City, Utah

MAILING CERTIFICATE

I have this day served the foregoing

A copy of the foregoing document has been mailed this day prepaid to Gary Weight, attorney for Juanita Taft Rogers, at Aldrich, Nelson, Weight & Esplin, P.O. Box L, Provo, Utah 84603.

Dated at Salt Lake City, Utah this 1st day of December, 1987.

Don T. Jones
SIGNATURE

SKW87-08-02-P

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this form from being returned to you. The return receipt fee will provide you the name of the person to whom delivered and the date of delivery. For additional fees the following services are available. Consult the postage meter for fees and check box(es) for additional service(s) requested.

Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

1. Addressee to:

Juanita Taft Rogers
Taft Company
11 Locust Lane
Provo, Utah 84604

4. Article Number
P 242 586 632

Type of Service:

☒ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Addressee's Address (ONLY if requested and fee paid)

Signature - Addressee

Signature - Agent

Date of Delivery



Thursday
21 October, 1982
Provo, Utah.

Antiques & etc. which ^{are} personal property of Barbara Honeyer...

Dear Barbara:

As I mentioned to you a week or so ago when you called, I have fixed up a current list of all the items which we found in your one room which your ex-husband had locked. I told you I'd get that done the day we went to see Stan Smith, attorney in American Fork, Utah. Now that you decided not to go to Stan Smith and that Alan Young is not representing you, I have asked Barbara to deliver a copy of the personal property list to Mr. Robert Moody. I apologize for not getting it to you sooner, but hope dropping it off to Mr. Moody's office will be a help to you. I had also told you I'd have a copy of this list dropped off at the office of Mr. Alan Young. I have asked Barbara to do that also.... I know he may not need it now, but thought it wouldn't hurt for him to have it in his files.

The original document which you asked that we write & sign, when Betty Byrd was the witness, is in the hands of my attorney, Mr. Stanley R. Smith of American Fork, Utah. I sent you & Betty a note telling you that was where the original document was. I thought it best for neither of us to hold the document. I know it gives me full liquidation responsibility &/or selling as is or in a restored condition. However, the main antique show that sells the most is in April... There is now one in SLC but I cannot afford to pay the \$200.00 entry fee and the \$300-\$400 for a van to haul the items there and then pay \$200-\$400 for labor to unpack and sell and man the booth for four full days. I just paid \$225.00 to have the little tables refinished, and I've got to dig up the final \$645.00 to pay for the items refinished by the lady (husband died) in California. Have you any deep pockets of gold? The restoration and shipping have totaled about \$1,500.00 for the items. However, they should make enough to cover that and upholster the chairs in the spring sale. As I mentioned earlier, the Con Con Clock was evaluated by a Mr. Lothar Jorke (German Clock specialist) and he said it would take \$500.00 in parts and labor to get it in working condition and the least it would cost would be \$250.00...and he thought it could not sell for any more than that. However, I found another man who said it can be restored for less, but he would call me the quote before they started work on it.... I told him to put it on hold as I could not feed any more money into the items at that time. There is a private business in SLC who buy take some of the bigger pieces on consignment and perhaps they'll sell by May. However, he thinks they ought to go mostly in the spring show. I'll plan to enter that one and get some of this turned into cash. As I told you, I was able to give Mrs. Weaver an antique of mine appraised at \$475.00 to pay for the many hours she prepared, picked and cleaned the booth in SLC. She went with me to have the clock evaluated..... Therefore, whoever told you it had sold somewhere for \$1,500.00 had to be dreaming. Something was in such poor condition, perhaps we should have sold it all at one offer from the first appraiser of \$2,000.00 for the clock. If I can scrape up