

BEFORE THE INDIANA REAL
ESTATE COMMISSION
CAUSE NO: 2015 IREC 0056

IN THE MATTER OF THE LICENSE OF

BERT WHALEN

LICENSE NO.: SP39500817 (Expired, Non-Renewable)

FILED

JAN 24 2018

Indiana Professional
Licensing Agency

FINAL ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE PANEL'S ORDER

At all times relevant to this action, Bert Whalen ("Respondent") was licensed by the Indiana Real Estate Commission ("Commission") as a real estate salesperson holding license number SP39500817. Petitioner, the State of Indiana, filed a Complaint against Respondent on December 28, 2015, alleging that Respondent violated Ind. Code § 25-1-11-5. An Administrative Law Judge Panel hearing was held and concluded on April 19, 2017. The Commission reviewed the matter and the Administrative Law Judge Panel's Order ("Panel Order") at its duly noticed public meeting on January 17, 2018, in Room W064 of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204. The Commission, by unanimous vote, affirmed the Panel Order, which is attached hereto as **Exhibit A**, and incorporated by reference into this Final Order.

WHEREFORE, the Commission hereby affirms the Panel Order, and Respondent is hereby **ORDERED** to abide by the terms of this Final Order.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- i. Respondent Bert Whalen's Indiana real estate salesperson license is hereby **PERMANENTLY REVOKED**.

ii. Within **NINETY (90) DAYS** of this Final Order, Respondent shall pay **CONSUMER RESTITUTION** in the amount of **ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00)**, for the benefit of William J. Thompson, by check or money order made payable to the State of Indiana and submitted to the following address:

**Office of the Indiana Attorney General
Attn. Teresa Henson
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46202**

iii. Within **THIRTY (30) DAYS** of this Final Order, Respondent shall pay a **FEE** of **FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund pursuant to Ind. Code § 4-6-14-10(b), by check or money order made payable to the State of Indiana and submitted to the following address:

**Office of the Indiana Attorney General
Attn. Health Records Fee Administrator
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46202**

SO ORDERED this 24th day of January, 2018.

INDIANA REAL ESTATE COMMISSION

By: Maureen Bennett
for Pamela Lumley
Chair
Indiana Real Estate Commission

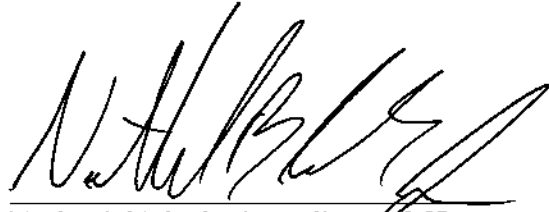
CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of JANUARY, 2018, a true and correct copy of this Final Order was served upon the below-listed party via First Class U.S. Mail, postage prepaid.

Bert Whalen
12634 Shorevista Drive
Indianapolis, IN 46236
Service by U.S. Mail

Colby M. Kus
Deputy Attorney General
Attorney No.: 33800-53
Office of the Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Tel: (317) 234-4783
Fax: (317) 233-4393
Colby.Kus@atg.in.gov
Service by Email

1/24/18
Date


Nathaniel Black, Compliance Officer

Indiana Real Estate Commission
Indiana Government Center South
402 West Washington Street, Room W072
Indianapolis, IN 46204
Phone: 317-234-3015
Fax: 317-233-4236
Email: pla9@pla.in.gov

Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

BEFORE THE INDIANA REAL
ESTATE COMMISSION
CAUSE NO: 2015 IREC 0056

IN THE MATTER OF THE LICENSE OF)
BERT WHALEN)
LICENSE NO.: SP39500817 (Expired, Non-Renewable))

FILED

DEC 18 2017

Indiana Professional
Licensing Agency

ADMINISTRATIVE LAW JUDGE PANEL'S ORDER

The Administrative Law Judge Panel ("Panel") (consisting of Charles Shook, Norman McClain, and Paul Boyter) designated by the Indiana Real Estate Commission ("Commission") in this proceeding, held an administrative hearing on April 19, 2017, in Room W064 of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, concerning an Administrative Complaint ("Complaint") filed by the State of Indiana ("Petitioner") against the Indiana real estate salesperson license of Bert Whalen ("Respondent").

Petitioner was represented by counsel, Deputy Attorney General Colby M. Kus. Respondent was neither present nor represented by counsel. The Panel, by a 3-0-0 vote, found the Respondent to be in **DEFAULT** and proceeded with the hearing in the Respondent's absence.

On April 19, 2017, the Panel took official notice of its file in this matter, held formal proceedings, and considered the evidence presented. The Panel now issues the following Findings of Fact, Conclusions of Law, and Order ("Panel's Order").

Notice is hereby given that any objection to the Panel's Order must be filed with the Commission, identifying the basis of the objection with reasonable particularity, no later than eighteen (18) days from the date of issuance of this order unless such date is a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana Professional Licensing Agency's offices are closed during regular business hours in which case the deadline would be the first day

EXHIBIT A

thereafter that is not a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana Professional Licensing Agency's offices are closed during regular business hours. The Panel's Order is not the final order of the Commission in this proceeding. However, in the absence of any objection, the Commission either will affirm the Panel's Order as its final order or will serve notice of its intent to review any issue related to the Panel's Order.

FINDINGS OF FACT

1. Respondent's address on file with the Commission is 12634 Shorevista Drive, Indianapolis, IN 46236.

2. Respondent is a licensed real estate salesperson holding license number SP39500817.

3. At all times relevant to the Complaint, Respondent was the manager and/or member of Oceanpoint Investments LLC, an Indiana limited liability company.

Criminal Convictions

4. On July 17, 1998, Respondent was convicted of Operating a Vehicle with a Blood Alcohol Content of .08-.15%, a Class C Misdemeanor, in Cause Number 49F19-9803-CM-031748. The court sentenced Respondent to 60 days in jail with 58 days suspended and 180 days of criminal probation.

5. On October 31, 2001, Respondent was convicted of Reckless Driving, a Class B Misdemeanor, in Cause Number 53C05-0007-DF-00375. The court sentenced Respondent to 180 days incarceration, with 120 days suspended, 12 months of criminal probation, and a \$240.00 fine.

6. On September 12, 2008, Respondent was arrested for Operating a Motorboat with a Suspended Driver's License.

7. On November 13, 2008, Respondent was convicted of Operating a Motorboat While Intoxicated, a Class C Misdemeanor, in Cause Number 29D06-0706-CM-2736. The court sentenced Respondent to 60 days incarceration, with 56 days suspended, 361 days of criminal probation, perform 180 hours of community service, and a 90-day driver's license suspension.

8. On February 4, 2009, Respondent was convicted of Operating a Motorboat with a Suspended Driver's License, a Class A Misdemeanor, in Cause Number 49F19-0809-CM-212959. The court sentenced Respondent to 365 days in the Marion County Jail with 361 days suspended and suspended Respondent's driver's license for 180 days.

9. On February 22, 2012, Respondent was convicted of Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor, in Cause Number 29D04-1103-CM-002910. The court sentenced Respondent to 40 days in the Hamilton County Jail and 180 days on home detention and suspended Respondent's driver's license for 90 days.

Renewal Fraud

10. On December 31, 2009, Respondent submitted an online renewal for his real estate salesperson license and answered "No" to question (3), which asked, "Since you last renewed, have you been convicted of or pled guilty to a violation of a federal or state law or are criminal charges pending?"

Property Management

11. On February 13, 2013, Respondent entered into a Property Management Agreement with American Pension Services, Inc., in which Respondent agreed to manage 4037 Catherwood, Indianapolis, Indiana 46226, for compensation.

12. Respondent also managed 4255 Dubarry Road, Indianapolis, IN 46226 ("4255 Dubarry") for American Pension Services, Inc.

13. On June 11, 2013, Respondent filed an eviction action in the Marion County Small Claims Court, Lawrence Township, Cause Number 49K03-1306-SC-003015, against tenant Brittany Doss, who resided at 4255 Dubarry.

14. On July 29, 2013, Respondent entered into a lease with Tamika Smith for 4255 Dubarry.

15. On November 11, 2013, Tamika Smith paid \$650.00 to Respondent for rent at 4255 Dubarry.

16. Respondent deposited Tamika Smith's November 11, 2013, rental payment into a bank account that had not been designated as a trust account.

17. Respondent did not remit the \$650.00 rental payment to American Pension Services, Inc.

CONCLUSIONS OF LAW

18. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. Respondent was convicted of Operating a Vehicle with a Blood Alcohol Content of .08-.15%, a Class C Misdemeanor, on July 17, 1998.

19. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. Respondent was convicted of Reckless Driving, a Class B Misdemeanor, on October 31, 2001.

20. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. Respondent was convicted of Operating a Motorboat While Intoxicated, a Class C Misdemeanor, on November 13, 2008.

21. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. Respondent was convicted of Operating a Motorboat with a Suspended Driver's License, a Class A Misdemeanor, on February 4, 2009.

22. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(2)(B) in that Respondent has been convicted of a crime that is harmful to the public. Respondent was convicted of Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor, on February 22, 2012.

23. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(1)(A) in that Respondent engaged in fraud or material deception in order to obtain a license to practice. On Respondent's 2009 renewal application, Respondent failed to disclose that he had been arrested for Operating a Motorboat with a Suspended Driver's License on September 12, 2008, convicted of Operating a Motorboat While Intoxicated on November 13, 2008, and convicted of Operating a Motorboat without a Valid Driver's license on February 4, 2009.

24. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(3) in that Respondent has knowingly violated a state statute or rule regulating the practice of real estate. Specifically, Respondent managed property without a valid license, which is unlawful pursuant to Ind. Code § 25-34.1-3-2(a).

25. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(3) in that Respondent has knowingly violated a state statute or rule regulating the practice of real estate. Respondent operated and/or managed a company that managed real estate without acting under the auspices of a principal broker, which, at all times relevant to this Complaint, was required of real estate salespersons pursuant to Ind. Code § 25-34.1-3-3.1(c).

26. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(4)(A) in that Respondent has continued to practice although he has become unfit to practice due to professional incompetence. Respondent failed to deposit the November 11, 2013, rent payment into a bank account clearly designated as a trust account, as required under Ind. Code § 25-34.1-4-5(a)(2), which, is considered unprofessional conduct pursuant to 876 Ind. Admin. Code 1-1-40(15).

27. Respondent's conduct as described above constitutes a violation of Ind. Code § 25-1-11-5(a)(4)(A) in that Respondent has continued to practice although he has become unfit to practice due to professional incompetence by failing to remit the November 11, 2013, rent payment for 4255 Dubarry to American Pension Services, Inc. Failing to remit funds that come into a licensee's possession which, is considered unprofessional conduct pursuant to 876 Ind. Admin. Code 1-1-40(1).

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

i. Respondent Bert Whalen's Indiana real estate salesperson license is hereby **PERMANENTLY REVOKED**.

ii. Within **NINTY (90) DAYS** of the issuance of the Commission's Final Order affirming the Panel's Order, Respondent shall pay **CONSUMER RESTITUTION** in the amount of **ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00)**, by check or money order made payable to the State of Indiana and submitted to the following address:

**Office of the Indiana Attorney General
Attn. Teresa Henson
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46202**

iii. Within **THIRTY (30) DAYS** of the issuance of the Commission's Final Order affirming the Panel's Order, Respondent shall pay a **FEE of FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund pursuant to Ind. Code § 4-6-14-10(b), by check or money order made payable to the State of Indiana and submitted to the following address:

**Office of the Indiana Attorney General
Attn. Health Records Fee Administrator
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46202**

SO ORDERED this 18th day of December, 2017.

**INDIANA REAL ESTATE COMMISSION
Administrative Law Judge Panel**

By: Maureen Bessett
for Paul Boyter
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of DECEMBER, 2017, a true and correct copy of this Administrative Law Judge Panel's Order was served upon the below-listed party via First Class U.S. Mail, postage prepaid.

Bert Whalen
12634 Shorevista Drive
Indianapolis, IN 46236
Service by U.S. Mail

Colby M. Kus
Deputy Attorney General
Attorney No.: 33800-53
Office of the Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Tel: (317) 234-4783
Fax: (317) 233-4393
Colby.Kus@atg.in.gov
Service by Email

12/18/17
Date


Nathaniel Black, Compliance Officer

Indiana Real Estate Commission
Indiana Government Center South
402 West Washington Street, Room W072
Indianapolis, IN 46204
Phone: 317-234-3009
Fax: 317-233-4236
Email: pla9@pla.in.gov

Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.