

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001255-MR

ANDREW HASLETT

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 05-CI-02265

CONNIE M. FISCHER;
LYDIA DREXLER; AND
KENTUCKY REAL ESTATE COMMISSION

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; KELLER, JUDGE; BUCKINGHAM,¹ SENIOR JUDGE.

KELLER, JUDGE: Andrew Haslett (Haslett) appeals from the Hardin Circuit Court's order dismissing his appeal from the final order of the Kentucky Real Estate Commission (the Commission) dismissing his complaint. The circuit court found that Haslett's petition for review by the circuit court of the Commission's order of dismissal was not

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

timely filed and that, even if it had been timely filed, the circuit court would have upheld the Commission's order on the merits. On appeal, Haslett argues that he timely filed his petition for review with the circuit court and that the Commission's order was faulty because the Commission did not undertake an appropriate and statutorily mandated investigation. For the reasons set forth below, we affirm.

FACTS

On February 15, 2002, Haslett, who was represented by realtor Mark Haynes (Haynes), entered into a contract to purchase a home in Elizabethtown, Kentucky. The sellers were represented by a realtor, Connie Fischer (Fischer), who was working for a broker, Lydia Drexler (Drexler). Haslett closed the purchase on March 8, 2002. On May 7, 2002, Haslett sent a memo to Haynes indicating that he had discovered structural damage to the exterior door of the dining area, a roof leak, and leaking through the concrete block walls around the garage perimeter. Haslett concluded that, because of the nature of the defects, the sellers should have known they existed and should have disclosed them.

On September 19, 2005, Haslett filed a complaint with the Kentucky Real Estate Commission alleging that the roof bulged during warm weather, that the house contained high levels of moisture and humidity that could only be detected during warm weather, and that the garage wall leaked "after any appreciable amount of rain." Haslett stated that he could not have discovered these defects at the time he viewed the house because he did so during a dry period in the winter, when the defects would not have

been evident. However, Haslett stated that Fischer would have known of the defects because she would have been present at the house when the defects would have been evident. Haslett also stated that Drexler failed to adequately supervise Fischer's work. Finally, Haslett noted that the defects were evident during the warm summer and autumn months.

In her response, Fischer noted that the seller disclosure statement indicates that the sellers had the roof repaired in 1999 and that the home inspector's report disclosed a "very high" humidity level in the crawl space. Furthermore, Fischer noted that she did not notice any structural defects and that, as a realtor, she had no obligation to make an independent inspection of the property. Finally, Fischer noted that a number of repairs identified by Haslett's inspector were made by the sellers prior to closing. Drexler essentially adopted Fischer's response as her own, additionally noting that other agents from the agency went to the house in question but did not notice any of the defects noted by Haslett.

On October 10, 2005, Fischer and Drexler filed a motion to dismiss Haslett's complaint with the Commission arguing that the complaint was not timely filed. In support of their motion, Fischer and Drexler pointed out that Haslett is a certified home inspector, that he knew of the alleged defects in the property as early as May of 2002, and that he failed to file his complaint within the two years provided by statute and regulation. It does not appear from the record that Haslett filed a response to that motion and the Commission dismissed Haslett's complaint on November 22, 2005. We note that

the Commission's final order reads as follows: "The complaint in this matter fails to set forth a legitimate issue under KRS Chapter 324 and is hereby dismissed without further investigation or hearing." The order further states that judicial review is available; however, a petition for such review must be filed "within thirty (30) days after this Order is mailed or delivered by personal service, in accordance with KRS Chapter 13B."

On December 27, 2005,² Haslett filed a petition for judicial review with the Hardin Circuit Court. In that petition, Haslett argued that the Commission acted arbitrarily and contrary to statute when it did not conduct an investigation prior to dismissing the complaint. Additionally, Haslett argued that the Commission's order did not provide sufficient grounds to support its dismissal of Haslett's complaint.

In their responses, the Commission, Fischer, and Drexler (collectively, the defendants) stated that the Commission's decision was supported by facts in the record, specifically, the fact that Haslett did not timely file his complaint. The defendants then raised a number of procedural issues, alleging that the petition was not properly served on the Attorney General and that Haslett had failed to issue any summonses.

On April 17, 2006, the circuit court dismissed Haslett's "action seeking judicial review." In its order dismissing, the circuit court found: (1) that Haslett did not timely file his petition for review from the Commission's order; (2) that Haslett did not properly follow the procedures for seeking review of the Commission's order; and (3) that Haslett had not timely filed his complaint with the Commission. Haslett filed a motion to

² We note that the petition was time stamped December 28, 2005; however, the circuit court clerk stated in an Affidavit that the document was received in the clerk's office on December 27, 2005. Therefore, we will deem that the document was filed on December 27, 2005.

alter, amend or vacate, which the circuit court granted to the extent that it altered the date Haslett filed his petition for review. It is from these orders that Haslett appeals.

STANDARD OF REVIEW

The parties do not seriously dispute any of the underlying facts. However, Haslett does dispute the circuit court's application of the law to those facts; therefore, this appeal involves questions of law and is subject to *de novo* review. *See A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, 998 S.W.2d 505, 509 (Ky.App. 1999).

ANALYSIS

The first issue we must address, and ultimately the only issue we will address, is whether the Commission properly dismissed Haslett's appeal. KRS 324.420(6) provides that:

No aggrieved party shall be entitled to recover compensation from the real estate education, research, and recovery fund unless the action against the licensee is commenced within two (2) years from actual knowledge of the cause of action or from the time when circumstances should reasonably have put the aggrieved party on notice of the cause of action.

201 KAR 11:190 Section 1(e) states that a complaint shall be filed "within two (2) years from: 1. Actual knowledge of the cause of action; or 2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action."

In his May of 2002 memo to Haynes, Haslett identified problems with the roof and with the garage block wall. Furthermore, in his complaint to the Commission, Haslett stated that these problems, as well as the other problems he identified, were

apparent in warm weather associated with summer and autumn. Taking Haslett's statements as true, Haslett knew or reasonably would have known that he had a cause of action by no later than sometime during the fall of 2002. Haslett did not file his complaint with the Commission until September of 2005, more than two years after he knew or reasonably would have known of his cause of action; therefore, Haslett did not timely file his complaint with the Commission and the Commission properly dismissed Haslett's complaint.

We note that Haslett argues that the Commission did not conduct an investigation as required by KRS 324.150 and 201 KAR 11:190 Section 1(4). KRS 324.150 provides that:

[o]n the verified written complaint of any person, the commission shall investigate the actions of any [licensee], . . . if the complaint, together with any evidence presented in connection with it, alleges a prima facie case that a violation set out in KRS 324.160 has been committed. After the investigation, the commission may order a hearing and, in appropriate cases, take disciplinary action against any licensee who is found in violation of KRS 324.160.

201 KAR 11:190 Section 1(4) essentially parrots the preceding.

While we agree that the Commission's order leaves much to be desired, we note that the language in the order belies Haslett's argument. The order specifically states that Haslett's claim was being dismissed "without further investigation or hearing." (Emphasis added). The plain language of the order indicates that an investigation was undertaken and that no additional investigation was necessary. As set forth above, the Commission may, after conducting an investigation, schedule a hearing. However, it is

not required to do so. As the circuit court noted, and as we have held, the record before the Commission clearly established that Haslett did not timely file his complaint.

Therefore, the Commission was not required to take any further action.

Because we have held that Haslett did not timely file his complaint with the Commission, we need not address whether Haslett timely filed his petition for review with the circuit court.

CONCLUSION

Based on the record, we hold that Haslett did not timely file his complaint with the Commission and the Commission properly dismissed that complaint. Because the Commission properly dismissed Haslett's complaint, the circuit court properly dismissed his petition for review. We do not need to address, and will not address, whether Haslett timely filed his petition for review with the circuit court.

Therefore, we affirm the decision of the Hardin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES
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