

money in a business account, paying bills, and paying for repairs (Finding of Fact No. 15), and Jewell recorded those transactions on a handwritten ledger. (Finding of Fact No. 16.) Jewell distributed profits to the Johnsons only when they requested her to do so. (Finding of Fact No. 15.) Although the Johnsons paid Brokers a fee for the management services, the parties never entered into a written rental management agreement. (Findings of Fact Nos. 13, 14.)

Barbara Johnson terminated the parties' oral agreement in July 2004, (Finding of Fact No. 20), and demanded an accounting for her properties.² Jewell did not do so and, consequently, Johnson filed a complaint with the Commission. (Notes of Testimony, 8/2/2007, at 17.) The Department of State assigned a professional conduct inspector, Joseph Szczech, to investigate the matter. During the investigation, Jewell claimed that she had at least three accounts with Sovereign Bank—a general business account, a rental escrow account, and a trustee account. (Finding of Fact No. 18.) Szczech requested Jewell's bank account records on at least six different occasions, but Jewell never produced them. (Finding of Fact No. 19.) Jewell produced only the rental ledger pertaining to the Johnson properties. (Finding of Fact No. 17.)

The Bureau of Professional and Occupational Affairs (Bureau) filed orders to show cause why the Commission should not suspend, revoke, or restrict Brokers' licenses or impose a civil penalty. As amended on May 16, 2007, the orders to show cause alleged that Brokers violated several provisions of the Real Estate

² Edward Johnson died in 2000, and Jewell then continued to manage the properties on behalf of Barbara Johnson. (Findings of Fact Nos. 11, 12.) Thus, we hereafter refer to Johnson in the singular.

Licensing and Registration Act (RELRA)³ and the Commission’s regulations by failing to maintain records (Sections 604(a)(5)(v), (15), (17), (20), and (25) of RELRA⁴ and 49 Pa. Code §35.328⁵), failing to place Johnson’s property management

³ Act of February 19, 1980, P.L. 15, *as amended*, 63 P.S. §§ 455.101- 455.902 .

⁴ Section 604 of RELRA provides as follows:

(a)The commission shall have power to refuse a license or registration certificate for cause or to suspend or revoke a license or registration certificate or to levy fines up to \$1,000, or both, where ... a licensee or registrant, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

....

(5) Failure to comply with the following requirements:

....

(v) every broker shall keep records of all funds deposited therein, which records shall indicate clearly the date and from whom he received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission. Such separate custodial or trust fund account shall designate the broker, as trustee, and such account must provide for withdrawal of funds without previous notice. All such records shall be available to the commission, or its representatives, immediately after proper demand or after written notice given, or upon written notice given to the depository.

....

(15) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this act.

....

(Footnote continued on next page...)

(continued...)

(17) Failing, within a reasonable time as defined by the commission, to provide information requested by the commission as the result of a formal or informal complaint to the commission, which would indicate a violation of this act.

....

(20) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency.

....

(25) Violating section 606 or 607.

63 P.S. §455.604(a)(5)(v), (15), (17), (20), 25). Although section 604 (a)(5) was in effect at the time this matter was initiated, it was subsequently deleted from RELRA by the Act of July 6, 2009, P.L. 58.

⁵ The regulations require a broker to keep escrow records as follows:

A broker shall keep records of monies received by him that are required to be held in escrow and shall produce the records for examination by the Commission or its authorized representatives upon written request or pursuant to an office inspection under § 35.246 (relating to inspection of office). The records shall contain:

(1) The name of the party from whom the broker received the money.

(2) The name of the party to whom the money belongs.

(3) The name of the party for whose account the money is deposited.

(4) The date the broker received the money.

(5) The date the broker deposited the money into the escrow account.

(6) The date the broker withdrew the money from the escrow account.

49 Pa. Code §35.328.

agreement in writing (49 Pa. Code §35.281(a)⁶), failing to account for monies that were paid in rent on the Johnsons' properties, (Sections 606.1(a)(1), (2), (5), and (9),⁷), failing to provide the Commission's investigator with documentation regarding

⁶ The regulation provides:

(a) All contracts, commitments and agreements between a broker, or a licensee employed by the broker, and a principal or a consumer who is required to pay a fee, commission or other valuable consideration shall be in writing and contain the information specified in § 35.331 (relating to written agreements generally).

49 Pa. Code §35.281(a).

⁷ Section 606.1 of RELRA provides as follows:

(a) Regardless of whether a licensee is acting within the scope of an agency relationship with a consumer, a licensee owes to all consumers to whom the licensee renders real estate services the following duties, which may not be waived:

(1) to exercise reasonable professional skill and care which meets the practice standards required by this act;

(2) to deal honestly and in good faith;

....

(5) to account in a timely manner for all money and property received from or on behalf of any consumer to a transaction consistent with the provisions of section 608.5;

....

(9) to ensure that all services that are to be provided to the consumer are provided in a reasonable, professional and competent manner in accordance with the practice standards of this act.

63 P.S. §455.606a(a)(1), (2), (5), (9).

account records (Section 604 of RELRA and 49 Pa. Code §35.282), failing to exercise professional skill, and failing to deal honestly and in good faith (Section 604 and 606.1 of RELRA).

On August 2, 2007, a hearing was conducted before a Commission hearing examiner. At the hearing, Szczech testified that Jewell informed him that she maintained bank accounts and that money from rentals was deposited into a general business account and noted on a rental ledger. (Supplemental Reproduced Record (S.R.R.) at 13, 22, 24, 29.) Szczech testified that he asked Jewell to produce bank records six to eight times, but they were never supplied. (S.R.R. at 20.) Furthermore, Szczech stated that Jewell informed him that an employee had embezzled approximately \$21,000 from the business in the 1990s and that Jewell covered the loss by drawing money from other accounts. (S.R.R. at 10.) Szczech testified that Jewell admitted to him that she owed Johnson about \$37,000. (S.R.R. at 10-11.)

Jewell testified that she managed Johnson's properties pursuant to an oral agreement and that no written agreement existed. (S.R.R. at 21.) Jewell admitted that she provided no bank records to Szczech and that she understood that she was required to produce such records when requested by an investigator. (S.R.R. at 30-31.) Moreover, Jewell admitted that she owed Johnson \$37,218.91 and that she never paid that money to Johnson. (S.R.R. at 23, 32-33.) During the hearing, Jewell offered to pay partial restitution to Johnson. (S.R.R. at 26-27.)

On November 24, 2009, the hearing examiner issued a proposed decision containing findings of fact and conclusions of law. The hearing examiner concluded that Brokers violated sections 604 and 606.1 of RELRA and 49 Pa. Code §§35.281(a) and 35.328, and was subject to disciplinary action. The hearing examiner recommended that Brokers' real estate licenses be revoked.

Brokers filed exceptions to the proposed decision with the Commission. On May 19, 2010, the Commission issued an adjudication and order, concluding that all of Brokers' exceptions were without merit. The Commission adopted the hearing examiner's findings of fact and concluded that the evidence established that Brokers violated sections 604(a)(5)(v), (15), (17), (20) and (25) of RELRA, sections 606.1(1), (2), (5), and (9) of RELRA, and 49 Pa. Code §§35.281(a) and 35.328. The Commission revoked Brokers' real estate licenses; however, the Commission's order provided that, upon payment of all monies due and owing to Johnson, Jewell would be permitted to apply for and receive a salesperson's license, which would be placed in probationary status during the period of revocation.⁸

On appeal to this Court,⁹ Brokers first contend that the Commission erred by finding a violation of section 604(a)(5)(v) of RELRA. Brokers argue that the pertinent section is 604(a)(5)(vi) of RELRA, 63 P.S. §455.604(a)(5)(vi), which provides that rents collected by a broker pursuant to a property management transaction may be placed in a rental management account. Brokers contend that

⁸ During the probationary period, the Commission ordered that Jewell may not have access to escrow funds and may not have a financial interest in the real estate company for which she is employed or affiliated. Jewell was ordered to provide a copy of the Commission's adjudication and order to permit the employing broker to acknowledge supervision of Jewell under the ordered restrictions.

The Commission's order does not revoke Brokers' licenses for a specific period of time. However, Section 501 of RELRA provides that the Commission shall not reinstate a license, within five years of the date of revocation, of any person whose license has been revoked. 63 P.S. § 455.501.

⁹ Our scope of review of an order of the Commission is limited to determining whether an error of law was committed, whether constitutional rights were violated or whether necessary findings of fact are supported by substantial evidence. Campo v. State Real Estate Commission, 723 A.2d 260 (Pa. Cmwlth. 1998).

section 604(a)(5)(v) applies only to escrow/custodial accounts and that rents are not required to be placed in escrow; therefore, Brokers assert that they cannot be penalized for failing to maintain or produce rent records. We disagree.

Brokers were being investigated for failing to account for thousands of dollars belonging to Johnson. In the course of that investigation, Jewell informed Szczech that Johnson's money had been deposited in a bank account, (S.R.R. at 2-3), and she represented that she had at least three bank accounts: a general business account; a rental escrow account, and a trustee account. (Finding of Fact No. 18.) Despite Szczech's repeated requests for the production of bank records, Jewell consistently failed to provide the investigator with bank records for any account. Jewell admitted at the hearing that she did not give any bank records to Szczech and that she understood that she was required to produce such records when requested by an investigator. (S.R.R. at 30-31.)

Section 604(a)(5)(v) of RELRA provides that brokers must keep detailed records of all deposited funds and make such records available to the Commission or its representatives immediately after proper demand. This obligation is amplified by 604(a)(17) of RELRA, which requires a broker to produce, within a reasonable time, information requested by the Commission as the result of a formal or informal complaint, and 49 Pa. Code §35.328, which requires a broker to keep and produce escrow records. Although it is true that section 604(a)(5)(vi) of RELRA permits a licensee to deposit rents into a rental management account, Brokers failed to produce bank records for any type of account at all after proper demand by the Commission's investigator. Consequently, there is no evidence verifying that Brokers maintained account records as required by either section 604(a)(5)(v) or 604(a)(5)(vi) of RELRA. In fact, Brokers did not provide Szczech with documentation showing that Johnson's

money existed in any account whatsoever. (S.R.R. at 12-13, 16.) Therefore, the Commission correctly concluded that Brokers violated section 604(a)(5)(v) of RELRA, as well as sections 604(a)(17) of RELRA and 49 Pa. Code §35.328.

Jewell contends that her failure to make an accounting upon Johnson's request did not show a lack of professional skill and that she did not engage in conduct that showed bad faith, dishonesty, incompetence, or a lack of trustworthiness. Again, we disagree.

Jewell admitted that Brokers owed Johnson \$37,218.91 for the three managed properties. (S.R.R. at 32-33; Finding of Fact No. 21.) The oral management agreement was terminated in July of 2004, and Brokers did not repay Johnson in a reasonable time thereafter. In fact, Brokers were unwilling to pay Johnson any restitution at all until the administrative hearing on August 2, 2007, approximately three years after Brokers ceased managing Johnson's properties. It appears that the Commission's hearing process was necessary to encourage Brokers to offer even partial restitution to Johnson.¹⁰

Jewell argues that the delay in making payments to Johnson stems from difficulty recovering from a financial loss resulting from an employee's theft. However, this theft occurred in the mid-1990s and, for that reason, cannot justify Brokers' failure to repay Johnson upon the termination of the oral agreement in 2004.

Moreover, it is undisputed that the property management contract between Brokers and Johnson was not in writing. The Commission's regulations command that *all contracts* between a broker and a principal or a consumer who is

¹⁰ It is not clear from the record whether Brokers paid any money to Johnson following the administrative hearing; however, Brokers assert that they subsequently tendered a certified check to Johnson in the amount of \$22,467.37. (Brokers' brief at 14.) Even if that money was paid, Brokers owe Johnson an additional \$14,751.54.

required to pay a fee, commission, or other valuable consideration shall be in writing. 49 Pa. Code §35.281(a). Brokers minimize the absence of a written contract by asserting that the parties had operated under the terms of an informal oral agreement for approximately twenty years; however, there is no exception in the regulation that authorizes long term oral agreements or other alternative contractual arrangements.

Brokers had a duty under section 606.1(5) of RELRA to account in a timely manner for the significant sum owed to Johnson. However, Brokers did not account for the money or repay Johnson, which prompted Johnson to file a complaint with the Commission. In response to the subsequent investigation, Brokers refused to produce the bank records necessary to show that Johnson's money actually existed in any account. Also, Brokers used an idiosyncratic record-keeping system that relied on ledgers, which were confusing, difficult to comprehend, and insufficient to account for Johnson's funds. (S.R.R. at 7.)

In light of the foregoing, we conclude that the Commission did not err in determining that Brokers failed to exercise professional skill, engaged in conduct constituting bad faith and dishonesty, and behaved in an incompetent or untrustworthy manner in violation of sections 606.1(a)(1), (2), (5), and (9) of RELRA.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Yvonne Jewell and Jewell Realty	:	
Company,	:	
	:	
Petitioners	:	
	:	No. 1203 C.D. 2010
v.	:	
	:	
State Real Estate Commission,	:	
Respondent	:	

ORDER

AND NOW, this 28th day of February, 2011, the May 10, 2010, order of the State Real Estate Commission is hereby AFFIRMED.

PATRICIA A. McCULLOUGH, Judge