

DA 06-0353

IN THE SUPREME COURT OF THE STATE OF MONTANA

2007 MT 253N

ROBERT L. WHITE,

Petitioner and Appellant,

v.

DEPARTMENT OF LABOR and INDUSTRY and
MONTANA BOARD OF REALTY REGULATION,

Respondents and Appellees.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DV 05-106
Honorable Wm. Nels Swandal, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert L. White (Pro Se), Livingston, Montana

For Appellees:

M. Gene Allison, Special Assistant Attorney General, Helena, Montana

Submitted on Briefs: January 31, 2007

Decided: October 3, 2007

Filed:

Clerk

Justice John Warner delivered the Opinion of the Court.

¶1 Pursuant to Section 1, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant Robert L. White (White) appeals from an order of the Sixth Judicial District Court, Park County, affirming a decision of the Montana Board of Realty Regulation, Department of Labor and Industry (Board) dismissing White's petition for relief. We affirm.

¶3 White is a real estate salesperson licensed in Montana and subject to the authority of the Board. From time to time, White had sold properties for an individual named Sandra McNamara (McNamara). On August 13, 2005, White advertised for sale real property belonging to McNamara. However, at the time he did so, White did not have a signed listing agreement covering the property advertised. A competing realtor did have a signed listing agreement from McNamara regarding the same property and filed a complaint against White with the Board.

¶4 A Board hearing examiner found White in violation of § 37-1-316(18), MCA, establishing generally accepted standards for practice, and § 37-51-321(2)(a), MCA, prohibiting a licensee from advertising property of others without a signed listing agreement. The hearing examiner submitted Proposed Findings of Fact, Conclusions of Law, and Recommended Order to the Board.

¶5 A Board Adjudication Panel issued a Final Order that adopted the Hearing Examiner's recommended findings, conclusions and order. The Board fined White, ordered him to attend remedial education classes, and suspended his license to sell real estate for one year.

¶6 White petitioned for judicial review. After reviewing motions and hearing oral argument, the District Court affirmed the Board's decision and dismissed White's petition. This appeal followed.

¶7 A district court reviews an administrative decision to determine whether the findings of fact are clearly erroneous in view of reliable, probative and substantial evidence in the whole record and whether the Board correctly applied the law. We employ the same standards when reviewing a district court order affirming or reversing an administrative decision. *Crismore v. Montana Bd. of Outfitters*, 2005 MT 109, ¶ 11, 327 Mont. 71, ¶ 11, 111 P.3d 681, ¶ 11; § 2-4-704, MCA.

¶8 A complete review of the record leads this Court to the conclusion that the District Court correctly affirmed the Board's determination that White did not have a signed, written listing agreement with McNamara at the time he advertised her real property.

¶9 It is manifest on the face of the briefs and record before us that settled Montana law clearly controls the legal issues and that the District Court correctly interpreted the law. Upon review of the record and the corresponding exhibits, we affirm the District Court's holding that White did not have a signed, written listing agreement.

¶10 Affirmed.

/S/ JOHN WARNER

We Concur:

/S/ JAMES C. NELSON

/S/ W. WILLIAM LEAPHART

/S/ JIM RICE

/S/ BRIAN MORRIS