

TEXAS



REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services

Direct Line: (512) 936-3005

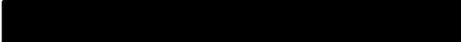
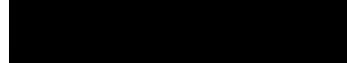
Facsimile: (512) 936-3809

**NOTICE OF VIOLATION OF ORDER,
AUTOMATIC SUSPENSION OF
TEXAS REAL ESTATE BROKER LICENSE**

November 20, 2015

Nichole Lynn Cusick

Via Email:



CM:RRR No. 91 7199 9991 7032 9336 1413

(also sent by regular mail)

Re: Our Hearing File No. 151917
In the Matter of Nichole Lynn Cusick
Texas Real Estate salesperson License No. 151917

Dear Ms. Cusick:

The Texas Real Estate Commission ("Commission") records reflect that you failed to comply with the Agreed Order ("Order") dated August 24, 2015 entered in the above referenced matter. The Order required you pay to the Commission an administrative penalty of \$2,500.00 by making 25 payments of \$100.00 due on the 20th of each and every month beginning on or before August 20, 2015 and ending with a final payment due on or before August 20, 2017. You failed to make the payments due on or before September 20, 2015 and October 20, 2015. Therefore, your real estate broker license number 596244 has been suspended effective on November 20, 2015, until the remaining balance of the administrative penalty is paid in full.

As your license is suspended, you may no longer conduct the business of a real estate broker or salesperson. (22 Tex. Admin. Code §535.141(g)). Conducting the business of a real estate broker or salesperson with a suspended license is a violation of The Real Estate License Act and may result in further disciplinary action.

Sincerely,

A handwritten signature in black ink, appearing to read "Pim Mayo".

Pim S. Mayo
Staff Attorney

cc: Master File No. 596244

HEARING NO. 151917

IN THE MATTER OF
NICHOLE LYNN CUSICK
ROUND ROCK, TEXAS

§
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§

BEFORE THE TEXAS REAL
ESTATE COMMISSION
("COMMISSION")

TEXAS REAL ESTATE BROKER
LICENSE NO. 596244

SITTING IN AUSTIN
TRAVIS COUNTY, TEXAS

AGREED ORDER

On August 10, 2015, Nicole Lynn Cusick ("Respondent") was notified of allegations against her. In order to conclude this matter, Respondent admits to the truth of the following Findings of Fact and Conclusions of Law and agrees to the entry of this Order and assessment of an administrative penalty.

FINDINGS OF FACT

1. Respondent is a licensed Texas real estate broker, was a Texas real estate broker at all times relevant to these matters, and performed an act in Texas constituting an act of a broker or salesperson as defined under Tex. Occ. Code §1101.002(1).
2. Respondent has no history of public complaints filed against her with the Commission.

COUNT 1 – 150650

3. Respondent was the property manager for 102 Chandler Crossing in Round Rock, Texas ("Property 1") at all times relevant to this matter. On April 30, 2014, Henry Garcia and Marissa Hernandez ("the Tenants") moved out of Property 1. On June 11, 2014, the Tenants supplied Respondent with their forwarding address.
4. On May 20, 2014, Respondent refunded the Tenants their security deposit of \$1,350.00 via electronic payment; however, for reasons unknown by Respondent this payment was not processed.
5. Respondent issued the Tenants Check 1003 dated August 18, 2014 in the amount of \$1,350.00. The Tenants negotiated the check, and it was returned for insufficient funds. Respondent stated to the Commission that a bank error caused the check to bounce.
6. Subsequently, the Tenants made demand for the return of their security deposit. The Tenants hired an attorney who drafted a demand letter on the Tenants' behalf dated September 23, 2014. Respondent did not respond to these demands.
7. On December 5, 2014, the Tenants filed a complaint with the Commission regarding this matter.

8. On January 7, 2015, Respondent issued a check for \$1,350.00 to the Tenants, and the payment was cashed.
9. Respondent paid the Tenants \$250.00 for the attorney's fees that were incurred related to this matter.

COUNT 2 – 150859

10. Respondent began managing 2913 Mission Tejas Drive in Pflugerville, Texas ("Property 2") on or about January 1, 2012 for Anthony Knippen ("Knippen"), the owner of Property 2.
11. Carpet repair was performed at Property 2 in 2012. The invoice for the repair was not paid. Respondent stated to the Commission that she did not discover until much later that her accountant failed to pay this invoice.
12. A Mechanics and Materialman's Lien was filed against Property 2 on February 15, 2013, in the amount of \$1,649.27. In Cause No. C-1-CV-14-001044, *Impact Floors L.P. v. Anthony Knippen and ERealty Services L.L.C.*, in the County Court at Law No. 2 in Travis County, Texas, the Court entered a Writ of Execution against eRealty Service L.L.C. in the amount of \$5,113.97 plus post-judgment interest accruing at 5%.
13. Respondent paid \$3,565.88 towards the Writ of Execution and constable collection fees. On October 10, 2014, the judgement balance was \$2,091.50. When Knippen sold the Property in 2014, the remaining balance of the judgment was deducted from his seller proceeds at closing.
14. Respondent reimbursed Knippen \$2,091.50.

COUNT 3 – 151917

15. eRealty Services LLC ("eRealty") is a Texas real estate broker and performed an act in Texas constituting an act of a broker or salesperson as defined under Tex. Occ. Code §1101.002(1). Respondent was the designated broker for eRealty from May 4, 2012, to August 14, 2014.
16. eRealty began managing 203 E. Custers Creek Boulevard in Pflugerville, Texas ("Property 3") on or about July 18, 2013, for Mark Duncan ("Duncan"), the owner of Property 3.
17. On March 31, 2014, the owner of Property 3 and eRealty, through Respondent, mutually agreed to terminate their property management agreement.
18. As part of the mutual termination, Respondent agreed to transfer the security deposit paid by the tenant of Property 3 to the owner, without deductions by April 10, 2014.

19. On April 24, 2014, Respondent mailed the owner a letter, which included a check \$1,255.29 for the security deposit of Property 3. Respondent contends that this letter was returned as "Unclaimed."
20. There is currently ongoing litigation regarding the return of the security deposit for Property 3.
21. In response to this complaint, Respondent paid Duncan the \$1,255.29 security deposit.

CONCLUSIONS OF LAW

The acts and omissions on the part of Respondent set out in the Findings of Fact constitute the following violations that are cause for the suspension, revocation, or reprimand of Respondent's Texas real estate broker license pursuant to the specific statutes cited below and/or TEX. OCC. CODE §1101.656 and are further cause for the assessment of an administrative penalty against Respondent pursuant to TEX. OCC. CODE §1101.701:

22. failing within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person, in violation of TEX. OCC. CODE §1101.652(b)(9); and
23. acting negligently or incompetently, while acting as a broker or salesperson, in violation of TEX. OCC. CODE §1101.652(b)(1).

ORDER

IT IS ORDERED that Respondent's Texas real estate broker license is suspended for four years, if timely renewed, effective 5:00 p.m., August 24, 2015.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., August 24, 2015, the suspension is fully probated for four years, if timely renewed, ending August 24, 2019, subject to the following terms.

1. Respondent comply with Chapter 1101 of the Texas Occupations Code and with the Rules of the Commission.
2. Respondent fully cooperate with the Commission's Standards & Enforcement Services Division in completing its investigation of any complaints filed against her.
3. Respondent not act as a designated broker for a licensed business entity during the term of probation.
4. Respondent not establish, maintain, operate, be responsible for, or be a signatory on any bank account, or any custodial trust, escrow, property management, or similar account in which funds are held for others.

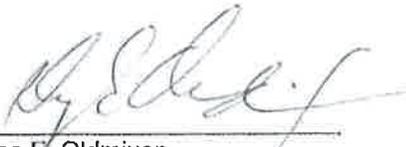
5. On or before 5:00 p.m., November 20, 2015, Respondent provide the Commission's Standards & Enforcement Services Division with evidence of her completion of 30 hours in a property management course as defined by TEX. OCC. CODE §1101.003(a)(4) from a school or provider approved by or acceptable to the Commission, and that these hours are in addition to the Continuing Education (CE) hours required for the next renewal of Respondent's Texas real estate broker license. Failure to provide the evidence of timely completion of the course as ordered automatically suspends Respondent's real estate license until the evidence is provided to the Commission's Standards & Enforcement Services Division. Failure to timely complete the course as ordered revokes probation and Respondent's real estate license is suspended for the full term, starting from the effective date of the revocation of probation.

IT IS FURTHER ORDERED that Respondent pay an administrative penalty of \$2,500.00 in the form of cashier's checks or money orders made payable to the Texas Real Estate Commission as follows. The remitter on the cashier's check or money order must be Respondent or Respondent's attorney.

1. For 25 months, the sum of \$100.00 is due on or before the 20th of each month beginning on or before August 20, 2015, and ending with the final payment due on or before August 20, 2017.
2. Should the 20th day of any month fall due on a weekend or legal holiday, the payment is due the next business day.
3. Any amounts paid by Respondent in excess of the required monthly payments of \$100.00 go toward the principal amount owed and do not excuse Respondent from making regular monthly payments of at least \$100.00 until the total sum is paid in full.
4. Respondent must make all payments timely and without any grace period or notice from the Commission. Failure to timely pay automatically suspends Respondent's Texas real estate broker license until all of the remaining balance of the administrative penalty is paid in full.
5. Respondent may not act as a designated broker for a licensed business entity while Respondent has any unpaid or past due monetary obligation to the Commission.

IT IS FURTHER ORDERED that a violation of the above terms, other than those that specifically provide for automatic suspension, or automatic revocation of probation or suspension of license, is, after notice and hearing, grounds to revoke probation and impose the above suspension of Respondent's Texas real estate broker license in addition to any additional disciplinary action which may be warranted for a subsequent violation of the Texas Occupations Code.

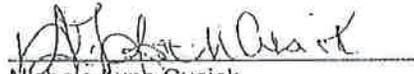
DATED: 24 AUG 15



Douglas E. Oldmixon
Administrator
Texas Real Estate Commission

The undersigned Respondent states and affirms that Respondent enters into this agreed order of her own free will; that Respondent admits to the above Findings of Fact and Conclusions of Law; that Respondent has been afforded all administrative remedies due her under the law by the Commission; that Respondent, having been advised of her right to a hearing, waives this right; that Respondent has been represented and counseled in this matter by an attorney of her own selection who is licensed to practice in the State of Texas; and that Respondent waives all right to judicial review of this Order.

DATED: Aug 20, 2015



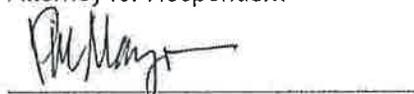
Nichole Lynn Cusick
Respondent

DATED: 8/24/15



Tony A. Pitts
Attorney for Respondent

DATED: 24 Aug 2015



Pim S. Mayo
Staff Attorney