

SOAH Docket No. 329-19-1489.REC / TREC Hearing No. 180294

Texas Real Estate Commission
("Commission") or ("Petitioner")

v.

Mayra Jovel ("Respondent")
Texas Real Estate Sales agent
License No. 675021

§
§
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§
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§
§

Before the Texas Real
Estate Commission

Sitting in Austin,
Travis County, Texas

Final Order

The Commission considered the above case on August 12, 2019.

After proper notice was given, the case was heard at the State Office of Administrative Hearings ("SOAH") by an Administrative Law Judge ("ALJ") on March 20, 2019. The record closed that same day, and on May 10, 2019, the ALJ filed a Proposal for Decision ("PFD") containing Findings of Fact and Conclusions of Law. The PFD was properly served on each party and each party was given an opportunity to file exceptions and replies as part of the administrative record. No party filed exceptions.

The Commission, after review and consideration of the PFD, attached as Exhibit A, adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD and incorporates those findings and conclusions into this Final Order as if fully set out and separately stated in this Final Order. All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied.

IT IS THEREFORE ORDERED by the Commission that Respondent is assessed an administrative penalty of \$6,750 ("Penalty"). Respondent's real estate sales agent license expired July 31, 2018, and has not been renewed.

IT IS FURTHER ORDERED that if reinstated, Respondent's real estate license be suspended for six months starting on the date Respondent's license is reinstated and, if Respondent has not paid the administrative penalty, Respondent's license will remain suspended beyond the six month period until the Penalty is paid in full.

If enforcement of this Final Order is restrained or enjoined by court order, this Final Order is effective upon a final determination by the court or an appellate court in favor of the Commission.

Signed August 12, 2019.



R. Scott Kesner, Chairperson
Texas Real Estate Commission



State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

May 10, 2019

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA INTERAGENCY

RE: SOAH Docket No. 329-19-1489.REC; *Texas Real Estate Commission v. Mayra Jovel*

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule that may be found at www.soah.texas.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriel P. Soto".

Gabriel P. Soto
Administrative Law Judge

GPS/eh
Enclosure

xc: Sandra Zimmerman, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – **VIA INTERAGENCY**
Mayra Jovel [REDACTED] **VIA REGULAR MAIL**
Mark Moore, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400,
Austin, TX 78701 – **VIA INTERAGENCY**

SOAH DOCKET NO. 329-19-1489.REC

TEXAS REAL ESTATE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
MAYRA JOVEL,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Real Estate Commission (Commission) brought this action against Mayra Jovel for three alleged violations of the Real Estate License Act, Texas Occupations Code Chapter 1101 (Code).¹ Staff seeks to impose an administrative penalty totaling \$6,750 and suspend Ms. Jovel's real estate license for six months.

The Administrative Law Judge (ALJ) concludes Ms. Jovel committed three violations of the Code as alleged by Staff. The ALJ finds that Staff proved the allegations and recommends that Ms. Jovel be ordered to pay the administrative penalty of \$6,750, and that Ms. Jovel's license be suspended for six months as set forth in this proposal for decision (PFD).

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were undisputed and are set out in the findings of fact and conclusions of law. This matter was referred to the State Office of Administrative Hearings (SOAH) on December 3, 2018. The hearing convened on March 20, 2019, before ALJ Gabriel Soto at the SOAH facility in Austin, Texas. Staff was represented by Staff Attorney Sandra Zimmerman. Ms. Jovel appeared and represented herself. Following closing statements at the hearing, the record closed that same day.

¹ In the original petition, the administrative penalty is for violations of the Texas Occupations Code (Code), specifically, for negligence or incompetence under § 1101.652(b)(1) (a penalty of \$1,750); for engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness under .652(b)(2) (a penalty of \$2,500); and for offering to sell real property without the knowledge and consent of the owner of real property under .652(b)(19) (a penalty of \$2,500). Staff Ex. 1.

II. APPLICABLE LAW

Staff alleges that Ms. Jovel violated Code § 1101.652(b)(1), .652(b)(2), .652(b)(19) when she entered into a letter of representation agreement without the owner's consent or knowledge and failed to be truthful to her broker. Pursuant to the Code, the Commission is empowered to establish and enforce standards of conduct and ethics for persons licensed by the Commission.² The Commission may, among other enforcement options, suspend or revoke the license of, assess administrative penalties against, and order a refund to a consumer by, a license holder who engages in prohibited conduct,³ including:

- a license holder who “acts negligently or incompetently;”⁴
- a license holder who “engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;”⁵ and
- a license holder who “offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;”⁶

A broker is a person who, in exchange for a commission or other valuable consideration performs for another person one of the following acts:

- sells, exchanges, purchases, or lease real estate;
- offers to sell, exchange, purchase, or lease real estate;
- negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

² Code § 1101.151(b)(2).

³ Code §§ 1101.652, .656, .659, and .701. The amount of administrative penalty is addressed in Code § 1101.702. That section sets a maximum penalty of \$5,000 for each violation. A penalty range of \$500-\$3,000 per violation per day may be assessed for violation of Code § 1101.652(b)(1), and a penalty range of \$1,000-\$5,000 per violation per day may be assessed for violation of Code § 1101.652(b)(2) and (19). 22 Tex. Admin. Code § 535.191(d), (e).

⁴ Code § 1101.652(b)(1).

⁵ Code § 1101.652(b)(2).

⁶ Code § 1101.652(b)(19).

- lists or offers, attempts, or agrees to list real estate for sale, lease or exchange;
- aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;
- procures or assists in procuring property to effect the sale, exchange, or lease of real estate.⁷

“Sales agent” means a person who is sponsored by a license broker for the purpose of performing an act described by the Code §1101.002(7).

The following factors are to be considered in determining the amount of the penalty:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.⁸

Staff has the burden of proof in this proceeding pursuant to 1 Texas Administrative Code §155.427.

III. DISCUSSION

A. Undisputed Background

Ms. Jovel was licensed as a Texas real estate sales agent from July 7, 2016, to July 31, 2018.⁹ Ms. Jovel worked as a real estate agent for broker Charles “Chuck” Green with Chuck Green & Associates, which is a commercial real estate firm. Ms. Jovel worked for Mr. Green for approximately six months. Mahmoud Aminian is the owner of property located at

⁷ Code § 1101.002(1)(A)(i)–(iv), (vii), (ix).

⁸ Code § 1101.702(b), (c); 22 Tex. Admin. Code § 535.191(d), (e).

⁹ Staff Ex. 2. Ms. Jovel holds real estate license number 675021 that expired on July 31, 2018, and she has not renewed her license as of the date of the hearing.

5647 S. Lancaster Road in Dallas, Texas (parcel number 00000644011200000) (Lancaster Property).¹⁰ Ms. Jovel entered into a letter of representation agreement with Poncio Espinoza for the sale of the Lancaster Property.¹¹ Mr. Espinoza was the tenant of Mr. Aminian.¹² In September 2017, Mr. Aminian became aware that his Lancaster Property was advertised for sale in the Multiple Listing Service (MLS) for \$3,000,000 by Ms. Jovel.¹³ Ms. Jovel had no listing agreement with Mr. Aminian for the sale of the Lancaster Property.¹⁴ On or about September 6, 2017, Mr. Aminian contacted Mr. Green, the designated broker for Chuck Green & Associates about the Lancaster Property MLS listing.¹⁵ After Mr. Aminian informed Mr. Green of the Lancaster Property listing, the listing was removed from MLS. Mr. Aminian filed a complaint against Ms. Jovel with the Commission.¹⁶ The Commission completed an investigative report on Ms. Jovel on March 29, 2018.¹⁷

B. Evidence

Staff called Mr. Aminian and Mr. Green as witnesses who testified telephonically. Staff also called Michael Molloy, a staff attorney, as a witness at the hearing. Staff also called Susan Miller, an investigator, as a rebuttal witness. Staff Exhibit Nos. 1 through 7 were admitted into evidence without any objection. Ms. Jovel offered no exhibits and testified on her own behalf.

¹⁰ Staff Ex. 4.

¹¹ Staff Ex. 5. Ms. Jovel met Mr. Espinoza while she was a real estate agent with Keller Williams, and after departing this brokerage firm, he remained her client.

¹² Staff Ex. 3.

¹³ Staff Ex. 3.

¹⁴ Staff Ex. 3.

¹⁵ Staff Ex. 4.

¹⁶ Staff Ex. 3.

¹⁷ Staff Ex. 4.

1. Mahmoud Aminian

Mr. Aminian testified that he is the owner of the Lancaster Property. Mr. Aminian filed a complaint with the Commission against Ms. Jovel, because he felt she illegally listed the Lancaster Property without his authorization. In early September 2017, after speaking with a friend, Mr. Aminian stated that he became aware that the Lancaster Property was advertised for sale on MLS for \$3,000,000. Mr. Aminian reviewed the MLS listing and identified the listing agent as Ms. Jovel who worked for Mr. Green. Mr. Aminian testified that he immediately contacted Mr. Green and informed him that the listing was made without his knowledge or consent. According to Mr. Aminian, Mr. Green informed him that he did not know about the Lancaster Property listing. Mr. Aminian stated he had never met Ms. Jovel and did not have any listing agreement with her. Mr. Aminian said that Mr. Green removed the Lancaster Property from MLS within two days and apologized to him. Mr. Aminian realized that Ms. Jovel had listed the Lancaster Property with his tenant, Mr. Espinoza. However, Mr. Aminian said that Mr. Espinoza did not own the Lancaster Property. Mr. Aminian testified that he purchased the Lancaster Property through a joint partnership with Dallas Max, LLC and later in 2014, he became the sole owner of the Lancaster Property after the purchase by Pro Inv., Inc., a company solely owned by Mr. Aminian.

2. Charles "Chuck" Green

Mr. Green testified that he received a telephone call from Mr. Aminian inquiring into the Lancaster Property listing in MLS. Mr. Green stated he had never seen the Lancaster Property listing before Mr. Aminian's call. Mr. Green further testified that he had not given Ms. Jovel permission to use the brokerage firm to list the Lancaster Property on MLS, and the property had never gone through approval by Chuck Green & Associates. Mr. Green confirmed that Ms. Jovel had entered the Lancaster Property in MLS. He stated that she had access to his MLS password.¹⁸

¹⁸ Staff Ex. 4.

After the call with Mr. Aminian, Mr. Green testified that he researched the property ownership verifying Mr. Aminian's corporation and confirming Mr. Aminian's ownership of the Lancaster Property. Mr. Green also testified that he was surprised that the listing was placed in MLS because the brokerage firm did not list commercial property, such as the Lancaster Property, in MLS which is generally a listing site for the sale of residential property. According to Mr. Green, the Lancaster Property should have been listed, with other commercial real estate listings, in CoStar and Xceligent. Mr. Green testified that Ms. Jovel also had access to his CoStar and Xceligent accounts.

Mr. Green recalled that when Ms. Jovel first arrived at his brokerage firm, she had asked him for a better commission split for property she had from her previous brokerage firm. Mr. Green stated he agreed to a better commission, but he never received any information about the Lancaster Property listing agreement from Ms. Jovel or anyone else.

Mr. Green testified that when he questioned Ms. Jovel about the Lancaster Property listing, she was evasive and wanted to speak to her client about the matter before answering his questions. Ms. Jovel would not disclose her client's name (Mr. Espinoza) to Mr. Green for the Lancaster Property. Mr. Green testified that the next morning, he asked Ms. Jovel to provide a copy of the Lancaster Property listing agreement and all correspondence between her and her client detailing how she obtained the listing. At the end of the same day, Mr. Green stated that he terminated Ms. Jovel after she failed to produce any listing agreement for the Lancaster Property. Mr. Green testified that he could not locate a listing agreement for the property in Ms. Jovel's files because she had removed her files from the office.

3. Michael Molloy

Mr. Malloy has been a staff attorney with the Commission for ten years and testified on the proposed sanctions. Mr. Malloy noted that he based his opinion on the supporting documentation. Mr. Malloy testified that Ms. Jovel failed to do her due diligence by searching the property records to verify the ownership of the Lancaster Property, which constituted negligence and incompetence. Mr. Malloy explained that Mr. Green completed the property search in a short

amount of time after speaking with Mr. Arminian, which should have been the same process completed by Ms. Jovel, who was a real estate agent engaging in brokerage activity. Mr. Malloy explained that this conduct would support a Code violation under § 1101.652(b)(1). Mr. Malloy testified that as the broker, Mr. Green, who was responsible for the Lancaster Property listing, should have been informed by Ms. Jovel about the details of the listing. Ms. Jovel's evasive and dishonest answers to Mr. Green and her removing files from the office further supported Mr. Malloy's belief that Ms. Jovel's actions supported a Code violation under 1101.652(b)(2). Mr. Malloy stated that it was also a Code violation under § 1101.652(b)(19) for Ms. Jovel to engage in brokerage activity by listing the Lancaster Property for sale without the knowledge of the owner, Mr. Aminian.

Mr. Malloy testified that based on these three Code violations, the Commission has the authority to suspend Ms. Jovel's real estate license for six months, which in his opinion was appropriate and necessary under the circumstances. Mr. Malloy also explained that the administrative penalty of \$6,750 for three violations of the Code was reasonable. Mr. Malloy testified that the violations raised serious concerns in this case, and he believes that the administrative penalty is appropriate based on Ms. Jovel's negligence and failure to do her due diligence in determining the actual owner of the Lancaster Property.

4. Mayra Jovel

Ms. Jovel testified that she had been doing research for her client, Mr. Espinoza, who was living at the Lancaster Property. Ms. Jovel stated that Mr. Green asked about the date the property was going to be listed, and that he recommended that she use the short-form for the listing agreement. Ms. Jovel admitted to using the short-form representation agreement, from Chuck Green & Associates, for Mr. Espinoza to sign. Ms. Jovel testified that she entered into a long-form contract with Mr. Espinoza when she was with the Keller Williams brokerage firm. Ms. Jovel knew that the Lancaster Property had been listed on MLS for 180 days, but she did not obtain the proper information to determine whether Mr. Espinoza owned the Lancaster Property.

Ms. Jovel explained that she was learning about the business and was trying to do research through articles and public records for the Lancaster Property. Ms. Jovel stated that she entered into a letter of representation agreement with Mr. Espinoza for the Lancaster Property because she believed he was the owner of the property. Ms. Jovel testified, however, that she did not speak to Mr. Green when he questioned her because she wanted to get more documentation to get a clearer picture of the situation. Ms. Jovel stated she provided Mr. Green an immediate response, but was unable to go into detail until she was able to gather more information. Although Ms. Jovel testified that she had the appraisal district records to support Mr. Espinoza's prior ownership of the Lancaster Property, she later discovered gaps with his current ownership.

5. Susan Miller

Ms. Miller is an investigator with the Commission who completed the report in this matter. Staff called Ms. Miller as a rebuttal witness for the limited purpose of testifying about her investigative report. Ms. Miller testified that during her investigative interview, Ms. Jovel stated that she had Mr. Espinoza sign the representation agreement for the Lancaster Property. Ms. Miller also testified that Ms. Jovel provided a statement that she accessed the MLS by borrowing Mr. Green's log-in information to enter the property listing.

IV. ANALYSIS

The ALJ finds that Staff proved that Ms. Jovel acted negligently; engaged in conduct that is dishonest or that demonstrates untrustworthiness; and offered to sell or lease real estate property without the knowledge and consent of the owner of real property.

The evidence shows that Ms. Jovel entered into a letter of representation agreement with Mr. Espinoza for the sale of the Lancaster Property. The letter of representation was signed by Mr. Espinoza on April 4, 2017.¹⁹ Mr. Espinoza was only a tenant of the Lancaster Property and did not have the vested interest necessary to establish a client relationship with Ms. Jovel for the

¹⁹ Staff Ex. 4.

sale of the property. The Lancaster Property was listed in MLS for \$3,000,000 on behalf of Mr. Espinoza.²⁰ Ms. Jovel could not enter into a letter of representation for the Lancaster Property without the consent or knowledge of the actual owner, Mr. Aminian.

A. Negligence or Incompetence

The evidence shows that Ms. Jovel acted negligently or incompetently by failing to do due diligence to determine ownership of the Lancaster Property prior to listing on MLS. Ms. Jovel engaged in brokerage activity by listing the Lancaster Property prematurely and believing Mr. Espinoza to be the owner of the Lancaster Property. After Ms. Jovel had already listed the property in MLS, she continued to conduct research on the property. Although Ms. Jovel uncovered appraisal district records that revealed Mr. Espinoza as a previous owner of the Lancaster Property, she failed to substantiate his current ownership of the property.

Mr. Green was not aware that the Lancaster Property had been listed in MLS by Ms. Jovel. Although Ms. Jovel testified that Mr. Green had been pressuring her to list the property, she never consulted Mr. Green about ownership of the Lancaster Property. Even after Mr. Green confronted Ms. Jovel about the Lancaster Property listing, she avoided any conversation with Mr. Green related to the property listing because she obviously had concerns with Mr. Espinoza's current ownership. She failed to perform due diligence, which would have included searching property records and consulting with her broker, Mr. Green. Through Ms. Jovel's negligence and incompetence, she failed to obtain consent from Mr. Aminian for the sale of the Lancaster Property. The ALJ, therefore, concludes that Ms. Jovel violated Code § 1101.652(b)(1) by acting negligently or incompetently when she established a client relationship with Mr. Espinoza and prematurely listed the Lancaster Property for sale on MLS.

²⁰ Staff Ex. 3.

B. Dishonesty or Bad Faith or Demonstrates Untrustworthiness

The evidence shows that Ms. Jovel engaged in dishonest conduct and was untrustworthy as a real estate agent when she failed to be upfront with Mr. Green. When Mr. Green questioned Ms. Jovel about the MLS listing, she failed to disclose the details about the Lancaster Property and stated she preferred to speak to her client before answering Mr. Green's questions. Ms. Jovel also deliberately withheld her client's name from Mr. Green. Because of Ms. Jovel's dishonest and evasive conduct, Mr. Green was unable to obtain additional listing information from Ms. Jovel regarding her client relationship with Mr. Espinoza. Thereafter, Ms. Jovel stopped communicating with Mr. Green and removed her files from the office. Ultimately, Mr. Green terminated Ms. Jovel for her dishonest conduct.

The evidence shows that Ms. Jovel was not truthful with Mr. Green and avoided questions related to the Lancaster Property and her agency agreement. By failing to communicate with her broker, and not following up with him, Ms. Jovel was dishonest, untrustworthy, and acted in bad faith. Ms. Jovel also concealed the truth about Lancaster Property listing and the details of her client relationship with Mr. Espinoza from Mr. Green. The ALJ, therefore, concludes that Ms. Jovel violated Code § 1101.652(b)(2) by engaging in conduct that is dishonest, in bad faith, and demonstrates untrustworthiness.

C. Sale of Real Property Without Knowledge or Consent of the Owner or Agent

The evidence shows that Ms. Jovel was offering to sell the Lancaster Property without the knowledge and consent of Mr. Aminian. The evidence established that Mr. Green was unaware of Ms. Jovel's Lancaster Property listing, and Mr. Green testified that he never approved a letter of representation agreement for the Lancaster Property. Ms. Miller testified that during her investigation, Ms. Jovel admitted to using Mr. Green's password to enter the Lancaster Property listing into MLS without his consent.²¹ Ms. Jovel had Mr. Espinoza sign a letter of representation agreement on April 4, 2017, on a standard internal form from Chuck Green & Associates, which

²¹ Staff Ex. 5.

she intended to appoint Chuck Green & Associates as commercial real estate brokerage firm as the “sole and exclusive broker” for Mr. Espinoza and for her to sell the Lancaster Property as the real estate agent.²² There is no evidence that Mr. Jovel had an actual letter of representation agreement with her previous broker Keller Williams for the Lancaster Property. The evidence also showed that Mr. Aminian was the sole owner of the Lancaster Property, and that Ms. Jovel listed the property without his knowledge or consent.²³ The ALJ, therefore, concludes that Ms. Jovel violated Code § 1101.652(b)(19) by offering to sell or lease real estate property without the knowledge and consent of the owner of real property or the owner’s authorized agent.

D. Administrative Penalty and Suspension

The Commission is required to consider penalty factors outlined in the Code in determining the appropriate administrative penalty. Even though Ms. Jovel has no prior violations, her prohibited conduct in listing the Lancaster Property and failing to substantiate ownership was a serious violation.²⁴ Further, Commission provided witness testimony that the penalty amount was appropriate and reasonable based on Ms. Jovel’s lack of due diligence to verify property ownership before she entered into a representation agreement and placed the listing on MLS.²⁵ In summary, based on the evidence and arguments presented, the factors set out in the Code, and the Commission’s penalty guidelines, the ALJ concludes that an administrative penalty of \$6,750 should be assessed against Ms. Jovel. Furthermore, based on the seriousness of the violations, Ms. Jovel’s license should be suspended for six months.

V. FINDINGS OF FACT

1. The staff (Staff) of the Texas Real Estate Commission (Commission) seeks to suspend the license of and impose an administrative penalty of \$6,750 against Ms. Mayra Jovel for alleged violations of the Real Estate Act, Texas Occupations Code Chapter 1101 (Code).

²² Staff Ex. 5.

²³ Staff Ex. 4 and 5.

²⁴ Code § 1101.702(b), (c); 22 Tex. Admin. Code § 535.191(d), (e).

²⁵ Code § 1101.702(b), (c); 22 Tex. Admin. Code § 535.191(d), (e).

2. From at least July 7, 2016, through July 31, 2018, Ms. Jovel held a Commission sales agent license. Ms. Jovel holds real estate sales agent license number 675021 issued by the Commission that expired on July 31, 2018.
3. A Notice of Alleged Violation and the Original Petition were sent to Ms. Jovel on October 26, 2018.
4. Ms. Jovel requested a hearing before the State Office of Administrative Hearings (SOAH).
5. Notice of the hearing was sent to Ms. Jovel on December 6, 2018.
6. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. The hearing convened on March 20, 2019, before Administrative Law Judge (ALJ) Gabriel Soto at the SOAH facility in Austin, Texas. Staff was represented by Staff Attorney Sandra Zimmerman. Ms. Jovel appeared and represented herself. Following closing statements, the hearing concluded, and the record closed on the same day.
8. Ms. Jovel attempted to sell the property located at 5647 S. Lancaster Road in Dallas, Texas (parcel number 00000644011200000) (Lancaster Property).
9. Ms. Jovel had Poncio Espinoza sign a letter of representation agreement on April 4, 2017, on a standard internal form from Chuck Green & Associates, which she intended to appoint Chuck Green & Associates as commercial real estate brokerage firm as the "sole and exclusive broker" for Mr. Espinoza and for her to sell the Lancaster Property as the real estate agent.
10. Mr. Espinoza was only a tenant of the Lancaster Property and had no vested interest necessary to establish a client relationship with Ms. Jovel for the sale of the Lancaster Property.
11. Ms. Jovel did not obtain a letter of representation agreement from Mr. Aminian for the Lancaster Property.
12. Ms. Jovel used Charles "Chuck" Green's, the designated broker for Chuck Green & Associates, password to enter the Lancaster Property into MLS for sale without Mr. Green's consent.
13. In September 2017, Mr. Aminian became aware that the Lancaster Property he owned was advertised for sale on MLS for \$3,000,000.

14. On or about September 6, 2017, Mr. Aminian contacted Mr. Green about the Lancaster Property MLS listing and informed Mr. Green that the listing was done without his knowledge and consent.
15. Mr. Green was unaware of the Lancaster Property listing and immediately took the listing down from MLS.
16. After speaking with Mr. Aminian, Mr. Green questioned Ms. Jovel about the details of her representation agreement and the Lancaster Property listing in MLS.
17. Ms. Jovel did not have an actual letter or representation agreement with her previous broker Keller Williams or any letter of representation that had been approved by Chuck Green & Associates.
18. When Mr. Green questioned Ms. Jovel about the MLS listing, she failed to disclose the details about the Lancaster Property and her client's name.
19. Mr. Green unsuccessfully attempted to obtain additional listing information and documentation from Ms. Jovel detailing the Lancaster Property. Ms. Jovel stopped communicating with Mr. Green and removed her files from the office of Chuck Green & Associates.
20. Mr. Green terminated Ms. Jovel after she stopped communicating with him and failed to produce any listing agreement for the Lancaster Property.
21. Mr. Aminian filed a complaint against Ms. Jovel with the Commission.
22. Staff initiated an investigation into the complaint and made a determination that Ms. Jovel violated the Code and Commission rules. An investigative report was completed by the Commission on March 29, 2018.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Occ. Code ch. 1101.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, under Texas Government Code ch. 2003.
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051-.052.
4. Staff had the burden of proving the case by a preponderance of the evidence in this proceeding pursuant to 1 Texas Administrative Code § 155.427.

5. Based on the Findings of Fact, Ms. Jovel violated Texas Occupations Code § 1101.652(b)(1), by acting negligently or incompetently.
6. Based on the Findings of Fact, Ms. Jovel violated Texas Occupations Code § 1101.652(b)(2), by engaging in conduct that is dishonest, in bad faith, or that demonstrates untrustworthiness.
7. Based on the Findings of Fact, Ms. Jovel violated Texas Occupations Code § 1101.652(b)(19), by offering to sell real property without the knowledge and consent of the owner of the real property or the owner's authorized agent.
8. The Commission may suspend or revoke the license of, assess administrative penalties against, and order a refund to a consumer by, a license holder who violates the Code or a Commission rule. Tex. Occ. Code §§ 1101.652, .656, .659, .701.
9. The amount of any administrative penalty imposed may not exceed \$5,000 per violation per day and shall be based on consideration of specified factors. Tex. Occ. Code § 1101.702.
10. The factors to consider when determining the amount of the penalty are: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts; (2) the history of previous violations; (3) the amount necessary to deter future violations; (4) efforts to correct the violation; and (5) any other matter that justice may require. Tex. Occ. Code § 1101.702(b).
11. The Commission has adopted a schedule of administrative penalties taking into consideration the factors set forth in Texas Occupations Code § 1101.702(b). 22 Tex. Admin. Code § 535.191.
12. Based on the above Findings of Fact and Conclusions of Law, the ALJ recommends an administrative penalty of \$6,750 and suspension of Ms. Jovel's license for six months.

SIGNED May 10, 2019.



GABRIEL P. SOTO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS