

Hearing No. 181979

Texas Real Estate Commission	§	Before the Texas Real
	§	Estate Commission
v.	§	("Commission")
	§	
Agave Properties LLC	§	Sitting in Austin,
Unlicensed	§	Travis County, Texas

Final Order

On February 19, 2019, a designee of the Executive Director, after investigation of a possible violation and the facts relating to that violation, issued a Notice of Violation and Original Petition ("Notice") to Agave Properties LLC ("Respondent"). The Notice informed Respondent of the determination that Respondent had violated a provision of Chapter 1101 of the Texas Occupations Code and recommended that Respondent be ordered to cease and desist all unlicensed real estate brokerage activities in Texas and the imposition of an administrative penalty of \$5,000 ("Penalty"). A copy of the Notice is attached and incorporated here. The Notice was sent by email, regular and certified mail, return receipt requested, to Respondent's last known address of record as shown by the Commission's records. Respondent failed to submit a written response to the Notice.

Pursuant to Sections 1101.704(b) and 1101.759 of the Texas Occupations Code, the Commission approves the determination and imposition of the recommended Penalty and order to cease and desist. Respondent is ordered to cease and desist all unlicensed real estate brokerage activities in Texas and assessed an administrative penalty of \$5,000, effective May 29, 2019.

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 Texas Real Estate Commission.

Douglas E. Oldmixon

Digitally signed by Douglas E. Oldmixon
DN: cn=Douglas E. Oldmixon, o=TREC/TALCB, ou=AMS,
email=douglas.oldmixon@trec.texas.gov, c=US
Date: 2019.04.23 09:54:39 -05'00'

Douglas E. Oldmixon Date
Executive Director
Texas Real Estate Commission



Standards & Enforcement Services
Direct Line: (512) 936-3005
Facsimile: (512) 936-3809

February 19, 2019

NOTICE OF ALLEGED VIOLATION
CEASE AND DESIST UNLICENSED ACTIVITY

DO NOT IGNORE THIS IMPORTANT MATTER OR AN ORDER TO CEASE AND DESIST
AND IMPOSITION OF AN ADMINISTRATIVE PENALTY WILL BECOME FINAL.

Agave Properties LLC
Clayton Duncan Cooper, Member

Via Email

CM:RRR No. 91 7199 9991 7037 9374 7731
(copy also sent by regular mail)

Re: Our File No. 181979
In the Matter of
Agave Properties LLC

Dear Mr. Cooper:

1. Notice. Based on information contained in our referenced file, the Texas Real Estate Commission ("the Commission") has determined that Agave Properties LLC, violated Chapter 1101 of the Texas Occupations Code ("The Real Estate License Act") and/or the Rules of the Texas Real Estate Commission ("Commission"). Attached is a copy of an Original Petition which includes a summary of the alleged violations and is incorporated here by reference.

2. Consequences. The legal consequences of these violations could include:

- A.** an administrative penalty not to exceed \$5,000 per violation, with each day a violation continues or occurs a separate violation for purposes of imposing a penalty;
- B.** a referral to a district or county attorney for criminal prosecution as a Class A misdemeanor, with the following penalties:
 - 1.** a fine not to exceed \$4,000; and
 - 2.** an additional fine not to exceed \$10,000; and
- C.** a temporary or permanent injunction issued by a district court.

3. Cease and Desist. We request that Agave Properties LLC, immediately **CEASE AND DESIST** all activities considered to be the business of real estate brokerage as defined in Tex. Occ. Code §1101.002(1). A business entity may not act as or represent that the business entity is a real estate broker until the business entity applies for and obtains an active real estate broker license. See Tex. Occ. Code §1101.351(a-1).

Despite the issuance of this cease and desist notification and notification of the following assessment of an administrative penalty, the Commission is not precluded from referring evidence of Agave Properties LLC's unlicensed real estate brokerage activity violations to the proper authorities for criminal prosecution.

4. Penalty. We recommend that the Commission issue a final order:

- 1) imposing a \$5,000 administrative penalty ("Penalty");
- 2) ordering Agave Properties LLC, to immediately cease and desist all unlicensed real estate brokerage activities in Texas; and
- 3) ordering Agave Properties LLC, to pay reasonable costs.

5. Agreement. If you agree to our determination of the alleged violations and recommended administrative penalty and to have Agave Properties LLC, immediately cease and desist unlicensed real estate brokerage activities in Texas, you have not later than the 30th day after the date this letter was sent to notify this office in writing of your agreement, and remit to us the recommended administrative penalty in the form of a cashier's check or money order payable to the Texas Real Estate Commission. Upon our receipt of your written notice of agreement and the administrative penalty, a final order by the Commission will be entered reflecting the recommendation.

6. Hearing Request. If you do not agree to the determination of the violations or recommended administrative penalty, you have **not later than the 30th day** after the date this letter was sent to submit a written request for a hearing. A hearing will be set in Austin, Texas, at a later date and you will be notified of that date and location. A response by phone is not a written request.

7. Applicable Law. The Real Estate License Act and the Rules of the Commission may be found on our website, www.trec.texas.gov.

8. Default Notice.

Failure To Submit Written Request For A Hearing

If you fail to either send a written request for a hearing or a written notice of agreement, pay the administrative penalty, and immediately have Tybray Property Management, LLC, cease and desist unlicensed real estate brokerage activities in Texas within the 30-day period described above, the Commission will enter a final order to cease and desist and impose the administrative penalty as described in paragraph 4 above.

Please use the file number on the previous page in any future correspondence with this agency. Please address any written correspondence to the undersigned attorney at the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or you may fax to (512) 936-3809.

Sincerely,



Ken Herring
Staff Attorney
Standards & Enforcement Services

KH/rs
Enclosure

Texas Real Estate Commission

v.

**Agave Properties LLC
Unlicensed**

§
§
§
§
§
§

Before the State Office

Of

Administrative Hearings

Original Petition

The Texas Real Estate Commission (“Commission” or “Petitioner”), brings the following action against Agave Properties LLC (“Respondent”), to seek relief authorized by Sections 1101.351, 1101.759, Texas Occupations Code, and Subchapter O of Chapter 1101, Texas Occupations Code. In support, Petitioner shows the following.

Jurisdiction and Authority

1. Petitioner is responsible for administering and enforcing Chapter 1101, Texas Occupations Code (“The Real Estate License Act”), including ensuring that consumers of real estate brokerage services are protected through the licensing and regulation of those persons engaged in real estate brokerage services. Petitioner is authorized to impose administrative penalties and/or issue a cease and desist order. See Tex. Occ. Code §§1101.701, 1101.759, and 22 Tex. Admin. Code §535.191.
2. Contested cases are to be initiated by Petitioner and pursued in accordance with 22 Tex. Admin. Code ch 533. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law. See Tex. Gov’t. Code ch. 2003 and 22 Tex. Admin. Code ch 533.
3. Real estate brokerage activity is defined in Section 1101.002, Texas Occupations Code.
4. Exemptions to The Real Estate License Act are listed in Section 1101.005, Texas Occupations Code.
5. Unless a business entity holds a license issued under Chapter 1101, Texas Occupations Code, the business entity may not act as or represent that the business entity is a broker. See Tex. Occ. Code §1101.351(a-1).

License Status and Address

6. Respondent's Broker Entity License (589993) expired October 31, 2017.
7. Respondent is not, and was not, a licensed Texas real estate broker at times relevant to this matter.
8. Respondent's last known mailing address for service is: (1) [REDACTED] and (2) email address: [REDACTED]

Facts of Case.

9. Respondent continuously engaged in real estate brokerage services in Texas for another in exchange for a fee or other valuable consideration or with the expectation of receiving valuable consideration after its license expired on October 31, 2017.
10. Respondent continuously held itself out to be a licensed real estate broker in the state of Texas after its license expired on October 31, 2017.
11. On February 7, 2018, Commission staff gave Respondent a notice to "immediately **CEASE AND DESIST** all activities considered to be the business of real estate brokerage as defined in Section 1101.002(1), Texas Occupations Code."
12. On February 13, 2018, Respondent acknowledged its license expiration and indicated that license renewal would be sought "ASAP."
13. Currently, Respondent remains unlicensed by the Commission and the Texas Secretary of State indicates Respondent has an entity status of "Forfeited existence/Inactive."

Allegations

ACCORDINGLY, Petitioner complains that Respondent committed the following violation:

14. Section 1101.351(a-1), Texas Occupations Code, by acting in the capacity of, engaging in the business of, or advertising or holding itself out as engaging in or conducting the business of a real estate broker without a real estate license.

Prayer

Petitioner requests that Respondent be cited to appear and answer. Petitioner further requests:

1. Respondent be ordered to pay an administrative penalty of \$5,000.00;
2. Respondent be ordered to cease and desist engaging in activity considered to be the activity of a real estate broker as defined in Section 1101.002(1), Texas Occupations Code;
3. Respondent be ordered to pay reasonable costs associated with the hearing if Respondent fails to appear at the hearing; and
4. such other and further relief to which Petitioner may be justly entitled.

Respectfully submitted,



W. Kenneth Herring
Staff Attorney
Standards & Enforcement Services
Texas Real Estate Commission
State Bar No. 00686787
P.O. Box 12188
Austin, Texas 78711-2188
Telephone: (512) 936-3051
Facsimile: (512) 936-3809

From: Raquel Salazar
To: [REDACTED]
Subject: FW: Notice of Alleged Violation, RE: Agave Properties LLC, TREC FILE# 181979
Date: Tuesday, February 19, 2019 8:13:00 AM
Attachments: [181979.Agave Properties LLC.NOAV.pdf](#)
[181979.Agave Properties LLC.OPET.pdf](#)

From: Raquel Salazar
Sent: Tuesday, February 19, 2019 8:13 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Notice of Alleged Violation, RE: Agave Properties LLC, TREC FILE# 181979

Mr. Cooper:

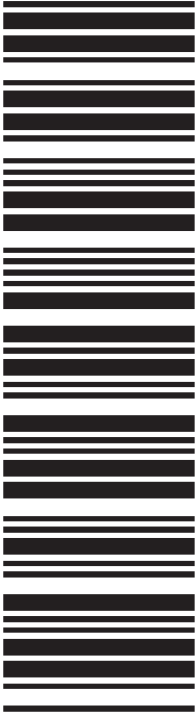
Attached please find important information regarding the above-referenced Commission matter. Please read the Original Petition (OPET) carefully and follow the directions contained in the Notice of Alleged Violation (NOAV). This information is time-sensitive and requires your prompt attention.

Please keep these documents with your records regarding this matter. You may contact Staff Attorney Ken Herring at (512) 936-3005 if you have questions or concerns regarding this matter.

Raquel Salazar
Legal Assistant, III
Standards & Enforcement Services
Texas Real Estate Commission
(512) 936-3005

Ship Request Form

Ship Request #: 202607



Sender

Name: Raquel Salazar
Account #: 32960 ENFORCEMENT
Phone: 512-936-3074
Email: [REDACTED]
Company: CPA TPASS

eRR Track: 9171999991703793747731

Recipient

Attn To: CLAYTON DUNCAN COOPER
Company: AGAVE PROPERTIES LLC
Address: [REDACTED]
City: [REDACTED]
State: [REDACTED]
Zip: [REDACTED]
Country: US

Shipping Instructions

Items

Track Another Package +

Tracking Number: 9171999991703793747731

Remove X

Expected Delivery on

WEDNESDAY

20 FEBRUARY 2019 ⓘ

by 8:00pm ⓘ

✓ Delivered

February 20, 2019 at 11:04 am
Delivered, PO Box
AUSTIN, TX 78703

Feedback

Return Receipt Electronic	▼
Tracking History	▲
February 20, 2019, 11:04 am Delivered, PO Box AUSTIN, TX 78703 Your item has been delivered and is available at a PO Box at 11:04 am on February 20, 2019 in AUSTIN, TX 78703.	
February 20, 2019, 9:23 am Sorting Complete AUSTIN, TX 78703	
February 20, 2019, 7:51 am Arrived at Unit AUSTIN, TX 78705	
February 19, 2019, 9:05 pm Departed USPS Regional Facility AUSTIN TX DISTRIBUTION CENTER	

February 19, 2019, 7:44 pm
Arrived at USPS Regional Facility
AUSTIN TX DISTRIBUTION CENTER

February 19, 2019, 6:29 pm
Accepted at USPS Origin Facility
AUSTIN, TX 78701

February 19, 2019
Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Product Information



See Less 

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FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Feedback

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April 17, 2019

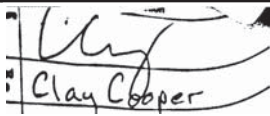

Dear RAQUEL SALAZAR:

The following is in response to your request for proof of delivery on your item with the tracking number:
9171 9999 9170 3793 7477 31.

Item Details

Status:	Delivered, PO Box
Status Date / Time:	February 20, 2019, 11:04 am
Location:	AUSTIN, TX 78703
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™
	Return Receipt Electronic

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004