

BEFORE THE DELAWARE REAL ESTATE COMMISSION

IN THE MATTER OF:

CARL CHEN

LICENSE NO. RB-0002121

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Case No. 02-17-14

**FINAL ORDER**

Pursuant to 29 *Del. C.* § 8735(v)(1)d, a properly noticed hearing was conducted on May 10, 2018 before a Hearing Officer to consider the above referenced complaint filed by the State of Delaware against Carl Chen, a licensed real estate broker, with the Delaware Real Estate Commission ("Commission"). The Hearing Officer has submitted the attached recommendation in which the Hearing Officer found as a matter of fact that the above-captioned Case No. 02-17-14 has been shown by a preponderance of the evidence to establish that Mr. Chen violated certain provisions of the Commission's Practice Act, Chapter 29 of Title 24 ("Practice Act"), and certain Commission regulations.

As a threshold matter, the Hearing Officer addressed the issue of service in that Mr. Chen did not appear for the hearing. The hearing notice was mailed to Mr. Chen by First Class mail to the last and most current address reported by him to the Commission. The First Class mailing was not returned to the Hearing Unit within a reasonable time after it was mailed, and, therefore, a presumption arose that it was received by Mr. Chen. The hearing notice was also emailed to Mr. Chen, and he sent an email to the paralegal in the Hearing Unit acknowledging its receipt. In short, Mr. Chen had actual notice. The Hearing Officer found that Mr. Chen received good and valid notice of the hearing.

The Hearing Officer found that the following facts were proven by a preponderance of the evidence. At the time that the complaint was filed in this matter, in October 2016, Mr. Chen

held an active broker license. On September 15, 2017, Mr. Chen was released as a broker from the RE/MAX Sunvest Realty ("Sunvest") office on Kirkwood Highway in Wilmington, DE. Mr. Chen's license was then placed in terminated status and continued in terminated status as of the hearing date.

At all relevant times, Mr. Chen was the broker of the Sunvest office, and as broker, he was responsible for operation of the office and the conduct of salespersons employed there. At various times, salespersons Donyiell Adams, David Attarian and Stephen Quinn were employed at Sunvest. All three were disciplined by the Commission for conduct occurring while they were operating under Mr. Chen's supervision and management.

In 2014, the Commission revoked Donyiell Adams' license in connection with a disciplinary action arising from several complaints filed by clients in real estate transactions. The Commission found that Mr. Adams received funds and other monies from clients and failed to return those funds when the real estate transactions fell through or were not completed. The Commission further found that Mr. Adams failed to disclose his financial interests in certain transactions. Finally, Mr. Adams ultimately entered a guilty plea to felony theft in connection with his wrongful retention of funds in real estate transactions.

More than one of Mr. Adams' victims contacted Mr. Chen about Mr. Adams' conduct. For example, one victim made multiple calls and visits to the Sunvest office to complain to Mr. Chen and to demand the return of deposited funds. Mr. Chen responded that there was nothing he could do to cure the situation. Another victim complained to Sunvest when Mr. Adams failed to escrow or return a \$12,000 deposit. Mr. Chen provided no assistance.

David Attarian, another salesperson acting under the supervision and management of Mr. Chen, was also disciplined by the Commission. In a consent agreement with the State, which

was adopted by the Commission as a Final Order in 2015, Mr. Attarian admitted that he received a total of \$12,500 in “advanced commissions” on the sale of new homes that were never timely completed by the builder. The sales became void because of the lack of performance by the builder. However, Mr. Attarian failed to return the commissions to the buyers. The Commission suspended Mr. Attarian’s salesperson’s license for five years. In connection with the investigation of the complaint against him, Mr. Attarian reported to the Division of Professional Regulation (“Division”) that Mr. Chen was very aware of the problems with the defaulting builder, and Mr. Chen responded to Mr. Attarian that no advance commissions would be returned to the prospective buyers unless they signed full releases. When interviewed by a Division investigator, Mr. Chen reported that he was not a hands-on person in dealing with Mr. Attarian, and Mr. Attarian just used the Sunvest name and paid for costs associated with using the office to collect 100% commissions.

Mr. Chen was also the broker in the Sunvest office while Stephen Quinn was employed there. Mr. Quinn was initially involved in a real estate transaction with a Mr. and Mrs. Musser. At one point, Mr. Quinn borrowed \$8,000 from the Mussers, and pursuant to a written agreement, promised to repay \$3,000 within one year. The agreement further provided that if, in the event that Mr. Quinn failed to meet this obligation, Mr. Quinn instructed his broker to pay over Mr. Quinn’s future commissions until the \$3,000 had been paid in full. The \$3,000 was not paid until three years later. As the result of Mr. Quinn’s conduct, in 2016, the Commission issued a letter of reprimand to Mr. Quinn and placed his license on probation for a year.

At the hearing of this matter, the Mussers’ attorney testified that Mr. Chen refused to respond to his many demands for repayment of the \$3,000 owed to the Mussers. Mr. Chen did not respond until the Mussers’ attorney advised Mr. Chen that, in the absence of payment, a

complaint would be filed with the Commission.

Based on these factual findings, the Hearing Officer recommends that the Commission find that Mr. Chen violated certain sections of the Practice Act and Commission regulations. The Hearing Officer further recommends that Mr. Chen's license be revoked and that, pursuant to Commission Reg. 12.2, he be barred from taking any action to apply for a new real estate license for at least two years from the date of revocation. The Hearing Officer also recommends that Mr. Chen be required to satisfy certain conditions before he is granted a new license. Finally, the Hearing Officer recommends imposition of a \$5,000 monetary penalty for the violations of each of the three salespersons whose actions are the subject of this matter, for a total \$15,000 monetary penalty.

The Commission is bound by the findings of fact made by the Hearing Officer. 29 *Del. C. § 8735(v)(1)d.* However, the Commission may affirm or modify the Hearing Officer's conclusions of law and recommended discipline. The Commission deliberated on the recommendation at its August 9, 2018 meeting.

The parties were given twenty days from the date of the Hearing Officer's June 18, 2018 recommendation to submit written exceptions, comments and arguments concerning the conclusions of law and recommended discipline. No written exceptions, comments or arguments were submitted by the parties.

### **Analysis**

Based on the factual findings, the Hearing Officer recommends a number of conclusions of law. The Board accepts and adopts all of the Hearing Officer's recommended conclusions of law with respect to findings that violations had been proven by the State by a preponderance of the evidence.

The Hearing Officer first recommends that the Commission find as a matter of law that Mr. Chen received good and valid notice of the hearing yet did not attend. The hearing notice was mailed to Mr. Chen by First Class mail to the last and most current address reported by him to the Commission. The First Class mailing was not returned to the Hearing Unit within a reasonable time after it was mailed, and, therefore, a presumption arose that it was received by Mr. Chen. The hearing notice was also emailed to Mr. Chen, and he sent an email to the paralegal in the Hearing Unit acknowledging its receipt. In short, Mr. Chen had actual notice. The Commission accepts and adopts this recommended conclusion of law.

The Hearing Officer next recommends that the Commission find as a matter of law that Mr. Chen violated 24 *Del. C.* § 2912(a)(6) in that he engaged in the negligent practice of real estate in such a manner as to not safeguard the interests of the public. The Commission accepts and adopts this recommended conclusion of law. The State's expert witness, Jason Giles, a licensed Delaware broker, offered un rebutted testimony that Mr. Chen violated the Commission's Practice Act, regulations and the applicable standard of care. Mr. Giles testified that the broker is responsible for the supervision and management of the office's salespersons. It is the broker's duty to ensure that the licensees acting under his or her supervision are complying with Commission and ethical requirements. It is not a passive role and a broker is obligated to investigate any concerning actions by a salesperson. Mr. Giles testified that, upon receiving complaints about Mr. Adams' retention of client funds, a reasonable and prudent broker would have conducted an investigation. Further, Mr. Chen knew, or should have known, that Mr. Attarian engaged in the activity of receiving and retaining advance commissions. Mr. Chen should have insisted that advance payments be held in escrow and returned to the client when the new home construction contract was cancelled. With regard to Mr. Quinn, Mr. Giles testified

that he had never seen such an agreement as that entered into by Mr. Quinn and the Mussers. Mr. Chen should have investigated the matter, and had he done so, he would have realized that Mr. Quinn was using his salesperson's license to improperly secure a loan. Mr. Giles stated that, as soon as Mr. Chen became aware of Mr. Quinn's obligation to the Mussers, he should have repaid the \$3,000. The uncontested facts established that Mr. Chen repeatedly failed to comply with basic requirements of supervision and management. The Commission accepts and adopts the Hearing Officer's recommended conclusion of law, that, while under Mr. Chen's management and supervision, the three salespersons at issue in this matter engaged in illegal or unprofessional conduct, and by his lack of or indifferent responses to these actions, Mr. Chen clearly failed to safeguard the interests of the public.

The Hearing Officer also recommends that the Commission find as a matter of law that Mr. Chen violated Commission Reg. 1.3.1 in that he failed to ensure that his licensees comply with the Commission's rules and regulations. As noted by the Hearing Officer, in particular, Mr. Chen failed to enforce Commission Reg. 6.3, which mandates that all money received in a real estate transaction be escrowed in the broker's escrow account. As Mr. Chen was advised, Mr. Adams accepted deposits from clients but did not give those deposits to Mr. Chen for escrow. The Commission accepts and adopts this recommended conclusion of law.

The Hearing Officer also recommends that the Commission find as a matter of law that Mr. Chen violated Commission Reg. 1.3.2 in that, by failing to ensure that his salespersons complied with Commission regulations and the Practice Act, he failed to provide complete and adequate supervision of his office. For reasons already noted, the Board accepts and adopts this recommended conclusion of law.

The Hearing Officer further recommends that the Commission find as a matter of law that

Mr. Chen violated Commission Reg. 1.3.5., which provides that: "The failure of any Licensee to comply with provisions of 24 Del. C. Ch. 29 and the Commission's Rules and Regulations may also result in discipline against his or her Broker's license." The Commission accepts and adopts this conclusion of law. Brokers are required to ensure that their salespersons comply with the Commission's Practice Act and rules and regulations, and are further charged with the obligation to provide complete and adequate supervision of the office. Violation of these requirements may result in professional discipline for the broker for failure to adequately supervise his or her salespersons. As stated by the Hearing Officer, in this case, there were multiple salespersons committing multiple illegal or unethical acts while working for Mr. Chen. Mr. Chen's statement to a Division investigator that he was not a "hands-on" person was illustrative of his indifference to his obligations as a broker.

Because the State proved that Mr. Chen committed multiple violations of Commission regulations, the Hearing Officer recommends that the Commission find as a matter of law that Mr. Chen violated 24 Del. C. 2912(a)(9). The Commission accepts and adopts this conclusion of law.

While the Commission accepts and adopts all of the Hearing Officer's recommended conclusions of law, the Commission amends the Hearing Officer's recommended discipline on the basis that it is insufficient to address the significant risk to the public presented by Mr. Chen. The Hearing Officer's recommends revocation of Mr. Chen's license, and provides that, pursuant to Commission Reg. 12.2, Mr. Chen be barred from taking any action to apply for a new license for at least two years after the date of revocation. Section 2914(a)(5) of Title 24 provides that the Commission may revoke or *permanently revoke* any licensee's license. The Commission finds that the egregious facts in this matter compel a conclusion that Mr. Chen's license should

be permanently be revoked and that he consequently be barred from re-applying for licensure.

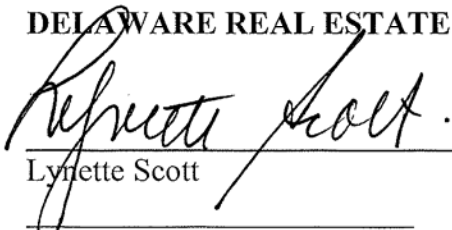
Mr. Chen's supervision of Mr. Adams, Mr. Attarian and Mr. Quinn showed complete disregard for his obligations as a broker. He failed to investigate worrisome conduct by his salespersons and ignored complaints from the public. His "hands off" approach allowed his salespersons to cause actual financial harm to clients. In these circumstances, permanent revocation of Mr. Chen's license is required to safeguard the interests of the public.

**NOW THEREFORE**, by the affirmative vote of five members of the Delaware Real Estate Commission, with two Commission members recusing<sup>1</sup> themselves, the Commission enters the following disciplinary Order:

1. Carl Chen's license is hereby permanently revoked effective September 13, 2018;
2. Mr. Chen shall pay a monetary penalty in the amount of \$15,000 in the form of a draft made payable to the "State of Delaware";
3. This is a public disciplinary action which shall be reported to the appropriate national practitioner data banks; and
4. A copy of this Final Order shall be served personally or by certified mail, return receipt requested, upon Mr. Chen. A copy of the Hearing Officer's recommendation shall be attached hereto and incorporated herein as modified by this Final Order.

**IT IS SO ORDERED** this 13th day of September, 2018.

**DELAWARE REAL ESTATE COMMISSION**

  
\_\_\_\_\_  
Lynette Scott

<sup>1</sup> Commissioners Jason Giles and Nikki Haley recused themselves from participating in review and deliberations on the Hearing Officer recommendation.

Chairperson

Pursuant to 29 *Del. C.* § 10128(g)

### APPEAL RIGHTS

29 Del. C. § 10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Date Mailed: 10-1-18

cc: Carl Chen  
Carla Jarosz, Deputy Attorney General  
Roger A. Akin, Chief Hearing Officer

**BEFORE THE DELAWARE REAL ESTATE COMMISSION**

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| In the Matter of:   | ) |                   |
|                     | ) | Case No. 02-17-14 |
| Carl Chen           | ) |                   |
| Lic. No. RB-0002121 | ) |                   |

**RECOMMENDATION OF CHIEF HEARING OFFICER**

**Nature of the Proceedings**

The State of Delaware, by and through the Department of Justice, has filed a professional licensure complaint against Carl Chen, formerly an active real estate Broker licensed by the Delaware Real Estate Commission. In the complaint the State alleges that Mr. Chen was, at all relevant times, the resident Broker for Re/Max Sunvest Realty in Wilmington DE.

The State alleges that Mr. Chen was responsible for the management of the relevant Re/Max office and the supervision of at least three licensed Salespersons. One of those Salespersons, Donyiell Adams, had his license revoked by the Commission in 2014 after it was determined that Mr. Adams had victimized four clients who had deposited funds with Adams which were not returned to them. Two of Adams' clients had filed criminal complaints against Adams. In 2013 Adams entered a plea of guilty to felony theft. One of the four clients claimed that Mr. Adams had fraudulently added the client's name to a mortgage for a property owned by a company in which Mr. Adams had a financial interest. All four of Mr. Adams' victims had contacted Mr. Chen seeking his assistance in their real estate matters. The State alleges that Mr. Chen provided no help for the clients, and allowed Mr. Adams to remain employed at Re/Max Sunvest.

The State further alleges that Mr. Chen also supervised David Attarian, another licensed Salesperson. The State contends that Attarian had negotiated three sale agreements for new residential construction. It is alleged that Mr. Attarian received advanced commission payments from the three buyers and failed to return those funds to the clients after the builder failed to start or complete the three homes. The State alleges that Mr. Chen was aware of issues concerning the builder

as well as Mr. Attarian's refusal to return certain deposited funds. The State claims that after Mr. Attarian informed Mr. Chen about the problems with the sales, Mr. Chen did not provide the buyers with assistance and allowed Mr. Attarian to assist another buyer in entering into an agreement with the same builder.

The State also alleges that Mr. Chen supervised Stephen Quinn, a third licensed Salesperson. The State contends that Mr. Quinn borrowed \$8,000 from clients in 2012 and signed a note promising to pay the funds back within one year. The loan had not been repaid by Quinn and in 2014 the relevant clients engaged an attorney. After substantial contacts between Mr. Chen and the attorney, and after threats of legal action, the State alleges that Mr. Chen finally repaid the clients \$3,000 in October 2014.

The State alleges that Mr. Chen had failed to adequately supervise the three named Salespersons and had engaged in the negligent practice of real estate. The State contends that Mr. Chen thereby violated two provisions of the Delaware Real Estate Services, Brokers, Associate Brokers and Salespersons Act, 24 *Del. C.* Ch. 29, and three regulations adopted by the Commission.

An open hearing on due notice was convened at 9:10 a.m. on May 10, 2018 in the State Office Building, 820 N. French St., Wilmington DE. The State was represented by Carla Jarosz, Deputy Attorney General. Mr. Chen failed or refused to attend the hearing. A registered court reporter was present who made a stenographic record of the proceedings. All witnesses testified under oath or affirmation. This is the recommendation of the undersigned hearing officer after due consideration of all relevant evidence.

#### **Summary of the Evidence**

The hearing officer reviewed the status of the file with regard to notice of these proceedings to Mr. Chen. The notice of this hearing was sent to him on March 12, 2018. A copy of the notice was admitted as Administrative Hearing Unit Exhibit 1 ("AHU X1"). The notice was prepared and mailed to Mr. Chen in the normal course of the business of the Hearing Unit.

The notice was mailed to Mr. Chen by First Class mail to the last and most current physical address reported by him to the Commission. That address was secured from a licensee data base maintained by the Commission for that purpose. Licensees are required to continually update their address information as changes occur. The First Class mailing of AHU X1 was not returned to the Hearing Unit within a reasonable time after it was mailed to Mr. Chen. Hence, a presumption arises that the First Class mailing was in fact received by him.

Similarly, AHU X1 was emailed to Mr. Chen at his last and most current reported email address. A copy of a transmitting email is attached to AHU X1. According to the audit file, the emailing of AHU X1 did not result in a return message that the email was undeliverable or sent to an invalid email address. Therefore, a presumption arises that Mr. Chen received the emailed copy of AHU X1 as well. Finally, it is evident that Mr. Chen received the emailed copy of AHU X1. On March 12, 2018, Mr. Chen sent an email to the paralegal in the Hearing Unit acknowledging its receipt. A copy of that email was admitted as Respondent Exhibit 1 ("RX 1"). Based on this record, I determined that Mr. Chen had received good and valid notice of these proceedings. Mr. Chen failed or refused to attend the hearing.

At the outset Ms. Jarosz offered a collection of 25 documents numbering 261 pages into the record. The documents were admitted collectively as State Exhibit 1 ("SX 1"). Ms. Jarosz then made a brief opening statement. She stated that in this case the State will prove that Mr. Chen has engaged in the negligent practice of real estate brokerage. He had failed to supervise and/or properly manage three licensed Salespersons who were employed in his real estate office. His actions have constituted violations of two provisions of the Act as well as three regulations adopted by the Commission.

Ms. Jarosz added that of the three Salespersons involved in this case, one has been disciplined after a hearing before this hearing officer, one has been disciplined after proceedings before the Commission, and the third has been disciplined after executing a consent agreement with the State. Ms. Jarosz added that the evidence will show that Mr. Chen knew of the unprofessional or criminal actions

committed by the Salespersons but did not respond and failed to properly supervise them, took no actions against the three, nor took any actions to promptly remedy the matters about which third parties were complaining.

The State first called Ms. Megan Miller, a licensing investigator employed in the Division of Professional Regulation. Her duties include assisting the Investigative Supervisor in managing the work of 14 investigators and investigating complaints against licensed Delaware professionals. Ms. Miller stated that the primary investigator in this case was Ms. Jean Betley, who retired from State service in late 2017. Ms. Miller reviewed the file in this case as well as Ms. Betley's report. This matter was investigated in the normal course of Division business. Ms. Miller added that she had not reviewed the underlying files of the three Salespersons whose conduct prompted the State's complaint.

Ms. Miller identified SX 1 at 5 as a "screenshot" of Mr. Chen's license status form in the Commission's licensee data base. Mr. Chen was first issued a license in 1986. Mr. Chen's Broker license was terminated in September 2017 at the request of Mr. Chen. The formal complaint in this case was filed in October 2016, and therefore incorrectly states that Mr. Chen's Broker license is presently "active." SX 1 at 1.

SX 1 at 7-8 is a "Request for Transfer/Inactive Status/Termination or Cancellation of License" form submitted on September 15, 2017 by Lyman Chen. In that form Lyman Chen released Carl Chen from the Re/Max Sunvest office in Wilmington "to be terminated". SX 1 at 8. The State's attorney asked Ms. Miller what would occur if Mr. Chen reapplied for a Broker license at present or in the future. Ms. Miller testified that she was unaware of the process which would follow. The license history shows that Mr. Carl Chen was an active Delaware Broker from 1986 until September 2017.

Ms. Jarosz then questioned Ms. Miller regarding Donyiell Adams. Mr. Adams was once a licensed Salesperson working under Mr. Chen, who served as his Broker. A copy of an email from Carl Chen to Ms. Betley is found at SX 1 at 20. In that email Mr. Chen states that Mr. Adams was a

Salesperson in the Re/Max Sunvest office from 1995-2014. Mr. Chen further states as follows: "We found out later that Mr. Adams had made deals directly with his clients without informing us. We would not re-hire him after his termination." *Id.*

Ms. Miller identified a final order of the Commission in five licensure cases filed against Donyell Adams. That order followed deliberations of the Commission on April 10, 2014. In that order the Commission agreed with this hearing officer's recommendation that the cases warranted revocation of Mr. Adams' Salesperson license, as well as a monetary penalty of \$30,000 (\$5,000 for each of six violations of the Act.) SX 1 at 43.

In the recommendation underlying the Commission order, it was found as a matter of fact that for a portion of the time when Mr. Adams had violated provisions of the real estate Act, Mr. Adams' brokerage of record was Re/Max Sunvest in Wilmington. The recommendation provides details regarding Mr. Adams' systematic acceptance of deposits and other monies without returning the funds when real estate sales were not consummated, as well as Mr. Adams' fraudulent self-interest in some of the relevant properties. The Commission is entitled as a matter of law to take notice of its prior orders and their underlying facts, I will not summarize all of the facts proven in that case, but only those facts which concern the allegations against Mr. Chen of improper management and supervision of licensed Salespersons.

One of Mr. Adams' victims (Mr. Burton) testified that he had gone to the Re/Max Sunvest office to complain regarding Mr. Adams' failure to return deposit monies toward a failed transaction, but that Mr. Adams' Broker was "covering up" for Mr. Adams. SX 1 at 57. Mr. Adams eventually entered a plea of guilty to felony theft in the Superior Court. SX 1 at 77.

During the investigation of this case, Ms. Betley conducted a telephone interview of one of Mr. Adams' victims, Oluwatobi Menawonu. A summary of that interview is found at SX 1 at 144. During the hearing Ms. Miller read this portion of the summary: "Mr. Menawonu advised that he started

contacting Carl Chen in October 2012 to get his money back. He said that he went to the RE/MAXX (sic) office three or four times. He said that he met with Carl Chen once or twice and that Mr. Chen advised that there was nothing he could do." *Id.*

One of the fraudulent acts committed by Mr. Adams against Mr. Menawonu was to add Mr. Menawonu's name to a mortgage on a Wilmington property held by WAMU Properties LLC without Mr. Menawonu's consent. Mr. Menawonu informed Ms. Betley that Mr. Chen failed to disclose that he was a previous owner of the Wilmington property and held the mortgage. (The title history for the Wilmington property was placed in evidence. SX 1 at 122. A prior owner of the property was "Chenmax Properties, Inc. The registered agent for that corporation was Carl Chen. SX 1 at 30.) During his telephone interview with Ms. Betley, Mr. Menawonu stated that when he learned the Wilmington property was recorded in his (Mr. Menawonu's) name, he contacted Mr. Chen. Mr. Chen informed Mr. Menawonu that "the only way that he (Chen) could help him was to pay Mr. Chen to fix up the house and rent it out for him. The rental income would give Mr. Menawonu a way to pay for the mortgage." *Id.*

Another of Mr. Adams' victims was Erika Lopez, who testified during Mr. Adams' hearing with the assistance of a Spanish interpreter. During a telephone interview with Ms. Betley, Ms. Lopez was asked if she had contacted Mr. Chen after Mr. Adams had refused to return a \$10,000 deposit to her in conjunction with another failed transaction. Ms. Lopez informed Ms. Betley that she had gone to the Re/Max Sunvest office and called the office on multiple occasions. On one occasion Ms. Lopez went to the office and waited for three hours, only to be told that Mr. Chen was not present. On another occasion a Spanish-speaking office employee told Ms. Lopez that Mr. Chen was "too important and would not meet with her." Ms. Lopez was also told that she (Ms. Lopez) had "to be legal first before you can file a complaint." Ms. Lopez was told that Mr. Chen was "too big to be sued". SX 1 at 145.

A final Adams victim, Jacqueline Delaney, was also interviewed by Ms. Betley and testified during the Adams hearing. Mr. Adams had failed or refused to escrow a \$12,000 deposit with Re/Max Sunvest. Ms. Delaney believed that Mr. Adams and the Sunvest office were involved in her real estate transaction because she had met with Mr. Adams and Mr. Chen in the Sunvest office. SX 1 at 146. She received no assistance from Mr. Chen after complaining about the loss.

Another Salesperson practicing under Mr. Chen's brokerage was David Attarian. Mr. Attarian was the subject of two professional complaints which were ultimately resolved by his entry into a consent agreement with the State. SX 1 at 147. That agreement was accepted by the Commission in February 2015. SX 1 at 151. In the consent agreement Mr. Attarian agreed that in 2009-2010 he had negotiated several sales of new home construction. From deposits toward the sales, Mr. Attarian had received "advanced commissions" in the total amount of \$26,500. Construction on the homes was never completed. Mr. Attarian failed to return the commissions to the buyers. SX 1 at 148. Mr. Attarian entered a "no contest" plea in 2014 to one count of securities fraud and one count of felony theft. As part of his criminal sentence, he was ordered to pay restitution in the amount of \$217,665 to a number of victims named in a criminal indictment. SX 1 at 147-148. In the consent agreement, Mr. Attarian agreed to a license suspension of five years. *Id.*

Mr. Attarian was a Salesperson practicing under the Re/Max Sunvest brokerage with Mr. Chen as his employing Broker. SX 1 at 152. Attarian was released by Mr. Chen in April 2011. SX 1 at 153. After he received a copy of the professional complaint in his licensure case, Mr. Attarian addressed a letter to the Division Investigative Supervisor. In that letter Mr. Attarian stated as follows: "My broker, Carl Chen, was very aware of the issues with Tailor (sic) Made Homes. I kept him informed as to the issues, and problems, with this builder.... Mr. Chen made it clear to Mr. McKeown (a buyer-client) that no commissions would be returned if he did not sign releases. Mr. McKeown refused to do so. SX 1 at 155.

The State has submitted an exchange of emails between Mr. Attarian and Mr. Chen in August 2010. SX 1 at 157-158. Mr. Attarian's email of that date describes the defalcation of the builder, Taylor Made Homes. He describes deposits made by buyers and the fact that Taylor Made had been denied further construction loans until existing home were sold. He states that ReMax/Sunvest had received "an advance of 50% of the commissions." Since the builder would "not likely release the deposits", Mr. Attarian predicts that the matter will become "pretty ugly". Mr. Attarian recommends suit against the builder "for non-performance". In response, Mr. Chen asks Mr. Attarian to "...let me know if you find another builder to work with your buyers." SX 1 at 157.

On April 23, 2013, Ms. Betley interviewed Pamela Perry, one of the putative buyers of the Taylor Made Homes in Newark. A summary of the interview is found at SX 1 at 201-201. After describing her financing issues, Ms. Perry explains that she had spoken with Mr. Chen. Mr. Chen asked her to write a letter. She did so, but never received a response from him. SX 1 at 201.

In April 2013 Ms. Betley called and then met with Mr. Chen. A summary of their discussions is found at SX 1 at 197. In his statement to Ms. Betley, Mr. Chen stated that it is "not unusual" for a buyer's agent to deal directly with a builder and that using a listing agent is just a 'formality'." When asked to explain, Mr. Chen stated that he did not "know where he got the idea". Mr. Chen then admitted that he is "not a 'hands-on' person" with Mr. Attarian." He added that Attarian "just used the Re/MAX name and paid direct costs associated with using the office in order to collect 100% commissions." *Id.*

The third Salesperson in this case who was practicing in Mr. Chen's brokerage was Stephen Quinn. Quinn was the subject of a hearing before the Commission in July 2016. A copy of the Commission's decision and order in that case is found at SX 1 at 231-238. In its findings the Commission determined that Mr. Quinn had promised to prepare a real estate services booklet in exchange for \$8,000 in loan payments from a real estate seller. He never prepared the booklet. Though Mr. Quinn

had promised to repay the loan within one year, it was not repaid until more than three years later. Other claims by the State against Mr. Quinn were found not to have been proven. The Commission ordered that Mr. Quinn receive a letter of reprimand and that his Salesperson license be placed on probation for one year. *Id.*

In furtherance of its claims against Mr. Chen for alleged improper management and supervision of Quinn, the State called Timothy Ferry, Esq., a Delaware attorney. Mr. Ferry stated that Mr. Quinn was the real estate agent who sold Pamela Musser's deceased mother's home. Another attorney represented the Mussers in the transaction. After the estate was wound up, the Mussers informed an employee in Mr. Ferry's office about issues concerning Mr. Quinn.

In 2011 the Mussers had paid Mr. Quinn \$2,500 for "professional services". Early in 2012 a written agreement was signed regarding that payment, and the Mussers advanced another \$3,000 to Quinn as an advance on his commission. At the time Mr. Quinn was a Salesperson in the ReMax/Sunvest brokerage. It was confirmed by Mr. Ferry that Mr. Chen was the Broker there.

Mr. Ferry prepared a "timeline" for the Department of Justice in this matter. SX 1 at 240-241. Mr. Ferry reviewed the highlights of that timeline. In May 2014 Mr. Ferry contacted Kyle Mayhew, who was believed to be the Sunvest Broker. Mr. Ferry stated that Mr. Quinn was originally the agent for the Mussers, and then for the buyer. A business entity owned by Mr. Quinn became the buyer for the relevant property. The contract for the sale was assigned to another person.

As I understand the transaction, in January 2012 the Mussers and Quinn entered into a written agreement whereby Quinn, as agent, would sell to the Mussers a portion of his interest in commissions on certain sales for the amount of \$3,000. SX 1 at 246. In exchange, Mr. Quinn personally guaranteed the repayment of the \$3,000 within one year. If the sale of any relevant property did not close, Mr. Quinn "irrevocably" directed his Broker to turn over future commissions as earned by Mr. Quinn until the Mussers were reimbursed in full. *Id.*

When Mr. Quinn defaulted under the agreement, the Mussers engaged Mr. Ferry. In an email to Mr. Mayhew at ReMax/Sunvest, Mr. Ferry demanded that the \$3,000 be paid to the Mussers. SX 1 at 242. According to Mr. Ferry, that email did not receive a response.

Mr. Ferry then addressed a letter to Mr. Chen as the senior management partner at the Sunvest brokerage. SX 1 at 244. After alleging that the sale of the Mussers' property is "loaded with unprofessional and ethical issues", Mr. Ferry demanded that ReMax/Sunvest repay the \$3,000 to the Mussers pursuant to their agreement with Quinn. Mr. Chen failed to respond to the Ferry letter. Though Mr. Ferry suggested that the Mussers engage other counsel, he stayed involved in the matter. A call was placed to the ReMax office and Mr. Chen answered. After the matter was reviewed again for Mr. Chen by other counsel, Mr. Chen promised to respond by October 1, 2014 in writing.

In anticipation of a response from Mr. Chen, Mr. Ferry sent a second letter to him on September 26, 2014. SX 1 at 249-250. In addition to raising certain ethical issues in his letter, Mr. Ferry asked on what basis ReMax was refusing to honor the written commitment of Mr. Quinn.

On October 1, Mr. Chen forwarded to Mr. Ferry a copy of an email to Mr. Chen from Mr. Quinn. SX 1 at 251-252. In his email to Mr. Chen, Mr. Quinn summarizes the timeline of matters concerning the Mussers. At the close of his email, Mr. Quinn informs Mr. Chen as follows: "I do not deny there is a debt due to the Mussers, as you know I have had a series of personal and health issues that greatly limited my ability to earn an income until recently." SX 1 at 252.

Mr. Chen forwarded the Quinn email to Mr. Ferry, apparently believing that it would constitute his "response in writing." On October 2, 2014, Mr. Ferry mailed a third letter to Mr. Chen. SX 1 at 256-257. In the letter Mr. Ferry characterized Mr. Chen's response as insufficient and "insulting". Mr. Ferry again asks Mr. Chen if ReMax/Sunvest is willing to honor Mr. Quinn's irrevocable instruction to repay the debt. If not, Mr. Ferry asks for a statement of the reason. Mr. Ferry demanded a response within 24 hours.

After receiving no response from Mr. Chen, Mr. Ferry mailed him a fourth letter on October 8, 2014. SX 1 at 259-260. Payment of the \$3,000 is again demanded. Failure to do so, according to Mr. Ferry, would result in a complaint against Mr. Chen to the Commission. Mr. Ferry testified that by October 8 he had already filed a professional complaint against Mr. Quinn. His October 8 letter also threatened a complaint against Mr. Mayhew. On October 13, 2014, Mr. Mayhew forwarded an email to Mr. Ferry stating that the \$3,000 would now be paid by Sunvest out of Mr. Quinn's commissions. SX 1 at 261.

Mr. Ferry added that Mr. Chen has never once responded to his inquiries and demands. Mr. Chen would arrange for his employees to make excuses for him. When the payment was finally made, it was promised by Mr. Mayhew, not Mr. Chen. Nor did Mr. Chen ever respond to Mr. Ferry's claim of illegal or unethical real estate practices in the matter. Mr. Ferry testified that he believes Mr. Quinn remains employed at ReMax/Sunvest. Mr. Ferry added that, in his opinion, Mr. Chen displayed a lack of professionalism.

The State next called Jason Giles as an expert witness in this case. He has been with Patterson Schwartz for 25 years. He had been both a licensed Delaware Salesperson and Broker. He is now a Senior Vice President at Patterson Schwartz. He is presently a member of the Commission. Mr. Giles stated that he would provide opinions in this case according with his experience and knowledge of the real estate profession.

The State's attorney asked Mr. Giles what constitutes adequate Broker supervision of Salespersons. He stated that the role of the Commission is to protect the public. He is presently responsible for the conduct of 120 licensed agents. He testified that a code of ethics is a guide for professional conduct in the industry. Real estate practitioners are sworn to abide by that code. Real estate professionals are expected to cooperate with one another. If a Salesperson violates a provision in

the Code, the relevant Broker must uphold the standards in the code. Brokers have the authority to both reprimand and terminate Salespersons.

When a Broker receives a complaint, it is "good business" and standard of care practice to promptly investigate the matter. The Act and regulations must be referenced. Brokers must ensure that agents are acting correctly. If a Salesperson acts negligently or unethically, the Broker must work to "make it right". For instance, if there has been a theft of client funds, the Broker should compensate for the loss even if the brokerage has not been at fault.

Mr. Giles was then questioned about the three Salespersons who are central to this case, as well as Mr. Chen's supervision and management of their activities. With regard to Donyiell Adams, Ms. Jarosz read the second paragraph on page 2 of the Commission's final order. SX 1 at 42. That is the paragraph which finds that Mr. Adams had requested funds from at least four separate buyers to secure real estate purchases. None of the checks from the clients were written as payable to any specific Broker. Mr. Giles testified that in such instances drafts must always show the Broker as payee unless there has been a specific agreement to the contrary. This is learned when Salespersons are being trained. Mr. Giles insists that his managers ensure compliance with this rule. An agent who is taking checks not made payable to a Broker is engaged in a "no-no". His firm would terminate a Salesperson who engages in such conduct. The code of ethics serves as a "baseline". Brokers must abide by a "higher standard of care". Brokers are expected to timely respond to complaints or queries.

Mr. Giles was referred to the New Castle County parcel history of the Wilmington property which disclosed issues for Mr. Menawonu. Mr. Giles testified that it would not have been a problem for Mr. Chen or a company in which he was interested sold the property to Mr. Menawonu, but only if there had been a specific disclosure of his status as owner and as a Commission licensee. Mr. Giles was surprised if Mr. Menawonu's name were recorded in a mortgage for the property without his explicit consent.

Mr. Giles was asked what would have been appropriate Broker conduct by Mr. Chen if he had learned that Mr. Menawonu had nothing to do with the sale of the Wilmington property or its financing. Mr. Giles testified that, as a Broker, Mr. Chen had an obligation to report fraudulent conduct. Further, if Mr. Chen was the prior owner and held a mortgage on the Wilmington property, he had a clear obligation to disclose that to all parties.

Mr. Giles was then asked questions about the conduct of Mr. Attarian. He is familiar with the terms of and admissions in the consent agreement at SX 1 at 147-150. Mr. Giles opined that it is rare that a licensee would be paid "advance commissions" in the context of the sale of new residential construction. Mr. Giles was asked what should have been Mr. Chen's ethical and correct response after learning of Attarian's conduct. He stated that any advance payments such as were made in the relevant transactions should have been held in escrow by the interested Broker. He reiterated that buyers typically do not pre-pay commissions. Normally, such payments await settlement. He added that proper standard of care conduct in the Attarian matters would have been to ensure that buyers were reimbursed the advanced payments when the homes were not built.

Mr. Giles continued. If homes were ultimately not built as promised, prepaid funds should have been returned to the buyers. Signed releases typically describe what would happen in certain eventualities. Again, typically Patterson Schwartz informs buyers that if any advance payments are made to builders, those funds should be held in escrow by the contractor and should not be used to provide funds for the construction. In this instance proper conduct by Mr. Chen would have been to instruct the builder to refund pre-paid amounts. When no release could be secured from the buyers, Mr. Chen did not act according to standard of care practice. Had the funds been placed in escrow, and had the contract become void, the Broker should have arranged for refunds. In the absence of refunds by the proper parties, the proper action by the buyers in the case would have been to initiate litigation in the Justice of the Peace Court.

Mr. Giles' attention was drawn to the exchange of emails between Mr. Attarian and Mr. Chen. SX 1 at 157-158. The builder (Taylor Made Homes) had defaulted in delivery of new homes. Mr. Attarian was seeking Mr. Chen's advice. Again, proper conduct by Mr. Chen would have been to meet with the builder. Mr. Chen should have counseled Mr. Attarian regarding taking advantage of the buyers. Once a Broker knows that client-buyers may be harmed, it is the Broker's responsibility to ensure that his Salespersons stop doing business with the builder as well as others who may not be acting in good faith. In this instance the buyers had a legal right to be refunded the monies once the builder was in breach. Mr. Giles added that, as a Broker, he would have authorized release of the funds to the client while working with the builder to be made whole.

Mr. Giles was questioned about Ms. Betley's interview of Mr. Chen on April 17, 2013. SX 1 at 197. In this case Mr. Giles stated that Mr. Attarian should have forwarded the monies to Mr. Chen for placement in escrow. The responsibility to supervise Salespersons belongs to the Broker.

Mr. Giles was then questioned about the discipline imposed on Mr. Quinn by the Commission. He was referred to the Commission's decision and order at SX 1 at 231-238. In that case the Commission found that Mr. Quinn had made false promises to third parties and had failed to timely remit funds which belonged to others. Mr. Giles' attention was drawn to the "future receivable commission" agreement between Mr. Quinn and the Mussers. SX 1 at 246. Mr. Giles testified that he had never seen such an agreement during his career. It is improper to use a real estate license in order to collect funds to write a book. Since Mr. Quinn was relying on his real estate license to engage with the Mussers, it was not proper for him to use the license in conjunction with a "loan" of funds to perform other than real estate services.

Mr. Giles continued. In his opinion when Mr. Chen learned of Mr. Quinn's defalcation with respect to a clear agreement, he should have made the Mussers whole and then collected the funds from Mr. Quinn. Mr. Giles further stated that Salespersons do not "sign deals" with buyers. That is the

responsibility of the Broker. In summary, Mr. Giles reiterated that it was Mr. Chen's obligation to make the Mussers whole.

Mr. Giles was asked what should have been the response of Mr. Chen to Mr. Ferry's multiple letters in the Quinn matter. Mr. Giles testified that Mr. Chen had an obligation to investigate the matter. By not responding to the letters and other inquiries or complaints, Mr. Chen simply made matters worse. Had Mr. Giles been the involved Broker, a check would have been authorized as soon as an investigation established the facts. His firm is in a position to authorize a check on the same day that it learns of a valid complaint. In this case the Mussers waited an unreasonably long time to be made whole.

Mr. Giles was asked to provide overall opinions of Mr. Chen's conduct with regard to the three Salespersons in his office. Mr. Giles stated that he was reluctant to "cast stones". However, there were repeated issues in this case. There are different ways that a Broker can insist on and enforce ethical conduct. In this case Mr. Chen failed to properly train and supervise his Salespersons. He acted unprofessionally when queries and complaints went unanswered. In this case Mr. Chen did a "poor job". In Mr. Giles' opinion, the New Castle County Board of Realtors would have found ethical violations in this case.

In response to the hearing officer, Mr. Giles testified that some violations in this case were violations of the code of ethics. The code is interwoven with Commission regulations. Mr. Giles confirmed that his opinions as to what should have been done by Mr. Chen in this case articulate proper Broker standard of care conduct.

The State's final witness in the hearing was Mr. Menowonu, who testified with permission via telephone. He retained Mr. Adams' services in 2011 to assist him in purchasing a home. He paid \$10,000-12,000 down on a property in Claymont DE. After marrying and bringing his new wife to the U.S. from Africa, the settlement date for the property kept changing. In the end the property did not go

to settlement. Mr. Menowonu testified that he was "duped" because Mr. Adams would not return his funds.

After the Claymont purchase fell through, Mr. Menowonu learned that his name had been placed on a mortgage for a property in Wilmington. He learned of that fact when he received a default notice from a lender. He did not know what had happened. When he contacted Mr. Chen with questions or concerns, Mr. Chen confirmed that the Wilmington property mortgage was in his name. Mr. Chen recommended that Mr. Menowonu rent out the property to bring in cash with which he could then apply toward mortgage payments. Mr. Chen informed Mr. Menowonu that he would investigate. He did not hear from Mr. Chen again. Mr. Menowonu became fearful that the entire episode would harm his credit and ability to borrow. At this time the State rested.

In her closing Ms. Jarosz argued that the State has proven that Mr. Chen was the Broker of record at ReMax/Sunvest during the period of time when Salespersons Adams, Attarian and Quinn were engaged in unlawful or unethical conduct on behalf of that firm. Mr. Adams' clients made various down payments or pre-payments for properties and all were ignored when they requested reimbursement after sales were not consummated. In the opinion of Mr. Giles, Mr. Chen did not comply with applicable standards of care in dealing with those matters. When sales of new homes to Mr. Attarian's clients did not go forward, Mr. Attarian was not responsive in making the clients whole. Nor did Mr. Chen properly investigate the matter or make those clients whole. Finally, when Mr. Quinn was grossly delinquent in repaying funds to the Mussers which were due to them under a written agreement, Mr. Chen failed or refused to investigate the matter, and refused to reimburse the Mussers with brokerage funds.

Ms. Jarosz argued that in this case the State has proven a pattern of lack of supervision by Mr. Chen of Salespersons in his brokerage. His below standard of care supervision and management of the three agents constitute violations of the Delaware real estate Act as well as regulations adopted by the

Commission. In this case the State asks that it be recommended to the Commission that Mr. Chen's Broker license be revoked. Though Mr. Chen terminated his real estate license in September 2017, he may be disciplined nonetheless because the relevant negligent supervision and management proven in this case occurred while he was an active licensee. The State has chosen to continue to prosecute this case and to make a record of Mr. Chen's misconduct should he elect to have his license reinstated or reactivated, or to apply for a new license.

### **Findings of Fact**

The notice of this hearing provided Mr. Chen with the date, time, place and subject matter of the proceedings. AHU X1. The notice also provided him with a statement of his rights with regard to the hearing. The notice was prepared and mailed to him in the normal course of Division business.

AHU X1 was sent to Mr. Chen by First Class mail at the last and most current physical address in Wilmington DE which he had reported to the Commission as the place where he would receive official communications regarding his license. That address was secured by the Administrative Hearing Unit from a licensee data base maintained by the Commission for that purpose. Licensees are expected and required to update their address information as changes occur. The First Class mailing of AHU X1 was not returned to the Hearing Unit within a reasonable period of time after it was mailed as undeliverable. Therefore, a rebuttable legal presumption arises that Mr. Chen in fact received the First Class mailing.

AHU X1 was also emailed to Mr. Chen at his last and most current reported email address. That emailing did not result in a return message to the Hearing Unit that it was undeliverable or sent to an invalid email address. Consequently, a presumption arises that Mr. Chen received the emailed AHU X1 as well. AHU X1 was mailed and emailed to Mr. Chen on March 12, 2018. The emailing was in fact received by Mr. Chen on that date as he acknowledged its receipt in a return email to the Hearing Unit. RX 1. Based on this record, I therefore find that Mr. Chen did in fact receive good and valid notice of the proceedings. He failed or refused to attend the hearing.

The following facts have been proven in this case by a preponderance of the evidence. Mr. Chen was issued his initial Delaware real estate license in December 1986. The complaint in this case (SX 1 at 1-4) was filed in October 2016. At that time Mr. Chen's Broker license was active. However, in September 2017 Mr. Chen "terminated" his Broker license. SX 1 at 5. It remains in "terminated" or "canceled" status at the time of the writing of this recommendation. On September 15, 2017, Mr. Chen was released as a real estate Broker in the Re/Max Sunvest Realty office on Kirkwood Highway in Wilmington. SX 1 at 8.

At times relevant to this case, Mr. Chen was a Broker or Broker of Record in the Re/Max Sunvest Realty office in Wilmington. Employed in that office at various times were licensed Salespersons Donyiell Adams, David Attarian and Stephen Quinn.

While employed at Re/Max Sunvest during the period 1995-2014, Mr. Adams became the subject of five professional licensure complaints. Those complaints were the subject of an administrative hearing and a final order of the Commission in 2014. Mr. Adams' Salesperson license was revoked by the Commission and he was assessed a monetary penalty of \$30,000.

During Mr. Adams' administrative hearing it was found that he had received certain deposit and other monies and had failed to return those funds to their rightful owners after repeated requests and demands when real estate transactions were not consummated. It was also found that Mr. Adams was self-interested in some of the transactions without having disclosed his interests to clients. Mr. Adams eventually entered a plea of guilty to felony theft as a result of his wrongful retention of the funds.

At least one of Mr. Adams' victims complained directly about Adams' conduct to Mr. Chen. It was her opinion during the Adams hearing that Mr. Chen was "covering up" for Mr. Adams. Another of Adams' victims made multiple calls and visits to the Sunvest brokerage to complain to Mr. Chen and to demand the return of deposited funds. Mr. Chen stated that there was nothing he could do to cure the situation. Nor did Mr. Chen disclose to that victim that he, Mr. Chen, was a prior owner of a property in

Wilmington on a mortgage for which the victim's name had been fraudulently entered. Rather than attempt to right the wrong, Mr. Chen simply stated that the victim should rent out the Wilmington property and apply the rental proceeds toward the fraudulent mortgage.

Another of Mr. Adams' victims attempted to contact Mr. Chen to report Mr. Adams' wrongful retention of a \$10,000 deposit. The victim attempted to contact Mr. Chen on the telephone, and went to Mr. Chen's office on multiple occasions. An employee in the brokerage informed this victim that Mr. Chen was "too important and would not meet with her." The victim (Ms. Lopez) was also told by the employee that she must be "legal" in order to file a complaint, and that Mr. Chen was "too big to be sued". A final victim met with Mr. Chen and Mr. Adams in the Re/Max office to secure their assistance in her purchase of a property. She complained to the brokerage when Mr. Adams failed to escrow or return a \$12,000 deposit. She received no assistance from Mr. Chen in the matter.

Another Salesperson acting under the supervision and management of Mr. Chen was David Attarian. He was the subject of two professional complaints which ended with the Commission's acceptance of a consent agreement. In the agreement Mr. Attarian admitted that he had negotiated the purchases of new home construction. He had received a total of \$26,500 in "advanced commissions" on certain sales of homes which were never timely completed by the relevant builder. When those sales became void for lack of performance, Attarian failed to return the commissions to the buyers. In 2014 Mr. Attarian entered a "no contest" plea in Superior Court to charges of felony theft and securities fraud and was ordered, *inter alia*, to pay a total of \$217,665 in restitution to his victims. In his consent agreement with the State in 2015, Mr. Attarian agreed to the suspension of his Salesperson license for five years.

Mr. Attarian was released by Mr. Chen in 2011. When he received the professional complaint in his own licensure case, Mr. Attarian addressed a letter to the Division. In that letter Attarian explained that Mr. Chen was "very aware" of the problems with the defaulting builder. Mr. Chen had informed

Mr. Attarian, according to the letter, that no "advance commissions" would be returned to any of the putative buyers unless they signed full releases. According to Mr. Attarian, Mr. Chen's response to the problem was to ask that he be informed if another builder could be engaged to work with the buyers.

One of the new home buyers injured by Attarian's actions informed a Division investigator that she had spoken with Mr. Chen about the matter. Mr. Chen requested that she reduce her complaint in writing and send it to Mr. Chen. She did so. Mr. Chen never responded to her. In response to the investigator when interviewed, Mr. Chen stated that he was "not a 'hands-on' person" in his dealings with Attarian. In an apparent effort to deflect any responsibility away from himself and his brokerage, Mr. Chen stated that Attarian had simply "used the Re/Max name and paid direct costs associated with using the office in order to collect 100% commissions."

Mr. Chen was also the Broker of Record in the Re/Max Sunvest office while Stephen Quinn was employed there. (Testimony in this case suggests that Mr. Quinn may remain employed there.) His somewhat confusing and long-term involvement with the Mussers is described above. The long and short of it is that at one time Mr. Quinn arranged to borrow a total of \$8,000 from the Mussers in exchange for his promise to write a booklet describing real estate services. The booklet was never written. Mr. Quinn had promised to repay \$3,000 within one year. The loan was eventually paid in full more than three years later after extraordinary pressure from the Mussers' attorney. As a result of his defalcation, Mr. Quinn received a letter of reprimand from the Commission and his Salesperson license was placed on probation for one year in 2016.

The Mussers' attorney, Mr. Ferry, testified during this hearing. The dispute which arose between the Mussers and Mr. Quinn concerned a payment from the former to the latter of \$3,000 as an advance of a prospective sale of realty. Since a business entity owned by Mr. Quinn eventually became the buyer for the property, Mr. Ferry raised certain ethical and other issues regarding the real estate transaction which are not being prosecuted in this case.

In a written agreement between the Mussers and Mr. Quinn, the Mussers loaned him \$3,000 and, in return, Mr. Quinn promised to personally guarantee repayment within one year. If a sale or sales did not materialize, Mr. Quinn "irrevocably" instructed his Broker to pay over future commissions due and owing to Mr. Quinn until the \$3,000 had been reimbursed in full to the Mussers. Mr. Quinn defaulted on his agreement with the Mussers. Mr. Ferry then engaged in a painfully long and often one-way exchange of communications with Mr. Chen. He demanded that the brokerage repay the \$3,000 to the Mussers under the terms of their agreement with Quinn.

After an exchange between Mr. Ferry and Mr. Chen, Mr. Chen promised to provide the decision of the brokerage by a date certain. Rather than provide that response, Mr. Chen simply forwarded to Mr. Ferry an email from Mr. Quinn. In that email, Mr. Quinn informs Mr. Chen that he "does not deny" that payment is due to the Mussers. Mr. Ferry responded to Mr. Chen that simply forwarding Mr. Quinn's explanation was "insulting". Mr. Ferry again demanded a substantive response from Mr. Chen within 24 hours. When no response was received from him, Mr. Ferry sent Mr. Chen a fourth letter again demanding payment of the \$3,000 on behalf of his clients. In the absence of payment, Mr. Ferry stated that a complaint would be filed against him with the Commission. That letter finally prompted a response from Mr. Mayhew in Mr. Chen's office that the debt would be paid. Mr. Ferry characterized Mr. Chen's actions (and inaction) in the matter as "unprofessional".

The above statement of factual findings is basically uncontested. After receiving good and valid notice of this hearing, Mr. Chen failed or refused to attend. Therefore, he waived his right to provide any explanation or mitigating or extenuating evidence in defense of his conduct. Even if Mr. Chen's Broker license is presently "terminated" or "canceled", his failure to attend the hearing is further demonstration of his lack of professionalism and a disrespect for the lawful processes of the Commission.

#### **Conclusions of Law**

The notice of this hearing provided Mr. Chen with the date, time, place and subject matter of the proceedings. AHU X1. The notice also provided him with a statement of his hearing rights. The notice otherwise comported with legal requirements for notices of hearings before the Commission.

The notice was prepared and mailed to Mr. Chen at the last and most current addresses which he had reported to the Commission. The First Class mailing of the notice to Mr. Chen's address in Wilmington was not returned to the Hearing Unit as undeliverable. Hence, under the "mailbox rule" a rebuttable legal presumption arises that the notice was in fact received by him. The notice was also emailed to Mr. Chen at his last reported email address. Mr. Chen did in fact receive that copy of the notice as he emailed a "thank you" note back to the Hearing Unit on the same day that it was emailed to him. Based on this record, I therefore conclude as a matter of law that good and valid notice of the hearing was provided to Mr. Chen, and that he did in fact receive the notice. Mr. Chen failed or refused to attend the hearing.

The primary objective of the Real Estate Commission is to protect the general public, and specifically those who are direct recipients of real estate services in Delaware. 24 *Del. C.* §2900(a). The Commission is vested with the authority to adopt regulations which implement or clarify the Delaware Real Estate Services, Brokers, Associate Brokers and Salespersons Act. 24 *Del. C.* §2906(a)(1). The Commission is authorized to conduct hearings and to impose professional discipline upon its licensees when the Commission finds good cause to do so. 24 *Del. C.* §2906(a)(10), (11). It may be a basis for professional discipline if a licensee violates a provision of the Act or a regulation adopted by the Commission. 24 *Del. C.* §2912(a)(9). These are all valid means and ends rationally related to the legitimate purpose of protecting the public.

The first legal claim alleged by the State in the complaint is that Mr. Chen has violated 24 *Del. C.* §2912(a)(6). The State alleges that, at relevant times in this case, Mr. Chen engaged in the negligent practice of real estate in such a manner as to not safeguard the interests of the public. *Id.* In the

context of Sec. 2912(a)(6) of the Act, the legislature has not defined what constitutes the "negligent" practice of real estate. Nor has the Commission defined the term in its regulations.

When the General Assembly employs a word in a statute, the interpreter of the Code provision is instructed to read the word within its context and to construe it according to the common and approved usage of the English language. 1 *Del. C. Sec. 303*. The word "negligent" has been defined as "marked by or given to neglect...not taking prudent care...." *Webster's Collegiate Dictionary* (10<sup>th</sup> ed. 1996) at 777. An act of "negligence" is defined as the "failure to exercise the care that a prudent person usually exercises...." *Id.*

The term "negligence" has taken on a particular meaning in Delaware courts. "Negligence" is often a proof requirement in the trial of civil damages and personal injury cases. Delaware juries are typically instructed by judges that "negligence" is "the lack of ordinary care; that is, the absence of the kind of care a reasonably prudent and careful person would exercise in similar circumstances...If a person's conduct in a given circumstance doesn't measure up to the conduct of an ordinarily prudent and careful person, then that person was negligent." *Del.P.J.I. Civ. Sec. 5.1*. Whether the lay or legal definition of "negligent" or "negligence" is applied, it is clear that both standards consider "negligence" to constitute the lack of prudent care, or the failure to engage in conduct in which the ordinary prudent and careful person would engage in a given set of circumstances.

When that standard is applied in the context of this case, I find that the State has proven that Mr. Chen has engaged in negligent real estate Broker conduct as a matter of law and by a preponderance of the evidence. During the presentation of its case, the State called as an expert witness Mr. Giles. He is a Commission member and licensee with substantial experience in the profession of real estate, and particularly in the practice of real estate brokerage. He was called as an expert to testify on the proper standards of care to which the reasonable real estate Broker is held in Delaware. In other words, since the State is claiming that Mr. Chen has engaged in the "negligent"

practice of law, it is necessary that the State present evidence of what the "reasonably prudent" or "ordinarily prudent and careful" real estate Broker should do under certain circumstances.

Mr. Giles was asked a number of questions which called on him to compare Mr. Chen's actions (or inactions) against those of the "reasonable broker" when provided with the factual contexts of the three Salespersons whom Mr. Chen was legally responsible to supervise. In other words, Mr. Giles was asked to opine on whether Mr. Chen had complied with or breached his duty to act as the reasonably prudent broker under those facts.

As a general proposition, Mr. Giles began his testimony by stating that it is the duty of the Delaware broker to ensure that licensees acting under his supervision are complying with Commission regulations and an "ethical code" which is to provide guidance to all in the profession. With regard to Mr. Adams, Mr. Giles opined that the reasonable and prudent broker would have conducted an investigation when he learned of Adams' conduct. In training, agents are taught that checks held as deposits on behalf of clients should in fact be made out to the firm's broker, and should in fact be deposited in the Broker's escrow account. In his view Mr. Adams' failure to do so provided a basis on which Mr. Chen should have released Adams.

In addition, Mr. Chen had a duty himself to fully disclose any ownership interest in any property which had become the subject of a sale or potential sale. Such disclosures are mandated. Failure to disclose them is an ethical breach. Further, when Mr. Chen had learned that Mr. Menawonu's name had been fraudulently entered on a mortgage, he had a duty to report such fraudulent conduct. If Mr. Chen never learned of Mr. Adams' withholding client deposit funds, or never learned of the matter of the fraudulent mortgage, then he had breached the duty of the reasonably prudent broker to investigate the matter in order to ensure agent compliance with legal and ethical standards.

Similarly, Mr. Chen knew or should have known that Mr. Attarian was engaged in the "rare" activity of receiving and retaining "advance commissions". Had he chosen to investigate Mr. Attarian's

activities fully and to respond prudently, he would have insisted that the advanced payments be held in escrow and be returned to the client when the new home construction slowed or was canceled based on the builder's inability to secure additional loans. Again, if Mr. Chen simply chose not to investigate Mr. Attarian's activities, he breached his duty to protect the public to whom brokers and agents owe their first duty.

In addition, Mr. Giles opined that a proper "standard of care" investigation would have involved the Broker meeting with the builder. If Mr. Attarian were not released by Mr. Chen, at a minimum Attarian should have been warned against taking advantage of members of the public. Further, the reasonably prudent Broker under these circumstances should have instructed Salespersons to stop doing business with the defaulting builder. Here Mr. Chen did not promptly investigate and ensure that full refunds were made to clients. He failed in his duty to require that Mr. Attarian immediately place collected funds into the firm's escrow account. Mr. Giles testified that he would have promptly released the funds to the relevant clients and then work with the builder to recoup lost funds. Mr. Giles stated that these are basic requirements of supervision and management which are imposed on Brokers under laws and Commission regulations.

With regard to Mr. Quinn, Mr. Giles testified that he had never seen an agreement such as was entered into by Mr. Quinn and the Mussers. Had Mr. Chen promptly and fully investigated the matter and discovered that agreement, he would have realized that Mr. Quinn was using the privilege of his Salesperson license to secure funds for a writing project. That is an improper use or abuse of the client-salesperson relationship.

More importantly, Mr. Giles opined that as soon as Mr. Chen became aware of the obligation which Mr. Quinn had assumed while acting under the authority of the ReMax/Sunvest brokerage, he should have repaid the \$3,000 in order to make the Mussers whole. That was the "first obligation" of the Broker, and should not have been conditioned on the ability of ReMax/Sunvest to collect those

funds from Mr. Quinn. Had Mr. Chen investigated promptly and completely, he would have learned that Mr. Quinn had improperly entered into an agreement which was the responsibility of the Broker.

Mr. Giles provided his "standard of care" opinions regarding Mr. Chen's lack of responsiveness to reasonable inquiries and demands concerning the Quinn obligation. If Mr. Chen in fact ever investigated the Quinn matter, that should have been done long before ReMax decided to assume its obligation to pay the \$3,000. Mr. Chen breached his duty to respond to public inquiries as the proper representative of the brokerage. His delays and silence were "unreasonable", in Mr. Giles' opinion. The Mussers were forced to wait for years to be made whole.

In Mr. Giles' opinion, Mr. Chen engaged in multiple acts of broker negligence in this case. He was faced with numerous ethical and legal issues here, but chose to ignore them, or to ignore reasonable requests that he assume his duty of supervision. There is no evidence in this case that Mr. Chen completed responsible investigations into the actions of his Salespersons. Since Mr. Chen chose not to attend the hearing, he waived his right to explain his conduct or provide evidence in mitigation of his unprofessional actions.

Based on this uncontested hearing record, I therefore conclude as a matter of law that in the cases of each of the three Salespersons under Mr. Chen's management and supervision, illegal or unprofessional conduct occurred, and that Mr. Chen breached his duty to act as the reasonably prudent Broker should have acted under the circumstances. The actions of the three Salespersons and Mr. Chen's sub-standard responses to those actions clearly failed to safeguard the interests of the public. The State has proven a violation of 24 Del. C. §2912(a)(6).

The State next claims that Mr. Chen violated 24 Del. C. §2912(a)(9) in having violated three regulations adopted by the Commission. The first of those regulations is Comm. Reg. 1.3.1. That regulation, *inter alia*, states that "(i)t is the responsibility of the employing Broker to insure that his or her Licensees comply with the Commission's Rules and Regulations." *Id.* The regulation is set forth

under the heading "Broker's Responsibilities". It is a restatement of Mr. Giles' opinion that one of the premier duties of a Broker is to ensure that Salespersons under his supervision are in compliance with regulations and ethical standards.

Putting aside the acts of Broker negligence described above, one regulatory provision which the three Salespersons violated in varying degrees and which Mr. Chen failed or refused to enforce is Comm. Reg. 6.3. That regulation requires that all moneys received on real estate transactions be escrowed in the Broker's escrow account. Had Mr. Chen been diligent in enforcing that rule with his Salespersons (as well as others), and had Mr. Chen appreciated his own responsibilities with regard to the funds in such an account, some of the problems in this case would have been minimized or avoided.

In addition, the Commission has promulgated a list of those crimes which are "substantially related to the practice of providing real estate services" pursuant to 24 Del. C. §2906(c). That list is found at Comm. Reg. 15.0 *et seq.* Among those crimes are Felony Theft (Comm. Reg. 15.1.26) (Adams, Attarian), and Securities Act violations (Comm. Reg. 15.1.151) (Attarian). Mr. Chen clearly failed to take effective actions to ensure that Salespersons under his supervision did not commit such crimes. I have concluded that the State has therefore proved violations of Comm. Reg. 1.3.1 as a matter of law in that Mr. Chen failed to ensure that Salespersons under his supervision had acted lawfully.

The State next claims that Mr. Chen violated Comm. Reg. 1.3.2. That regulation requires, *inter alia*, that a licensed Broker "shall provide complete and adequate supervision" of his office. *Id.* I have concluded that the State has also proved violations of this regulation as a matter of law. In forming this conclusion, I incorporate the above discussion regarding Comm. Reg. 1.3.1 as if restated herein. By failing to ensure that his Salespersons had acted in conformity with Commission rules and with provisions in the Act, Mr. Chen had failed to provide "complete and adequate supervision". Further, in the context of the responsibilities of a licensed Broker, "complete and adequate supervision" of a realty office not only involves effective supervision of Salespersons and other staff, but the management of

effective communications with members of the public and their representatives when valid complaints are raised against the brokerage or its employees.

The State finally alleges in the complaint that Mr. Chen also violated Comm. Reg. 1.3.5. That regulation, in full, states as follows: "The failure of any Licensee to comply with the provisions of 24 Del. C. Ch. 29 and the Commission's Rules and Regulations may also result in disciplinary action against his or her Broker's license." *Id.* This regulation is a classic statement of the general rule of agency in the area of employment law. Delaware juries are typically instructed that if some form of harm to a third party is the result of an act of negligence committed by an agent or employee while that person is acting within the scope of his employment, then that negligence is also the legal responsibility of the principal or employer.

This form of transferred liability is sometimes called "vicarious" liability. In my view the imposition of such "vicarious" liability is particularly apt in the real estate salesperson-broker relationship. As noted in the above discussion, Brokers are legally required by Commission rules to ensure that Salespersons comply with Commission regulations and are charged with the duty to provide "complete and adequate" supervision of the brokerage. Concomitant with those duties should be the consequence of professional discipline based on a failure to adequately supervise agents.

And the application of the rule is doubly apt here. The Commission was careful in crafting Comm. Reg. 1.3.5 to state that failures of licensees to comply with laws or regulations *may* result in disciplinary action against the license of the relevant Broker. There may be an instance in which a single Salesperson is acting solely on his own in violating a law or a rule and is taking substantial steps to create a subterfuge or effective smoke screen to hide his actions. In such a case the Commission may (or may not) find that the imposition of vicarious liability against the Broker works an unfairness.

But this is not such a case. Here we have multiple Salespersons committing multiple illegal or unethical acts while in the employ of the same Broker. Perhaps the most telling and poignant piece of

evidence in this case was Mr. Chen's statement to Ms. Betley on April 17, 2013 when he observed to her that he is not a "hands-on" person. In that single answer to one of her questions, Mr. Chen may have accurately characterized his "management style". But at the same time he demonstrated a careless indifference to his legal duties as a Broker. By his failure to provide complete and adequate supervision in this case, Mr. Chen became complicit in the conduct of the three Salespersons. It is perhaps more than a coincidence that Adams and Attarian, and to a lesser extent Quinn, all came to be working in the same office.

Since the State has proven multiple violations of Commission regulations, Mr. Chen is therefore subject to professional discipline pursuant to 24 *Del. C.* §2912(a)(9).

Due process has been afforded in this case.

#### **Recommendation**

Based on the relevant evidence in this case and the findings of fact and legal conclusions set forth above, the following is recommended to the Commission:

1. That the Real Estate Commission revoke any license or any interest in any license held by Carl Chen, effective at the time when a majority of a quorum of the Commission shall vote to take such action;
2. That pursuant to Comm. Reg. 12.2, Mr. Chen be barred from taking any action to apply for a new real estate license for at least two years from the effective date of his license revocation;
3. That if Mr. Chen shall apply for a new license after the two-year period of revocation, the Commission reserve the right, within its sole discretion, to grant or deny any such application;
4. That if the Commission is inclined to grant to Mr. Chen a new real estate license after a minimum of two years have passed, Mr. Chen be required to satisfy the following conditions:
  - a. That Mr. Chen shall petition the Commission for the issuance of a new license and shall be required to appear before the Commission to satisfy the Commission that he is fit to return to practice;
  - b. That Mr. Chen show documentary proof that he has completed all continuing education requirements established in Commission regulations during the period of his revocation;
  - c. That Mr. Chen has attended and passed the applicable course for the type of license for which he is applying, and has taken and passed the relevant Commission examination pertaining to such license;
  - d. That in addition to the continuing education modules required to be completed at the time of license renewal, Mr. Chen complete and show documentary proof of the

- completion of an additional six hours of continuing education in real estate ethics and six hours in standard of care brokerage management and supervision practices;
- e. That Mr. Chen has paid a total monetary penalty of \$15,000, or \$5,000 for the violations of each of the three Salespersons whose actions are the focus of this case;
  5. That if Mr. Chen is restored to practice in the future by action of the Commission, the Commission reserve the right to impose any reasonable and necessary restrictions or conditions upon his real estate license.
  6. That the final order of the Commission in this case constitute public disciplinary action.

  
Roger A. Akin  
Chief Hearing Officer

Dated: June 18, 2018

Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Board of Real Estate Commission any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 Del.C. §8735(v)(1)d.