

**STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LICENSING**

**In The Matter Of:**  
**The License to Practice as a  
Managing Real Estate Broker / Real  
Estate Broker / Real Estate Firm of:**

**MICHAEL HELICKSON, Lic. # 17267,**  
**TARA HELICKSON, Lic. # 2063, and**  
**HELICKSON.COM, INC., Lic. # 7905,**  
**Respondents.**

**OAH Docket No. 2010-DOL-0043  
DOL No. 2010-06-0027-00REA**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
INITIAL ORDER**

**I. ISSUES PRESENTED**

1.1 Whether the Respondents engaged in a pattern and practice of misrepresenting and advertising that they would purchase a home listed with them if it did not sell within thirty days. If so, did such conduct violate any of the following: RCW 18.85.230(1), (2), (3), and (23), and RCW 18.235.130(1), (3), (4), and (11).

1.2 Whether the Respondents engaged in a pattern and practice of encouraging homeowners to stop making payment on their home loans. If so, did such conduct violate any of the following: RCW 18.85.230(1) and (23), RCW 18.86.030(1)(a) and (1)(b), and RCW 18.235.130(4).

1.3 Whether the Respondents engaged in a pattern and practice of listing homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept, in order to generate multiple low-ball offers. Such conduct allegedly included dishonest advertising regarding the price of homes the Respondents listed for sale and engagement in automatically reducing the list price of homes the Respondents listed, which caused list prices to regularly fall below what the lender was willing to accept to release the lien on the home. If so, did such conduct violate any of the following: RCW 18.85.230(1), (2), (3), and (23), RCW 18.86.030(1)(a), (b), and (d), and RCW 18.235.130(1), (3), (4), and (11).

1.4 Whether the Respondents engaged in a pattern and practice of listing homes at prices that were not authorized by the homeowners. If so, did such

conduct violate any of the following: RCW 18.85.230(1), (2), (3), and (23), RCW 18.86.030(1)(a), (b), and (d), and RCW 18.235.130(1), (3), (4), and (11).

1.5 Whether the Respondents engaged in a pattern and practice of misrepresenting the contents of the listing agreement to the homeowners whose homes they listed for sale, sometimes by misrepresenting the expiration date of the listing, sometimes by having the homeowner fill out a blank addendum and later filling in false authorizations for automatic price reductions on the home, or other addenda that were not explained, or explained in a misleading way to the homeowners. If so, did such conduct violate any of the following: RCW 18.85.230(1), (2), (3), and (23), RCW 18.86.030(1)(a), (b), and (d), and RCW 18.235.130(1), (4), and (11).

1.6 Whether the Respondents engaged in a pattern and practice of failing to provide copies of executed listing agreements to homeowners at the time of execution. If so, did such conduct violate any of the following: RCW 18.85.230(18) and (23), and RCW 18.235.130(4).

1.7 Whether the Respondents engaged in a pattern and practice of negligent, dilatory communications with homeowners, potential buyers, and lenders, resulting in harm and prejudice to all three. If so, did such conduct violate any of the following: RCW 18.85.230(23) and RCW 18.235.130(4).

1.8 Whether the Respondents engaged in a pattern and practice of drafting addenda to purchase and sale agreements as part of a counter-offer that stated "All parties are aware that the sellers have requested that the buyer pre-qualify through one of the following lenders", which lenders were listed, and where these addenda did not represent a request from the homeowners. If so, did such conduct violate any of the following: RCW 18.85.230(1), (2), (3), and (23), RCW 18.86.030(1)(a), (b), and (d), and RCW 18.235.130(1) and (4).

1.9 Whether the Respondents engaged in a pattern and practice of telling owners that they were required to vacate their homes before they were legally required to vacate. If so, did such conduct violate any of the following: RCW 18.85.230(3) and (23), and RCW 18.235.130(4).

1.10 Whether the Respondents engaged in false advertising, including claims that they were the number one agent in Washington, Oregon, and Hawaii; that they were the top Washington, Oregon, and Hawaii real estate agents, that they were authorized to conduct real estate business in Oregon and Hawaii despite not being licensed to do so; that they will sell a home in 30 days or buy it themselves; and that Michael Hellickson could provide mortgage loans when he was not licensed to do so. If so, did such conduct violate any of the following: RCW 18.85.230(2) and (23), RCW 18.85.361(2), (3), and (23), and RCW

18.235.130(3), (4), and (11).

1.11 Whether the Department of Licensing shall revoke the license of Michael Hellickson for 10 years.

1.12 Whether the Department of Licensing shall revoke the license of Tara Hellickson for 10 years.

1.13 Whether the Department of Licensing shall revoke the license of Hellickson.com, Inc., for 10 years.

## II. ORDER SUMMARY

2.1 The charge that the Respondents engaged in a pattern and practice of misrepresenting and advertising that they would purchase a home listed with them if it did not sell within 30 days is AFFIRMED in violation only of RCW 18.86.030(1)(b), RCW 18.85.230(2), and RCW 18.235.130(3) and (11).

2.2 The charge that the Respondents engaged in a pattern and practice of encouraging homeowners to stop making payment on their home loans is SET ASIDE. Findings of Fact supported this charge only as to Respondent Michael Hellickson and only by a preponderance of the evidence.

2.3 The charge that the Respondents engaged in a pattern and practice of listing homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept, in order to generate multiple low-ball offers is AFFIRMED in violation only of RCW 18.85.230(2), (3), and (23), RCW 18.86.030(1)(a) and (b), and RCW 18.235.130(3) and (11).

2.4 The charge that the Respondents engaged in a pattern and practice of listing homes at prices that were not authorized by the homeowners is SET ASIDE.

2.5 The charge that the Respondents engaged in a pattern and practice of misrepresenting the contents of the listing agreement to the homeowners whose homes they listed for sale is SET ASIDE.

2.6 The charge that the Respondents engaged in a pattern and practice of failing to provide copies of executed listing agreements to homeowners at the time of execution is AFFIRMED in violation only of RCW 18.85.230(18) and (23).

2.7 The charge that the Respondents engaged in a pattern and practice of negligent and dilatory communications with homeowners, potential buyers, and lenders, resulting in unreasonable risk of harm and prejudice to all three is

AFFIRMED only as to unreasonable risk of harm and prejudice to homeowners and in violation of RCW 18.85.230(23) and RCW 18.235.130(4).

2.8 The charge that the Respondents engaged in a pattern and practice of drafting addenda to purchase and sale agreements as part of a counter-offer that stated "All parties are aware that the sellers have requested that the buyer pre-qualify through one of the following lenders", which lenders were listed, and these addenda did not represent a request from the homeowner, is AFFIRMED only as to Respondents Michael Hellickson and Tara Hellickson, in violation only of RCW 18.85.230(23) and RCW 18.86.030(1)(a).

2.9 The charge that the Respondents engaged in a pattern and practice of telling owners that they were required to vacate their homes before they were legally required to vacate is SET ASIDE.

2.10 The charge that the Respondents engaged in false advertising, including claims that they were the number one agent in Washington, Oregon, and Hawaii; that they were authorized to conduct real estate business in Oregon and Hawaii despite not being licensed to do so; that they will sell a home in 30 days to buy it themselves; and that Michael Hellickson could provide mortgage loans when was not licensed to do so, is AFFIRMED, in violation only of RCW 18.85.230(2) and RCW 18.235.130(3) and (11).

2.11 The 10-year revocation of Respondent Michael Hellickson's managing real estate broker's license, number 17267, is AFFIRMED, effective on a date to be determined by the Department of Licensing.

2.12 The 10-year revocation of Respondent Tara Hellickson's real estate broker license, number 2063, is AFFIRMED, effective on a date to be determined by the Department of Licensing.

2.13 The 10-year revocation of Respondent Hellickson.com, Inc.'s real estate firm license, number 7905, is AFFIRMED, effective on a date to be determined by the Department of Licensing.

### III. HEARING

3.1 **Hearing Date:** February 14, 15, 23, 25, and 28, and March 1, 2, 3, 4, and 15, 2011

3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 **Respondents:** Michael Hellickson, Tara Hellickson, and Hellickson.com, Inc.

3.3.1 **Representative:** Douglas Tingvall, Attorney at Law

3.3.2 **Witnesses:**

3.3.2.1 Verl N. Workman, real estate agent “coach”

3.3.2.2 Michael J. Hellickson, Respondent

3.4 **Agency:** Department of Licensing (hereinafter, “the Department”)

3.4.1 **Representative:** Toni Hood, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Kathleen Streight, client of Respondents (hereinafter, “client”)

3.4.2.2 Daniel D. Streight, client

3.4.2.3 Thomas L. Kittelman, real estate agent

3.4.2.4 Heather J. Smith, client

3.4.2.5 Sarah Kukhahn, real estate agent

3.4.2.6 Richard T. Smith, client

3.4.2.7 William W. Cody, client

3.4.2.8 Kathleen D. Cody, client

3.4.2.9 Alice J. Million, real estate agent

3.4.2.10 Susan H. Brooks, real estate agent

3.4.2.11 Timothy A. Phillips, client

3.4.2.12 Allison D. Ybarra, real estate agent (expert and fact witness)

3.4.2.13 Justin D. Haag, Director of Policy and Forms, Northwest Multiple Listing Service

3.4.2.14 Joseph L. Toner, real estate agent, formerly employed by Respondents

3.4.2.15 Rebecca M. Beaty, real estate agent (expert and fact witness)

3.4.2.15 Angela Giaever, property manager

3.4.2.16 David Randall, owner of a property foreclosed upon

3.4.2.17 Joyce K. Watts, client and real estate agent, formerly employed by Respondents

3.4.2.18 Jon Ryan Geertsen, real estate agent, formerly employed by Respondents

3.4.2.19 Lori E. Bennett, client

3.4.2.20 Monika M. Peltz, manager of liquidations for Wells Fargo

3.4.2.21 Jytte Wells, real estate agent

3.4.2.22 Robin Jones, Investigator, Real Estate Unit, Business and Professions Division, Department of Licensing

3.4.2.23 Theresa L. Jenkins, formerly employed by the Respondents

3.4.2.24 Karen L. Jarvis, Professions License Manager, Business and Professions Division, Department of Licensing

3.4.2.25 Jerry G. McDonald, Administrator, Real Estate Unit, Business and Professions Division, Department of Licensing

3.4.2.26 Jennifer M. Salo, client

**3.5 Exhibits:** The Department filed Exhibits 1 through 296 and the Respondents filed Exhibits A through P. All of the Respondents' exhibits were offered and admitted. Many of the Department's exhibits were not offered and some that were offered were not admitted. The file contains my notes on the Department's Exhibit List indicating the status of each exhibit. That list is incorporated herein by this reference. Furthermore, any exhibits not offered or not admitted bear that reference on the first page of the exhibit. Certain exhibits were admitted only in part. Those designations appear both on the Exhibit List

and on the exhibit itself as well.

3.6 **Court Reporters:** Connie Church (February 14, 15, and 23, 2011), Laura Gjuka (February 25 and 28, and March 1, 2, 3, 4, and 15, 2011)

3.7 **Close of Record:** The evidentiary record closed on March 4, 2011. By agreement with the parties, the Department submitted its Closing Argument on paper, filed no later than March 11, 2011; the Respondents submitted their Closing Argument orally on March 15, 2011, accompanied by a written argument; and the Department submitted its Reply Argument on paper, filed no later than March 18, 2011.

#### IV. FINDINGS OF FACT

I find the following facts pursuant to the clear and convincing evidence standard, unless specifically noted otherwise:

##### Jurisdiction

4.1 The Department served the Statement of Charges on Summary Action to the Respondents on September 2, 2010. Ex. 8.

4.2 The Respondents timely appealed.

##### Respondents Licenses and Business

4.3 During all times material herein, Michael Hellickson held an active designated broker's license, License Certification #17267. Ex. 1.

4.4 During all times material herein, Tara Hellickson held first an active salesperson's license and then an active broker's license, License Certification #2063. Ex. 2

4.5 During all times material herein, Hellickson.com, Inc., dba The Hellickson Team, (hereinafter, either "Hellickson.com, Inc." or "the Hellickson Team") held either an active corporation or firm license, License Certification #7905. Ex. 3. During all times material herein, Michael Hellickson and Tara Hellickson were officers of and held controlling interest in Hellickson.com., Inc. Testimony of Karen Jarvis; Ex. 234.

4.6 In 2009 and 2010, the Hellickson Team's listings were split approximately half-and-half between short sales and foreclosed properties owned by lenders, commonly called REOs. Testimony of Michael Hellickson.

4.7 On September 2, 2010, when the Statement of Charges and summary license suspensions were served, Hellickson.com had between 400 and 500 listings, with pending transactions effecting "well over" 200 of those listings. Testimony of Michael Hellickson.

### **The Department's Investigation of the Respondents and Proposed Revocations**

4.8 The Department received 37 complaints regarding the Respondents. Testimony of Karen Jarvis. Approximately 10 of those complaints were filed *after* September 2, 2010, but involved the same activity alleged by the Department in this matter. *Id.* In her 36 years working for the Department, Ms. Jarvis has never observed a licensee get more than two complaints within a year. *Id.*

4.9 Typically, the Department investigates a complaint by contacting the licensee named in the complaint and asking for relevant documents and for the licensee's side of the story. Testimony of Karen Jarvis. However, the Department ceased contacting the Respondents after receiving a letter dated December 2, 2009, from Douglas Tingvall, the Respondents' attorney, in which Mr. Tingvall told Ms. Jarvis that the Respondents would no longer provide information or documents in view of the King County Superior Court decision that such requests by the Department violated the Respondents' constitutional rights expressed in the Fourth Amendment. *Id.*; see Ex. 290 (the letter).

4.10 When determining what discipline to invoke, the Department considers the severity of the violation or violations, the number of violations, whether the licensee cooperated with the Department, and whether the licensee acknowledged and attempted to correct the conduct. Testimony of Karen Jarvis. Here, the Respondents allegedly committed a large number of violations, many violations were repeated, they did not cooperate with the investigation, and they did not acknowledge or attempt to correct their conduct. *Id.*

4.11 Here, a number of the complaints received regarding the Respondents included comparatively unique complaints. For example, the Department has not received a false advertising charge similar to that alleged here. Testimony of Karen Jarvis. The Department has had one prior complaint regarding 30-day buy programs. *Id.* The Department has never previously received complaints that the seller was advised by the agent to stop making mortgage payments. *Id.* The Department has never previously had complaints about artificially reduced pricing, unauthorized list prices, misrepresentation regarding listing documents, or failure to promptly provide to the client a signed copy of the listing agreement. *Id.* The Department has had some past complaints regarding negative or dilatory communication. *Id.*



4.12 The 30-day program misrepresentation was a “serious violation” of relevant licensing law. Testimony of Jerry McDonald. However, alone it would not likely have resulted in a 10-year revocation. *Id.* It was the misrepresentation that was the violation and not the program itself. *Id.* The advertisement that the Respondents were the number one agent in Washington, Oregon, and Hawaii would likely alone not have resulted in a 10-year revocation. *Id.* If the prequalification addenda had been the only violation, it would not likely have resulted in a 10-year revocation. *Id.* However, telling sellers to stop making mortgage payments would alone have resulted in significant discipline, although perhaps not a 10-year revocation. *Id.* The listing of artificially low prices was serious and might alone have resulted in a 10-year revocation. *Id.* Failing to provide clients with copies of their executed listing agreements was also very serious and would also alone have likely resulted in a license revocation, although perhaps not for 10 years. *Id.*

4.13 The Department’s intent pursuant to the licensing statutes is to protect the public. Testimony of Karen Jarvis; Testimony of Jerry McDonald.

4.14 The Department asserted that the Respondents’ conduct harmed the public or risked harm to the public in ways including but not limited to placing citizen’s equity at risk, putting their financial well-being at risk, creating reliance based on false premises, and placing at risk eligibility for future credit. Testimony of Jerry McDonald.

4.15 Ultimately, the Department determined to revoke each Respondent’s license for 10 years, a severe and rare discipline. Testimony of Karen Jarvis. The Department selected that discipline in order to protect the public. *Id.*

4.16 The Department sought to revoke the Hellickson Team’s license as well as the individual licenses of Michael and Tara Hellickson because Michael and Tara Hellickson have controlling interest in the Hellickson Team. Testimony of Karen Jarvis.

4.17 Although the complaints received by the Department referenced either Michael Hellickson or the Hellickson Team, the Department sought to revoke Tara Hellickson’s license as well because she was the co-listing agent on all of the listing agreements subject to the complaints and, therefore, bore the same level of responsibility as did Michael Hellickson. Testimony of Karen Jarvis.

**Whether the Respondents misrepresented and advertised that they would purchase a home listed with them if it did not sell within 30 days.**

4.18 The Hellickson Team advertised on radio, on signage, and in their publication that they would purchase a home listed with them that did not sell

within 30 days. For example, in the May 2010 issue of the Hellickson.com report, the Hellickson Team advertised that it guaranteed to purchase the sellers home or sell it at no commission if they did not sell it within 30 days, but that some restrictions applied. Ex. 107, pp. 11 – 15.

4.19 The advertising for the 30-day program included the provision that some restrictions applied and provided the Hellickson.com phone number for questions. Testimony of Michael Hellickson. No ad said that the 30-day program did not apply to short sales. *Id.*

4.20 Dan and Kathleen Streight hired the Hellickson Team to list their home and pursue a short sale on November 5, 2008. Exs. 119 and 124.

4.21 The Hellicksons put up a sign in the Streights' yard that advertised that the Hellickson Team would make the homeowner's monthly payments if the home did not sell in 30 days. Testimony of Kathleen Streight. However, Mr. Hellickson never offered to make their payments for them. *Id.* On the other hand, the Streights never asked the Hellickson Team to buy their home. *Id.* Michael Hellickson never said that the 30-day program had restrictions. *Id.* Nevertheless, the 30-day program was not a factor in the Streights' decision to hire Michael Hellickson. *Id.* Furthermore, the Streights did not hear about the 30-day program until after they signed a listing agreement with the Hellickson Team. *Id.* When Dan Streight later asked Mr. Hellickson about the 30-day program, Mr. Hellickson told him that it did not apply to them but he also had repeatedly said that he could sell their home and that he would buy it if it did not sell. *Id.*; Testimony of Dan Streight.

4.22 At one point, Michael Hellickson told Heather Smith that if her home did not sell in 90 days he would buy it, depending upon the circumstances. Testimony of Heather Smith. She asked him what would make her eligible but he did not tell her. *Id.* Mr. Hellickson did not say there were restrictions. *Id.* Later, Ms. Smith called the Hellickson Team office about that representation but never got a call back. *Id.* She does not recall if she ever asked the Hellickson Team to buy her home. *Id.* The program did not influence Ms. Smith to list with the Hellickson Team because she found out about it after she listed. *Id.*

4.23 Michael Hellickson told Richard Smith that he would buy Mr. Smith's home if it did not sell within 30 days. Testimony of Richard Smith. (Note: Richard Smith is Heather Smith's brother-in-law. They each listed their own properties with the Hellickson Team.) Mr. Hellickson did not mention any restrictions or qualifications. *Id.* Although Mr. Smith was not in default at that time, Mr. Hellickson encouraged Mr. Smith to default on his payments so that they could do a short sale. *Id.* The 30-day promise did not affect Mr. Smith's decision to list. *Id.* After Mr. Smith's initial meeting with Mr. Hellickson, Mr. Smith received a

Hellickson Team newsletter that included discussion of the 30-day promise. *Id.* Mr. Smith's home did not sell within the first 30 days. *Id.* After Mr. Smith's home was on the market for four or five months, he called the Hellickson Team office and left a voice mail asking if they would buy his home. *Id.* He never received a response. *Id.*

4.24 At the first meeting, Michael Hellickson told William Cody about his "I buy program". Testimony of William Cody. Mr. Hellickson told Mr. Cody that they could discuss the program further *after* Mr. Cody signed a listing agreement. *Id.* After Mr. Cody signed a listing agreement, Mr. Hellickson told him that it depended upon the evaluation of the Cody home but did not discuss any restrictions. *Id.* However, Mr. Cody never asked Mr. Hellickson to buy his home. *Id.*

4.25 Michael Hellickson did not inform Timothy Phillips about the 30-day program but Mr. Phillips found out about it while reviewing a Hellickson Team website. Testimony of Timothy Phillips. Mr. Phillips did not expect the program to be apt in his case because he had too much debt secured by his home. *Id.*

4.26 Joyce Watts, both a customer and a client of the Hellickson Team, asked Michael Hellickson to buy her home pursuant to the 30-day guarantee. Testimony of Joyce Watts. He declined. *Id.* Neither Michael Hellickson, Tara Hellickson, nor Ms. Watt's listing agent, Joe Toner, told her there were restrictions applicable to the 30-day program. *Id.* The 30-day program did not influence Ms. Watt's decision to list with the Hellickson Team. *Id.* Moreover, she did not learn about it until after she listed. *Id.*

4.27 Ms. Pugh sought to use the 30-day program. Testimony of Michael Hellickson. However, when Michael Hellickson offered her a price, she rejected it. *Id.*

4.28 The purpose of the 30-day program was to generate contacts for listing appointments. Testimony of Michael Hellickson.

4.29 No homes have been purchased under the 30-day program since 2008. Testimony of Michael Hellickson.

4.30 One of Joe Toner's responsibilities while employed as an agent by the Hellickson Team was to contact homeowners who inquired about the 30-day sell or purchase program and discuss it with them. Testimony of Joe Toner.

4.31 When following up on leads with the goal of scheduling listing appointments, Joe Toner was obliged to use a script. Testimony of Joe Toner; see Ex. 272. In relevant part, the script includes the following: "If I could show

you how [Michael Hellickson] can sell your home in 30 days or buy it himself at no cost to you would you be willing to have him come by and take a look at the house?" Ex. 272.

4.32 Jon Ryan Geertsen used the same script. Testimony of Jon Ryan Geertsen. He worked for the Hellickson Team from December 2009 through February 2010. *Id.* Mr. Geertsen is not aware of the Hellickson Team making any purchase under this program. *Id.* When Mr. Geertsen expressed concern about the 30-day program to Michael Hellickson, he told Mr. Hellickson that the program was not legitimate, that is was merely a hook to get the Hellickson Team in the door. *Id.* Mr. Hellickson replied that the Hellickson Team would buy a house under the program if the seller agreed to a price that was 50% of market value. *Id.*

4.33 The 30-day program was never discussed at any of the listing appointments observed by Verl Workman. Testimony of Verl Workman. Although some high volume agents use such a program, it is not widely used. *Id.*

4.34 Michael Hellickson could not ethically apply the 30-day program to a short sale transaction because the lender would not accept it. Testimony of Michael Hellickson.

4.35 Prior to the receipt on September 2, 2010, of the Statement of Charges, Michael Hellickson was unaware that the Department objected to the 30-day program. Testimony of Michael Hellickson.

4.36 Hellickson.com ceased advertising the 30-day program when the Respondents' licenses were suspended on September 2, 2010. Testimony of Michael Hellickson.

4.37 In sum, the Hellickson Team advertised repeatedly that it would purchase homes listed with them that did not sell within 30 days – subject to restrictions. The purpose of this advertising was to generate leads and, ultimately, listing agreements. However, the Hellickson Team had no intention of buying homes at anything close to market price. Moreover, Michael Hellickson said that the 30-day program did not apply to short sales, which was a dominant part of his business during the times material herein. This issue applies to all three Respondents because Michael Hellickson and Tara Hellickson were co-listing agents and they were owners/operators of the Hellickson Team, employees of the Hellickson Team were involved in the material conduct, and the Hellickson Team provided the advertising of the program. Accordingly, I find that the Respondents engaged in a pattern and practice of misrepresenting and advertising that they would purchase a home listed with them if that home did not sell within 30 days.

**Whether the Respondents encouraged homeowners to stop making payments on their home loans.**

4.38 The evidence in the record is inconsistent regarding this issue, as discussed below.

4.39 Michael Hellickson asserted as follows. Mr. Hellickson had conversations with sellers about whether to stop making mortgage payments. Testimony of Michael Hellickson. He never told a seller to stop making payments and he told them he would not offer such advice but he also said that lenders will not negotiate until a borrower is behind. *Id.* He referred sellers to a bankruptcy attorney as an initial step in such a consideration. *Id.* Michael Hellickson discussed deficiency judgments at every listing appointment that addressed a distressed property. *Id.*; see Ex. C, p. 1 (listing agreement checklist).

4.40 Verl Workman, a real estate agent coach, observed Michael Hellickson conduct listing appointments for two days in early Spring 2009, observing approximately 14 to 16 listing appointments. Testimony of Verl Workman. Mr. Hellickson's method varied only marginally. *Id.* After reviewing the home, but before presenting a listing packet, Mr. Hellickson discussed with the potential client his/her loan status, what was owed, what financial problems the client had, and whether or not circumstances conducive to "hardship" were present. *Id.* In each of the instances observed by Mr. Workman, the potential client owed more than the house was presently worth. *Id.* Mr. Hellickson asked them if they could afford to pay the difference between what the house was worth and what was owed to the lender. *Id.* If the client replied that he/she could not, Mr. Hellickson told them they had three options: sell the house themselves, allow it to proceed to foreclosure, or agree to a short sale. *Id.* Mr. Hellickson is considered to be a short sale expert. *Id.* Mr. Hellickson explained the short sale process to each client. *Id.* Everyone asked about deficiency judgments. *Id.* Mr. Hellickson's response was to refer them to an attorney to discuss bankruptcy. *Id.* Mr. Workman never heard Mr. Hellickson advise clients to stop making mortgage payments. *Id.* However, Mr. Hellickson told them that a lender would not likely support a short sale if the seller was current with mortgage payments. *Id.* At all of the listing appointments observed by Mr. Workman, the owner/seller was already in default. *Id.* Mr. Hellickson used a check list to explain the short sale process and provided the owner with short sale paperwork to complete and return to his office. *Id.*

4.41 However, several former clients of the Hellickson Team testified that Michael Hellickson told them to stop making their mortgage payments.

4.42 Dan and Kathleen Streight asserted as follows. Mr. Hellickson told Mr.

and Mrs. Streight to stop making their mortgage payments because it would be easier to sell the home if they were in arrears. Testimony of Kathleen Steight; Testimony of Dan Streight. The Streights were worried about what would happen if they stopped making payments but the home did not sell. Testimony of Kathleen Streight. Mr. Hellickson kept saying that there would not be a problem because he could sell the home. *Id.* At one point, Mr. Hellickson told Mr. Streight that he would buy the home from them. *Id.* Mr. Hellickson never suggested that Mr. and Ms. Streight consult with an attorney. *Id.* At the listing appointment, Kathleen and Dan Streight told Michael Hellickson that they were two months behind regarding their mortgage payments. Testimony of Michael Hellickson; Ex. C, p. 1.

4.43 Heather Smith asserted as follows. Michael Hellickson told Heather Smith to stop making mortgage payments on both of the homes she listed with him. Testimony of Heather Smith. Ms. Smith's boss, who is a real estate broker, attended the listing meeting and thought that Mr. Hellickson telling Ms. Smith to stop making mortgage payments was odd, but she was not experienced regarding short sales. *Id.* Foreclosure proceedings had begun, so Mr. Hellickson recommended a short sale. *Id.* Eventually, one home sold and the other was foreclosed. *Id.*

4.44 Richard Smith asserted as follows. Michael Hellickson told Richard Smith to stop making mortgage payments, including homeowner's dues, in order to facilitate a short sale. Testimony of Richard Smith. Mr. Smith was not considering a short sale until Mr. Hellickson's listing presentation. *Id.* At that time, Mr. Smith was current in his payments. *Id.*

4.45 Timothy Phillips asserted as follows. Michael Hellickson told Timothy Phillips that he had the *option* to stop paying on his mortgage and dues – he was current at the time – because the lender was more likely to accept an offer on the property if he did so. Testimony of Timothy Phillips. Mr. Hellickson did not refer Mr. Phillips to an attorney or a financial advisor to discuss that option. *Id.* Mr. Phillips also told Mr. Hellickson that there was a \$60,000.00 construction assessment regarding his home and Mr. Hellickson told Mr. Phillips that he likely would not have to pay it. *Id.*

4.46 Jennifer Salo asserted as follows. Michael Hellickson told Jennifer Salo to stop making mortgage payments – so she stopped. Testimony of Jennifer Salo. But no one told her about the risks of doing so. *Id.* Ms. Salo does not remember being told about the risk of a deficiency judgment. *Id.* Ms. Salo was current in her payments when Mr. Hellickson told her to stop making her payments, although she probably owed more than the house was worth. *Id.* Ms. Salo discussed bankruptcy with Mr. Hellickson and he referred her to an attorney. *Id.*

4.47 In conclusion, the clients who testified said that the subject was discussed and they were told to stop making payments, whereas Mr. Hellickson said that he specifically refused to advise clients but told them lenders will not negotiate with borrowers who are current in their payments. Given that only borrowers in arrears had a basis for completing a short sale, I am not persuaded that Michael Hellickson would remain ambivalent. Therefore, I am persuaded that Michael Hellickson engaged in a pattern and practice of encouraging homeowners to stop making payments on their home loans. However, I make this finding by a preponderance of the evidence only. Moreover, it applies only to Respondent Michael Hellickson.

4.48 Telling a client to stop making mortgage payments is a violation of reasonable skill and care. Testimony of Allison Ybarra. If a client asks about it, the agent should refer the client to a real estate attorney, CPA, financial advisor, etc. *Id.*

**Whether the Respondents listed homes at artificially reduced prices.**

4.49 Dan and Kathleen Steights' home was initially listed on November 6, 2008, at \$275,000, reduced to \$250,000 on November 20, 2008, reduced to \$225,000 on December 4, 2008, reduced to \$200,000 on December 18, 2008, and then further reduced on December 18, 2008, to \$175,000. Ex. 152.

4.50 Real estate agent Thomas L. Kittelman represented a buyer named Penny who made an offer on the Streights home. Testimony of Thomas Kittelman; Ex. 145. Mr. Kittelman valued the Streights' home at approximately \$230,000 to \$240,000. Testimony of Thomas Kittelman; Ex. 145. When it was reduced to \$175,000, Mr. Penny made an offer of \$190,000. Testimony of Thomas Kittelman; Ex. 145. The Hellickson Team office told Mr. Kittelman that Mr. Penny made the best offer. Testimony of Thomas Kittelman; Ex. 145. Then the Hellickson Team office told Mr. Kittelman that the Penny offer had been topped, so Mr. Penny re-offered at \$201,000. Testimony of Thomas Kittelman; Ex. 145. Again, the Hellickson Team office told Mr. Kittelman that his client had made the best offer. Testimony of Thomas Kittelman; Ex. 145. Kathleen Streight called Mr. Kittelman and said that her lender had not received the offer and please send her a copy that she could pass on. Testimony of Thomas Kittelman; Ex. 145. But the purchase never occurred because the Streights' lender declined the offer. Testimony of Thomas Kittelman; Ex. 145. Kathleen Streight told Mr. Kittelman that the lender would not accept anything less than \$220,000. Testimony of Thomas Kittelman.

4.51 When Dan Streight learned from a real estate agent that the price on his home had dropped to \$175,000, he and his wife were shocked because the lienholder had told Mr. Streight that the lienholder would not accept less than

\$240,000. Testimony of Dan Streight.

4.52 Richard Smith's condominium was listed initially at \$175,000 on September 25, 2008. Ex. 190. Thereafter, the price was reduced several times until it listed at \$75,000 on November 20, 2008. *Id.* However, the list price increased to \$117,000 on February 17, 2009. *Id.* Ultimately, it reduced to \$75,000 on March 26, 2009. *Id.* Nevertheless, it increased to \$113,000 on June 9, 2009, reduced to \$100,000, back to \$113,000, back to \$100,000, and then to \$75,000, the latter on September 26, 2009. *Id.* Thereafter the price increased to \$95,000 on October 5, 2009, reduced to \$75,000 on January 21, 2010, and then to \$50,000 on February 5, 2010. *Id.*

4.53 Richard Smith received some offers that were too low, below which he knew his lender would accept. Testimony of Richard Smith.

4.54 Sarah Kukhahn represented a buyer who wanted to buy a condominium from a seller represented by the Hellickson Team. Testimony of Sarah Kukhahn. It was listed at \$75,000. *Id.* Ms. Kukhahn's client wanted more information before he made a cash offer and he wanted to close promptly. *Id.* She knew it was short sale and she learned that the lender would not accept anything less than \$160,000. *Id.* She was surprised at the large difference. *Id.* Ms. Kukhahn does short sales herself and believes that it is a waste of time to list lower than what the bank will accept. *Id.* The Hellickson Team office told Ms. Kukhahn they knew when they listed the property at \$75,000 that the lender would not accept less than \$160,000. *Id.* The listing agent can place in the multiple listing service agent notes what price below which the lender will not consider offers. *Id.*

4.55 Alice Million was the real estate agent for Mr. and Mrs. Berg who made an offer on a Spanaway home listed by the Hellickson Team. Testimony of Alice Million. The home was listed at \$150,000 and the Bergs made a full-list price offer. *Id.* The seller accepted but the lender declined the offer and counter-offered at \$170,000. *Id.* The Bergs responded with an offer of \$155,000. *Id.* The list price rose to \$170,000 after the Bergs offered \$150,000, and then was reduced to \$150,000 after the Bergs offered \$155,000. *Id.*

4.56 Rebecca Beaty represented a buyer who made an offer at list price \$200,000 on a home that the Hellickson Team represented for sellers Mr. and Ms. Cody. Testimony of Rebecca Beaty; Exs. 49 and 51. Two or three days later, someone from the Hellickson Team called and said that the bank would not consider anything less than \$240,000. Testimony of Rebecca Beaty; Ex. 51. The price listed with the Northwest Multiple Listing Service (hereinafter, "NWMLS") was then raised to \$240,000 and subsequently reduced back to \$200,000. Testimony of Rebecca Beaty, Exs. 49 and 51. Part of Ms. Beaty's



communication with the Hellickson Team regarding this matter was with staff member Shelby and part with Tara Hellickson. Testimony of Rebecca Beaty. This conduct was a violation of reasonable skill and care regarding a listing price. *Id.*

4.57 The Cody home was originally listed on March 18, 2009, at \$350,000; reduced to \$300,000 on April 2, 2009; reduced to \$275,000 on April 16, 2009; reduced to \$250,000 on April 30, 2009; reduced to \$225,000 on May 14, 2009; reduced to \$200,000 on May 28, 2009; increased to \$240,000 on August 27, 2009; reduced to \$200,000 on September 2, 2009; and increased to \$240,000 on September 28, 2009. Ex. 41, p. 3.

4.58 The price increase to \$240,000 reflected a counteroffer by the lienholder. See, e.g., Ex. 57, p. 3.

4.59 Michael Hellickson took a comparative market analysis with him to each listing appointment. Testimony of Michael Hellickson.

4.60 Verl Workman observed that Mr. Hellickson's listing packet for a listing appointment included a comparative market analysis. Testimony of Verl Workman.

4.61 When Joe Toner started with the Hellickson Team in August 2009, listing prices were predicated upon a comparative market analysis produced by Tara Hellickson. Testimony of Joe Toner. After a few months, that stopped and he was instructed to list homes for the amount owed. *Id.* The amount owed typically had nothing to do with the market value of the home. *Id.* Nevertheless, Mr. Toner did his own comparative market analysis before going to a listing meeting in order to be prepared and to be responsible to the seller. *Id.*

4.62 It was not Respondents' practice to perform comparative market analysis before every price reduction. Testimony of Michael Hellickson.

4.63 Most short sellers do not have the money, time, or desire to improve, correct, or repair property. Testimony of Michael Hellickson.

4.64 The standard of practice is to talk about price reductions at the listing meeting as well as later if the home is not selling. Testimony of Allison Ybarra; Testimony of Rebecca Beaty. If there are no offers, the agent should research why and review the market for recent activity regarding similar properties. Testimony of Allison Ybarra. Even in the case of short sales, the agent should research the market before reducing the price. *Id.* An agent cannot project 90 days in advance what a reasonable market price will be. *Id.* For example, listing a home at \$175,000 on September 28, 2008, and reducing it by \$25,000 every

two weeks, resulting in a price on December 4, 2008, of \$50,000 is too aggressive and without justification, particularly if the buyer cannot actually buy the home for \$50,000, and if foreclosure is not imminent. Testimony of Allison Ybarra, see also Ex. 191. Pricing recommendations by the seller's agent should be based on research. Testimony of Allison Ybarra. Most agents have a file with comparable sales to justify price reductions. Testimony of Allison Ybarra; Testimony of Rebecca Beaty. Lack of offers alone does not necessarily justify a price reduction. Testimony of Rebecca Beaty. Other considerations include advertising, open house, clean-up, and feed back from agents. *Id.*

4.65 Most of the complaints that the NWMLS has received regarding the Hellickson Team have addressed pricing, typically that the price was not a good faith reflection of what the seller would accept and the lender approve. Testimony of Justin Haag. Moreover, most of those pricing issues occurred in short sale circumstances. *Id.* The NWMLS has received 40 complaints regarding the Hellickson Team since 2004, approximately 35 of those beginning 2008. *Id.* Eighteen complaints resulted in discipline in 2009 and 2010 combined, representing 3.4% of Hellickson Team sales during those years. *Id.* During the same two years, all other realtors combined received disciplines for 0.11% of their sales. *Id.* The term "good faith" was not added to NWMLS rules until the summer of 2009. *Id.* The goal of the NWMLS is to facilitate cooperation among its members, as compared to protecting the public. *Id.* Nevertheless, several of its rules in effect protect the public as well. Testimony of Rebecca Beaty.

4.66 It is undisputed that the Respondents advised their clients and obtained authorization from their clients to make substantial, arbitrary price reductions, usually every two weeks, simply because the home had not generated offers. It is undisputed that the Respondents made no effort to determine if some factor other than price was apt for consideration. Moreover, the price reductions were aggressive and frequent. Further, apparently the prices were below what the lender would accept. The implication is that the Respondents were more interested in generating offers than they were in realistic pricing. This issue applies to all three Respondents because Michael Hellickson and Tara Hellickson were co-listing agents, Tara Hellickson was involved in at least some of the material communication with NWMLS and with buyers' agents, and Hellickson Team employees were involved as well. Thus, I find that the Respondents engaged in a pattern and practice of listing homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept, in order to general multiple low-ball offers.

**Whether the Respondents listed homes at prices that were not authorized by the homeowners.**

4.67 Dan and Kathleen Streight disagreed with Michael Hellickson regarding

the arrangements made concerning price reductions, as discussed below.

4.68 Dan and Kathleen Streight asserted as follows. The Streights' home was initially listed at \$285,000, with a series of \$20,000 reductions to follow – but the Streights told Mr. Hellickson that they wanted to know in advance of any price reductions. Testimony of Kathleen Streight. The price reductions were to be \$20,000 every two weeks. Testimony of Kathleen Streight; Testimony of Dan Streight. The Streights signed a price reduction form but it was blank when they signed it. Testimony of Kathleen Streight; Testimony of Dan Streight; see Ex. 137. The form calls for \$25,000 reductions every two weeks. Ex. 137. Mr. Hellickson said that he would complete it and return it later. Testimony of Kathleen Streight. The Hellickson Team did not advise the Streights before reducing the price. Testimony of Kathleen Streight; Testimony of Dan Streight. The Streights found out about price reductions from realtors who showed the home to prospective buyers. Testimony of Kathleen Streight. Ms. Streight called the Hellickson Team office when she learned about price reductions, including one all the way to \$175,000, but only reached voice mail and got no response to her messages. Testimony of Kathleen Streight. The Streights and Mr. Hellickson did not discuss a “bottom price” at the listing meeting. Testimony of Kathleen Streight.

4.69 Michael Hellickson asserted that Mr. and Ms. Streight did not ask to be told when a price reduction became effective, that Michael Hellickson did not offer to do so, and that price reduction authorizations were completed at listing appointments. Testimony of Michael Hellickson.

4.70 The price reduction authorization that is Ex. 137 herein is consistent with Hellickson Team practice regarding both the frequency and amount of reduction. Moreover, I am not persuaded that Mr. Hellickson would promise to provide advance notice of price reductions. In the first place, the authorization includes dates. Secondly, such customer service would be inconsistent with the Hellickson Team notion of customer service. Accordingly, I find Mr. Hellickson's testimony in this instance to be more credible than the testimony of Mr. and Ms. Streight. Therefore, I find, by a preponderance of the evidence, that the price reduction authorization was not blank when signed and that Mr. Hellickson did not promise to provide advance notification of each price reduction.

4.71 Heather Smith agreed to the list price and the price reductions and signed a price reduction form. Testimony of Heather Smith. However, she was not always notified in advance of reductions and the reductions were not the ones she had agreed to. *Id.* Ms. Smith does not remember being given a comparable market analysis regarding either the list price or the price reductions. *Id.* However, she did not object to the price reductions until near the end because the home was not selling. *Id.*

4.72 At Richard Smith's listing meeting, he and Michael Hellickson discussed price and Mr. Smith signed a form authorizing price reductions. Testimony of Richard Smith; see Ex. 191. However, it was blank when Mr. Smith signed it. Testimony of Richard Smith. They agreed to list at \$175,000, with price reductions of \$5,000 every two weeks, and a floor of \$135,000 because that is what Mr. Smith's lender told him was the lender's floor. *Id.* The Hellickson Team never provided Mr. Smith with a market analysis regarding either the original list price or the reductions. *Id.* Mr. Smith called the Hellickson Team office about price reductions when he saw low offers but no one returned his call. *Id.*

4.73 Michael Hellickson discussed with William Cody the list price and a series of future price reductions. Testimony of William Cody. Mr. Cody signed a price reduction sheet which he believes was completed before he signed it. *Id.*; see Ex. 39, p. 1. That is the only pricing document Mr. Cody ever signed. Testimony of William Cody. The Hellickson Team office was supposed to notify Mr. Cody in advance of each price reduction but they never did so, nor was their website updated with information. *Id.*

4.74 Joe Toner was instructed to get homeowners to sign a price reduction form with a least \$25,000 reductions bi-weekly. Testimony of Joe Toner. No one researched the market before applying the price reduction schedule. *Id.* Shortly before Mr. Toner left in August 2010, he and office manager Theresa Jenkins attempted, without success, to persuade the Hellickson Team to use a less aggressive price reduction schedule. *Id.* Neither Michael Hellickson nor Tara Hellickson instructed Mr. Toner to have clients sign blank price reduction addenda. *Id.*

4.75 The price-reduction schedule was agreed to and completed at the listing appointment. Testimony of Michael Hellickson. The purpose and process was explained at that time. *Id.* Mr. Hellickson did this for every short sale. *Id.*

4.76 It is a violation of reasonable skill and care to list a price not approved by the seller. Testimony of Allison Ybarra; Testimony of Rebecca Beaty.

4.77 If the seller has preapproved a series of price reductions, advance notice of specific reductions is not required but should occur nevertheless as a matter of courtesy. Testimony of Allison Ybarra. Such a price-reduction arrangement is not a violation of reasonable skill and care. *Id.*

4.78 There were instances, including some of the listings discussed in the previous subsection of the Findings of Fact, when the Hellickson Team learned after the fact that the list price was below that which the lienholder would accept. See Testimony of Michael Hellickson. At that point, the Hellickson Team needed

to increase the list price at once but could not timely contact the seller for authorization to do so. *Id.* In June or July 2009, Hellickson.com developed a Short Sales agreement form to comply with disclosure requirements. *Id.*; see also Ex. A, pp. 4-7. The form also included a provision that allowed Hellickson.com to deviate from the agreed pricing schedule if apt. Testimony of Michael Hellickson; see also Ex. A, p. 6. Hellickson.com included that provision in an attempt to address the conflicts it experienced regarding its obligations as provide in the relevant portion of the Revised Code of Washington, its obligations to satisfy the concerns expressed by the Department, and the pricing requirements dictated by the NWMLS. Testimony of Michael Hellickson.

4.79 I find by a preponderance of the evidence that the Respondents received signed, pre-authorized price-reduction schedules from their clients. Accordingly, I find that the Respondents did not engage in a pattern and practice of listing homes at prices not authorized by the homeowners. Or, more precisely stated, I fail to find that the Respondents engaged in a pattern and practice of listing homes at prices not authorized by the homeowners.

**Whether the Respondents misrepresented the contents of the listing agreement.**

4.80 Primarily at issue was whether the listing agreements were signed with some terms left blank and whether the Hellickson Team misrepresented how long the listing agreement would be enforceable.

4.81 Michael Hellickson's listing appointments last 32 to 37 minutes 90% of the time and are effective 98% of the time. Ex. 294 at 3:00 (Note: Ex. 294 is a CD downloaded from a Michael Hellickson advertisement for his coaching seminars. The times noted are approximate.) At the end of the listing appointment, Mr. Hellickson has a signed listing agreement, a signed disclosure and other documents, and a signed pre-approval for price reductions bi-weekly. Ex. 294 at 3:00. He obtains 50 to 75 listings a month. Ex. 294 at 3:00. He closed 417 short sales in less than 10 months. Ex. 294 at 3:30. He closed 325 REOs in less than 10 months. Ex. 294 at 6:00. He demonstrated to his audience how he immediately exercised "dominance" of the listing appointment and characterized his conduct as a trainer whacking a dog as hard as possible. Ex. 294 at 6:10. At one point, Mr. Hellickson told the audience that he brings four pens to listing appointments because doing so saves him eight minutes during the appointment. Ex. 294 at 5:30.

4.82 Everything typed on a listing agreement appeared on the listing agreement prior to the listing appointment; everything handwritten was added at the time of the listing appointment; nothing was added after the listing appointment. Testimony of Michael Hellickson.

4.83 All pricing schedule agreements were completed before they were signed by the seller. Testimony of Hellickson.

4.84 Nevertheless, Theresa Jenkins saw listing agreements signed by sellers with blanks not yet filled in. Testimony of Theresa Jenkins. This was a regular practice. *Id.* The actual listing agreement and price reduction form were not always completed at the listing appointment. *Id.* However, there were several agents taking listings in Michael Hellickson's name so Ms. Jenkins does not know who was not completing documents at the listing appointment. *Id.* She told *all* listing agents that the listing documents were to be completed at the listing meeting. *Id.*

4.85 At each of the listing appointments observed by Verl Workman, the sellers signed *completed* listing agreements and the schedule for preauthorized price adjustments was also completed prior to being signed. Testimony of Verl Workman. Any addendums were filled out before being initialed or signed. *Id.* Mr. Workman does not recall any questions, much less complaints, from sellers regarding the schedule for price reductions. *Id.* Mr. Hellickson required the sellers to sign all of the short sale paperwork that would be subsequently submitted to the lender to preclude missing signatures discovered later that could of itself cause the lender to reject a short sale offer. *Id.* Mr. Hellickson asked the seller to complete the documents later – they were too complex and required too much time to be completed during a listing appointment – and to return them to his office after reviewing and completing them. *Id.* He also told them that the house would not be marketed until after the seller provided the completed short sale documents to his office. *Id.*

4.86 When Kathleen Streight signed the listing agreement on November 5, 2008, everything on it was blank. Testimony of Kathleen Streight. She also signed a blank check list. Testimony of Kathleen Streight; see Ex. 119, p. 1. Michael Hellickson did not employ a check list in her presence. Testimony of Kathleen Streight. Even the typed information was not present when she signed the check list. *Id.* However, Mr. Streight recognized the check list when shown to him at the hearing and said that he believed Mr. Hellickson completed the check list in his presence. Testimony of Dan Streight, see Ex. 119. Mr. Streight “browsed” through the listing agreement documents but he did not read them before signing them. Testimony of Dan Streight.

4.87 Both Streights were at the listing appointment. Testimony of Michael Hellickson.

4.88 The listing agreement with Dan and Kathleen Streight was completed before Mr. and Ms. Streight signed it. Testimony of Michael Hellickson; see Ex.

C, pp. 2 – 4. The pricing schedule agreement was an addendum to the listing agreement and was completed before it was signed. Testimony of Michael Hellickson; see Ex. C, p. 5.

4.89 Richard Smith signed the Addendum/Amendment to Purchase and Sale Agreement that recited his request that prequalify through specified lenders. Testimony of Richard Smith; see Ex. 192, p. 28. However, it was never discussed with him, much less recommended to him, and he did not request it. Testimony of Richard Smith.

4.90 Listing agreements were typically three or four years, to give Michael Hellickson sufficient time to complete a short sale. Testimony of Michael Hellickson. Nevertheless, the longest time Mr. Hellickson has needed to date to complete a short sale was approximately 25 months. *Id.* Mr. Hellickson does not want to invest a lot of time marketing a house and then have the seller re-list with a different agent. *Id.*

4.91 Listing agreements were typically for three years. Testimony of Jon Ryan Geertsen; Testimony of Theresa Jenkins.

4.92 Michael Hellickson told Richard Smith that his listing agreement was for six months. Testimony of Richard Smith. However, he subsequently re-listed with the Hellickson Team. *Id.* Shortly thereafter, he became dissatisfied with the Hellickson Team because of lack of communication and lack of answers to his questions. *Id.* Mr. Smith began listing with the Hellickson Team in 2009. *Id.* His home was foreclosed in October or November 2010. *Id.*

4.93 William Cody wanted a listing agreement for three to six months; Michael Hellickson wanted it for 12 months; Mr. Cody understood the listing agreement he signed to be for 12 months. Testimony of William Cody. However, the listing agreement Mr. Cody signed on March 17, 2009, lasted through December 31, 2013. Ex. E. He did not discover this until a buyer's agent mentioned and he called the Hellickson Team office to confirm. Testimony of William Cody. Mr. Cody did not read the listing agreement before signing it but parts were not completed. *Id.* Mr. Hellickson said that he would fill it in later. *Id.* Mr. Cody believes that the expiration date of the listing agreement was not filled in when he signed it. *Id.*

4.94 Kathleen Cody was surprised when she learned later that the listing agreement was through December 2013. Testimony of Kathleen Cody. She thought it was for six months, which was her experience in the past. *Id.*

4.95 I find that it was Hellickson Team best practice to complete the listing agreement prior to its being signed but that compliance with this practice was not

100%. On the other hand, I find that explanations regarding the contents of the listing agreements were likely sparse because Michael Hellickson had neither the time nor the inclination to volunteer to do so. However, the sellers must take some responsibility to review a document for blanks before signing and to ask to be shown where provisions of particular concern to them were addressed. To be sure, some clients were surprised by terms included in their listing agreement. Nevertheless, I fail to find that the Respondents engaged in a pattern and practice of misrepresenting the contents of the listing agreement to the homeowners whose homes they listed for sale.

**Whether the Respondents failed to provide copies of executed listing agreements to homeowners.**

4.96 At the end of a successful listing appointment, Mr. Hellickson left the short sale documents with the seller for the seller to review, complete, and return to the Hellickson Team office. Testimony of Michael Hellickson. The only document Mr. Hellickson took with him was the completed and signed listing agreement. *Id.* A copy was to be later faxed, e-mailed, or mailed to the seller. *Id.* That was Mr. Hellickson's instruction to the staff and Hellickson Team practice. *Id.*

4.97 Joe Toner was instructed to turn in signed listing agreements to office staff and it was the job of office staff to distribute a copy to the client. Testimony of Joe Toner.

4.98 Jennifer Salo received a copy of her listing agreement. Testimony of Jennifer Salo.

4.99 Nevertheless, several former clients asserted that they did not receive a copy of the executed listing agreement, as discussed below.

4.100 Michael Hellickson promised to give Mr. and Ms. Streight a copy of the completed listing agreement but he never did so. Testimony of Kathleen Streight. Mr. Hellickson said that he would type it all out and bring it to them, so Mr. and Ms. Streight trusted Mr. Hellickson and signed it while blank. *Id.* Ms. Streight reiterated her request by leaving several voice messages. *Id.* The Streights never got a copy of the listing agreement from the Hellickson Team office. *Id.* Dan Streight does not remember getting a copy of the signed agreement. Testimony of Dan Streight. However, his wife keeps the paperwork at their home so he would not have necessarily seen it. *Id.*

4.101 Heather Smith listed two homes with the Hellickson Team and signed listing agreements for each. Testimony of Heather Smith. She never got copies of the listing agreements until months later she went to the Hellickson Team office and obtained them herself. *Id.* Prior to that, Ms. Smith made several



telephone requests, including one with Tara Hellickson, but never received copies of the listing agreements. *Id.*

4.102 Kathleen Cody did not receive a copy of the listing agreement. Testimony of Kathleen Cody. She asked for a copy and even called the Hellickson Team office to request a copy. *Id.*

4.103 Joyce Watts worked for the Hellickson Team and also listed a home with them. Testimony of Joyce Watts. She never received a copy of the listing agreement. *Id.* But she did not ask for one. *Id.*

4.104 Lori Bennett did not get copy of her listing agreement but she did not ask for one. Testimony of Lori Bennett.

4.105 Other former clients were less certain whether they received a copy of the executed listing agreement.

4.106 Richard Smith signed a listing agreement but he does not recall if he ever received a copy of it. Testimony of Richard Smith.

4.107 William Cody does not remember getting a copy of the listing agreement. Testimony of William Cody.

4.108 Timothy Phillips believes that he did not get a copy of the listing agreement. Testimony of Timothy Phillips.

4.109 The Hellickson Team office was disorganized and inefficient, as more specifically discussed below. Therefore, in conclusion, I am persuaded that it repeatedly failed to provide clients with copies of the executed listing agreement. This issue applies to all three Respondents because Michael Hellickson and Tara Hellickson were responsible as co-listing agents and Hellickson Team employees were involved. Thus, the Respondents engaged in a pattern and practice of failing to provide copies of executed listing agreements to homeowners at the time of execution or promptly thereafter.

4.110 It is a violation of reasonable skill and care to fail to give a client a signed copy of the listing agreement. Testimony of Rebecca Beatty. It is her practice to either mail a copy or scan it and e-mail it. *Id.*

#### **Whether the Respondents engaged in negligent, dilatory communications.**

4.111 Verl Workman observed that Mr. Hellickson told clients that they could contact his office by e-mail to ask questions and to telephone the office if they did not get a response from the e-mail within 15 minutes. Testimony of Verl

Workman. Mr. Workman observed that Mr. Hellickson told clients that he would not call them unless he had something important to discuss with them. *Id.*

4.112 Michael Hellickson gave sellers his cell phone number to call if they had questions. Testimony of Michael Hellickson.

4.113 Nevertheless, clients and agents were frequently unable to timely and satisfactorily communicate with the Respondents.

4.114 Kathleen Streight left 10 voice mail messages for someone from Hellickson.com to call her but no one did. Testimony of Kathleen Streight. It was like Michael Hellickson was never around. *Id.* Ms. Streight tried to call Michael and Tara Hellickson but only got staff member Shelby. *Id.* The Streights heard from other realtors that there were five or six offers on their home but they could never get ahold of the Hellickson Team office to confirm that except that at one point Shelby told them that the Hellickson Team had received an offer but it was still being reviewed. *Id.* Realtors told Ms. Streight that they could not get ahold of the Hellickson Team office either to check on the status of their offer. *Id.* Eventually, Tara Hellickson came to their home and the Streights signed off on two or three offers. *Id.* At that time, Ms. Streight was not employed and so she was almost always home; plus they had voice mail and she checked e-mail regularly. *Id.* The Streights' lender was not getting copies of the purchase offers. Testimony of Dan Streight. He was calling his lender weekly because he was worried. *Id.*

4.115 Thomas Kittelman represented a client who made two offers on the Streights' home. Testimony of Thomas Kittelman; Ex. 145. It was several days before he heard back from the Hellickson Team office regarding the status of those offers. Testimony of Thomas Kittelman; Ex. 145. Typically, he hears back from other offices within 24 hours. Testimony of Thomas Kittelman.

4.116 Communication with the Hellickson Team office was confusing, always someone different answering the phone. Testimony of Heather Smith. She talked to Michael Hellickson once or twice. *Id.* She had very little communication with Tara Hellickson because Tara Hellickson was rude and not helpful. *Id.*

4.117 Every time Richard Smith called the Hellickson Team office, his call went straight to voice mail and he would not receive a call until as much as two weeks had passed, and then the call would be about an offer and not a response to his voice mail. Testimony of Richard Smith.

4.118 William Cody regularly contacted his lender and inquired if the lender had received any communication from the Hellickson Team; the answer was always no. Testimony of William Cody. Mr. Cody asked someone at the Hellickson

Team – he does not know who – to contact his lender, but no one ever did. *Id.* This was after Mr. Cody understood he had a buyer with an offer. *Id.* To Mr. Cody's knowledge, the Hellickson Team never presented an offer to his lender. *Id.*

4.119 Shortly after the Codys signed the listing agreement, Kathleen Cody moved to Las Vegas. Testimony of Kathleen Cody. Nevertheless, she expected to receive regular communication from the Hellickson Team office regarding the status of the listing and she did not receive such communication. *Id.* However, while Ms. Cody was in Las Vegas, she did not have internet access, for a time did not have a cell phone, and she did not provide a Las Vegas address to the Hellickson Team office. *Id.* She expected either Mr. Cody to provide this information to the Hellickson Team office or the Hellickson Team office to ask Mr. Cody for it. *Id.*

4.120 Alice Million was buyer's agent for the Bergs who made two offers to purchase a home listed by the Hellicksons Team. Testimony of Alice Million. The Bergs made an offer which the lender declined and then made a second offer. *Id.* The Hellickson Team office did not communicate timely or well regarding the status of those offers. *Id.*

4.121 Susan Brooks was the agent representing clients who offered to purchase the property listed by the Hellickson Team for Mr. and Ms. Streight. Testimony of Susan Brooks. A staff member from the Hellickson Team responded to their first offer with a request for a back-up offer, which Ms. Brooks produced on behalf of her clients. *Id.* She heard nothing further thereafter from the Hellickson Team office. *Id.* Then Ms. Streight called Ms. Brooks seeking help in selling their home because she had cancelled her agreement with the Hellickson Team. *Id.* Ms. Streight told Ms. Brooks that the offers had never been submitted to the Streights' lender. *Id.* Ms. Brooks does not know if Ms. Streight was correct. *Id.*

4.122 Timothy Phillips had difficulty reaching anyone in the Hellickson Team office by phone. Testimony of Timothy Phillips. Staff member Angie would typically respond to his e-mail inquires, but usually only after two or three days. *Id.* He became so dissatisfied with the lack of communication that he complained and said that he was going to drop the listing, which prompted a call from Joe Toner. *Id.*

4.123 When Rebecca Beaty called the Hellickson Team office, her call was always answered but it typically took a couple of calls before the relevant person returned her call. Testimony of Rebecca Beaty.

4.124 Lori Bennett had difficulties communicating with the Hellickson Team and getting her questions about her listing answered. Testimony of Lori Bennett.

4.125 Monika Peltz works for Wells Fargo dealing with distressed properties for which Wells Fargo is the lender. Testimony of Monika Peltz. She was involved in the Streights' attempt through the Hellickson Team to short sell the Streights' home. *Id.* The lender did not get the offers until they were nearly two months old which the lender considered to be stale and no longer valid. *Id.* For example, the Penny offer to purchase the Streights' home was dated January 13, 2009, and the Kasper offer was dated January 7, 2009, but the lender did not receive them until the first week of March. Ex. 149, p. 5; Ex. 152, p. 5; Testimony of Monika Peltz. Moreover, the lender never got from the Hellickson Team all of the documents it needed. Testimony of Monika Peltz. Further, the lender never received Penny's counter-offer addendum dated January 13, 2009. Testimony of Monika Peltz; Ex. 158, p. 1.

4.126 Broker Jytte Wells represented a buyer who submitted an offer at full list price to Hellickson Team on a property for which they represented the seller. Testimony of Jytte Wells: see also Exs. 181, 183, and 184. Ms. Wells made several (probably approximately five) unsuccessful attempts to contact the Hellickson Team regarding the status of the offer. Testimony of Jytte Wells. Finally, the Hellickson Team office told Ms. Wells that the seller was reluctant to accept the offer. *Id.* She thought that was odd, presuming that the seller authorized the price reductions. *Id.* Normally, one gets a much faster response from a seller's agent. *Id.* The delay may have been caused by the seller but the agent should still have returned her calls. *Id.*

4.127 Jennifer Salo found the Hellickson Team to be impersonal and available only by e-mail. Testimony of Jennifer Salo; Ex. 270. The Hellickson Team did not tell her that her house had sold until she contacted the Hellickson Team and asked about the status of her home. Testimony of Jennifer Salo; Ex. 270. The Hellickson Team did not tell her when the sale would close: She had to call the escrow company for that information. Testimony of Jennifer Salo; Ex. 270. Ms. Salo did not get any notice from the Hellickson Team until Michael Hellickson called her to tell her that her house had sold. Testimony of Jennifer Salo; Ex. 270.

4.128 Virtually all of Jennifer's Salo's communication with the Respondents was by e-mail. Testimony of Jennifer Salo. She never got responses to voice mail messages. *Id.*

4.129 Several of the complaint received by the NWMLS regarding the Hellickson Team addressed the Hellickson Team's alleged lack of cooperation and communication with efforts to show a home or submit an offer. Testimony of Justin Haag.

4.130 When Theresa Jenkins worked as Michael Hellickson's personal assistant, she referred complaint calls she received to either Michael Hellickson or Tara Hellickson. Testimony of Theresa Jenkins. She got complaints from both clients and buyers' agents about communication. *Id.* Ms. Jenkins never encountered complaints about purchase offers not being processed. *Id.*

4.131 The Hellickson Team office was disorganized and hectic. Testimony of Joe Toner. Clients were not getting calls. *Id.* There was a delayed response to purchase offers. *Id.* Mr. Toner received complaints from clients that office staff members were short, rude, and nonresponsive. *Id.* Files were often lost and offers unattended to. *Id.* Mr. Toner told the Hellickson Team about these matters. *Id.*

4.132 Joyce Watts never heard any complaints from her clients regarding communication with the Hellickson Team office. Testimony of Joyce Watts. However, she heard complaints from other agents regarding Hellickson Team office personnel. *Id.* Nevertheless, it was her impression that the office was tremendously understaffed for and overwhelmed by the volume of business the Hellickson Team did. *Id.*

4.133 Some files were missing documents and were not being properly maintained, labeled, and stored. Testimony of Theresa Jenkins.

4.134 Michael Hellickson was typically gone two or three weeks each month. Testimony of Theresa Jenkins. Tara Hellickson was in charge when Mr. Hellickson was gone, and she typically ran the staff meetings. *Id.*

4.135 An agent should respond within one or two business days to voice mail and e-mail inquiries, whether from clients or agents. Testimony of Allison Ybarra. In certain instances, where rights can dissolve within three days, a response should be prompter. *Id.* If a lender requests a document, the response should be immediate. *Id.* Therefore, what constitutes reasonable skill and care regarding responses to inquiries depends upon what is needed and how accessible it is. *Id.*

4.136 It is a violation of reasonable skill and care to fail to respond to phone calls from clients, agents, or lenders within 24 hours. Testimony of Rebecca Beaty. If the broker is out of the office, someone else should be assigned to return calls. *Id.*

4.137 This issue applies to all three Respondents because Michael Hellickson and Tara Hellickson were co-listing agents and Hellickson Team employees were involved as well. Given the foregoing evidence, I find that the Respondents engaged in a pattern and practice of negligent dilatory communications with

homeowners, potential buyers, and lenders, and that the homeowners were thereby placed at unreasonable risk of harm or prejudice.

**Whether the Respondents drafted addenda to purchase and sale agreements that were not requested or authorized by the homeowner.**

4.138 Hellickson.com typically requested sellers to include as an addendum to the purchase and sale agreement a provision that the buyer needed to prequalify through one of two or three specific lenders. Testimony of Michael Hellickson. The purpose was to promptly determine from a reliable entity that the buyer would qualify for the loan. *Id.* The alternative was to invest resources in a transaction that would subsequently fail because the buyer could not qualify for a loan. *Id.* Hellickson.com did not receive any compensation for referring buyers to certain entities for pre-qualification. *Id.*

4.139 The price-reduction form discussed at the listing appointment refers to pre-qualification of buyers by preferred lenders. Testimony of Michael Hellickson; see, e.g., Ex. E, p. 5. Michael Hellickson explains the process at that time. Testimony of Michael Hellickson.

4.140 The Streights did not discuss with Michael Hellickson, much less request, any language requiring prospective buyers to prequalify with specific lenders. Testimony of Kathleen Streight; Testimony of Dan Streight. The addendum to the purchase and sale agreement that requests specific prequalification bears the initials of both of the Streights, but they were asked to initial several forms, which they did not read before initialing. Testimony of Kathleen Streight; see Exs. 127, p. 19; 132, p. 5; 133, p. 29; 147, p. 29; 149, p. 18; 151, p. 20; 152, p. 39; and 158, p. 17. Mr. Streight would never have asked a buyer to prequalify. Testimony of Dan Streight. Ms. Streight did not feel like she had time to read everything. Testimony of Kathleen Streight. However, Ms. Hellickson did not pressure them to sign without reading. *Id.*

4.141 Heather Smith signed the prequalification addendum, but she did not read it, did not request it, did not discuss it. Testimony of Heather Smith; see Ex. 108, p. 83. She was told to sign it so she signed it. Testimony of Heather Smith.

4.142 Richard Smith initialed the prequalification addendum, but he did not request it, nor was it discussed with him, much less recommended. Testimony of Richard Smith; see Ex. 192, p. 28.

4.143 William Cody does not remember agreeing to request buyers prequalify with designated lenders. Testimony of William Cody. He crossed it out whenever he saw it on documents. *Id.* However, he initialed such an authorization on the price reduction form. Ex. 39, p. 1. Furthermore, he initialed the

Authorization/Addendum to the Purchase and Sale Agreement. Ex. 56, p. 2.

4.144 It is a violation of reasonable skill and care to fail to discuss with the client any addendum. Testimony of Rebecca Beaty. Signature or initials are not enough – there must be a discussion to assure the client understands. *Id.*

4.145 It is a violation of reasonable skill and care for an agent to represent as a seller request something not requested by the seller. Testimony of Allison Ybarra.

4.146 Here, the addendums were not requested by the homeowners. Nevertheless, the addendums were authorized. However, that authorization was uninformed. Accordingly, the Respondents should have discussed with the clients the proposed addendum. Since the Respondents did not do so, I find that the addendums were neither requested nor authorized. This issue applies only to Michael Hellickson and Tara Hellickson – as co-listing agents. Therefore, I find that Respondents Michael Hellickson and Tara Hellickson engaged in a pattern and practice of drafting addenda to purchase and sale agreements as part of a counter-offer that state “All parties are aware that the sellers have requested that the buyer pre-qualify through on of the following lenders”, which lenders were listed, and these addenda did not represent a request for the homeowners.

**Whether the Respondents told homeowners prematurely that they were required to vacate their homes.**

4.147 A few months after listing, Heather Smith moved out of her home because Michael Hellickson advised her to do so in order to avoid the risk of being locked out if the foreclosure was finalized. Testimony of Heather Smith.

4.148 Michael Hellickson advised Timothy Phillips to move out of his home because that would encourage his lender to agree to a sale. Testimony of Timothy Phillips. Mr. Phillips did so. *Id.*

4.149 Tamar Walter of the Hellickson Team advised Jennifer Salo by e-mail dated January 5, 2009, that the lienholder had approved the short sale and that the sale should close in approximately 30 days, by which time she must have vacated the home. Ex. 271, p. 1.

4.150 In none of these circumstances did the Respondents tell the client that the client was required to vacate. Moreover, given the volume of business generated by the Respondents, three instances do not establish a pattern. Accordingly, I find that the Respondents did not engage in a pattern and practice of telling owners that they were required to vacate their homes before they were legally

required to vacate.

**Whether the Respondents engaged in false advertising.**

4.151 The Hellickson Team signs and the Hellickson Team newsletters advocated the program that the Hellickson Team would buy the client's home if it did not sell. Testimony of Heather Smith.

4.152 Richard Smith observed the 30-day promise on the header of several of the Hellickson Team newsletters. Testimony of Richard Smith.

4.153 For approximately five months, the Hellickson Team ran radio ads that referenced the 30-day-sell-or-buy guarantee. Testimony of Joe Toner. Mr. Toner received four to eight inquiries a day from this advertising. *Id.* The purpose of the 30-day program advertising was to generate a listing appointment resulting in a 3-year listing agreement. *Id.* The program was nothing more than "a hook". *Id.* Mr. Toner is not aware of any home purchased under the program and was never given a written list of restrictions. *Id.* The Hellickson Team would not list with anyone whose interest was strictly in the 30-day program. *Id.*

4.154 The 30-day program was a gimmick designed to attract people to call. Testimony of Joyce Watts. It was advertised on fliers, street signs, the web site, "everywhere". *Id.* Ms. Watts was expected to respond to inquiries from callers but she was never provided with guidelines or a list of restrictions. *Id.* No one, including Michael Hellickson, told Ms. Watts that short sales were exempt from the 30-day program. *Id.*

4.155 Jon Ryan Geertsen complained to Michael Hellickson that the 30-day program was not legitimate, that it was only a hook to get them in the door. Testimony of Jon Ryan Geertsen. Mr. Hellickson's reply was that they would buy any home at 50% of market value. *Id.* The program was advertised on the website and on radio. *Id.*

4.156 The Hellickson Team advertised the 30-day program in newsletters and stated that restrictions apply. Testimony of Robin Jones; *see, e.g., Ex. 264.* Ms. Jones reviewed several newsletters and never discovered an explanation of what restrictions applied. Testimony of Robin Jones.

4.157 Joe Toner was instructed to tell customers that the Hellickson Team was number one in the northwest. Testimony of Joe Toner. He did so. *Id.* He believed it was true. *Id.*

4.158 From April 2009 through August 2010, the Hellickson Team advertised that they were the number one agent in Oregon, Washington, and Hawaii.



Testimony of Robin Jones. However, they were never licensed in Oregon or Hawaii. *Id.*

4.159 For example, on the Hellickson Team website on August 11, 2010, the Hellickson Team advertised itself as the “#1 Agent in Washington, Oregon and Hawaii”. Ex. 214, p. 1. The website also included the following statement: “As top Washington, Oregon and Hawaii real estate agents, we have the experience and track record you are looking for.” Ex. 214, p. 2.

4.160 Hellickson.com advertised the Michael Hellickson was the number one agent in Washington, Oregon, and Hawaii because he was: He had more listing than any other real estate agent/broker in any of those states. Testimony of Michael Hellickson. However, he never represented that he was licensed to sell in Oregon or Hawaii. *Id.* Rather, he would refer persons to someone who was. *Id.*

4.161 Michael Hellickson had Jon Ryan Gertzen take the courses predicate to testing for an Oregon real estate license. Testimony of Michael Hellickson. Later in the hearing, Michael Hellickson testified that he asked Mr. Gertzen to find out what Mr. Hellickson needed to do to get licensed in Oregon. *Id.* However, Mr. Gertzen did more: He began taking on-line courses for Mr. Hellickson that were a condition precedent to testing for a license. *Id.* Mr. Hellickson did not direct Mr. Gertzen to do so but did not tell him to stop when Mr. Hellickson found out. *Id.*

4.162 On page 4 of a print out on July 6, 2010, from the Hellickson Team website “stinkycredit.com”, the following appeared: “In an effort to provide even better services for his clients, Michael added mortgage to his list of companies with the opening of PerfectFitLoans.com. Michael and his team of experts can now provide everything from zero down loans to super jumbo loans at the most competitive rates in the industry.” Ex. 240, p. 6.

4.163 Michael Hellickson was licensed as a loan originator from November 5, 2008, through December 31, 2009, when his license expired and he did not renew. Ex. 5, p. 42. Moreover, the mortgage firm branch license with which Mr. Hellickson was associated expired on December 31, 2008. *Id.* For a loan originator license to be valid, it must be associated with a mortgage firm license. *Id.* Accordingly, Mr. Hellickson was licensed only from November 5, 2008, through December 31, 2008. *Id.*

4.164 The 30-day sell or buy program was without substance. The Respondents implied that they were licensed to sell real estate in Oregon and Hawaii. The Respondents advertised a loan company that was not functional and Michael Hellickson’s license to sell mortgages was inactive. Therefore, these advertised

claims were false. This issue applies to all three Respondents because the advertising represented the status of all three Respondents, the advertising was produced by the Hellickson Team, and Michael and Tara Hellickson were owners/operators of the Hellickson Team. Thus, I find that the Respondents engaged in false advertising.

### **Dates of relevant conduct**

4.165 A review of the evidentiary record demonstrates that virtually all of the conduct alleged and material herein occurred prior to July 2010.

## **V. CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

### **Jurisdiction**

5.1 I have jurisdiction to hear and decide this matter pursuant to Chapter 18.85 RCW, Chapter 18.86.030 RCW, Chapter 18.235 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, Chapter 308-124 WAC, and Chapter 308-08 WAC.

### **Pre-law July 2010 law applies**

5.2 Chapter 18.85 RCW was substantially revised effective July 1, 2010. Given that all, or virtually all, of the alleged Respondent conduct occurred prior to July 1, 2010, I will rely on the provisions of Chapters 18.85, 18.86, and 18.235 in the form in which they appeared prior to July 1, 2010, namely the 2008 edition of the RCW.

### **General vs. Specific Statutes**

5.3 The Respondents argued that Chapter 18.235 RCW, the Uniform Regulations of Business and Professions Act, should not apply herein because it governs thirty professions regulated by the Department, whereas Chapter 18.85 RCW (Real Estate Brokers and Salespersons) and Chapter 18.86 RCW (Real Estate Brokerage Relationships) specifically address the conduct of real estate professionals. The Respondents argued that these more specific statutes should apply instead of the more general. This is not a new argument for the Respondents, who raised it in January 2011. That Chapters 18.85 and 18.86 address a subset of the persons addressed by Chapter 18.235 is clear. However, the authority referenced by the Respondents is concerned about the content of the statutory provisions at issue, not the context from which they are drawn. To that effect, for example, RCW18.235.130(4), which references

"Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another", is arguably more specific than is RCW 18.86.030(1)(a), which references "To exercise reasonable skill and care". Moreover, the *Shriner* court cited by the Respondents addressed criminal statutes and was concerned not with the prosecutor charging the violation of two statutes but rather with the prosecutor charging the wrong statute. Of particular concern was that the two statutes contained different elements to be proved and different penalties. Also, the *Higbee* court cited by the Respondents addressed two statutes that were in conflict. Here, the concerns addressed by those two courts do not apply. Further, I am not persuaded that real estate professionals are obliged only to comply with provisions specific to their profession but not to additional rules governing a variety of professions. Therefore, I hold that all of that all three Chapters referenced above govern the Respondents conduct and are aptly relied upon herein where they specifically apply.

### **Standard of Proof**

5.4 The Department acknowledged in its post-hearing briefing that the order issued by Judge Grant of the Pierce County Superior Court holding that the "clear and convincing" standard applies governs herein. However, the Department has appealed that order. Therefore, I clarified which Findings of Fact above were by only the "preponderance of the evidence" standard. Ultimately, the distinction was relevant only as to one charge, that the Respondents encouraged homeowners to stop making payments on their home loans. When that charge is addressed below, the distinction will be discussed.

### **Whether to give deference to the Department's interpretation of the law**

5.5 The Respondent argued that the tribunal is to give no deference to the Department. The Department disagreed. The Respondent relied upon the following: *American Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 802 P.2d 784 (1991); *Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 858 P.2d 494 (1993); *Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 646 P.2d 113 (1982); and, *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 90 P.3d 659 (2004). The Department relied upon the following: *W. Ports. Transp., Inc. v. Emp't Sec. Dep't*, 110 Wn.App. 440, 41 P.3d 510 (2002); *Safeco Ins. Co. v. Meyering*, 102 Wn.2d 385, 687 P.2d 195 (1984); and, *Hickethier v. Dep't of Licensing*, 159 Wn.App. 203, 244 P.3d 1010 (2011). Having reviewed the foregoing authority, I am persuaded that I am obliged to give deference to the Department's interpretation when its expertise is clearly in play but even so the interpretation of a statute is ultimately up to the tribunal.

### Definition of “a real estate transaction”

5.6 The Respondents observed that RCW 18.85.230(23) is restricted to “conduct in a real estate transaction” and that RCW 18.86.010(12) defines “a real estate transaction” as a written offer signed by at least one party. Therefore, the Respondents argued that the kinds of communication testified to at the hearing were not relevant to determining if subsection (23) was violated. However, Chapters 18.85, 18.86 and 18.235 RCW each present a definitions section. Thus, had the legislature wish to define “real estate transaction” and/or incorporate the definition employed in Chapter 18.86 RCW, it would have. It chose not to do so. Moreover, the legislature specifically applied the definitions in Chapter 18.86 RCW to Chapter 18.86. RCW 18.86.010. Accordingly, I decline to use that definition except to interpret the contents of Chapter 18.86 RCW. Rather, I employ the following: “Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair.” *Black’s Law Dictionary*, 1496 (6<sup>th</sup> ed. 1990). Further, this is consistent with the Department’s interpretation. Accordingly, “a real estate transaction” includes *any* communication between the parties or entities involved regarding a proposed or pending transaction.

### Use of the term “negligence”

5.7 The Respondents argued that the use of the term “negligence” in the statute imported tort principles into the issue, specifically the elements of duty, breach, harm, and proximate cause. However, the only real estate case cited by the Respondents discussed the dichotomy and problems if tort and contract remedies were allowed to overlap in a real estate matter. See *Alejandre v. Bull*, 159 Wn.2d 674, 683, 153 P.3d 864 (2007). Moreover, the negligence standard in real estate matters does not require proof of damage but rather proof of the unreasonable risk of harm or damage. *Hickethier v. Dept. of Licensing*, 244 P.3d 1010, 1016 (Wash. App. Div. 3, 2011). Further, at issue herein is not duty or harm/damage to third parties. Rather, at issue is duty and harm/damage to clients caused by the Respondents’ conduct both with clients and with other persons involved or potentially involved in the sale of the client’s home, such as buyers agents and lienholders. Accordingly, I hold that the Department need not prove the four elements of negligence referenced above to establish that the Respondents behaved negligently under real estate licensing law. More particularly, the Department need only establish that such conduct created an unreasonable risk of harm to the client.

### The Respondents misrepresented and advertised that they would purchase a home listed with them if it did not sell within 30 days

5.8 The Department may discipline a real estate broker or salesperson who,

while acting in that capacity, is guilty of violating, *inter alia*, RCW 18.86.030. RCW 18.85.230(1).

5.9 "Real estate broker" includes "firms". See RCW 18.85.011(4).

5.10 A real estate licensee owes to any parties to whom he/she renders real estate services the duty "[t]o deal honestly and in good faith". RCW 18.86.030(1)(b).

5.11 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of "[m]aking, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, description or promises." RCW 18.85.230(2).

5.12 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of "[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency". RCW 18.85.230(23).

5.13 "The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not" constitutes unprofessional conduct. RCW 18.235.130(1).

5.14 "Advertising that is false, deceptive, or misleading" constitutes unprofessional conduct. RCW 18.235.130(3).

5.15 "Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another" constitutes unprofessional conduct. RCW 18.235.130(4).

5.16 "Misrepresentation in any aspect of the conduct of the business or profession" constitutes unprofessional conduct. RCW 18.235.130(11).

5.17 Here, the Respondents advertised on radio, on signage, and in their publications that they would purchase a home listed with them if it did not sell within 30 days. Almost always, such advertising indicated that restrictions applied. But any restrictions were illusory and irrelevant. The Respondents had not purchased a home under that program since 2008. The purpose of the

program was to generate leads for listing appointments. The Respondents had no intention of purchasing a home at anything close to market price if the home did not sell within 30 days. Accordingly, the 30-day program was dishonest and lacking good faith, in violation of RCW 18.86.030(1)(b).

5.18 As well, the 30-day program consisted of publishing false statements intending recipients to schedule a listing appointment, and the Respondents knew that the statements were false, in violation of RCW 18.85.230(2).

5.19 The Department argued that the 30-day program also constituted bad faith and dishonesty in a real estate transaction, as contemplated by RCW 18.85.230(23). The Respondents argued that the definition of a real estate transaction in RCW 18.86.010(12) applies and limits relevant conduct to circumstances where a written offer has been signed by at least one party. However, RCW 18.86.010 provides definitions for Chapter 18.86. The term is not defined in Chapter 18.85. I find the Respondents' definition too narrow but the Department's too broad. I am not persuaded that mere advertising constitutes a real estate transaction. Therefore, I find that the 30-day program did not violate RCW 18.85.230(23).

5.20 RCW 18.235.130(1) includes a discussion about conviction by a court of competent jurisdiction of the act at issue in the disciplinary hearing. Thus, I hold that the Respondents' 30-day program did not violate RCW 18.235.130(1).

5.21 The 30-day program constituted false, deceptive, or misleading advertising in violation of RCW 18.235.130(3).

5.22 Although the 30-day program was false, deceptive, and misleading, I am not persuaded that it constituted incompetence, negligence, or malpractice. Accordingly, it did not violate RCW 18.235.130(4).

5.23 The 30-day program constituted misrepresentation as a broker or agent. Therefore, it constituted unprofessional conduct in violation of RCW 18.235.130(11).

5.24 Thus, the Respondents engaged in a pattern and practice of misrepresenting and advertising that they would purchase a home listed with them if it did not sell within thirty days, in violation of RCW 18.86.030(1)(b), RCW 18.85.230(2), RCW 18.235.130(3), and RCW 18.235.130(11).

**Respondent Michael Hellickson encouraged homeowners to stop making payments on their home loans – PREPONDERANCE STANDARD ONLY**

5.25 The Department may discipline a real estate broker or salesperson who,

while acting in that capacity, is guilty of violating, *inter alia*, RCW 18.86.030. RCW 18.85.230(1).

5.26 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency”. RCW 18.85.230(23).

5.27 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o exercise reasonable skill and care”. RCW 18.86.030(1)(a).

5.28 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o deal honestly and in good faith”. RCW 18.86.030(1)(b).

5.29 “Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another” constitutes unprofessional conduct. RCW 8.235.130(4).

5.30 As discussed in the Findings of Fact above, the evidence fails to prove that any Respondent told clients to stop making payments. However, Michael Hellickson encouraged them to do so. That constituted a violation of reasonable skill and care according to expert witness Allison Ybarra, and therefore was in violation of RCW 18.86.030(1)(a).

5.31 However, this encouragement, or advice, was apt if a client was considering a short sale, given that lienholders would not consider a short sale unless the borrower was behind in payments. Therefore, the conduct was neither dishonest nor in bad faith and did not violate RCW 18.86.030(1)(b).

5.32 The Department argued that defaulting on a mortgage could have collateral consequences to the client’s credit and financial health. That is likely so. But so would bankruptcy or forfeiture. Michael Hellickson did not pretend to be giving financial advice. The clients consulted him about selling a distressed property. He advised them accordingly. Furthermore, he regularly, if not typically, referred them to an attorney for legal advice. Therefore, I am not persuaded that Mr. Hellickson’s encouragement to cease making mortgage payments constituted incompetence, negligence, or malpractice in violation of RCW 18.235.130(4).

5.33 The Findings in support of the charge discussed in this section were by a preponderance of the evidence only. Thus, I hold that the Respondents did not engage in a pattern and practice of encouraging homeowners to stop making

payment on their home loans.

5.34 However, if the body or tribunal reviewing this order determines that the preponderance standard is apt, I would hold that Respondent Michael Hellickson – but only Respondent Michael Hellickson because there is no evidence in the record regarding this charge attributable to either Tara Hellickson or the Hellickson Team – engaged in a pattern and practice of encouraging homeowners to stop making payment on their home loans, in violation of RCW 18.86.030(1)(a) and RCW 18.235.130(4).

#### **The Respondents listed homes at artificially reduced prices**

5.35 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of violating, *inter alia*, RCW 18.86.030. RCW 18.85.230(1).

5.36 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[m]aking, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, description or promises.” RCW 18.85.230(2).

5.37 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[k]nowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee.” RCW 18.85.230(3).

5.38 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency”. RCW 18.85.230(23).

5.39 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o exercise reasonable skill and care”. RCW 18.86.030(1)(a).

5.40 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o deal honestly and in good faith”. RCW 18.86.030(1)(b).



5.41 A real estate licensee owes to any parties to whom he/she renders real estate services the duty "[t]o disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate." RCW 18.86.030(1)(d).

5.42 "The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not" constitutes unprofessional conduct. RCW 18.235.130(1).

5.43 "Advertising that is false, deceptive, or misleading" constitutes unprofessional conduct. RCW 18.235.130(3).

5.44 "Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another" constitutes unprofessional conduct. RCW 18.235.130(4).

5.45 "Misrepresentation in any aspect of the conduct of the business or profession" constitutes unprofessional conduct. RCW 18.235.130(11).

5.46 The Respondents listed homes at prices below which the lienholder would approve. As such, those prices constituted false statements which the Respondents expected buyers to act on and generate offers to purchase. The Respondents knew or could have known that the statements were false. Therefore, the Respondents violated RCW 18.85.230(2).

5.47 The Respondents knowingly misrepresented the selling price of homes and buyers lawfully relied upon that misrepresentation to make purchase offers. Thus, the Respondents violated RCW 18.85.230(3).

5.48 That conduct constituted bad faith and demonstrated untrustworthiness because buyers could not trust the list prices to be accurate and buyers therefore generated what were worthless offers to purchase that the Respondents knew or reasonably should have known would not be accepted by the lienholder. Accordingly, the Respondents violated RCW 18.85.230(23).

5.49 The Respondents made price reductions without market research. That violated the standard of care. The Respondents argued that market research was not necessary because the reductions were preapproved. However, the purpose of research is not to convince the client but to assure that the price suggested to the client is apt. Thus, market research is a condition of the standard of care even in short sale situations. Therefore, the Respondents

failed to exercise reasonable skill and care, in violation of RCW 18.86.030(1)(a).

5.50 The Respondents' motivation was to generate offers apparently in hopes of talking the lienholder down to a lower, agreeable price. However much that was to the Respondents' benefit, it did not necessarily benefit either their client or the lienholder, and it certainly did not benefit the buyers making offers. Thus, the Respondents' conduct was not honest and not in good faith, in violation of RCW 18.86.030(1)(b).

5.51 However, there is no evidence that the Respondents failed to disclose material facts known to them. Accordingly, the Respondents did not violate RCW 18.86.030(1)(d).

5.52 RCW 18.235.130(1) includes a discussion about conviction by a court of competent jurisdiction of the act at issue in the disciplinary hearing. Thus, I hold that the Respondents' 30-day program did not violate RCW 18.235.130(1).

5.53 Listing prices for homes with the NWMLS is marketing. However, "marketing" is not necessarily "advertising". Chapter 18.235 RCW does not define "advertising". When a word is not defined by statute, one relies upon a dictionary. "Advertise" means "To advise, announce, appraise, command, give notice of, inform, make known, publish. To call a matter to the public attention by any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business . . ." *Black's Law Dictionary* 54 (6<sup>th</sup> ed. 1990). In reliance upon that definition, I find that listing prices for homes with the NWMLS constitutes advertising. Here, those listings were for prices that would not result in a sale. Therefore, the advertising was false, deceptive, and misleading in violation of RCW 18.235.130(3).

5.54 On the other hand, the Respondents argued that this was the only way to generate offers, and offers – particularly multiple offers – were the only means by which they could ascertain what the lienholder would accept in a short sale circumstance. The record contains insufficient evidence to determine if the Respondents were correct. However, that is the position from which they operated. Accordingly, I decline to hold that the Respondents demonstrated incompetence, negligence, or malpractice in this regard. Therefore, the Respondents did not violate RCW 18.235.130(4).

5.55 Nevertheless, the listing prices, which were inconsistent with the price at which a sale would occur, constituted misrepresentation. Thus, the Respondents' conduct constituted misrepresentation in the conduct of their business, in violation of RCW 18.235.130(11).

5.56 Accordingly, the Respondents engaged in a pattern and practice of listing

homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept, in order to generate multiple low-ball offers, in violation of RCW 18.85.230(2), RCW 18.85.230(3), RCW 18.85.230(23), RCW 18.86.030(1)(a), RCW 18.86.030(1)(b), RCW 18.235.130(3), and RCW 18.235.130(11).

**The Respondents did not list homes at prices that were not authorized by the homeowners**

5.57 The Respondents did not engage in a pattern and practice of listing homes at prices that were not authorized by the homeowners.

**The Respondents did not misrepresent the contents of the listing agreement**

5.58 The Respondents did not engage in a pattern and practice of misrepresenting the contents of the listing agreement to the homeowners whose homes they listed for sale.

**The Respondents failed to provide copies of executed listing agreements to homeowners**

5.59 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[f]ailing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution.” RCW 18.85.230(18).

5.60 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency”. RCW 18.85.230(23).

5.61 “Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another” constitutes unprofessional conduct. RCW 18.235.130(4).

5.62 Given that the standard of practice is to use electronic forms, it is not reasonable to expect copies of signed documents to be distributed to signatories at once unless signed at a location that has a copier. Rather, best practice is to mail or e-mail a copy as soon as possible thereafter. Here, the Respondents repeatedly failed to send a copy at all. That is a violation of an agent’s reasonable skill and care. Accordingly, the Respondents violated RCW 18.85.230(18).

5.63 Since it constitutes reasonable skill and care to timely provide copies of signed documents, failure to do so constitutes incompetency and malpractice. Therefore, the Respondents also violated RCW 18.85.230(23).

5.64 However, there is insufficient evidence in the record to find that this Respondent conduct harmed or damaged another or created an unreasonable risk of harm or damage to another. Thus, the Respondents did not violate RCW 18.235.130(4).

5.65 Accordingly, the Respondents engaged in a pattern and practice of failing to provide copies of executed listing agreements to homeowners at the time of execution or promptly thereafter, in violation of RCW 18.85.230(18) and RCW 18.85.230(23).

#### **The Respondents engaged in negligent, dilatory communication**

5.66 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency”. RCW 18.85.230(23).

5.67 “Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another” constitutes unprofessional conduct. RCW 18.235.130(4).

5.68 Here, the Respondents repeatedly failed to timely communicate with other persons involved in real estate transactions, including clients, buyers agents, and lienholders. The standard practice is to return calls within 24 hours. Therefore, the Respondents’ conduct constituted incompetence in violation of RCW 18.85.230(23).

5.69 Here, the Respondents were incompetent and negligent in that they repeatedly failed to timely communicate with clients and others involved in the client’s transaction. Given that time is of the essence in real estate transactions, failure to timely communicate can result in a lost opportunity to sell a client’s home, creating an unreasonable risk of harm or damage to that client. Therefore, the Respondents violated RCW 18.235.130(4).

5.70 Thus, the Respondents engaged in a pattern and practice of negligent, dilatory communications with homeowners, potential buyers, and lenders, resulting in an unreasonable risk of harm to the homeowners in violation of RCW 18.85.230(23) and RCW 18.235.130(4). The Respondents did not cause an unreasonable risk of harm to potential buyers or to lenders.

**Respondents Michael Hellickson and Tara Hellickson drafted addenda to purchase and sale agreements that were not requested or authorized by the homeowner**

5.71 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of violating, *inter alia*, RCW 18.86.030. RCW 18.85.230(1).

5.72 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[m]aking, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, description or promises.” RCW 18.85.230(2).

5.73 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[k]nowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee.” RCW 18.85.230(3).

5.74 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of “[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency”. RCW 18.85.230(23).

5.75 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o exercise reasonable skill and care”. RCW 18.86.030(1)(a).

5.76 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o deal honestly and in good faith”. RCW 18.86.030(1)(b).

5.77 A real estate licensee owes to any parties to whom he/she renders real estate services the duty “[t]o disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate.” RCW 18.86.030(1)(d).

5.78 “The commission of any act involving moral turpitude, dishonesty, or

corruption relating to the practice of the person's profession or operation of the person's business, whether act constitutes a crime or not" constitutes unprofessional conduct. RCW 18.235.130(1).

5.79 "Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another" constitutes unprofessional conduct. RCW 18.235.130(4).

5.80 Regarding this issue, the Respondents did not issue false statements other than they represented that the clients had authorized the addenda. Accordingly, the Respondents did not violate RCW 18.85.230(2).

5.81 In like manner, the Respondents did not commit fraud, misrepresentation, etc. and did not violate RCW 18.85.230(3).

5.82 Nor did this Respondent conduct demonstrate bad faith, dishonesty, untrustworthiness, or incompetency in violation of RCW 18.85.230(23).

5.83 However, it is a violation of reasonable skill and care to represent as a seller request something not requested by the seller. Therefore, the Respondents violated RCW 18.86.030(1)(a).

5.84 Given that the Respondents conduct was in their view in their client's best interest and with at least cursory client authorization, I hold that this Respondent conduct was not dishonest or in bad faith. Thus, the Respondents did not violate RCW 18.86.030(1)(b).

5.85 Other than the issue of informed authorization from clients, this Respondent conduct did not address matters of disclosure and did not violate RCW 18.86.030(1)(d).

5.86 RCW 18.235.130(1) includes a discussion about conviction by a court of competent jurisdiction of the act at issue in the disciplinary hearing. Thus, I hold that the Respondents' conduct regarding addenda to purchase and sale agreements did not violate RCW 18.235.130(1).

5.87 There is insufficient evidence in the record from which to conclude that this Respondent conduct harmed or damaged another or created an unreasonable risk of such harm or damage. Accordingly, the Respondents did not violate RCW 18.235.130(4).

5.88 Therefore, Respondents Michael Hellickson and Tara Hellickson – but not Respondent Hellickson.com -- engaged in a pattern and practice of drafting addenda to purchase and sale agreements as part of a counter-offer that stated

"All parties are aware that the sellers have requested that the buyer pre-qualify through one of the following lenders", which lenders were listed, and these addenda did not represent a request from the homeowner, in violation RCW 18.85.230(23) and RCW 18.86.030(1)(a).

**The Respondents did not tell homeowners prematurely that they were required to vacate their homes**

5.89 The Respondents did not engage in a pattern and practice of telling owners that they were required to vacate their homes before they were legally required to vacate.

**The Respondents engaged in false advertising**

5.90 RCW 18.85.361 replaced RCW 18.85.230 on July 1, 2010. Accordingly, I will rely on RCW 18.85.230 rather than RCW 18.85.361, as discussed above.

5.91 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of "[m]aking, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, description or promises." RCW 18.85.230(2).

5.92 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of "[k]nowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee." RCW 18.85.230(3).

5.93 The Department may discipline a real estate broker or salesperson who, while acting in that capacity, is guilty of "[a]ny conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency". RCW 18.85.230(23).

5.94 "Advertising that is false, deceptive, or misleading" constitutes unprofessional conduct. RCW 18.235.130(3).

5.95 "Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another"

constitutes unprofessional conduct. RCW 18.235.130(4).

5.96 "Misrepresentation in any aspect of the conduct of the business or profession" constitutes unprofessional conduct. RCW 18.235.130(11).

5.97 Here, the Respondents advertised that they offered a 30-day-sell-or-we-buy program which was not active. They advertised that they were top Washington, Oregon, and Hawaii real estate agents when they were licensed only in Washington. They advertised that Michael Hellickson was a mortgage loan officer when his license was either expired or not functional. All of the representations were false.

5.98 The Respondents conduct constituted publishing false statements in violation of RCW 18.85.230(2).

5.99 The Respondents conduct constituted knowingly committing misrepresentations. However, the record contains no evidence of anyone relying on those representations. Accordingly, the Respondents did not violate RCW 18.85.230(3).

5.100 The Respondents conduct constituted dishonesty. However, that conduct was proffered to pursue real estate transactions, as opposed to conduct *in* a real estate transaction. Therefore, the Respondents did not violate RCW 18.85.230(23).

5.101 The Respondents conduct constituted advertising that was false, deceptive, and misleading. Thus, the Respondents violated RCW 18.235.130(3).

5.102 The Respondents conduct did not constitute incompetence or negligence. Accordingly, what is dispositive here is whether it constituted malpractice. Malpractice is not defined in Chapter 18.235 RCW. Therefore, I rely upon a dictionary. "Malpractice" means "Professional misconduct or unreasonable lack of skill. . . . Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct." *Black's Law Dictionary* 959 (6<sup>th</sup> ed. 1990). Here, the Respondents' conduct did not occur in the actual delivery or performance of professional services, was not a reflection of lack of skill, did no apparently damage, and was not evil, illegal, or immoral. Therefore, the Respondents did not violate RCW 18.235.130(4).



5.103 The Respondents' conduct constituted misrepresentation. Dispositive then is whether that misrepresentation was "in any aspect of the business or profession." I hold that advertising is an aspect of a business or profession. If it was not, it would serve no purpose. Thus, the Respondents violated RCW 18.235.130(11).

5.104 Accordingly, the Respondents engaged in false advertising, including claims that they were the number one agent in Washington, Oregon, and Hawaii; that they were authorized to conduct real estate business in Oregon and Hawaii despite not being licensed to do so; that they will sell a home in 30 days or buy it themselves; and that Michael Hellickson could provide mortgage loans when he was not licensed to do so, in violation of RCW 18.85.230(2), RCW 18.235.130(3), and RCW 18.235.130(11).

#### **Discipline on license of Michael Hellickson**

5.105 The Department may take disciplinary action on the licenses of real estate professionals and may impose any of the sanctions referenced in RCW 18.235.110. RCW 18.85.230 (effective until July 1, 2010); RCW 18.85.361 (effective July 1, 2010). The Department may impose sanctions authorized under RCW 18.85.040. RCW 18.85.271 (effective until July 1, 2010); RCW 18.85.390 (effective July 1, 2010, referencing sanctions under RCW 18.85.041).

5.106 A violation of the duties of the licensee provided in RCW 18.86.030 constitute violations of RCW 18.235.230. RCW 18.86.031.

5.107 The purpose of Chapter 18.235 "is to assure the public of the adequacy of business and professional competence and conduct." RCW 18.235.005.

5.108 RCW 18.85.040 and 18.85.041 refer to the sanction of denying licenses.

5.109 RCW 18.235.110 refers to a variety of possible sanctions: revocation, suspension, restriction or limitation of practice, remedial education or treatment, monitoring of the practice, censure or reprimand, probation with conditions, fines, denial of renewal for an interval of time, and "other corrective action". RCW 18.235.110(1).

5.110 To that effect, the Department proposed a 10-year revocation of each of the Respondents' licenses as necessary to protect the public health, safety, or welfare. I reviewed the testimony of Karen L. Jarvis, Professional License Manager, Business and Professions Division, Department of Licensing, and Jerry G. McDonald, Administrator, Real Estate Unit, Business and Professions Division, Department of Licensing, regarding the bases for asserting the 10-year

revocations. A decision regarding discipline usually involves consideration of four factors: the number of violations, the seriousness of those violations, whether the licensee cooperated with the Department's investigation, and whether the licensee acknowledged and attempted to correct its conduct. Moreover, the Department considers whether the conduct is ongoing. Here, I have affirmed six of the ten alleged violations as to Respondent Michael Hellickson and Respondent Tara Hellickson, and five as to the Hellickson Team. The violations were repeated and ongoing. Of the six, three were characterized as "serious" or "very serious" by Mr. McDonald. The Department further asserted that the Respondents failed to cooperate, acknowledge, or even address the violations. However, the Respondents asserted that they were exercising their Constitutional Rights. Therefore, I am persuaded that the Respondents committed, repeatedly, multiple, serious violations but I am not persuaded that the Respondents failed to cooperate or to acknowledge that violations were alleged. Nevertheless, discipline is apt. Three of the violations that I have affirmed were serious and each of those three alone would likely have resulted in a revocation, although any alone would likely not have resulted in a 10-year revocation. Accordingly, given that the violations were repeated and ongoing, three were "serious", and the public's (financial) welfare were at risk, I hold that the 10-year revocation of Michael Hellickson's license is AFFIRMED.

#### **Discipline on license of Tara Hellickson**

5.111 Here, Tara Hellickson was the co-listing agent on each of the listing agreements at issue. Moreover, she was the office manager during much of the relevant time. She was an officer of the corporation as well. Further, several of the witnesses testified that part of their communication on certain issues was with Tara Hellickson. Clearly, Tara Hellickson is not responsible for what Michael Hellickson alone did. However, Tara Hellickson was responsible for what she did not do. Moreover, as office manager and an officer of the corporation, Tara Hellickson was responsible for the conduct of the firm, including its inaction. Therefore, for the reason stated in paragraphs 5.105 through 5.110 above, I hold that the 10-year revocation of Tara Hellickson's license is AFFIRMED.

#### **Discipline on license of Hellickson.com**

5.112 Although Hellickson.com, commonly called the Hellickson Team, did not have a firm license until the law changed on July 1, 2010, the entity existed in the same form during the times material herein and so the license subsequently acquired should be subject to discipline. Moreover, I observe that although the Respondents argued that the Hellickson Team firm license should not be disciplined, that argument was based on its response to the allegations and not to the timing by which it acquired its license. As discussed in the foregoing Findings of Fact and Conclusions of Law, I found and held that certain material

conduct was properly attributed to the Hellickson Team by virtue of relevant employee conduct. Thus, for the reasons stated in paragraph 5.105 through 5.110 above, I hold that the 10-year revocation of Hellickson.com's license is **AFFIRMED**.

### INITIAL ORDER

#### IT IS HERBY ORDERED THAT:

The charge that the Respondents engaged in a pattern and practice of misrepresenting and advertising that they would purchase a home listed with them if it did not sell within 30 days is **AFFIRMED** in violation only of RCW 18.86.030(1)(b), RCW 18.85.230(2), and RCW 18.235.130(3) and (11).

The charge that the Respondents engaged in a pattern and practice of encouraging homeowners to stop making payment on their home loans is **SET ASIDE**. Findings of Fact supported this charge only as to Respondent Michael Hellickson and only by a preponderance of the evidence.

The charge that the Respondents engaged in a pattern and practice of listing homes at artificially reduced prices, which were not designed to accurately reflect what the owner of the home was willing to accept, in order to generate multiple low-ball offers is **AFFIRMED** in violation only of RCW 18.85.230(2), (3), and (23), RCW 18.86.030(1)(a) and (b), and RCW 18.235.130(3) and (11).

The charge that the Respondents engaged in a pattern and practice of listing homes at prices that were not authorized by the homeowners is **SET ASIDE**.

The charge that the Respondents engaged in a pattern and practice of misrepresenting the contents of the listing agreement to the homeowners whose homes they listed for sale is **SET ASIDE**.

The charge that the Respondents engaged in a pattern and practice of failing to provide copies of executed listing agreements to homeowners at the time of execution is **AFFIRMED** in violation only of RCW 18.85.230(18) and (23).

The charge that the Respondents engaged in a pattern and practice of negligent and dilatory communications with homeowners, potential buyers, and lenders, resulting in unreasonable risk of harm and prejudice to all three is **AFFIRMED** only as to unreasonable risk of harm and prejudice to homeowners and in violation of RCW 18.85.230(23) and RCW 18.235.130(4).

The charge that the Respondents engaged in a pattern and practice of drafting addenda to purchase and sale agreements as part of a counter-offer that stated

"All parties are aware that the sellers have requested that the buyer pre-qualify through one of the following lenders", which lenders were listed, and these addenda did not represent a request from the homeowner, is **AFFIRMED** only as to Respondents Michael Hellickson and Tara Hellickson, in violation only of RCW 18.85.230(23) and RCW 18.86.030(1)(a).

The charge that the Respondents engaged in a pattern and practice of telling owners that they were required to vacate their homes before they were legally required to vacate is **SET ASIDE**.


The charge that the Respondents engaged in false advertising, including claims that they were the number one agent in Washington, Oregon, and Hawaii; that they were authorized to conduct real estate business in Oregon and Hawaii despite not being licensed to do so; that they will sell a home in 30 days to buy it themselves; and that Michael Hellickson could provide mortgage loans when was not licensed to do so, is **AFFIRMED**, in violation only of RCW 18.85.230(2) and RCW 18.235.130(3) and (11).

The 10-year revocation of Respondent Michael Hellickson's managing real estate broker's license, number 17267, is **AFFIRMED**, effective on a date to be determined by the Department of Licensing.

The 10-year revocation of Respondent Tara Hellickson's real estate broker license, number 2063, is **AFFIRMED**, effective on a date to be determined by the Department of Licensing.

The 10-year revocation of Respondent Hellickson.com, Inc.'s real estate firm license, number 7905, is **AFFIRMED**, effective on a date to be determined by the Department of Licensing.

**Signed and Issued** at Tacoma, Washington, on the date of mailing.

  
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Terry A. Schuh  
Administrative Law Judge  
Office of Administrative Hearings

### **APPEAL RIGHTS**

Under RCW 34.05.464 and WAC 10-08-211, any party to this proceeding may file a petition for review of this initial order. The petition must be filed with the Director of Licensing, P.O. Box 9020, Olympia, WA 98504-9020 within twenty (20) days from the date this initial order was mailed to the parties. A copy of the

petition for review must be sent to all parties of record. A petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. Any party to this proceeding may file a reply to a petition for review. The reply must be filed with the Director of Licensing at the address above within ten (10) days from the date the petition for review was mailed.


**CERTIFICATION OF MAILING IS ATTACHED**

**Certificate of Service – OAH Docket No. 2010-DOL-0043**

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Toni M. Hood, AAG Office of the Attorney General PO Box 40110 Olympia, WA 98504-0110	First Class US Mail, postage prepaid
Address: Douglas Tingvall Attorney at Law 8310 154 <sup>th</sup> Avenue SE Newcastle, WA 98059-9222	First Class US Mail, postage prepaid
Address: Hellickson.com, Inc. c/o RSC Corporation, Registered Age 1201 3 <sup>rd</sup> Ave # 3400 Seattle, WA 98101-3034	First Class US Mail, postage prepaid
Address: Joseph W. Scuderi Cushman Law Offices PS 924 Capitol Way S Olympia, WA 98501	First Class US Mail, postage prepaid
Address: Michael Hellickson PO Box 7617 Bonney Lake, WA 98391	First Class US Mail, postage prepaid
Address: Tara Hellickson PO Box 7617 Bonney Lake, WA 98391	First Class US Mail, postage prepaid
Address: Karen Jarvis, Program Manager Department of Licensing PO Box 9015 Olympia, WA 98507-9015	First Class US Mail, postage prepaid

Date: May 11, 2011

  
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Edie Ali  
Office of Administrative Hearings