

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CC-01033 COA**

**GRADY GRAY, JR.**

**APPELLANT**

v.

**MISSISSIPPI REAL ESTATE COMMISSION**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	08/21/96
TRIAL JUDGE:	HON. WILLIAM F. COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	HERBERT LEE
ATTORNEYS FOR APPELLEE:	JOHN L. MAXEY II JOHN F. HAWKINS
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES (OTHER THAN WORKERS' COMPENSATION)
TRIAL COURT DISPOSITION:	CIRCUIT COURT AFFIRMED REVOCATION OF REAL ESTATE LICENSE
DISPOSITION:	AFFIRMED - 2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE THOMAS, P.J., KING, AND PAYNE, JJ.

THOMAS, P.J., FOR THE COURT:

Grady Gray, Jr. appeals the order of the Mississippi Real Estate Commission revoking his real estate broker's license, raising the following issue as error:

**I. THE CIRCUIT COURT OF HINDS COUNTY ERRED WHEN IT AFFIRMED THE MISSISSIPPI REAL ESTATE COMMISSION ORDER REVOKING APPELLANT'S REAL ESTATE LICENSE BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT MREC'S CONCLUSION THAT APPELLANT, AS**

**BROKER FOR THE TRANSACTION IN QUESTION, HAD ENGAGED IN IMPROPER CONDUCT; THEREFORE THE MREC ABUSED ITS DISCRETION, FAILED TO EXERCISE CAUTION AND ACTED ARBITRARILY, UNREASONABLY, AND CAPRICIOUSLY BY REVOKING THE APPELLANT'S REAL ESTATE BROKERS LICENSE.**

Finding no error, we affirm.

**FACTS**

Prior to the present incident, Grady Gray, Jr. had been a licensed real estate broker in the State of Mississippi for fifteen years. Then in February of 1994, the Department of HUD notified the Mississippi Real Estate Commission that they were in the process of conducting a hearing into the activities of Gray concerning alleged fraudulent acts. HUD suspected that Gray possibly participated in a fraudulent act by aiding one of his then employees, Lori Rutledge Kelly, in obtaining financing for a HUD unit by use of a falsified social security number. HUD eventually concluded that Gray was not responsible as broker for submitting the falsified social security number. However, HUD did conclude that as employer of the buyer, he or his agents of his company, Real Estate 2000, had submitted a verification of employment form to the mortgage company involved without first checking the social security number that had been supplied by the mortgage company. HUD rendered a Limited Denial of Participation to Gray, restricting him from participating in HUD programs for twelve months.

In June of 1994, the Mississippi Real Estate Commission mailed a certified letter to Gray advising him that because of the information received from HUD it would be necessary to conduct an audit of his account to ensure he was not in violation of the Real Estate Brokers License Act. Gray was directed to contact the investigator handling the matter in order to set up a time for the audit and to bring certain records for the audit. Gray failed to respond to this letter. A second certified letter was sent to Gray in July of 1994. Again, Gray failed to respond.

As a result of all this, the Commission filed a complaint against Gray in November of 1994. This complaint was separate and distinct from the HUD charges levied against Gray. This complaint dealt with questions concerning the keeping of escrow records, escrow monies, trust monies, and contracts. That same month Gray finally met with the investigating officer of this matter. He informed the investigator that both his parents had died over the summer months and that relatives had inadvertently taken his real estate records when they had collected the estate records of his parents. An amended complaint was then filed against Gray addressing record keeping requirements not covered in the original complaint.

The amended complaint was sent certified mail to Gray but the Commission received no notice that it was received. However, Gray had been given a copy when he had met with the investigator. A hearing was set but Gray asked for and received a continuance. A new hearing was scheduled for January of 1995 and a notice was sent by certified mail to Gray. Again the Commission received no confirmation that the notification was received. Attempts were made to contact Gray by phone but were unsuccessful. Finally, two investigators personally went out to Gray's address and taped a copy of the hearing notice on his front door and back door.

Gray attended the January hearing of the Commission. He testified that he had sent a letter in June of 1994 to the Commission in response to the initial certified letter of the investigator. He produced and offered the original copy of the letter into evidence. Rick Moon, the investigator of this matter, testified he had never received or seen this letter. Gray reiterated his claim that relatives had taken his files and also advanced that the bank where his files were kept had gone out of business making it impossible to recover the documents requested. He then purported to produce for the Commission "complete files." The hearing recessed to allow the investigator to review these documents. When the hearing reconvened in February of 1995, Moon testified that the records did not contain escrow records as had been asked for and nothing that would show that proper handling of escrow funds had been conducted by Gray. The Commission then revoked Gray's real estate license.

## ANALYSIS

### I.

**THE CIRCUIT COURT OF HINDS COUNTY ERRED WHEN IT AFFIRMED THE MISSISSIPPI REAL ESTATE COMMISSION ORDER REVOKING APPELLANT'S REAL ESTATE LICENSE BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT MREC'S CONCLUSION THAT APPELLANT, AS BROKER FOR THE TRANSACTION IN QUESTION, HAD ENGAGED IN IMPROPER CONDUCT; THEREFORE THE MREC ABUSED ITS DISCRETION, FAILED TO EXERCISE CAUTION AND ACTED ARBITRARILY, UNREASONABLY AND CAPRICIOUSLY BY REVOKING THE APPELLANT'S REAL ESTATE BROKERS LICENSE.**

Gray argues there was simply no substantial evidence to support the conclusion that as broker in the HUD transaction of his employee he had engaged in conduct that violated the Mississippi Real Estate Act of 1954. Furthermore, Gray argues that the circumstances of this case do not constitute a reasonable ground for the harsh penalty of indefinite revocation of his real estate license.

When we review the findings and actions of an administrative agency, such as the Mississippi Real Estate Commission, we are limited in the scope of our judicial review. *Harris v. Mississippi Real Estate Commission*, 500 So. 2d 958, 962 (Miss. 1982)(citing *Mississippi State Tax Commission v. Mississippi-Alabama Sate Fair*, 222 So. 2d 664, 665 (Miss. 1969)). We can only determine whether or not the order of the administrative agency (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right of the complaining party. *Id.*

Further, the Mississippi Supreme Court has stated that courts should not attempt to review penalties imposed by an agency where substantial evidence exists to support a finding of a violation. *Id.* at 963. The Mississippi Supreme Court has stated:

[O]ur traditional standard of review, whether or not it arguably allows such a determination, does not obligate us to separately second guess an administrative agency's imposition of sanction. We take this position in recognition of the unique position administrative agencies hold. The agency charged with regulating certain activities knows best how to police its own. This seems especially true where an agency commission comprised of fellow practitioners, as is the Real Estate Commission, sits in judgment of one of its own.

*Id.*

We are satisfied that the Commission's findings are supported by substantial evidence and were neither arbitrary nor capricious. Gray essentially argues that since HUD cleared him as broker for any fraudulent acts and since this was the basis of the Commission's investigation, there was nothing to support the Commission's findings or punishment. However, the incident which led HUD to investigate Gray and the one which led the Commission to investigate Gray is separate and distinct from the charges eventually levied against Gray by the Commission. The amended complaint alleged that Gray violated the following section of the Mississippi Real Estate Broker's License Act of 1954, as amended, and the following rules and regulations adopted by the commission:

§ 75-35-21(m);

Any act or conduct, whether of the same or of a different character than hereinabove specified, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper deal;

Rule IV.A.6.

Any licensee who fails in a timely fashion to respond to official Mississippi Real Estate Commission written communication or who fails or neglects to abide by Mississippi Real Estate Commission's rules and regulations shall be deemed prima facie, to be guilty of improper dealing.

Rule IV.B.6.

A real estate broker must keep on file for three years following its consummation, complete records relating to any real estate transaction. This includes, but is not limited to: listings, options, leases, offers to purchase, contracts of sale, escrow records, and copies of closing statements.

Rule IV.D.3.

Accurate records shall be kept on escrow accounts of all monies received, disbursed, or on hand. All monies shall be identified as to a particular transaction. Escrow records shall be kept in accord with standard accounting practices and shall be subject to inspection at all times by the Commission.

There was simply substantial and credible evidence supporting the Commission's findings and rulings. Gray failed to timely respond to inquiries from the Commission. He failed to maintain or produce documents required by the Commission. His explanation of why the documents were missing, even if true, do not relieve him of his responsibilities to maintain and properly keep these records. He offered little or no evidence to refute any of the charges against him. There is no question the Commission acted properly in this case. Furthermore, we will not disturb the penalty imposed by the Commission.

**THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO GRADY GRAY, JR.**

**BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**