

Steve BLACK *v.* THE ARKANSAS REAL
ESTATE COMMISSION et al

81-162

626 S.W. 2d 954

Supreme Court of Arkansas
Opinion delivered February 1, 1982

1. **STATUTES — ENACTED FOR BENEFIT OF PUBLIC — LIBERAL CONSTRUCTION TO EFFECTUATE PURPOSE.** — Statutes enacted for the benefit of the public should be liberally construed to effectuate the purpose of the act.
2. **BROKERS — RELIANCE ON BROKER BY PURCHASERS JUSTIFIED UNDER CIRCUMSTANCES.** — The purchasers of the real estate were entitled to rely upon the appellant-broker to act in a manner in which a broker or salesman should act since the transactions dealt with real estate and most of the sales were initiated in a real estate office where the appellant's broker's license was displayed.
3. **APPEAL & ERROR — MATTERS BROUGHT UP TO APPELLATE COURT**

THROUGH THE ADMINISTRATIVE PROCEDURE ACT — WEIGHT AND CREDENCE GIVEN TO ACTION OF BOARD OR COMMISSION. — In reviewing matters brought to the appellate court through the Administrative Procedure Act the Supreme Court gives much weight and credence to the action of the Board or Commission because of their knowledge of the subject matter before them; furthermore, the standard of review in this court is whether there is substantial evidence to support the action. *Held*: The decision of the circuit court affirming the action of the Real Estate Commission in suspending the appellee's broker's license for a period of six months is affirmed.

Appeal from Pulaski Circuit Court, Third Division, *Tom F. Digby*, Judge; affirmed.

Mitchell, Williams, Gill & Selig, for appellant.

Steve Clark, Atty. Gen., by: *Nelwyn Davis*, Asst. Atty. Gen., for appellees.

JOHN I. PURTLE, Justice. The appellant was brought before the Arkansas Real Estate Commission because of complaints filed against him by several persons. The complainants were people to whom the appellant had sold property in rural Pulaski County, Arkansas. The Commission found that appellant had violated the provisions of Ark. Stat. Ann. § 71-1307 (a) (b) (h) and (j) (Repl. 1979) as well as Commission Rule 40. His license was suspended for a period of six months. He appealed to the Pulaski County Circuit Court which affirmed the action of the Commission.

The appellant contends the Commission had no authority to review the actions of a licensed broker or salesman which actions were performed in a capacity other than as a licensed broker or salesman. He argues that since the actions complained of did not require the person committing the acts to hold either a broker's or salesman's license the Commission was without authority to act on the complaints filed against him. We disagree with the appellant.

The facts reveal appellant and his wife owned a tract of land in western Pulaski County which they attempted to

convert into a subdivision. Several persons purchased lots, usually in 5-acre tracts, in the subdivision. Most, if not all of the persons involved, testified that appellant promised to construct a good all-weather road in the area but he failed and refused to do so. The promises were not made in written form nor were they included in the purchase agreements or deeds. Most of the complaining witnesses testified that they called the appellant as a result of an advertisement in the classified ad sections of local newspapers. Most of them met the appellant in his real estate office where his broker's license was displayed in a prominent place. He told the purchasers that although he was a broker the lots being sold were owned by him and his wife. No commissions were expected or paid on the sales.

For the purpose of this opinion it is clear that the appellant committed acts which would be in violation of the statutes in question. It is equally clear that the acts he performed could have been done by one who did not have a broker's or salesman's license. The question at issue is whether the Real Estate Commission has the authority to govern the acts of licensed salesmen and brokers who are acting on matters which do not require a license.

The Commission's entire case is based upon Ark. Stat. Ann. § 71-1307, the pertinent part of which reads as follows:

The Commission may upon its own motion and shall upon the verified complaint in writing of any person, provided such complaint, or such complaint with evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either such capacity within this State and shall have power to suspend or to revoke any license issued under the provisions of this Act (§§ 71-1301 — 71-1311); at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned herein is deemed to be guilty of:

- (a) Making any substantial misrepresentation, or
- (b) Making any false promises of a character likely to influence, persuade or induce, or
- (c) . . . , or
- (d) . . . , or
- (e) . . . , or
- (f) . . . , or
- (g) . . . , or
- (h) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public, or
- (i) . . . , or
- (j) Any other conduct whether of the same or a different character from that hereinbefore specified which constitutes improper, fraudulent or dishonest dealing.

One way to read this statute would be:

The Commission may upon its own motion . . . suspend or . . . revoke any license issued under the provisions of this Act . . . where the licensee has by false or fraudulent representation obtained a license, or where the licensee [is] performing . . . any of the acts mentioned herein . . .

The acts "mentioned herein" are the same as those listed above in (a), (b), (h) and (j). We grasp the thrust of the appellant's interpretation of the statute and recognize that it is not completely unfounded. The statute is not artfully drawn. It is contended that that section which states ". . . investigate the actions of any real estate broker or real estate salesman, or any person who shall assume to act in either

such capacity . . . ” would not apply to appellant, as he was not acting or assuming to act as a real estate broker. To so isolate this sentence would be to misinterpret the statute. The second section which gives the appellant grounds for argument reads “. . . where the licensee in performing or attempting to perform any of the acts mentioned herein” Again, if you read only that portion of the sentence, it would give the impression that appellant was correct in his interpretation of the statute that the Commission could only take action against a licensed broker or salesman. However, in an over-all reading of the statute it is fairly clear that the “acts mentioned herein” means the acts listed following this portion of the statute, the applicable ones being (a), (b), (h) and (j). Therefore, in reading the statute in its totality it states that the Commission shall have the power, under circumstances stated therein, to discipline a real estate broker or salesman or “. . . any person who shall assume to act in either such capacity” The last quoted portion is an attempt to give the Commission authority over persons who assume to act as brokers or salesmen. We do not question appellant’s statement that in order for one to be acting as a broker or salesman he must be acting (a) for another and (b) for compensation or expectation of compensation. However, the Commission admits that appellant was not acting as a salesman or broker at the time he sold the lots in question. The Commission’s order is based primarily upon a claim of his making substantial misrepresentation or false promises concerning the building of the road in the subdivision and the reliance of the purchasers that appellant’s actions were sanctioned by the Real Estate Commission. These are grounds which may give rise to revocation or suspension and need not be made while the person is in fact acting as a broker or salesman.

One of the purposes set forth in the act is to “safeguard the interests of the public.” We have held that statutes enacted for the benefit of the public should be liberally construed to effectuate the purpose of the act. *Laman v. McCord*, 245 Ark. 401, 432 S.W. 2d 753 (1968). Both parties seem to place part of their argument in the case of *Rothgeb v. Safeco Insurance Co. of America*, 259 Ark. 530, 534 S.W. 2d 759 (1976). The *Rothgeb* case never came through the Real

Estate Commission and thus there was no issue as to the suspension of a broker's license. The action was brought by an individual against a real estate partnership alleging the partnership violated sections of Ark. Stat. Ann. § 71-1307 and asking for damages under a surety bond. Safeco Insurance Company was joined as a defendant because they wrote the surety bond for the Real Estate Commission at that time, and the defendants had gone into bankruptcy. In *Rothgeb* we stated:

We must agree with appellee's position that since Wimpy was selling land owned by him and Steele, he could not be considered an agent or broker, which requires a license, within the meaning of § 71-1302. If Wimpy was acting solely as the owner, he would not come within the provisions of § 71-1302. . . .

We do not think *Rothgeb* is controlling in the present situation, as there was neither an investigation nor a finding by the Commission of improper conduct. In the present case the Commission did not suspend appellant's license for selling the land but for promises made outside the sale which the Commission determined violated the above-mentioned provisions of the statutes and Rule 40. The appellant also relies on *Bell, Commissioner v. Investment Training Institute*, 271 Ark. 663, 609 S.W. 2d 919 (1981). In *Bell* the complaint was against a person who was running a school wherein applicants for licenses as security broker-dealers were tutored. The action of the commissioner in that case was an attempt to prevent the carrying on of the business of tutoring applicants for licenses. Again, the action was brought in the court seeking an injunction preventing appellees from performing certain acts. That is not the case in the present action.

In the present case it is obvious that appellant could have performed these very same transactions had he possessed no license at all. However, since the transactions dealt with real estate and most of the sales were initiated in his real estate office where his broker's license was prominently displayed, we think the purchasers were entitled to rely upon appellant to act in the manner in which a broker or salesman

should act. Almost every purchaser of a lot in this subdivision indicated they relied upon the fact that appellant was a real estate broker. There is, of course, substantial evidence to support the finding of the Commission that appellant misrepresented matters and made false promises. In reviewing matters which were brought up through the Administrative Procedure Act we give much weight and credence to the action of the Board or Commission because of their knowledge of the subject matter before them. The standard of review in this court is whether there is substantial evidence to support the action of the Real Estate Commission in suspending appellant's broker's license for a period of six months. *Ark. Real Estate Commission v. Harrison*, 266 Ark. 339, 585 S.W. 2d 34 (1979). Therefore, the circuit court decision affirming the order of the Real Estate Commission is hereby affirmed.

Affirmed.

HAYS, J., not participating.
