

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE ALASKA REAL ESTATE COMMISSION**

DONALD THOMSON,)
Claimant,)
)
v.)
)
GINGER RIBELIN,)
Respondent)

OAH No. 08-0578-RES
Agency No. S-29-004

DECISION

I. Introduction

The firm of Cloud & Ribelin managed a rental property owned by Donald Thomson. Mr. Thomson filed a claim against the Real Estate Surety Fund, seeking compensation for the firm's alleged mismanagement.

The matter was referred to the Office of Administrative Hearings, and the assigned administrative law judge conducted a hearing on January 23, 2009. Mr. Thomson testified, as did the respondent, Ginger Ribelin, and her broker, Judy Cloud.

Because Mr. Thomson did not prove that a licensee made an intentional or fraudulent misrepresentation to him, the claim is denied.

II. Facts

At the start of 2006, Donald and Jean Thomson were living in a house they owned, located at 52203 Marleme Avenue in Nikiski. In July, the couple moved to Eagle River and listed the house for sale. After four months had passed, no offers had been received and the Thomsons decided to rent the house out. They contacted Cloud & Ribelin, a Kenai real estate firm, to see about managing the house as a rental property.

Judy Cloud met with Mr. Thompson at the house at the end of September. After looking over the house, Ms. Cloud gave Mr. Thompson a property management agreement to review. Mr. Thompson took the agreement back to Eagle River with him, and on October 1, 2006, faxed the signed agreement back to Cloud & Ribelin.

The firm placed an ad for the property. Because the house was listed for sale, only a month-to-month tenancy was possible, and with the onset of winter the property drew little interest. In mid-November the firm received a call from Rushell Roetman about renting the

house. Ms. Roetman explained that she and her boyfriend, Marvin Dougherty, wanted to rent the house. The firm sent her an application form.

On November 14, 2006, Ms. Roetman faxed the completed application form back to the firm. The application was for joint occupancy by Ms. Roetman and Mr. Dougherty. It indicated that Ms. Roetman was living in Soldotna, and that Mr. Dougherty had recently been living in Phoenix, although he had previously worked in Nikiski. The application lists one local personal reference and both occupants' nearest relative. The document includes signatures purporting to be those of Ms. Roetman and Mr. Dougherty. Ms. Roetman also faxed a note explaining that Mr. Dougherty had not had not taken out a loan for a long time, did not know his Phoenix bank account number, and did not have an Alaskan bank account.

On the morning of November 16, Ms. Roetman emailed additional rental references for Mr. Dougherty to Ms. Ribelin; Ms. Roetman noted that she had not previously rented and had lived with her mother. Ms. Ribelin checked Mr. Dougherty's rental references, and was informed by Mr. Dougherty's former landlord that he had moved out in 2005, but that he had been an excellent tenant who always paid the rent on time, was neat and did his own repairs, and that the landlord would rent to him again. Ms. Ribelin then contacted Mr. Thomson and relayed to him what she had been told; Mr. Thompson authorized the rental. Ms. Ribelin then emailed Ms. Roetman, offering to rent the house, contingent on payment of the first month's rent (\$1,050) plus a \$1,000 security deposit and a \$300 pet deposit. On November 17, 2006, Ms. Roetman executed a rental agreement, which called for a month-to-month tenancy beginning November 17, with rent at the rate of \$1,050 per month payable on the first of each month (pro-rated for November) plus utilities, a security deposit of \$1,000, and a pet deposit of \$300. Mr. Dougherty did not sign the rental agreement. Ms. Roetman paid the necessary funds, which Ms. Ribelin deposited in the firm's trust account on November 20.

Ms. Roetman and Mr. Dougherty moved into the house on November 20 and discovered that it had no heat. They started a fire in the fireplace in an attempt to get some heat, but because there was insulation stuffed up into the chimney, smoke billowed out into the living area. They put out the fire and the next morning Marvin Dougherty called Ms. Ribelin to see about getting the heating going. Ms. Ribelin called Mr. Thomson, who authorized her to have Redoubt Plumbing trouble shoot the problem. Redoubt Plumbing personnel discovered that a circulating pump had failed, which they replaced, solving the heating problem. They notified Ms. Ribelin

that there was some smoke damage around the fireplace. Ms. Ribelin checked with the tenants, who then told her about the problem they had encountered with the fireplace.

The next day, November 21, the tenants discovered that due to the lack of heat, the pipes in the house had frozen and there was no water. They called Ms. Ribelin again, and she in turn called Mr. Thomson. Mr. Thomson instructed Ms. Ribelin to have Redoubt Plumbing go back out to the house to deal with the water supply problem. Redoubt Plumbing went out to the house that same day and fixed the water lines, in the process damaging vinyl in the kitchen by accidentally spilling PVC cleaner on it.

On December 1, 2006, Ms. Ribelin conducted a walk-through with the Ms. Roetman, who pointed out some possible mold on the walls. On December 11, 2006, Ms. Roetman called Ms. Ribelin and said that she had been getting headaches and that her doctor had said mold in the house could have been the cause. Ms. Roetman informed Ms. Ribelin that Mr. Dougherty had moved out and returned to Arizona; she gave Ms. Ribelin notice that she was vacating the property. At about that time, the Alaska State Troopers contacted Ms. Cloud and advised her that a stolen snow machine was located on the premises. Ms. Cloud accompanied an officer to the property and the snow machine was removed. It appeared that the property was vacant and unoccupied. The officer informed Ms. Cloud that Ms. Roetman was known to have been involved in criminal activity.

On January 2 and 10, 2007, Mr. Thompson drove down from Eagle River and inspected the property. He found that the soot around the fireplace had not been cleaned and that the tenants had left some furniture in the house. Cloud & Ribelin continued to advertise the house for rent, as well as looking for potential purchasers. Again, the property received little interest because it was the middle of winter, the house was not available for a long term lease, and it was located some distance from the population centers of Kenai and Soldotna. Cloud & Ribelin checked on the condition of the premises periodically. Mr. Thomson terminated the property management agreement effective March 3, 2007.

Cloud & Ribelin received from the tenants and deposited to its trust account a total of \$2,824.10, including the security deposit (\$1,000), rent from November 17-December 31, 2006 (\$1,514.10), the pet deposit (\$300), and sales tax payments (\$19.10). Of this amount, the firm transferred to its own account a leasing fee (\$525) and one month's management fee (\$100), and paid the remainder out as follows: to Mr. Thomson (\$1,616.88), to Redoubt Plumbing (\$572.22),

and to Kenai Peninsula Borough (\$10). In addition, out of its own account, the firm paid other expenses, including advertising (\$222.82), rekeying locks (\$110.16) and sales tax (\$9.10).

III. Discussion

Alaska law provides that the commission may award reimbursement from the surety fund for a loss resulting from fraud, misrepresentation or deceit by a licensee in connection with a real estate transaction.¹ To be eligible for an award based on fraud, misrepresentation or deceit, the claimant must show an intentional or fraudulent misrepresentation, rather than merely an innocent or negligent misrepresentation.² An intentional or fraudulent misrepresentation is one made with knowledge that it is false, misleading, or deceitful.³

Mr. Thomson alleges that the firm misrepresented Ms. Roetman's suitability as a tenant and the status of the utilities. He seeks compensation in the amount of \$1,820.44, consisting of utilities from November 17-January 31, 2006 (\$770.44) and rent for January, 2006 (\$1,050). He argues that these sums should be paid because Cloud & Ribelin failed to adequately screen Rushell Roetman as a prospective tenant by failing to perform a criminal record check (leading to unpaid rent), and failed to ensure that the utilities were transferred to the tenants' names prior to occupancy (leading to unpaid utilities charged to Mr. Thomson's account). Had Cloud & Ribelin done these things, Mr. Thomson argues, he would not have authorized the rental, and he would not have been responsible for the unpaid utility bills.

Missing in Mr. Thomson's claim is any allegation that either Ms. Cloud or Ms. Ribelin was aware that Ms. Roetman had a criminal record when she rented the property, that they had any knowledge of any circumstance that would have made either Mr. Dougherty or Ms. Roetman an unsatisfactory tenant, or that they knew that the tenants had not transferred the utilities prior to occupancy. The firm's handling of its management responsibilities may have been imprudent; Mr. Thomson views it as unprofessional and contrary to the property management agreement. However, it is precisely because the firm did not perform a criminal record check, or confirm that the utilities had been transferred, that neither Ms. Cloud nor Ms. Ribelin was aware of the relevant facts. A claim against the surety fund requires a knowing misrepresentation. There is no evidence that the firm knowingly misrepresented Ms. Roetman's suitability as a tenant, or the

¹ AS 08.08.470.

² State, Real Estate Commission v. Johnson, 682 P.2d 383 (Alaska 1984).

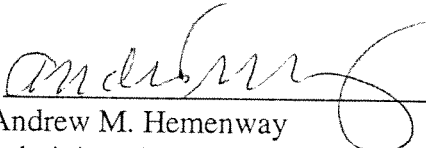
³ See, e.g., City of Fairbanks v. Amoco Chemical Co., 952 P.2d 1173, 1176 & n. 4 (Alaska 1998); Bubbel v. Wien Air Alaska, Inc., 682 P.2d 374, 381 (Alaska 1984).

status of the utilities. In the absence of a knowing misrepresentation, there is no basis for a claim against the surety fund.

IV. Conclusion

Mr. Thomson's claim is based on the alleged breach of a real estate management agreement. There is no evidence that a licensee knowingly misrepresented the relevant facts to Mr. Thomson. Accordingly, there is no basis for a claim against the surety fund, and the claim is therefore DENIED.

DATED May 19, 2009.

By: 
Andrew M. Hemenway
Administrative Law Judge

Adoption

On behalf of the Alaska Real Estate Commission, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22 day of June, 2009.

By: Brad Cole
Signature
BRAD COLE
Name
Chairman AREC
Title

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

- Jackson
- Ribelin
- Cloud

Office of Lt. Governor, Sharon Walsh, AK Real Estate Comm.
Signature Neil Robert Date 6/22/09