

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1901

RICHARD JOHN BRIEN

VS.

LOUISIANA REAL ESTATE COMMISSION

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JUDGMENT RENDERED: SEP 15 2006

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 486,888, DIVISION N  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

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LOUISIANA REAL ESTATE COMMISSION

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

*W. J. Carter*  
*C. J. Whipple*

MCDONALD, J.

Mr. Richard John Brien is a licensed real estate broker. A formal written complaint was filed with the Louisiana Real Estate Commission (the Commission) against Mr. Brien. The Commission notified him that he was alleged to have violated the Louisiana Real Estate License Law, more particularly, La. R.S. 37:1449.B, La. R.S. 37:1455.A(1), (2), (11), (15), and (18), and sections 3404.C and 3405.C of the Rules and Regulations of the Commission.

On July 19, 2001, after a formal adjudicatory hearing by the Commission, Mr. Brien was found guilty of all seven of the allegations brought forth. As a penalty, the Commission revoked Mr. Brien's real estate license and assessed all costs of the proceeding against him. Mr. Brien then filed a petition for judicial review in the trial court asking for judgment in his favor reversing or modifying the decision of the Commission.

After a hearing, the trial court rendered judgment, affirming the findings of the Commission, but remanding the matter to the Commission for a review of the penalty imposed. In oral reasons for judgment, the trial court noted that the sanction was "out of line" with the findings. On March 22, 2002, the trial court signed the judgment affirming the findings of the Commission and remanding the matter to the Commission for reconsideration of the penalty imposed.

Thereafter, Mr. Brien appealed that judgment to this court. This court issued an order to the parties to show cause why the appeal should not be dismissed on the grounds that the trial court judgment was not a final judgment. In response, Mr. Brien filed an order to dismiss the appeal without prejudice at his cost, conceding that the judgment was not a final judgment and that his appeal was therefore premature.

On August 22, 2002, the Commission again heard the matter. New sanctions were ordered, suspending Mr. Brien's real estate license for four years, requiring that he attend real estate broker's licensing school prior to his license being reinstated, and ordering that he pay the administrative costs of the proceedings.

Mr. Brien then filed an amended and supplemental petition for judicial review, asserting that the new sanctions were harsher than the original sanctions. He asked that the trial court either reverse or modify the decisions of the Commission and that the sanctions be stayed pending the conclusion of the proceedings. Thereafter, the trial court ordered that the actions against Mr. Brien be stayed during the pendency of the proceedings.

On February 10, 2003, the trial court rendered judgment on the merits dismissing four of the counts against Mr. Brien and affirming three of the counts, reducing the sanction to a six-month suspension and a thirty-hour broker responsibility training course, and ordering Mr. Brien to pay one-half of the costs of the proceeding. A written judgment was signed on February 27, 2003. Mr. Brien appealed that judgment.

On appeal, this court found that the February 27, 2003 judgment made a substantive amendment to the first judgment, and thus was null. **Brien v. Louisiana Real Estate Commission**, 2003-0965, (La. App. 1 Cir. 4/2/04) (unpublished). We vacated the February 27, 2003 judgment and remanded the case to the trial court for reconsideration of the sanction issue only. Further, we pretermitted the assessment of costs, pending the outcome of further proceedings on remand, and any appellate review by this court thereafter.

On remand, the trial court rendered judgment against Mr. Brien, ordering a six-month suspension of his real estate broker's license; that he

attend a 30-hour broker responsibility training course; that he pay a fine of \$5,000.00 to the Commission; and that he pay one-half of the costs of the administrative proceeding and all costs of court. Mr. Brien has appealed that judgment.

A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. Where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State, Dept. of Transportation and Development**, 617 So.2d 880, 882-883 (La. 1993).

Mr. Brien urges numerous assignments of error, including that the trial court erroneously found that it did not have the authority to review the factual findings of the Commission; that the Commission erred in finding that any of the charges against him were proven by a preponderance of the evidence; that the penalty imposed by the trial court was excessive; and that the Commission did not have the authority to levy a fine at the time the offenses were committed.

After a thorough review of the record, we find that the trial court did review the factual findings of the Commission. Further, we do not find that the Commission erred in finding that the charges against Mr. Brien were proven by a preponderance of the evidence, and we do not find that the penalty imposed against him by the trial court was excessive.

The Commission has the authority to censure, suspend or revoke a license, impose a fine and require continuing education. La. R.S. 37:1455. The Commission originally revoked Mr. Brien's real estate license. Upon remand, the Commission imposed a four-year suspension of Mr. Brien's license and assessed him with the administrative costs. The trial court,

finding that penalty too severe, concluded that a six-month suspension of his license, 30 hours of broker responsibility training, and one-half the administrative costs was an appropriate sanction. Upon remand by this court, the trial court, with a different judge sitting, found that a six-month suspension with 30 hours of continuing education and payment of one-half of the administrative costs was appropriate, and added all costs of court and a fine of \$5,000.00.

While we find the penalty was not excessive, we do find that the trial court (sitting as an appellate court) lacked the authority to impose a fine against Mr. Brien. Louisiana Revised Statute 37:1455 provides in part:

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

The language “levy fines or impose civil penalties not to exceed five thousand dollars” was added to the statute by Acts 1999, No. 452 § 2, and became effective August 15, 1999. The offenses committed by Mr. Brien occurred before that effective date. Therefore, we vacate the fine against Mr. Brien. In all other respects, the trial court judgment is affirmed. Costs are assessed against Mr. Brien.

**FINE VACATED; IN ALL OTHER ASPECTS, JUDGMENT AFFIRMED.**