



BOARD REVERSED IN COE APPEAL

In a recent judgment by the North Carolina Court of Appeals, the order of the North Carolina Real Estate Licensing Board suspending the license of real estate broker Earl F. Coe, Boone, was reversed. The opinion of the Court follows:

Appeal by defendant from Ervin, Judge, 18 December 1972 Session of Superior Court held in Watauga County.

On 26 May 1972 the North Carolina Real Estate Licensing Board (Board), through its secretary-treasurer, entered an order summarized in pertinent part as follows:

On 21 April 1972, in the Watauga County Courthouse, the Board conducted a hearing regarding Earl F. Coe (defendant). The Board found as a fact that defendant holds real estate broker's license No. 334 and that on or about 22 October 1971, in the U. S. District Court for the Western Division (sic) of North Carolina, defendant pled nolo contendere "to the charge of willfully filing fraudulent federal income tax returns." The Board concluded that defendant "is guilty of violating G.S. 93A-6(a) in that he has pled nolo contendere to the violation of a criminal offense involving moral turpitude." Pursuant to said findings and conclusion, the Board ordered that defendant's real estate broker's license No. 334 be suspended for a period of one year, effective 1 June 1972, said suspension to be suspended on condition that defendant violate no provision of Chapter 93A of the General Statutes of North Carolina and that he pay to the Board the cost of the transcript of the proceeding.

Defendant excepted to the order and appealed to superior court. Following a review of the record, including a transcript of the hearing

conducted by the Board, the court entered judgment affirming the Board's order. Defendant appealed to the Court of Appeals.

Attorney General Robert Morgan by Millard R. Rich, Jr., Assistant Attorney General, Attorneys for N.C. Real Estate Licensing Board.

W. G. Mitchell for defendant appellant.

McElwee & Hall by John E. Hall for defendant appellant.

BRITT, Judge.

G.S. 93A-6 empowers the Board, following specified procedures, to revoke or suspend the license of a real estate broker found guilty of either of the unlawful offenses or unethical acts set forth in the statute. Among other things, the statute authorizes the revocation or suspension of the license of a broker who "has been convicted or has entered a plea of nolo contendere upon which a finding of guilty and final judgment has been entered in a court of competent jurisdiction in this State or in any other state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense or offenses involving moral turpitude . . ."

The Board based its suspension of defendant's license on the conclusion that he pled nolo contendere to the violation of a criminal offense involving moral turpitude. We disagree with the Board's action and hold that the superior court erred in affirming the order suspending defendant's license.

It is well settled that statutes in derogation of the common law must be strictly construed. *Ellington v. Bradford*, 242 N.C. 159, 86 S.E. 2d 925 (1955); *McKinney v. Deneen*, 231 N.C. 540, 58 S.E. 2d 107 (1950). Suffice to say, governmental regu-

lation of real estate brokers was unknown to the common law.

Admittedly, defendant was not convicted of, nor did he plead nolo contendere to, the criminal offense of embezzlement, obtaining money under false pretenses, forgery, or conspiracy to defraud. The question then arises, did he plead nolo contendere to "any similar offense or offenses involving moral turpitude?" The record sets forth a copy of the judgment and commitment of the U.S. District Court which contains the following: [D]efendant upon his plea of nolo contendere has been convicted of the offense of wilfully and knowingly filing a false and fraudulent joint income tax return as charged in Count 3 of the indictment . . . Clearly the offense that defendant pled nolo contendere to and was convicted of was not similar to embezzlement, obtaining money under false pretenses, or forgery, but the Board insists that the offense is similar to conspiracy to defraud. We disagree.

In 2 Strong, N.C. Index 2d, Conspiracy, § 3, pp. 170-171, we find: "A criminal conspiracy is the unlawful concurrence of two or more persons in a scheme or agreement to do an unlawful act, or to do a lawful act in an unlawful way or by unlawful means. The unlawful agreement and not the execution of the agreement is the offense."

Applying the strict construction rule as we are required to do, we do not think filing a false and fraudulent income tax return, either individually or jointly, is an offense similar to conspiracy to defraud in which latter offense the **unlawful agreement** is the gist of the offense.

The judgment appealed from is Reversed.

Judges HEDRICK and VAUGHN concur.

REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice.

NORTH CAROLINA REAL ESTATE LICENSING BOARD

813 BB&T Bldg.

Raleigh, North Carolina 27602

James E. Holshouser, Jr., Governor

BOARD MEMBERS

Henry C. Doby, Jr.,
Chm. Albemarle

Billy Hinton, V. Chm. Clayton

A. P. Carlton Greensboro

Brantley Poole Raleigh

J. F. Schweidler Sec'y.-Treas.

Blanton Little Admin. Asst.

CAN AN OWNER TRY TO SELL AFTER USING OPEN LISTING?

The following article, written by the Counsel for the Oregon Association of Realtors, refers to a Kansas City Supreme Court decision:

What rights does an owner have after he has listed his property with a Realtor using an "open listing"? May he lawfully sell to a buyer who had been shown the property by the Realtor so long as the purchaser was not in "actual communication" with the seller?

On December 11, 1971, the Supreme Court of Kansas decided this question in the case of Holloway vs. Forshee. Holloway was the Realtor; Forshee was the seller. On February 7, 1969, Forshee gave Holloway an open listing for the sale of his residence located at 565 Wetmore Court, Wichita, Kansas, for the listed price of \$55,000. The Realtor was to receive six percent. Holloway showed the property to Mr. and Mrs. Loris V. Bell, and discussed with them the price and loan balance. Holloway did not introduce the Bells to the sellers. The Bells did not make an offer. Two days after showing the property to the Bells, Holloway checked with the Mid-Kansas Federal Savings and Loan to inquire as to financing and

interest rates. The next day, he called the Bells to ask whether he could help them complete the transaction. The Bells informed Holloway that they had already checked into financing. Four days later, Holloway learned the property had been sold. He confronted the seller with this fact. They informed the Realtor that they sold the house to the Bells, and the Bells had not disclosed that they had been shown the property by Holloway.

The sellers claimed that the Realtor was not the procuring cause of the sale being consummated because they were not introduced to the buyers.

The sellers also claimed that he was not notified of Bell as an interested buyer, and that said lack of notification constituted negligence on the part of the plaintiff Realtor.

The court held for the Realtor on both counts, stating:

"Even though a broker's contract here was an 'open' listing, if plaintiff were otherwise entitled to a commission, the defendant could not defeat that right by closing the deal himself."

"Where a Real Estate Agent is employed to find a purchaser ready, willing and able to buy on terms acceptable to the seller, it is not required, in order to earn his commission, that he bring the parties together personally or introduce them."

The court also found that there was no negligence since the broker did follow up, in an attempt to arrange financing for the buyer.

(From Jayhawk Realtor)

NARELLO CONFERENCE

The 45th Annual Conference of the National Association of Real Estate License Law Officials will be held in Washington, D. C. on November 4-8, 1973. Joseph F. Schweidler, Secretary-Treasurer of the North Carolina Real Estate Licensing Board is President of the organization and will preside. Board member A. P. Carlton will attend as Chairman of the NARELLO-INDUSTRY LIAISON Committee.

LICENSE STATISTICS

Licensees as of July 1, 1973
Brokers 12,643
Salesmen 2,939
15,582

Examination—April, 1973

	Passed	Failed
Brokers	366	171
Salesmen	121	80

Examination—May, 1973

	Passed	Failed
Brokers	394	337
Salesmen	116	72

Examination—June, 1973

	Passed	Failed
Brokers	402	350
Salesmen	163	85

BOARD MEMBER RESIGNS

Mr. John W. Olive, former Chairman and member of the North Carolina Real Estate Licensing Board since November 21, 1969, resigned from the Board effective August 1, 1973. Mr. Olive has moved to Greenville, South Carolina, where he is now Vice-President of Daniel Financial Services, Inc. His many friends wish him well in his new position.

NEW REAL ESTATE BOOK

The Licensing Board is pleased to announce that its new real estate book, NORTH CAROLINA REAL ESTATE FOR BROKERS AND SALESMEN, is presently being published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey. It is anticipated that the book will be available through North Carolina bookstores about February 1, 1974, for \$9.95 per copy.

ADDITIONAL EXAM CENTERS

The Licensing Board has made arrangements with the Princeton Educational Testing Service to administer the real estate examinations for the Board at the following examination centers: Asheville, Charlotte, Winston-Salem, Raleigh and Kinston. It is planned to hold both the broker and salesman examinations simultaneously on the fourth Saturday each month except December. This change will become effective with the January 1974 examinations. The complete examination schedule with exam center locations will be carried in the next issue of the Bulletin.

NATIONAL ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS
1972 SUMMARY ON LICENSE STATISTICS

STATE	No. Licensed		Brokers Examinations			Salesmen Examinations		
	Brokers	Salesmen	Tested	Passed—%	Failed—%	Tested	Passed—%	Failed—%
Alabama	4,838	3,876	2,178	1,776—82	402—18	1,522	1,095—72	427—28
Alaska	228	670	116	73—60	43—40	684	339—49	345—51
Alberta	863	4,635				1,771	1,578—89	193—11
Arizona	5,938	16,790	595	468—79	127—21	6,095	4,694—77	1,401—23
Arkansas	2,893	3,709	1,094	646—60	448—40	2,011	1,303—65	708—35
Br. Columbia	1,410	4,979	114	81—71	33—29	1,587	1,025—65	562—35
California	69,937	131,995	5,466	2,933—54	2,533—46	49,483	23,108—47	26,375—53
Colorado	4,733	17,054	1,210	624—52	586—48	7,377	4,785—65	2,592—35
Connecticut	16,807	5,197	2,405	1,626—68	779—32	1,783	1,518—85	265—15
Delaware	601	1,168						
Dist. of Columbia	2,811	2,945	129	60—46	69—54	326	233—71	93—29
Florida	21,791	35,701	2,312	2,120—92	192—8	15,509	12,131—78	3,378—22
Georgia	4,000	17,000	640	310—48	330—52	9,342	4,670—50	4,672—50
Hawaii	1,907	4,230	1,296	407—31	889—69	3,608	1,169—32	2,439—68
Idaho	1,090	2,314	86	79—92	7—8	702	509—70	193—30
Illinois	25,952	35,796	3,944	1,984—53	1,960—47	12,566	7,270—56	5,296—44
Indiana	13,046	10,196	1,530	981—64	549—36	2,128	1,824—86	304—14
Iowa	5,807	4,171	380	217—57	163—43	1,392	1,006—73	386—27
Kansas	5,641	4,344	279	227—81	52—19	2,293	1,801—79	492—21
Kentucky	4,673	4,487	353	176—50	177—50	2,116	1,231—58	885—42
Louisiana	3,796	11,362	744	665—89	79—11	4,625	2,948—64	1,677—36
Maine	3,996	723	1,023	666—65	357—35	575	312—54	263—46
Maryland	4,865	13,559	725	579—80	146—20	8,872	7,096—81	1,776—19
Massachusetts	60,000	15,000	10,604	6,100—57	4,504—43	3,783	2,687—71	1,096—29
Michigan	11,915	34,952	1,910	955—50	955—50	15,803	8,675—55	7,128—45
Minnesota	6,939	10,930	372	302—81	70—19	4,068	2,522—62	1,546—38
Mississippi	1,850	1,875	195	169—87	26—13	633	586—93	47—7
Missouri	13,601	20,315	2,259	1,697—75	562—25	4,865	3,446—71	1,419—29
Montana	1,200	750	137	62—45	75—55	761	280—37	481—63
Nebraska	4,133	3,558	277	141—51	136—49	2,388	1,076—46	1,312—54
Nevada	1,218	1,913	717	203—28	514—72	476	160—34	316—66
New Hampshire	8,132	2,146	503	453—90	50—10	1,783	1,405—79	378—21
New Jersey	10,801	27,816	1,072	653—61	419—39	9,751	7,406—75	2,345—25
New Mexico	1,552	2,642	388	270—70	118—30	1,508	1,112—74	396—26
New York	28,060	69,940	1,892	1,237—65	655—35	28,516	20,385—71	8,131—29
North Carolina	11,809	3,211	4,016	2,393—60	1,623—40	1,792	1,057—59	735—41
North Dakota	738	540	66	47—71	19—29	146	95—65	51—35
Ohio	11,444	41,032	1,049	701—66	348—34	9,972	7,324—73	2,648—27
Oklahoma	8,234	6,121	648	504—78	144—22	3,989	3,042—76	947—24
Ontario	5,519	13,786	986	758—77	228—23	5,692	4,925—87	767—13
Oregon	2,310	9,000	686	488—71	198—29	4,346	2,663—61	1,683—39
Pennsylvania	12,045	30,971	680	383—56	297—44	10,305	7,290—71	3,015—29
Quebec	730	2,012	79	64—81	15—19	764	687—90	77—10
Rhode Island	3,702	1,046	836	577—69	259—31	371	293—79	78—21
South Carolina	2,946	3,558	655	334—51	321—49	2,576	2,025—79	551—21
South Dakota	1,443	588	38	29—76	9—24	294	184—62	110—38
Tennessee	6,891	9,467	667	402—60	265—40	3,796	2,467—65	1,329—35
Texas	28,445	42,128	3,240	2,157—67	1,083—33	19,338	13,130—68	6,208—32
Utah	830	3,736	121	70—58	51—42	1,748	1,103—63	645—37
Vermont	2,435	641	110	68—62	42—38	616	361—59	255—41
Virginia	5,000	12,000	655	323—49	332—51	7,271	3,767—52	3,504—48
Virgin Islands	251	89	19	9—47	10—53	37	15—41	22—59
Washington	5,450	9,464	982	577—59	405—41	4,482	2,940—66	1,542—34
West Virginia	927	1,924	70	63—90	7—10	530	430—81	100—19
Wisconsin	11,239	5,854	1,843	813—44	1,030—56	944	376—40	568—60
Wyoming	408	436	99	36—36	63—64	227	129—57	98—43
TOTALS	479,820	726,342	64,490	39,736—62	24,754—38	289,938	185,688—64	104,250—36

NATIONAL AVERAGE

Brokers	Salesmen
62% Passed	64% Passed
38% Failed	36% Failed

AMI APPRAISAL COURSE

The American Institute of Real Estate Appraisers will offer REAL ESTATE APPRAISAL COURSE 1-B covering Capitalization Theory and Techniques at the University of North Carolina, Chapel Hill, on July 15-26, 1974.

This combination lecture and case study course is devoted entirely to the income approach to value. Following a review of the steps leading to the estimation of net income, all prevalent methods and techniques of converting net income into an indication of value are fully covered. Direct Capitalization, the Residual Techniques, Annuity Capitalization, Mortgage Equity Techniques, Capitalization Rates — all types — are thoroughly analyzed and discussed. Also covered are appraisal of lease interests and investment analysis.

Both traditional and contemporary procedures are explored in depth and demonstrated with a broad range of practical examples. Theory is stressed along with techniques. The valuation premises and mathematical principles inherent in each technique are explained in detail. Comprehension as well as technical proficiency is developed through class discussion and exercises.

A passing grade on Required Examinations I or I-A, or their equivalent, is required for registration in Course 1-B.

For information and application form, write to American Institute of Real Estate Appraisers, 155 East Superior Street, Chicago 60611.

RULE NO. 13

In the event that any licensee shall advertise in any manner using a firm name, a corporate name, or an assumed name which does not set forth the name of the licensee, he shall first notify the Board in writing of such name or names, and also notify the Board of all certificates filed in compliance with G.S. 66-68, giving the office of the County Register of Deeds in which any certificate has been filed and the date of such filing.

FROM THE MAIL BAG

To North Carolina Realistate
Raleigh Headquarters
County or City Departments

Just a line I was wandering what Land is Selling In your state. Land in Michigan is selling In the Neighborehood of \$200.00 to \$300.00 Per acre at present — or about 4 years ago. The weather is quite Hot at Times — Durreing the 9-months, Bur Cool-Cold nites, around-38-40 Degrees of Tempiture. I Noticed a Few Neighbors already have gone to Florida or Texas: P.S. I was Wandering about The Drinking Water also, out your way around our Way, thats on — Blow Sand or other, the Drinking Water is very good. We have what they Call a Wide Spout Shallow-Well Picture Pump, that Raises Water around 24-26 ft — It Contains Sulphurated Oily Yellow Color — over a good taste when Cold. Its — not Limmey Water — But a Little — In Settling of the teakittle — Stains Water Pale Yellow Sulphur Color on the greasy side: P.S. We head a white Frost A.M. of the 11th Just Started — To Shrivell up the Corn Leves, Farmers are mostely for grains Such Rye Wheat Oats Millet or Proso for Chickens also Piggs — For Hoggs. Pottatoes also Beans — Soy's Hay Such as Clover THIMOTHY Alfalfa — Cutting from Two — 3 — times a Season. This Year Puts me In Mind Back in Year of 1914, we head a Frost of Killing TYPE, of the 26 eve — A.M. 7-Month, of Which We almost Lost 2-acres-of White Beans Every Other Plant of Which was Frosted Black. So — We Replanted Same, they Almost — Ripened About the Same — We Also Head Planted — 10 Acres of Dark Red Kidney-Beans in the Low Hallows it made them Turn Slightly Brown from a White-Frost-they were planted on Fall-Plowed Heavy Sod from a Fall-before or of 1913. of Which Went about 8 Bushels Per Acre this Was a Klay Clay Field, without Any Fertilizer, well we also head 12 acres of White Navey Beans they Were about To thirds of a crop of Which Around Around 15-Bushels Per Acre that Year We Head — 7 Acres of Potatoes that went 200 bushels Per Acre this was on Medium Heavy Clay or Clay Loam ground: Well I was wandering of the RainFall Fall of Your State — This Year. Also the Heat Wave I Was Wandering about Your main Transcontenal Truck Line Hiway to Your State From Grand Rapids Mich or By the-Straits of Mackinaw Macknaw our new Free Way Will Be opened the 20 — Yours Respectfully —

From A B

P.S. In the Winter I Cut Dead wood for Fueal.

NORTH CAROLINA
REAL ESTATE LICENSING BOARD
P. O. BOX 288
RALEIGH, N. C. 27602

BULK RATE
U. S. Postage Paid
Permit No. 99
RALEIGH, N. C.