

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR DEPARTMENT OF COMMERCE

In the Matter of William Bernier doing  
business as Cedar Bridge Realty

**NOTICE OF AND ORDER FOR  
HEARING, ORDER TO SHOW CAUSE,  
ORDER FOR SUMMARY SUSPENSION,  
AND STATEMENT OF CHARGES**

TO:

William Bernier  
113-9th Street South  
South St. Paul, MN 55075

TO:

Cedar Bridge Realty  
113-9th Street South  
South St. Paul, MN 55075

**NOTICE OF HEARING**

**WILLIAM BERNIER DOING BUSINESS AS CEDAR BRIDGE REALTY IS  
HEREBY NOTIFIED** that the Department of Commerce has initiated this action to determine if  
Respondent committed the violations alleged below, subjecting him to disciplinary action.

**ORDER TO SHOW CAUSE**

**IT IS HEREBY ORDERED** that, pursuant to Minn. Stat. §§ 45.027, subd. 7(b) and 58.12  
(2004). Respondent must show cause why his real estate broker's license, No. 20236562 should not  
be revoked or suspended; why he should not be barred from mortgage origination activities; and  
why he should not be subject to censure or a civil penalty as provided for in Minn. Stat. § 45.027,  
subds. 6-7 (2004).

**ORDER FOR SUMMARY SUSPENSION**

**IT IS FURTHER ORDERED** that Respondent's real estate broker's license,  
No. 20236562. and mortgage originator exemption, No. 20269460, are **SUMMARILY  
SUSPENDED** under Minn. Stat. § 45.027, subd. 7(b) (2004), pending final determination of the  
Order to Show Cause.

## ORDER FOR HEARING

**IT IS FURTHER ORDERED** that a contested case hearing on the Order to Show Cause will be held on Friday, June 17, 2005 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Kathleen D. Sheehy, Administrative Law Judge, Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) .

The hearing will be conducted under the contested case procedures set out in Chapters 14 and 45 of Minnesota Statutes (2004) and the Rules of the Office of Administrative Hearings, Minnesota Rules Chapter 1400 (2003). A copy of these materials may be purchased from the Minnesota Book Store, telephone (651) 297-3000, or are available at *www.revisor.leg.state.mn.us*. Copies of the rules are also available at *www.oah.state.mn.us*.

The attorney for the Department of Commerce is Assistant Attorney General Michael J. Tostengard, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, (651) 282-9992. Mr. Tostengard may be contacted to discuss discovery or informal disposition of this matter.

## STATEMENT OF CHARGES

### ALLEGATIONS

1. Bernier is currently licensed as a real estate broker, License No. 20236562. Bernier further holds a mortgage originator exemption, exemption no. 20269460.

### MONTGOMERY COMPLAINT

2. In December 2003, the Department received a complaint about Bernier from Floyd Montgomery. The Department's investigation revealed that Montgomery signed a purchase agreement in November 2003 to buy a home owned by Bernier at 914 Jessamine Street, St. Paul,

Minnesota. Montgomery provided \$1,000 in earnest money to Bernier pursuant to the purchase agreement.

3. St. Paul ordinances require that a seller provide a Truth In Sale of Housing Disclosure ("TISH") to prospective purchasers. Bernier failed to provide Montgomery the requisite TISH form.

4. In fact, the home in question has numerous code violations which require repair. One of the problems in the home is a leak causing standing water in the basement. The purchase agreement Bernier prepared for Montgomery, however, represents that the home "has not" had a wet basement.

5. Bernier did not deposit the earnest money check in the trust account of the listing broker for the Montgomery sale until December 31, 2003, after the code compliance issues were discovered by Montgomery.

#### **BERNIER CRIMINAL HISTORY**

6. The Department's investigation further revealed that Bernier has a significant criminal history. On or about May 18, 1990, Bernier was convicted in Dakota County District Court of property damage/trespass in violation of Minn. Stat. § 609.6051B

7. In addition, Bernier was convicted of gross misdemeanor aggravated assault in Ramsey County District Court on April 7, 2005. The conviction arose out of an incident in which Bernier struck a real estate client with a lock box.

8. Bernier has also been the subject of a harassment restraining order issued by Ramsey County District Court on January 9, 2004. The order arose out of Bernier's harassment of employees at the City of St. Paul Office of Licenses, Inspections, and Environmental Protection.

9. Bernier has not disclosed any of his criminal convictions to the Department, despite the fact that his license applications contain questions regarding criminal charges or convictions and must be supplemented with any new information.

#### **WILLIAMS COMPLAINT**

10. In December 2004, the Department received a complaint concerning Bernier from Theress Williams.

11. The Department's investigation revealed that Williams entered into an agreement with Bernier for Bernier to sell her home in October 2004. At that time, Bernier assured Williams that he could place the home on the Multiple Listing Service ("MLS").

12. In fact, Bernier did not have the ability to place a home on the MLS and did not place the Williams home on the MLS.

13. Williams terminated her contract with Bernier when she learned of his inability to place her home on the MLS.

#### **MODLINSKI COMPLAINT**

14. In June 2004, the Department received a complaint from Linda Modlinski at the Minnesota Association of Realtors ("MAR") concerning Bernier. The Department's investigation revealed that Bernier allowed an unlicensed person, Christine Shore, to perform real estate salesperson activities on behalf of his brokerage. The Department's investigation also revealed that Bernier is doing business under the name "Cedar Bridge Realty & Mortgage," for which he is not licensed.

15. This Order is in the public interest.

## **VIOLATIONS**

### **Count I**

Bernier has demonstrated that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority granted by the Commissioner in violation of Minn. Stat. § 45.027, subd. 7(a)(4) (2004).

### **COUNT II**

By failing to disclose his criminal convictions, Bernier violated Minn. Stat. §§ 82.35, subd. 1(a), 82.41, subd. 13(5), and 58.12, subd. 1(iv) & (v) (2004).

### **COUNT III**

By doing business under the name Cedar Bridge Realty & Mortgage, Bernier has conducted business under a name other than the licensed name in violation of Minn. Stat. § 82.22, subd. 6 (2004).

### **COUNT IV**

By failing to deposit the Montgomery earnest money within three business days of the acceptance of the offer, Bernier has failed to deposit trust funds as required by Minn. Stat. §§ 82.50, subd. 5 (2004) and 82.41, subd. 13(3) (2004).

### **COUNT V**

By misrepresenting his ability to place the Williams property on the Multiple Listing Service, Bernier violated Minn. Stat. § 82.35, subd. 1(b) & (f) and Minn. Stat. § 82.41, subd. 13(7), (9) and (10) (2004).

## COUNT VI

By allowing another individual to act as a real estate salesperson without a license, Bernier violated Minn. Stat. §§ 82.35, subd. 1(f) (2004) and § 45.027, subd. 7(4) (2004).

### ADDITIONAL NOTICE

1. Respondent's failure to appear at the contested case hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

2. If any party has good cause for requesting a delay of the hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the other party.

3. Any party intending to appear at the hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department of Commerce's attorney, Assistant Attorney General Michael J. Tostengard. A Notice of Appearance form is enclosed.

4. At the hearing, all parties have the right to represent themselves or to be represented by legal counsel, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties may obtain subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence and cross-examine witnesses, and to submit evidence and argument. Ordinarily, the hearing is tape-recorded. . The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (2004).

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000 (2003). A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us) or by calling (612) 341-7600.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly.

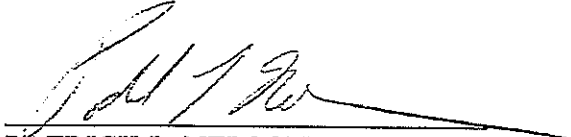
8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at [www.oah.state.mn.us](http://www.oah.state.mn.us) or by calling (612) 341-7600.

9. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the administrative law judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, or may call (612) 341-7610 (voice) or (612) 341-7346 (TTY).

10. Pursuant to Minn. Stat. § 45.027, subd. 6 (2004), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated any law, rule or order related to the duties and responsibilities entrusted to the Commissioner.

GLENN WILSON  
Commissioner

Dated: 5/17/05

  
PATRICK L. NELSON  
Deputy Commissioner  
Market Assurance Division

85 Seventh Place East, Suite 500  
Saint Paul, Minnesota 55101  
Telephone: (651) 296-4051



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of William Bernier doing  
business as Cedar Bridge Realty

**NOTICE OF APPEARANCE**

Date: Friday, June 17, 2005

Time: 9:30 a.m.

Name, Address, and Telephone Number of Administrative Law Judge:

Honorable Kathleen D. Sheehy  
Office of Administrative Hearings  
1700 Washington Square  
100 Washington Avenue South  
Minneapolis, Minnesota 55401-2138  
Telephone: (612) 341-7602

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the hearing:

Michael J. Tostengard  
Assistant Attorney General  
1200 NCL Tower  
445 Minnesota Street  
St. Paul, Minnesota 55101-2130  
Telephone: (651) 282-9992

Attorney for the Department of Commerce

Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
Telephone: (651) 296-2594

Dated: \_\_\_\_\_

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MICHAEL J. TOSTENGARD  
Assistant Attorney General

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1700 Washington Square  
100 Washington Avenue South  
Minneapolis, Minnesota 55401-2138  
Telephone: (612) 341-7602

PLEASE TAKE NOTICE that the party named below will appear at the hearing in this matter.

Name, Address, and Telephone Number of Party:

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Party's Attorney, Office Address and Telephone Number:

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Signature of Party/Attorney:

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Dated: \_\_\_\_\_.

**NOTICE:** This Notice must be served upon the attorney for the agency and any other known party. After an attorney has filed a notice of appearance, withdrawal is effective only if a notice of withdrawal is promptly served on all parties and filed with the judge. The notice of withdrawal must include the address and telephone number of the party. Withdrawal of counsel does not create any right to a continuance. Minn. R. 1400.5700.