

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sara Ladd, Samantha Harris, and Pocono :
Mountain Vacation Properties, LLC, :
Petitioners :

v. :

No. 321 M.D. 2017
Heard: July 12-13, 2022

Real Estate Commission of the :
Commonwealth of Pennsylvania and :
Department of State (Bureau of :
Professional and Occupational Affairs) :
of the Commonwealth of Pennsylvania, :
Respondents :

BEFORE: HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 31, 2022

I. Introduction & Procedural History

Petitioners Sara, a/k/a Sally, Ladd (Ladd), Samantha Harris (Harris), and Pocono Mountain Vacation Properties, LLC (PMVP) (collectively, Petitioners) filed a petition for review (Petition) in this Court’s original jurisdiction seeking declaratory and injunctive relief against the enforcement of the Real Estate Licensing and Registration Act (RELRA).¹ Petitioners asserted that Ladd wished to continue in business, through PMVP, as a short-term² vacation property manager, and Harris wished to continue to have Ladd manage her vacation property. Ladd,

¹ Act of February 19, 1980, P.L. 15, *as amended*, 63 P.S. §§ 455.101 - 455.902.

² Petitioners define “short-term,” as “rentals for periods of fewer than thirty days.” Petition, at 5.

however, ceased operations when Respondents, the Pennsylvania Department of State, Bureau of Professional and Occupational Affairs (Bureau), and the Pennsylvania Real Estate Commission (the Commission) (collectively, Commonwealth Respondents), informed her that they were investigating a report that she was engaged in the unlicensed practice of real estate. Petitioners further asserted that forcing Ladd to become a licensed real estate broker, simply to manage short-term vacation rentals, violated Ladd’s substantive due process right to pursue her chosen occupation under article I, section 1 of the Pennsylvania Constitution.³ Accordingly, Petitioners requested (1) a judgment declaring that RELRA violates Ladd’s right to pursue her chosen occupation and Harris’s right⁴ to avail herself of Ladd’s services under article I, section 1 of the Pennsylvania Constitution, and (2) an order permanently enjoining Commonwealth Respondents from enforcing RELRA against Ladd and others who are similarly situated. Petition, at 23-24.

In a previous opinion, this Court sustained Commonwealth Respondents’ preliminary objection in the nature of a demurrer and concluded that RELRA’s licensing scheme did not violate Ladd’s rights under article I, section 1 of the Pennsylvania Constitution. *See Ladd v. Real Est. Comm’n*, 187 A.3d 1070 (Pa. Cmwlth. 2018) (*Ladd I*) *rev’d*, 230 A.3d 1096 (Pa. 2020) (*Ladd II*). Our Supreme Court reversed that determination, applying a heightened rational basis test that it first articulated in *Gambone v. Commonwealth*, 101 A.2d 634 (Pa. 1954), and holding the allegations set forth in the Petition presented a colorable claim RELRA

³ “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1.

⁴ Due to our resolution of Ladd’s claims, we need not separately address Harris’s claims.

was unconstitutional as applied to Ladd’s short-term vacation property management services. *See Ladd II*.

Upon remand and after the parties completed discovery, this Court denied cross-applications for summary relief, concluding that the nature of Ladd’s vacation rental business presented a genuine issue of material fact. *See Ladd v. Real Est. Comm’n* (Pa. Cmwlth., No. 321 M.D. 2017, filed December 22, 2021), 271 A.3d 544 (Table). Accordingly, this Court conducted an evidentiary hearing on the Petition on July 12, 2022, and July 13, 2022.⁵ At the conclusion of that hearing, this

⁵ At the evidentiary hearing, both parties raised discovery violations as grounds for excluding evidence. Commonwealth Respondents complained that they were not provided with copies of signed contracts between the renters and the homeowners. Notes of Testimony (N.T.), 7/13/22, at 116. Commonwealth Respondents failed to establish a discovery violation, however, as they could not provide proof that they requested these documents in discovery. *Id.* at 141-47. Commonwealth Respondents also complained that Petitioners informed them that Ladd had six clients, instead of five clients as Ladd had previously sworn, within one week of trial. Commonwealth Respondents did not, however, make any motions regarding this complaint. *Id.* at 150-54. Instead, Commonwealth Respondents’ counsel appeared to simply use this to show that both parties made “oversights” in discovery. *Id.* at 154.

Petitioners complained that they were not provided with a copy of a letter that one of Ladd’s clients, Theresa Brooks (Brooks), provided to Commonwealth Respondents’ counsel approximately two months before trial. *Id.* at 107-08. Brooks originally sent the letter to Ladd. *Id.* at 113. Petitioners also complained that Brooks testified to matters that were a surprise, and they had been told Brooks’ testimony would be limited to matters contained in Ladd’s deposition. *Id.* at 120-21. Petitioners requested the Court strike Brooks’ testimony from the record due to these violations. *Id.* at 104. Commonwealth Respondents’ counsel admitted that she did not update her interrogatory responses or provide a copy of the letter to Petitioners’ counsel. *Id.* at 115-18. Nevertheless, Commonwealth Respondents’ counsel argued that Petitioners were not prejudiced, as Commonwealth Respondents did not use the letter at trial, Ladd should have had a copy of the letter as it was sent to her, and Brooks was a known witness who Petitioners could have contacted before trial. *Id.* 115-19. To remedy these violations, Commonwealth Respondents consented to Petitioners calling Ladd again to rebut Brooks’ testimony. *Id.* at 128. The Court finds this remedy was adequate under the circumstances because any prejudice Petitioners may have suffered by surprise was overcome by Ladd’s credible rebuttal testimony. Accordingly, to the extent Petitioners’ motion to strike needs to be resolved, it is denied.

Court heard both closing statements and oral argument. The case is now ready for disposition.

II. Evidence Presented & Findings of Fact

A. Ladd & PMVP

Ladd,⁶ a resident of the State of New Jersey, received a degree in journalism from the University of Miami in 1978 and worked from 1978 to 2004 in various editing, publishing, and marketing jobs. Parties' Joint Statement of Undisputed Facts, filed June 3, 2022 (J.S.) at 1-2. From 2004 to 2010, Ladd ran the marketing department for a real estate agency. Notes of Testimony (N.T.), 7/12/22, at 39. From 2010 to 2014, Ladd updated a medical publication's website and managed its digital marketing campaigns. J.S. at 2. Since 2014, when Ladd was laid off, she has worked on various internet marketing projects. *Id.*; N.T., 7/12/22, at 40.

In 2009, Ladd acquired a property in the Arrowhead Lake community, which is in the Pocono Mountain region of Pennsylvania⁷ – approximately a one and one-half hour drive from Ladd's residence. J.S. at 2; N.T., 7/12/22, at 42-45. Ladd chose to own a vacation property because she knew renting the property to others would enable her to afford the property and use it for her own family vacations. *Id.* at 42.

In late 2009 or early 2010, Ladd began renting her property through homeaway.com (now VRBO), which she described as a third-party platform that permitted her to advertise and book her vacation rental property over the internet. N.T., 7/12/22, at 45-46. Ladd coordinated her rentals from her home in New Jersey,

⁶ This Court finds Ladd's testimony entirely credible.

⁷ The Pocono Mountain region of Pennsylvania was commonly referred to by all witnesses as the Poconos. *See generally* N.T., 7/12/22. The Poconos are a popular, year-round tourist destination with abundant outdoor recreational activities, including skiing in the wintertime. *Id.*

and she initially charged between \$85 per night and \$115 per night to rent her property. *Id.* at 48. In 2013, Ladd acquired a second vacation property in the Arrowhead Lake community. J.S. at 2. Ladd formed PMVP, a limited liability company, around the same time to protect herself from personal liability for her rentals. N.T., 7/12/22, at 54.

In early 2014, Theresa Brooks (Brooks), a fellow property owner in the Arrowhead Lake community, asked Ladd if she would consider managing Brooks' vacation property for her. *Id.* at 54-55. Ladd admitted that she did not have any formal training in accounting, finance, contracts, agency law, consumer protection, the Americans with Disabilities Act,⁸ the Fair Housing Act,⁹ the Pennsylvania Human Relations Act,¹⁰ office management, or bookkeeping. *Id.* at 149-50. Despite this lack of formal training, Ladd agreed to manage Brooks' vacation property rentals because she had years of experience renting her own properties and because she was available due to having just lost her full-time job. *Id.* at 56-57.

Between 2014 and 2017, Ladd continued to rent her own properties and grew her vacation property management business. In that time, she managed a total of six properties for other property owners. N.T., 7/12/22, at 105. A Bureau investigator called Ladd in early 2017 and informed her that she was under investigation for the unlicensed practice of real estate. J.S. at 5. After consulting with an attorney, Ladd determined that she needed to stop managing vacation properties for other property owners, which she did by the end of summer 2017. N.T., 7/12/22, at 138-39. Ladd sold her first vacation property in September 2019, and her second in October 2021. J.S. at 6. As a result, she no longer owns vacation properties in Pennsylvania. *Id.*

⁸ 42 U.S.C. §§ 12101-12213.

⁹ 42 U.S.C. §§ 3601-3631.

¹⁰ Act of October 27, 1955, P.L. 744, *as amended*, 43 P.S. §§ 951-963.

B. Rental Service Agreements

Ladd, through her company, PMVP,¹¹ entered into contracts, called rental service agreements, with all her rental management clients, which set forth both her and her clients' obligations in the rental process. N.T., 7/12/22, at 57-58. Ladd's clients were generally responsible for keeping the property maintained, updated, and in rentable condition. *Id.* at 58-59. Clients were obligated to communicate the availability of the unit for rent to Ladd. *Id.* at 59. Ladd was responsible for advertising and managing the rentals. *Id.* at 64. Ladd listed the properties for rent on various internet platforms, which included adding photographs and populating description fields with answers and narratives. *Id.* at 65. Ladd approved renters, unless they exhibited "red flags" before the property was booked, and she coordinated each rental. *Id.* at 69-70. Following each rental, Ladd scheduled cleanings, collected the rental payments, and notified the owners of needed repairs if renters or the cleaning crew reported any. *Id.* at 64.

Ladd's rental service agreements were generally exclusive and effective for a period of one year. Petitioners' Exhibit 4 at 1. The agreements also renewed automatically, unless either party cancelled upon 30 days' written notice. *Id.* When a property owner notified Ladd that she was terminating the agreement, Ladd could still book the property, through the next year, during the final 30 days of the contract. *Id.* at 6. In addition, Ladd was entitled to retain her commission for all bookings she made, even if the bookings were beyond the contract termination date. *Id.*

The rental service agreements required Ladd and the property owners to mutually agree upon the nightly rental rate. N.T., 7/12/22, at 62; Petitioners' Exhibit

¹¹ Although PMVP was technically the party to these contracts, Ladd was the sole member and manager of PMVP. All references to Ladd should, therefore, be understood to mean Ladd acting on behalf of PMVP.

4 at 3. Ladd aided her clients in determining the nightly rental rate for their properties by reviewing comparable properties that were listed for rent on the internet and then providing a recommendation to the owners. N.T., 7/12/22, at 61-62. Many of Ladd's clients also permitted Ladd to unilaterally adjust the nightly rental rate to account for various market factors. *Id.* at 167-68.

Although Ladd's rental service agreements did not limit the duration of rentals, Ladd typically rented the properties for weekends, one week, or two weeks at a time. N.T., 7/12/22, at 72; J.S. at 3. Out of hundreds of rentals that she booked over several years, Ladd had 5 rentals that went beyond 30 days, with the longest being for 8 weeks.¹² N.T., 7/12/22, at 72, 173. The reasons that Ladd primarily booked less than two-week long rentals were that the property owners often wanted to use their own property, renters were often looking for shorter periods,¹³ and the nightly rental rate was higher for shorter rentals. *Id.* at 73.

Ladd's rental service agreements specified that Ladd was an independent contractor and that her vacation property management clients were responsible for paying her a commission, which was between 20 and 25% of the nightly rental price. Petitioners' Exhibit 4 at 1; N.T., 7/12/22, at 75. Ladd estimated that it took her at least two hours of work to coordinate each rental. *Id.* at 74. Based on the rental prices of the properties involved, Ladd's commission was approximately \$30 to \$50 per night, per booking. *Id.* at 75. In addition to paying Ladd's commission, Ladd's property management clients also paid for cleaning services and their subscriptions to the various listing websites. J.S. at 4.

¹² Despite having rented properties for longer than 30 days in the past, Ladd is only asking for a declaration that she may manage rentals for periods of less than 30 days. N.T., 7/12/22, at 190.

¹³ *See supra* note 7.

The listing websites processed payments and deposited rental fees for Ladd's rental properties and her clients' rental properties into Ladd's bank account, which was titled in both Ladd's name and PMVP. N.T., 7/12/22, at 67-68, 177. At the end of each month, Ladd provided her clients with a spreadsheet that reflected rental income, cleaning fees, taxes, Ladd's commission, and any other miscellaneous expenses. *Id.* at 67-68. Ladd would then pay her clients their monthly profit. *Id.* at 68.

C. Rental Contracts

Ladd's rental service agreements made it the property owners' responsibility to provide Ladd with a rental contract (to be signed by each renter), in editable format. Petitioners' Exhibit 4 at 3. Ladd's rental service agreements also specified that Ladd was not a party to the rental contracts. *Id.* Ladd provided her clients with a sample rental contract that they were allowed, but not required, to use. N.T., 7/12/22, at 60. Ladd originally obtained a template for this rental contract from homeaway.com, and she modified it based upon her prior rental experience. *Id.*

D. Ladd's Property Management Clients

Three of the six property owners that hired Ladd to manage their vacation property rentals testified. The first, Harris,¹⁴ is an attorney who owned a vacation property in the Arrowhead Lake community from 2014-2021. N.T., 7/12/22, at 193-94. Renting her property for short periods¹⁵ was appealing to Harris, because she and her family could use the property when they wanted, and she could generate income to cover expenses when they were not there. *Id.* at 196. When Harris first

¹⁴ This Court finds Harris's testimony entirely credible.

¹⁵ Harris stated that her rentals were for periods of one month or less. N.T., 7/12/22, at 195-96. Her rental periods usually lasted just for the weekends in the winter, which was ski season, and for a week or two in the summer. *Id.*

purchased her vacation home, she employed a caretaker (who the prior owner had used) to maintain the property and handle rentals. *Id.* at 196-97. The caretaker, who was not a licensed real estate broker, was not renting the property out frequently enough for Harris to offset her costs. *Id.* at 197.

Harris, hoping to increase the frequency of her rentals and not having time to coordinate rentals herself due to her full-time employment, hired Ladd to manage her vacation property rentals. N.T., 7/12/22, at 197-99. Initially, Ladd met with Harris and her husband, provided suggestions about making the property more attractive to renters, and proposed a rental price based upon other comparable properties that were listed for rent on the internet. *Id.* at 200, 209. Ladd provided Harris with her rental contract sample, which Harris ultimately used. *Id.* at 211. Before hiring Ladd, Harris used a rental contract that her previous property caretaker provided. *Id.* at 210. Harris could have continued using that contract, but she chose Ladd's sample, which she reviewed and found to be acceptable. *Id.* at 210-11.

Harris was satisfied with Ladd's services, as she was able to cover the expenses of the property with the rental income that Ladd generated. *Id.* at 205, 213. Harris felt she always had control over her vacation property, and she enjoyed that her business with Ladd could be conducted via phone, electronic mail (e-mail), or text. *Id.* at 212-13, 218. Ladd managed Harris's property from December 1, 2015, until Ladd stopped managing vacation property rentals in 2017. *Id.* at 200. Harris stated that "[i]t honestly wouldn't have occurred to me" that Ladd would need to be a licensed real estate broker to "manage this online booking system," because it did not involve any "sort of complicated transaction" like buying or selling property. *Id.* at 214.

After Ladd stopped managing vacation rentals, Harris began using the services of a licensed real estate broker. N.T., 7/12/22, at 215. Harris stated that the broker did not have time to rent her property, and she saw an immediate decline in rentals as a result. *Id.* at 215. Harris also said the broker's services were even worse than the property manager she used initially, because the broker exhibited a lack of communication and attention. *Id.* at 216.

Turning to the second client's testimony, Rita Reilly (Reilly), a former homeowner in the Arrowhead Lake community, testified on behalf of Commonwealth Respondents.¹⁶ N.T., 7/13/22, at 10-12. Reilly initially rented her vacation property through a real estate broker. *Id.* at 15. In April 2016, Reilly hired Ladd to rent her vacation property. *Id.* at 16, 19-20. Ladd suggested improvements to the property to increase its rentability, such as a hot tub, golf cart, and a fire pit, but Reilly refused each of these suggestions because she did not want the liability. *Id.* at 21. Ladd suggested a rental rate, based upon the rate of other comparable properties in the community, and she then advertised the property for rent. *Id.* at 21-22. Reilly stated that she did not believe the property was rented all that frequently during the four months of Ladd's tenure, yet she admitted that Ladd secured more rentals than she had with her prior real estate broker. *Id.* at 21, 24, 38. Reilly also stated that Ladd regularly acquired last-minute rentals, which were booked with less than one week's notice. *Id.* at 25.

Reilly felt that Ladd was demanding and controlling. N.T., 7/13/22, at 26. She did not like that Ladd suggested that Reilly change and/or redecorate her house.

¹⁶ This Court finds that Reilly presented her honest point of view, but that she had unreasonable expectations for renting her property. To the extent Reilly and Ladd had conflicts and contradictory testimony about those conflicts, this Court finds Ladd's testimony to be more credible.

Id. at 36, 43. Reilly was unhappy that she received two calls from renters that she believed should have been handled by Ladd. *Id.* at 27-28. Reilly also did not like that she only knew when the property was being rented, but not to whom it was being rented. *Id.* at 39. The final issue that led to Reilly terminating her relationship with Ladd occurred in August 2016, when Ladd accepted a last-minute booking for the property. *Id.* at 28-29. Despite admitting that she failed to block the rental calendar for that weekend, Reilly had already offered the property to her friends. *Id.* at 29. Reilly made Ladd cancel her booking and was then unhappy that Ladd insisted on keeping her \$80.00 commission for the booking.¹⁷ *Id.* at 29, 44. Reilly decided to end the relationship following this incident, so she blocked off all future dates in the rental calendar so that Ladd could not book any more renters. *Id.* at 29. Although Ladd was entitled to charge Reilly \$500.00 as an early termination fee, Ladd waived that fee and permitted Reilly to end her contract. *Id.* at 45-46. At the conclusion of their relationship, Ladd expressed that the short-term vacation rental business may not be suitable for Reilly.¹⁸ N.T., 7/12/22, at 164-65.

Moving to the final client's testimony, Brooks, a former homeowner in the Arrowhead Lake community, also testified on behalf of Commonwealth

¹⁷ This Court finds that Reilly was unreasonable in her complaints about Ladd. Reilly hired Ladd to maximize her rental income, yet she was offended that Ladd suggested changes to her property to increase the property's rentability. Additionally, Reilly became upset with Ladd for booking the property on a date that was available in the rental calendar, even though that was exactly what she hired Ladd to do.

¹⁸ Commonwealth Respondents introduced an e-mail sent from Ladd to Reilly, as Exhibit 3, which included the following statement: "I truly think you would be better off selling your home as you don't have the flexible disposition required for the rental business, nor do you seem interested in updating your home to draw consistent activity from quality renters." Commonwealth Respondents attempted to use this statement to show that Ladd advised clients about selling their homes in violation of RELRA. *See* N.T., 7/12/22, at 164-65. This Court, however, finds that Ladd was not advising Reilly about selling a home, but was simply informing Reilly that she was not suited for the short-term rental business.

Respondents.¹⁹ N.T., 7/13/22, at 52, 55. Brooks used the property exclusively as her vacation home for the first five years of her ownership. *Id.* at 56. Thereafter, however, economic hardships forced her to rent the property to others. *Id.* at 56-57. Brooks admitted that she was concerned about renting the property, because she “was worried about damage” and “was worried about strange people sleeping in [her] bed.” *Id.* at 58. Despite her concerns, Brooks contacted Ladd and requested that Ladd manage the home as a short-term rental. *Id.* at 59. After meeting Ladd, Brooks felt “as though she had the expertise necessary to help [her] manage [her] property.” *Id.* at 59. Even though Ladd did not tell Brooks that she was a licensed real estate broker, Brooks assumed Ladd to be a broker. *Id.* at 60, 89.

Ladd began booking Brooks’ property in May of 2014, and the relationship started well. *Id.* at 60-61. In July, however, Brooks discovered that Ladd was not a licensed real estate broker, and she informed Ladd that she believed Ladd needed to be a licensed real estate broker to manage her property. *Id.* at 66. Brooks testified that Ladd, in response, made a proposal that Brooks deed her 1% of her property so that Ladd could then manage rentals as an owner. *Id.* at 66. Brooks did not agree to this proposal, as she thought it sounded unethical. *Id.* After this conversation, Brooks looked up her property on a rental website and discovered that it appeared as if Ladd owned the property. *Id.* at 68-69. This alarmed Brooks, as she did not know if Ladd already had Brooks unknowingly convey a portion of ownership of the property. *Id.* at 69. Brooks admitted that she did not know if the property had always been listed as Ladd’s property on the rental website. *Id.* at 70-71.

¹⁹ This Court finds that Brooks, like Reilly, presented her honest point of view, but that she also had unreasonable expectations for renting her property and was unreasonable in her complaints about Ladd. To the extent Brooks and Ladd had conflicts and contradictory testimony about those conflicts, this Court finds Ladd’s testimony to be more credible.

While Brooks acknowledged that she knew when her property was being rented, she felt unsettled because she did not know who would be in her house. N.T., 7/13/22, at 71. Brooks was also confused by the financial statements that she received from Ladd. *Id.* at 73. The issue that ultimately led Brooks to end her contract with Ladd occurred in August of 2014, when Brooks and her husband planned a trip to their property for their anniversary. *Id.* at 75. A renter checked out of Brooks' property at 11:00 a.m. on a Sunday, and Brooks decided that she would go there that day, which was one day early.²⁰ On their way to the property, the cleaning company called Brooks and asked her to not come that day, as the renters left the house in disrepair. *Id.* at 76. The cleaning company also informed Brooks that there was a used lice kit sitting on the kitchen table. *Id.* Brooks believed Ladd already knew of these issues and was hiding them from her. *Id.* at 76-77.

Despite these requests, Brooks still went to her property and found it to be excessively dirty. N.T., 7/13/22, at 78. In addition, there were water stains on the dining room table and ice pick holes in one of the bedroom walls. *Id.* at 78. Brooks and her husband spent several days working to rid the house of lice. *Id.* at 79. Due to the damage, Brooks requested that Ladd withhold the renter's security deposit. *Id.* at 79. Ladd told Brooks that if she withheld the security deposit, the property would get a bad review and her property would not be rented. *Id.* at 79. As a result, Ladd returned most of the renter's security deposit. *Id.* Despite admitting that Ladd "did a very good job aggressively renting my home," Brooks decided to terminate

²⁰ Despite knowing that the day she was going to the property was reserved as a cleaning day, and that she had not reserved the property until the next day, Brooks testified that "the renters are gone and it's my home and I wanted to get up there a day early." N.T., 7/13/22, at 75. She also said that when Ladd told her that she was not supposed to be there until the following day, she replied that, "the renters are gone, it is my home and we wanted to get up a day earlier and I have the right because it's my house." *Id.* at 77.

her contract with Ladd after this incident. *Id.* at 81. Although this incident occurred in August, Brooks did not terminate her contract with Ladd until December 31, 2014, because Ladd secured rentals throughout the remainder of 2014. *Id.* at 89.

Ladd rebutted Brooks' testimony by stating that she did not tell Brooks about the lice incident because she only learned about it 20 or 30 minutes before Brooks arrived. Furthermore, Brooks was not supposed to be there that day, and Ladd was trying to determine how to remedy the situation. N.T., 7/13/22, at 158. Ladd said that she returned about \$200 of the renter's security deposit, and that she went over a list of issues with Brooks in reaching that amount. *Id.* at 159. She also said that she could not control who was listed as the owner on the listing websites, as they automatically fill in that section based upon who completes the information as the property manager. *Id.* Regarding the potential 1% ownership interest, Ladd stated that her brother-in-law, who is a real estate attorney in Florida, gave her the idea. *Id.* at 160. She also said she suggested it to Brooks "fairly casually" due to Brooks' concerns that she was not licensed, saying something like "this is the only option I'm aware of."²¹ *Id.* at 161.

Although Brooks informed Ladd in 2014 that she needed to be a licensed real

²¹ This Court finds Ladd to be more credible than Brooks regarding these conflicts. This Court further finds that Brooks did not want to give up any control over her property, despite choosing to rent it and hiring Ladd to manage the rental process. Brooks became upset with Ladd, primarily because renters damaged her property, which was beyond Ladd's control. Ladd was then attempting to rectify the situation for Brooks but was unable to do so because Brooks showed up at the house a day early. Ladd advised Brooks to forfeit the security deposit funds to avoid a bad review, which could decrease the property's future rentability, and this Court finds that Ladd and Brooks conferred and ultimately agreed, at the time, with the amount that Ladd returned. Regarding the 1% ownership suggestion, this Court finds that Ladd's motive was not unethical, but rather Ladd, having owned her own rentals and having consulted with an attorney, was simply trying to find a solution. Similarly, Ladd's testimony about how the website listed ownership was entirely credible. It is noteworthy that Brooks permitted Ladd to continue managing her rental for an additional four months after the property damage incident occurred.

estate broker to manage vacation rentals for other property owners, Ladd continued in her business. N.T., 7/12/22, at 123-25. Ladd contacted the Commission and was told that it could not give her legal advice. *Id.* at 125. Ladd also spoke with several individuals who were managing vacation rentals for other property owners in Pennsylvania. *Id.* at 124-25. Based upon her discussions with other property managers, Ladd thought that Pennsylvania had given tacit approval to short-term vacation property managers, as she concluded that the state was not paying attention to what was happening on a fairly widespread basis. *Id.* at 129. Despite having two disgruntled clients, none of Ladd’s clients ever filed a lawsuit against her. J.S. at 5.

E. RELRA Licensing Scheme

Krista Linsenbach (Linsenbach) is an administrator for the Commission. N.T., 7/12/22, at 226-28. The Commission designated Linsenbach to testify on its behalf regarding RELRA’s licensing scheme.^{22, 23} *Id.* at 229-31. She stated that the Commission’s main responsibility was to administer RELRA, which included qualifying applicants to obtain licenses under RELRA and adjudicating disciplinary actions against licensees and nonlicensees who violate RELRA. *Id.* at 234-35.

Linsenbach explained that the process of obtaining a real estate broker’s license begins with becoming a licensed real estate salesperson. *Id.* at 240. To become a licensed real estate salesperson, an applicant needs to complete 75 hours

²² Although the Commission designated Linsenbach to testify on its behalf, she is not a member of the Commission, and she stated that she had “no ability to speak on behalf of the Commission as to what decisions it would make or what opinions it might have on licensure or qualifications.” N.T., 7/12/22, at 232-33. When Petitioners’ counsel commented that he was surprised the Commission designated her to testify on its behalf, Linsenbach stated that, “[y]ou’re as surprised as I am, sir.” *Id.* at 236.

²³ This Court finds that Linsenbach’s testimony was credible, as she testified in a knowledgeable and disinterested manner.

of coursework and pass a salesperson exam. *Id.* at 240-41. Once someone becomes a licensed real estate salesperson, the person must then be hired by a licensed real estate broker and begin working under the supervision of the broker. *Id.* at 249.

Linsenbach also explained that to obtain a real estate broker's license, a licensed real estate salesperson must complete "240 hours of broker prelicensure education in specific topics, some of which are mandatory," complete three years of experience as a real estate salesperson under the supervision of a broker or have three years of equivalent experience, obtain a recommendation from a currently licensed broker, and pass the broker's examination. N.T., 7/12/22, at 237-38, 244. An applicant's experience within the required three-year period must equate to at least 200 points on the Commission's experience point system, which assigns specific point values to specific experiences, like representing the seller of a residential property through closing. *Id.* at 251-54. Linsenbach testified that the Commission has never approved an experience chart where an applicant obtained all of her points through renting properties for periods of less than 30 days. *Id.* at 258; J.S. at 6. In addition, Linsenbach testified that the Commission has never credited points on an applicant's experience chart for assisting a client in renting its property for periods of less than 30 days. N.T., 7/12/22, at 261; J.S. at 7.

RELRA's regulations require a licensed real estate broker to maintain a physical office space within the Commonwealth of Pennsylvania, unless the broker is licensed in another state where she maintains an office. N.T., 7/12/22, at 247. RELRA's regulations also require brokers to have signage and a private place to conduct business. *Id.* at 276. Linsenbach did not know if the Commission had any evidence that these requirements serve RELRA's valid purpose of public protection. *Id.* at 277.

Linsench affirmed that RELRA was first enacted in 1980, and that the internet, as well as websites devoted to vacation property rentals, did not exist at that time. *Id.* at 282. RELRA establishes licensing schemes for other specialty areas that existed in 1980, such as builder-owner’s salespersons and cemetery brokers, and these specialized licenses have less onerous educational and experience requirements than becoming a real estate broker. *Id.* at 290-99.

Importantly, Linsench admitted the only valid governmental purpose that the Commission contends is advanced by RELRA’s broker license requirements is “public protection, as determined by the General Assembly.” N.T., 7/12/22, at 271-75.

Arion Claggett, Acting Commissioner for the Bureau, was present for the hearing in this matter, and he briefly testified that the Bureau agreed with Linsench’s assertions. N.T., 7/12/22, at 415-24.

Petitioners admitted a 2018 sample national real estate salesperson practice examination and a 2018 sample national real estate broker practice examination. *See* Petitioners’ Exhibit 1, at 7-14, 16-23.²⁴ This Court has reviewed these materials and finds that very few questions are relevant to the services Ladd provided or seeks to provide.²⁵ Petitioners also admitted course outlines for all of the required real estate salesperson and real estate broker prelicensure education courses. *See* Petitioners’ Exhibit 1, at 25-91. This Court also reviewed these materials and similarly finds that the licensure education courses for real estate salespersons and brokers apply

²⁴ This exhibit contains multiple documents, and the exhibit is not paginated. The page references to this exhibit are, therefore, taken from the electronic version of the exhibit.

²⁵ By stipulation, the parties agreed that, although the questions on the national examinations “may change from year to year,” these practice examinations “are representative of the possible subject content” of the corresponding national examinations. Factual Stipulation, filed December 15, 2020, at 1, 2.

minimally, at best, to the services Ladd seeks to provide.

Petitioners and Commonwealth Respondents stipulated that it would cost Ladd approximately \$4,400.00 to complete the courses, examinations, and applications necessary to obtain a real estate broker's license. Parties' Joint Supplemental Statement of Undisputed Facts, filed June 24, 2022, at 5.

F. Real Estate Broker's Services

Kevin Gaughen (Gaughen), a licensed real estate broker and the owner of Gaughen Home Realty, testified on behalf of Petitioners.²⁶ N.T., 7/12/22, at 341-43. Gaughen practiced as a licensed real estate salesperson from 2006 to 2011, and he has now been a licensed real estate broker since 2011. *Id.* at 342. Gaughen currently provides both residential and commercial real estate services. *Id.* at 343. Gaughen also has an extensive background in residential leasing due to his ownership interest in hundreds of rental units. *Id.* at 357. Gaughen stated that "without a question" residential sales are more complicated than residential leasing. *Id.* at 358. He also explained residential leases are relatively simple compared to commercial leases, which can be "like the wild west." *Id.* at 363.

Gaughen uses form contracts, which he obtains from the Pennsylvania Association of Realtors, for all of his contracts, including leases and listing agreements. *Id.* at 360-62. If a transaction is too complicated for the form contracts, Gaughen refers his clients to an attorney. *Id.* at 361.

Gaughen has booked a vacation rental over the internet as a customer, but he

²⁶ This Court finds Gaughen's testimony entirely credible, as he testified in a knowledgeable and disinterested manner. This Court notes that Gaughen testified against the governing body for his own profession, yet he was forthcoming with his criticisms of his profession's licensing requirements. Gaughen was similarly straightforward in answers regarding the limitations of his own experiences. In addition, Petitioners did not compensate Gaughen, beyond travel expenses, for his testimony. N.T., 7/12/22, at 409.

has never booked a vacation rental as an owner or for an owner as a realtor. N.T., 7/12/22, at 367. When asked how using short-term vacation property rental websites compared with his professional services, the following exchange occurred:

A. I think it's a grey area sort of between hotels and residential leases, because in my practice we hardly ever do a residential lease shorter than six months. I mean, I don't think I've ever seen one in my career. And the reason for that is the high turnover costs. So if a tenant moves out of the place, you've got to replace the carpeting. You have to paint it. It doesn't make financial sense to do residential leases shorter than six months typically. So I mean, I understand that other brokers . . . down by the beach somewhere might be doing this, but I don't see it here.

Q. So I think you already answered it, but have you ever taken on a commission for Airbnb?

A. No, it wouldn't make sense. My commission rates for residential leases, I typically do them as favors for clients. . . . I had to find [a seller] a rental really fast [once]. So I worked as a tenant's agent. I only got paid \$200 for that, and I did it as a favor because I was closing their other house. That was a year-long lease that they entered into, and I got paid \$200. That was my total commission. So for an Airbnb that's like a week or two, I mean, it wouldn't make sense for me.

Id. at 367-68. Gaughen has attempted to find short-term leases from other brokers, without success, when he had clients who bought or sold a home and needed a place to stay for a short period. *Id.* After not finding anything available through other brokers, Gaughen sent his clients to hotels or vacation rentals. *Id.*

While Gaughen was a real estate salesperson, he split his commissions evenly with his supervising broker. N.T., 7/12/22, at 375. As a broker, Gaughen has supervised real estate salespersons, and he explained that the Commission did not supervise his mentorship in any way. *Id.* at 375-77.

Gaughen also testified regarding Pennsylvania's requirement that real estate

brokers have a brick-and-mortar office. *Id.* at 379. Gaughen remarked that “I don’t understand the necessity of this requirement in a post-COVID world, where most people are working from home” and “it’s sort of a burden to have this office, because I don’t really use it.” *Id.* at 379, 380. He has only done one closing at his office in 11 years, and he only has the office because he is required by law. *Id.* at 382. His office is a significant financial burden, as he must pay rent and utilities. *Id.* at 383. In addition to having an office, Gaughen testified that he purchased a membership in the multi-listing service, which cost \$5,000 at the time. *Id.* at 387.

Gaughen’s real estate practice is just one business model for real estate brokers; some brokers focus on property management. N.T., 7/12/22, at 402-03. Property management includes a spectrum of services that can include listing a residential or commercial property for rent, finding tenants, paying expenses on behalf of the landlord, maintaining the property, and modifying the property. *Id.* at 403-05.

III. Legal Analysis

A. Statutory Framework

RELRA requires a person to become licensed before engaging in, or acting in the capacity of, a real estate broker or salesperson. *See* Section 301 of RELRA, 63 P.S. § 455.301. RELRA defines a real estate “broker” as:

[a]ny person who, for another and for a fee, commission or other valuable consideration:

(1) negotiates with or aids any person in locating or obtaining for purchase, lease or an acquisition of interest in any real estate;

(2) negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing or option for any real estate;

- (3) manages any real estate;
- (4) represents himself to be a real estate consultant, counsellor, agent or finder;
- (5) undertakes to promote the sale, exchange, purchase or rental of real estate: Provided, however, That this provision shall not include any person whose main business is that of advertising, promotion or public relations;
- (5.1) undertakes to perform a comparative market analysis; or
- (6) attempts to perform any of the above acts.

Section 201 of RELRA, 63 P.S. § 455.201. Section 304 of RELRA provides several exclusions, where RELRA does not require individuals who would otherwise meet the definition of a “broker” to obtain a broker license before engaging in the excluded services, including:

- (1) An owner of real estate with respect to property owned or leased by such owner.

.....

- (10) Any person employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property: Provided, however, That such person is not authorized or empowered by such owner to enter into leases on behalf of the owner, to negotiate terms or conditions of occupancy with current or prospective tenants or to hold money belonging to tenants other than on behalf of the owner. So long as the owner retains the authority to make all such decisions, the employees may show apartments and provide information on rental amounts, building rules and regulations and leasing determinations.

63 P.S. § 455.304.

If a person wishes to become a licensed real estate broker, her first step is to become a licensed real estate salesperson. RELRA defines a real estate “salesperson” as:

Any person employed by a licensed real estate broker to perform comparative market analyses or to list for sale, sell or offer for sale, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate or collect or offer or attempt to collect rent for the use of real estate for or in behalf of such real estate broker. No person employed by a broker to perform duties other than those activities as defined herein under “broker” shall be required to be licensed as a salesperson.

Section 201 of RELRA, 63 P.S. § 455.201. To become a licensed real estate “salesperson,” an applicant must: (1) be at least 18 years old, (2) have a high school diploma or its equivalent, (3) complete 75 hours of “real estate instruction in areas of study prescribed by the rules of the [C]ommission, which rules shall require instruction in the areas of fair housing and professional ethics[,]” (4) pass an examination, and (5) submit an application, which must include a “sworn statement by the broker with whom [she] desires to be affiliated certifying that the broker will actively supervise and train the applicant[,]” to the Commission within three years of passing the examination. Sections 521 and 522 of RELRA, 63 P.S. §§ 455.521, 455.522.

A licensed real estate “salesperson,” can begin to gain experience and satisfy the requirements for becoming a licensed real estate “broker,” which include: (1) being at least 21 years of age, (2) having a high school diploma or its equivalent, (3) completing “240 hours in real estate instruction in areas of study prescribed by the rules of the [C]ommission, which rules shall require instruction in the areas of fair housing and professional ethics[,]” (4) being “engaged as a licensed real estate salesperson for at least three years or possess[ing] educational or experience qualifications which the commission deems to be the equivalent thereof[,]” (5) passing an examination, and (6) submitting an application, which must include the applicant’s desired place of business, to the Commission within three years of

passing the examination. Sections 511 and 512 of RELRA, 63 P.S. §§ 455.511, 455.512.

A licensed real estate “broker,” is required to “maintain a fixed office within this Commonwealth,” prominently display his license within that office, and “maintain a sign on the outside of his office indicating the proper licensed brokerage name.” Section 601 of RELRA, 63 P.S. § 455.601. If a person performs the services of a real estate “broker” without complying with RELRA’s licensing requirements, the person may be convicted of a summary offense, and “be sentenced to pay a fine not exceeding \$500 or suffer imprisonment, not exceeding three months, or both” Section 303 of RELRA, 63 P.S. § 455.303. If a person commits a subsequent offense, the person may be convicted of a felony of the third degree, and “be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.” *Id.* In addition to potential criminal penalties, the Commission “may levy a civil penalty of up to \$1,000 . . . on any person who practices real estate without being properly licensed” Section 305 of RELRA, 63 P.S. § 455.305.

In addition to establishing licensing schemes for a real estate “salesperson” and “broker,” RELRA establishes licensing schemes for several other real estate professions. Those include a: “cemetery broker,” “cemetery salesperson,” “builder-owner salesperson,” “rental listing referral agent,” “campground membership salesperson,” and “time-share salesperson.” These licenses all have less onerous educational and experience requirements than a real estate salesperson or broker license.²⁷

²⁷ For instance, a person can become a time-share salesperson simply by being 18 years of age; successfully completing 30 hours of instruction in basic contract law, sales practices and **(Footnote continued on next page...)**

B. Declaratory Judgment Act²⁸

The Declaratory Judgment Act (DJA)²⁹ provides that “[c]ourts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. § 7532. The DJA’s “purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. § 7541. Accordingly, courts “may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise

procedures, sales ethics, and basic theory of resort time sharing; completing 30 days of onsite training at a time-share facility; and submitting an application that includes a “sworn statement by a broker certifying that the broker will actively supervise and train the applicant and certifying the truth and accuracy of the certification of the applicant.” Sections 591 and 592 of RELRA, 63 P.S. §§ 455.591, 455.592.

²⁸ Despite this Court having previously determined that pre-enforcement declaratory relief was appropriate in this matter, Commonwealth Respondents made a continuing objection, on relevancy grounds, at the hearing in this matter to testimony regarding Ladd’s intended future business activities. *See* N.T., 7/12/22, at 77-78, 83-101. Commonwealth Respondents asserted that Petitioners were limited by their pleadings and that this Court should only consider Ladd’s prior conduct, particularly that she had not actually limited rentals to periods of less than 30 days. This Court permitted the testimony, but took Commonwealth Respondents’ continuing objection under advisement.

At the time Petitioners filed their Petition, Ladd had ceased, or was in the process of ceasing, her business operations. A review of the Petition reveals that Petitioners were asking for the right to manage short-term vacation rentals only. Petitioners defined “short-term” rentals as “rentals for periods of fewer than thirty days,” and then went on to make assertions like “[Ladd] seeks to continue providing short-term vacation property management services . . .” *See generally* Petition, filed 7/17/2017. By using the term “short-term,” which Petitioners had previously defined, this Court finds that Petitioners were asserting that Ladd was seeking a declaration that she may engage in vacation property management for rentals lasting less than 30 days – not that she hopes to continue in business exactly as she had been in the past. In addition, a request for pre-enforcement review, by its nature, typically includes a statement of intended activities that would violate a statute if performed in the future. Under these circumstances, testimony regarding Ladd’s intended future business activities is relevant. Accordingly, Commonwealth Respondents’ continuing objection is overruled.

²⁹ 42 Pa.C.S. §§ 7531-7541.

to the proceeding” 42 Pa.C.S. § 7537.

“[T]he availability of declaratory relief is limited by certain justiciability concerns . . . as the courts of this Commonwealth are generally proscribed from rendering decisions in the abstract or issuing purely advisory opinions.” *Office of Governor v. Donohue*, 98 A.3d 1223, 1229 (Pa. 2014) (citations omitted). Our Court has interpreted these limitations to mean that “a declaratory judgment is an appropriate remedy where a case presents antagonistic claims, indicating imminent and inevitable litigation . . . [but] it is an inappropriate remedy to determine rights in anticipation of events which may never occur.” *Independence Blue Cross v. Pa. Ins. Dep’t.*, 802 A.2d 715, 719 (Pa. Cmwlth. 2002) (citations omitted).

Our Supreme Court recently noted that its “jurisprudence in pre-enforcement declaratory judgment cases . . . has developed to give standing to plaintiffs to challenge laws before the laws have been enforced against them and before enforcement has been threatened.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 489 (Pa. 2021) (citations omitted). The Court further noted that pre-enforcement review is appropriate where petitioners must choose between “relinquishing their rights to comply with a law or willfully violating the law.” *Id.* (citation omitted). When petitioners are placed in that position, it shows that their “interest in the outcome of the constitutionality” of a law is “substantial, immediate, and direct,” which is sufficient to justify pre-enforcement review. *Id.* at 487, 490 (citations omitted).

In *Yocum v. Pennsylvania Gaming Control Board*, 161 A.3d 228, 231-32 (Pa. 2017), an attorney who was employed by the Pennsylvania Gaming Control Board (PGCB) asserted that she wanted to leave the PGCB and find a job representing gaming clients. She brought a declaratory judgment action against the PGCB,

challenging the constitutionality of statutory prohibitions³⁰ against her obtaining employment representing gaming clients within two years of her employment for the PGCB. The attorney asserted that she was “faced with two equally unappealing and untenable options to leave the employ of the [PGCB].” *Id.* at 233 (citation omitted). Her first option was to test the Gaming Act’s employment restrictions by violating them, thereby subjecting herself and her future employer to potential penalties. *Id.* Her second option was to practice law outside her area of expertise. *Id.* The PGCB filed preliminary objections, arguing that declaratory relief was not appropriate because the “hypothetical future occurrence” of the attorney obtaining outside employment was speculative. *Id.* at 237 (citation omitted). In dismissing that preliminary objection, our Supreme Court noted that:

awaiting [the attorney’s] actual application to or recruitment by a possible future gaming industry employer “is not likely to shed more light upon the constitutional question of law” she has presented. . . . The substantive question regarding constitutionality of the employment restrictions in the Gaming Act is clearly a question of law and, . . . such questions are “particularly well-suited for pre-enforcement review.”

Id. (citations omitted).

Although *Yocum* and *Firearm Owners* addressed facial constitutional challenges and *Ladd* presents an as-applied constitutional challenge,³¹ we conclude

³⁰ Sections 1201(h)(8) and (13) of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §1201(h)(8) and (13), prohibit attorneys the PGCB employs from accepting employment with a licensed gaming facility or appearing before the PGCB in a representation capacity for two years following termination of employment with the PGCB.

³¹ There are two types of constitutional challenges: facial challenges and as-applied challenges. *Nigro v. City of Phila.*, 174 A.3d 693, 699 (Pa. Cmwlth. 2017) (citation omitted). A facial challenge “tests a law’s constitutionality based on its text alone and does not consider the facts or circumstances of a particular case.” *Peake v. Com.*, 132 A.3d 506, 517 (Pa. Cmwlth. 2015) (citation omitted). “A statute is facially unconstitutional only where there are no circumstances under which the statute would be valid.” *Germantown Cab Co. v. Phila. Parking Auth.*, 206 A.3d (Footnote continued on next page...)

that *Yocum* and *Firearm Owners* are still applicable to Ladd. Petitioners have shown that Commonwealth Respondents contacted Ladd and informed her that she was under investigation for the unlicensed practice of real estate. As a result, like the attorney in *Yocum*, Ladd was forced to choose to close her vacation property management business to comply with RELRA or remain in business, thereby willfully violating RELRA. Faced with RELRA’s civil and criminal penalties, Ladd chose to comply with RELRA and close her business, which was a major source of her income at the time. This was the exact choice that our Supreme Court identified in *Firearm Owners* as indicating that Ladd’s interest in the outcome of the constitutionality of RELRA is sufficiently substantial, immediate, and direct to justify pre-enforcement review. *See Firearm Owners*, 261 A.3d at 489-90; *see also Diop v. Bureau of Pro. and Occupational Affairs, State Bd. of Cosmetology*, 272 A.3d 548, 562 (Pa. Cmwlth. 2022) (stating that Petitioners must present “facts to establish [their] direct and immediate interest in asserting an as-applied challenge”). Accordingly, like in *Yocum*, and as determined by this Court in *Ladd I*,³² this Court concludes that this matter is appropriate for pre-enforcement declaratory relief.

1030, 1041 (Pa. 2019). “[A]n as-applied [challenge] . . . does not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right.” *Weissenberger v. Chester Cnty. Bd. of Assessment Appeals*, 62 A.3d 501, 505 (Pa. Cmwlth. 2013) (citation omitted). “[A]n as-applied challenge will not necessarily invalidate a law given that a law ‘may operate in an unconstitutional way as to one particular individual or company, as to which it may be declared void, and yet may, as to others still be effective.’” *Nigro*, 174 A.3d at 700 (quoting *Pennsylvania R. Co. v. Driscoll*, 9 A.2d 621, 632 (Pa. 1939)).

³² In *Ladd I*, this Court stated “[t]he effect of the licensing requirements on Ladd under RELRA . . . is sufficiently ‘direct and immediate’ to warrant justiciability in advance of enforcement. . . . Pre-enforcement review of the application of RELRA’s licensing requirements to Ladd in this Court’s original jurisdiction is proper.” *Ladd I*, 187 A.3d at 1076, *rev’d on other grounds, Ladd II*, 230 A.3d at 1108-16 (citation omitted). Because the undersigned presently reaches the same conclusion as the Court in *Ladd I*, this Court need not analyze whether it would have been bound by the Court’s ruling in *Ladd I*.

C. Article I, Section 1 of the Pennsylvania Constitution

Although Petitioners concede that Ladd’s short-term vacation property management services fall within RELRA’s definition of services to be performed by a real estate broker, Petitioners assert that RELRA’s licensing scheme, as-applied to Ladd’s services, violates Ladd’s right to pursue a chosen occupation under article I, section 1 of the Pennsylvania Constitution. In *Ladd II*, our Supreme Court determined that in evaluating the alleged infringement upon Ladd’s non-fundamental right to pursue her chosen occupation, courts must apply the heightened rational basis test that it first articulated in *Gambone*, 101 A.2d at 636-37.³³ *Ladd II*, 230 A.3d at 1109-10. Accordingly:

[this Court] must determine: (1) whether RELRA’s real estate broker licensing requirements — apprenticeship, instructional coursework and examinations, and brick and mortar location — are “unreasonable, unduly oppressive, or patently beyond the necessities of the case[:]” and (2) whether those requirements bear a “real and substantial relation” to the public interest they seek to advance when applied to Ladd We also recognize there is a strong presumption the statutory scheme is constitutional; the presumption may be rebutted only by proof the law clearly, palpably, and plainly violates the constitution.

Id. at 1109-10 (citations omitted). The public interest RELRA seeks to advance is “protecting the public from the fraudulent conduct of those ‘engaged in the business of trading real estate.’” *Id.* at 1111 (citation omitted).

In *Ladd II*, our Supreme Court reviewed the facts presented in the Petition and concluded that, if true, Ladd’s “complaint raises a colorable claim that RELRA’s

³³ Given the majority of our Supreme Court’s application of the heightened rational basis test, also called the *Gambone* rational basis test, this Court is constrained to apply that test. However, the undersigned notes Justice Wecht’s well-reasoned position that *Gambone* sanctions judicial overreach and allows courts to “second guess the wisdom, need or appropriateness of otherwise valid legislation.” *See Ladd II*, 230 A.3d at 1116 (Wecht, J., dissenting).

requirements are unconstitutional as applied to her because they are, in that context, unreasonable, unduly oppressive and patently beyond the necessities of the case, . . . thus outweighing the government’s legitimate policy objection.” *Ladd II*, 230 A.3d at 1111 (citation omitted). This Court now must determine whether the mandates of RELRA are unconstitutional as applied to Ladd. To do so, this Court begins by noting that the facts considered by our Supreme Court in *Ladd II* were as follows:

Ladd, a New Jersey resident, owns two vacation properties on Arrowhead Lake in Monroe County, Pennsylvania, an area commonly known as the Pocono Mountains. Ladd started renting one of these properties in 2009 and the other in 2013 to supplement her income after being laid off from her job as a digital marketer. She used her digital marketing experience to establish an online system for booking the rentals. Eventually, some of her Arrowhead Lake neighbors learned of her success and asked her to manage rental of their own properties. By late 2013, Ladd formed a New Jersey limited liability company, Pocono Mountain Vacation Properties, LLC (PMVP), and in 2016, launched a corresponding website. Her objective was to “take the hassle out of short-term vacation rentals by handling all of the marketing and logistics that property owners would otherwise have to coordinate themselves[.]” Ladd considered “short-term” vacation rentals to be rentals for fewer than thirty days, and limited her services to such transactions only.

Ladd acted as an “independent contractor” for her “clients” and entered into written agreements with them related to her services. In these contracts, Ladd agreed to market her clients’ properties on the internet;[] respond to inquiries and coordinate bookings according to a list of pre-approved dates; manage all billing including accepting rental payments and security deposits, subtracting her own commission, and remitting payments to her clients; and ensure the properties were cleaned between renters. Her clients agreed to: execute a contract between themselves and the tenant; provide a list of available dates; work with Ladd to establish a rental rate; certify the property complied with all applicable laws; pay all applicable taxes;[] maintain short-term rental liability insurance; provide a list of household rules and instructions; and ensure the property was stocked with necessary supplies and items in accordance with the website listing. However,

Ladd herself was never a party to the contracts between her clients and their renters.

Ladd managed PMVP alone and operated a majority of its business from her home in New Jersey. According to Ladd, this limited overhead allowed her to provide low-cost services to her clients. Her services involved rentals lasting only a few days at a time for just a few hundred dollars. She never managed more than five clients' properties at one time and never managed a property outside of the Pocono Mountains. She distinguishes her services from those of traditional real estate brokers who engage in "complex, months- or year-long transactions involving the transfer of permanent or long-term interests in real property" and generally "buy and sell houses worth tens or hundreds of thousands of dollars." Ladd's services did not include buying or selling real property on behalf of her clients.

Ladd II, 230 A.3d at 1100-01 (citations and footnotes omitted). The evidence the parties presented at the hearing in this matter generally comports with the allegations of the Petition, which our Supreme Court reviewed and considered in *Ladd II*.

Commonwealth Respondents, however, argue that Ladd's services are distinguishable from the services she described in the Petition, because: (a) she did not actually limit rentals to periods of less than 30 days and admitted to booking 5 rentals that went beyond 30 days, with the longest being for 8 weeks; (b) Ladd's business model caused actual harm; (c) Ladd advised her clients about nightly rental rates; (d) Ladd's contracts with her clients are complex and provide her with paramount control over her clients' properties; (e) Ladd's contracts with her clients are for long terms, automatically renew, and were difficult for clients to terminate; (f) Ladd was involved in leasing, because she provided the lease agreement templates to her clients; (g) Ladd offered advice on upgrades; (h) Ladd was entitled to withhold renter information from her clients; and (i) Ladd practiced unsound business practices, such as intermingling funds and not maintaining records. Due to these alleged distinctions, Commonwealth Respondents argue that RELRA's real

estate broker licensing requirements are reasonable and necessary to protect the public from fraud.

Commonwealth Respondents' first alleged distinction (Ladd's prior conduct, particularly managing 5 vacation rentals that extended beyond 30 days) is not determinative in this action, because Petitioners requested a pre-enforcement declaratory judgment based upon the assertion that Ladd wishes to manage only short-term (periods of fewer than 30 days) vacation property rentals in the future. Commonwealth Respondents' second alleged distinction (that Ladd's business model caused actual harm) is inaccurate. Each of Ladd's clients to whom Commonwealth Respondents are referring (Reilly and Brooks) were unreasonable in their expectations for vacation rentals. Additionally, any minimal financial "losses" they may have incurred were either a result of their own misconduct or were "losses" they would have suffered regardless of who was managing their vacation rentals and/or how they were being managed.

Commonwealth Respondents' remaining alleged distinctions all focus on presumed improprieties of Ladd's business practices, which implicate the public protection interests RELRA seeks to advance. Accordingly, the Court will consider them in determining whether RELRA's licensing requirements bear a real and substantial relation to "the statutory objective of protecting consumers from the fraudulent practices of those 'engaged in the business of trading real estate.'" *Ladd II*, 230 A.3d at 1112-13 (citation omitted).

In *Ladd II*, our Supreme Court began by analyzing RELRA's coursework requirements for becoming a licensed real estate salesperson and broker and concluded that only 150 hours of the 315 hours required were even "arguably related to [Ladd's] services." *See Ladd II*, 230 A.3d at 1112. Upon review of the course

outlines and sample examinations presented at the hearing in this matter, this Court finds that far less than 150 hours of the 315 hours required are related to Ladd's services. Accordingly, this Court concludes that RELRA's instructional requirements, as applied to Ladd, "are an unreasonable and unduly oppressive means to achieve the statutory objective of protecting consumers from the fraudulent practices of those 'engaged in the business of trading real estate.'" *Ladd II*, 230 A.3d at 1112-13 (citation omitted).

In *Ladd II*, our Supreme Court continued by analyzing RELRA's apprenticeship requirements and concluded that the apprenticeship program would force Ladd to obtain "practical knowledge [that] would be neither relevant nor directly applicable to a short-term vacation property management business" *Ladd II*, 230 A.3d at 1113. The Commission stipulated that it "has no record of **ever** having credited points on a [real estate broker] applicant's experience chart for work that involved helping clients rent their properties for periods of less than 30 days." J.S. at 7 (emphasis added). In addition to not encompassing Ladd's business model, RELRA's apprenticeship requirements would force Ladd to work for and split commissions with a licensed broker for at least three years. Accordingly, upon review of the evidence, this Court finds that RELRA's apprenticeship requirements, as applied to Ladd, "are unreasonable, unduly oppressive and patently beyond the necessities of the case." *Id.*

In *Ladd II*, our Supreme Court continued further by analyzing RELRA's brick and mortar office requirements and noting that Ladd's business model was only sustainable because she worked from home and had limited overhead. *Id.* at 1113. The evidence presented in this matter supported that licensees incur significant commercial-rate expenses due to the brick and mortar mandate, Ladd's services can

be performed remotely from her home in New Jersey, and Ladd's typical commission was only between \$30 and \$50 per night per rental. As a result, this Court finds that RELRA's brick and mortar office requirements, as applied to Ladd, are "disproportionate to the government's interest in safeguarding the public from fraudulent practices." *Id.* at 1113.

After reviewing the evidence, this Court concludes that the following statements, which our Supreme Court set forth in *Ladd II*, remain true:

[i]t appears application of RELRA to Ladd is unconstitutional when we consider the fact that individuals who manage and facilitate rentals of lodging in apartment complexes and duplexes on behalf of their owners are completely exempt from the statute's broker licensing requirements, see 63 P.S. § 455.304(10) (exempting "[a]ny person employed by an owner of real estate for the purpose of managing or maintaining multifamily residential property"), and those who manage and facilitate rentals in hotels do not fall under the terms of RELRA at all. It is clear Ladd's business model . . . is more closely analogous to the services provided by these exempt individuals than to those of a broker, despite the fact that the statutory definition of "broker" technically catches Ladd in its net. Notably, Ladd routinely advised her clients they must comply with the Commonwealth's "hotel tax," 72 P.S. § 7210(a) ("an excise tax of six per cent of the rent upon every occupancy of a room or rooms in a hotel"), where "hotel" is defined as any form of lodging "available to the public for periods of time less than 30 days." 61 Pa. Code § 38.3.

Ladd II, 230 A.3d at 1114.

As fully detailed above, RELRA's broker licensure requirements of hundreds of hours of real estate coursework, a three-year apprenticeship, and the broker examination are all minimally related, at best, to Ladd's short-term property management services. RELRA's requirements are well beyond the necessities of this case. Forcing Ladd to comply with RELRA's requirements in no way advances the General Assembly's goal of public protection. As a result, this Court concludes

that, as applied to Ladd’s short-term property management services, RELRA’s licensure requirements do not bear a real and substantial relation to the statutory goal of protecting “the public from abuse by those who are engaged in the business of trading real estate.” *Id.* at 1106 (citation omitted).

IV. Conclusion

The evidence presented in this matter showed that, as applied to Ladd’s short-term vacation property management services, RELRA’s licensing requirements are unreasonable, unduly oppressive, and patently beyond the necessities of the case. Additionally, RELRA’s licensing requirements do not bear a real and substantial relation to protecting the public from harm by Ladd’s short-term vacation property management services. Accordingly, this Court concludes that, as applied to Ladd’s short-term vacation property management services, RELRA’s licensing scheme is an unconstitutional infringement upon Ladd’s right to pursue her chosen occupation under article I, section 1 of the Pennsylvania Constitution.³⁴



STACY WALLACE, Judge

³⁴ Ladd testified that many other people are engaged in short-term vacation property management services and that she is not alone in this activity. Should the General Assembly believe this type of activity needs to be regulated, it may consider establishing less rigorous requirements as it did for other professions falling under RELRA, like time-share salespersons. *See supra* note 24. Perhaps Ladd’s services fall under the umbrella of a “booking agent,” as defined in Section 209 (under part V of article II entitled “Hotel Occupancy Tax”) of the Tax Reform Code of 1971, Act of March 4, 1971, P.L. 6, *as amended*, 72 P.S. § 7209. Regardless, further analysis is not within the purview of the judicial branch. RELRA is unconstitutional as applied to Ladd, and whether short-term vacation property management services should be regulated is a question for our legislative branch.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sara Ladd, Samantha Harris, and Pocono :
Mountain Vacation Properties, LLC, :
Petitioners :

v. :

No. 321 M.D. 2017

Real Estate Commission of the :
Commonwealth of Pennsylvania and :
Department of State (Bureau of :
Professional and Occupational Affairs) :
of the Commonwealth of Pennsylvania, :
Respondents :

ORDER

AND NOW, this 31st day of October, 2022, following an evidentiary hearing held in this matter, Petitioners' Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief is hereby **GRANTED**. The Court **DECLARES** that the Real Estate Licensing and Registration Act, Act of February 19, 1980, P.L. 15, *as amended*, 63 P.S. §§ 455.101 - 455.902 (RELRA), is unconstitutional under article I, section 1 of the Pennsylvania Constitution, Pa. Const. art. I, § 1, as applied to Sara Ladd's short-term vacation property management services, where those services are limited to managing rentals of residential real estate for another for periods of fewer than 30 days.

It is further **ORDERED** that Respondents are hereby **ENJOINED** from enforcing, threatening to enforce, or attempting to enforce the provisions of RELRA with respect to Ladd's short-term vacation property management services.



STACY WALLACE, Judge