

## TENNESSEE REAL ESTATE COMMISSION MINUTES

**September 10, 2014**

The Tennessee Real Estate Commission convened on Wednesday, September 10, 2014 at 9:15 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Diane Hills, and Commissioner Marcia Franks. Absent from meeting was Commissioner Alexander and Commissioner Flitcroft. Others present: Executive Director Eve Maxwell, and Assistant General Counsel Julie Cropp, Admin Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday 4, September 4, 2014. Also, this meeting has been notice on the tn.gov website since Friday, September 5, 2014.

**Commissioner Collins made a motion to approve the September 2014 agenda; seconded by Commissioner McMullen. The motion carried.**

**Commissioner Collins made a motion to approve the August 2014 minutes; seconded by Commissioner Franks. The motion carried.**

**Introduction of newest employee: Auditor, Ahmed Lewis.**

### **INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Dennis David Pritchard # 328527; PRINCIPAL BROKER: Bobby J. Powers #256911**

Principal Broker: Mr. Powers #256911 is the Principal Broker of Whitetail Properties Real Estate, LLC. # 262775 located in, TN. and appeared to request a waiver of Rule 1260-2-.01 (2) (the 50 mile rule) in order to allow Dennis David Pritchard to affiliate with Whitetail Properties Real Estate, LLC. Mr. Pritchard, who appeared with Mr. Powers, lives approximately 84 miles from the firm office. After questions and discussion the commission voted.

**Commissioner Collins made a motion to approve to the waiver of Rule 1260-2-.01 (2) in order to permit Mr. Pritchard to affiliate with Whitetail Properties Real**

**Estate, LLC.; seconded by Commissioner DiChiara; motion carried by vote of 6 yes and 1 no Commissioner Blume voted against the motion.**

**Commissioner Franks stated she wanted added to the agenda for next month to have a discussion of the 50 mile rule. Commissioner Collins made motion to do away with 50 mile rule; motion seconded by Commissioner Franks; Commissioner McMullen moves to continue the discussion till the next meeting; Commissioner DiChiara seconds motion. The motion passes unanimously.**

**Update on: PRINCIPAL BROKER: FRAN HOOTEN #322944**

Fran Hooten # 230310 the Principal Broker of Keller Williams Realty # 258732 located in, Mt. Juliet, TN.. Ms. Hooten appeared with an applicant at the August, 2014 Commission meeting. During that Informal Appearance the Commission requested that a formal firm audit be conducted Keller Williams #258732 in order to determine the method used by the firm to pay its affiliate licensee. Management reported TREC mailed a mandatory firm audit. Mrs. Maxwell stated Ms. Hooten received the audit form on 8/18/14 and she has 30 days from the 8/15/14 date of the letter to respond.

**EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL**

Ms. Maxwell presented the following information to the Commission for review via the I-Pads:

**FINGERPRINT UPDATE**

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2014 there have been 2,813 individuals fingerprinted, 549 had an indication, 2,200 had no indication, and 64 were retaken. In the month of August, 2014 314 fingerprints were taken, 261 had no indications and 48 showed an indication.

**TREC MANUAL STATUS**

Directory of Program and Policy Development, Rachel Powers, updated the Commission on the on-line resource manual. Ms. Powers stated that an RFP is currently posted on the state website which requires these bids be submitted no later than 10/10/2014. The contract signing date is 11-3-14. The latest anticipated date for the on-line resource/manual to be available for use is 1-1-15. The on-line resource/manual is intended to be very user friendly with an improved searched option which allows a

printer friendly version and an e-mail option. The TN codes and rules will all be listed also. The RFP requires that all changes to codes and rules be updated within 30 days.

### **REINSTATEMENT REQUEST-JAMES LARRY CRAWFORD # 205409**

Ms. Maxwell read a letter from James Larry Crawford requesting a waiver of the \$1,250.00 civil penalty amount and a waiver of the requirement to attend the Commission meeting. Mr. Crawford requests that his affiliate broker license #205409 be reinstated upon payment of the \$80.00 renewal fee. Mr. Crawford stated that he did not receive a renewal notice and that his firm, Bolivar Insurance & Real Estate Agency, Inc. #54304, PB Robert L. Sain #204902, did not receive a renewal notice regarding his renewal either.

**Commissioner Blume made a motion to deny Mr. Crawford reinstatement request; motion seconded by Commissioner Collins. Commissioner McMullen made a motion to call the question. Commissioner Griess announced no further discussion on motion to call the question. The motion passes unanimously.**

### **UPDATE ON COURSE RENEWALS**

Ms. Maxwell updated course renewals as of 9-10-14. Renewals were mailed out to 173 providers, 94 have renewed, which received 56% of the providers. There are 1398 courses which are eligible for renewal, 969 of these courses have been renewed, which is about 70%. 222 instructors have renewed, and a total of \$30,775 in renewal fees have been paid. Commissioner Griess asked what is the procedure if course content is contrary to, or not addressed by, statutes or rules? Ms. Maxwell stated the information is presented to the Commission for discussion and determination. Commissioner Franks stated the bottom line is the Principal Broker is always responsible. Commissioner Collins asked if it would be possible to have an affidavit submitted stating that their material is pertinent to the state of TN. Ms. Maxwell stated that the schools are under an obligation to keep their material updated to current rules and laws.

**APPLICANT: ASHLI NONE WILLIAMS #330172; PRINCIPAL BROKER: MICHAEL D. "MIKE" NICHOLS #233466**

Mike Nichols # 233466 is the Principal Broker of Benchmark Realty, LLC. # 262297 located in, Nashville, TN. Ms. Williams #330172 has completed an Application for Decision Regarding Prior Criminal Sanctions in order to seek the Commission's approval to proceed with the licensure process to obtain an affiliate broker license. Ms. Williams has revealed in 1997 that she had a conviction for possession of a Controlled Substance, which appears to be a felony due to the length of her jail sentence. Ms. Williams stated that she completed all requirements of the court's order in regard to her sentence. Ms. Williams stated she was a licensed Real Estate broker in

California. She has paid her restitution and fees in full, resulting in a termination of her probation.

**Commissioner DiChiara made a motion to approve Ashli None Williams to move forward in the licensure process for affiliate broker license; seconded by Commissioner McMullen; motion carried.**

**Chris Sexton from TAR; reported to the Commission that the TAR Governmental Affairs Committee determined that TAR will pursue a statutory revision in order to give the Commission authority to approve one hour Continuing Education Courses, providing a law is passed and it goes through house and senate if approved by TREC. The Commissioners determined that it would be in the best interest TREC go forward with the rule making process or permit TAR of the public to allow TAR to complete with legislative process, Commissioner DiChiara stated that before TREC takes further action.**

### **COURSE REVIEW**

Ms. Maxwell presented the educational courses and instructors set forth on the September, 2014 Education Report for Commission Approval.

**Commissioner Collins made a motion to approve the courses for Commission evaluation with exception Smith and Sholar 1375/second part and CRS 122; seconded by Commissioner McMullen; motion carries.**

**Two courses presented for discussion involved the proposed rules. Commissioner Blume raised the question can you teach on proposed rules before they are effective? Ms. Maxwell stated that was one of the reasons why the courses were listed for discussion. Commissioner Blume made a motion to defer Smith and Sholar 1375 until rule become effective; motion seconded by Commissioner DiChiara; motion carries. Commissioner Blume made motion to defer CRS 122 until the rule become effective; motion seconded by Commissioner DiChiara; motion carries. Commissioner DiChiara makes a motion that both Smith and Sholar 1375 and CRS 122 be deferred until the rules become effective; motion seconded by Commissioner McMullen; motion carries.**

Ms. Maxwell presented the following information to the Commission for review via handouts.

### **COMPLAINT STATISTICS REPORT**

Ms. Maxwell presented complaint statistics to the Commission. As of August 31, 2014, TREC had a total of 220 open complaints. There have been 32 closed this fiscal year starting 7-1-14 with no action, 3 were closed with a letter of warning, 21 with a Consent Order and no revocations. The total civil penalties that were collected in August 2014 were \$96,300.00.

### **COMPLAINT REPORT**

Consent Orders Fees \$64,000.00, Reinstatement Fees \$31,100.00, E&O Penalty Fee \$1,200.00 Total collected in August 2014 \$96,300.00.

**Commissioner Griess mentioned for the record that starting October 1, 2014 the new citations fees, which were approved in May 2014, go into effect. Commissioner Griess asked Ms. Maxwell to explain what a citation is for the benefit of the attendees. Ms. Maxwell stated a citation is given a number, then sent out to the licensee. If the licensee pays then it is closed and does not go on to legal. Citations are issues primarily for advertising, failure to maintain an escrow account, firm signage, etc.**

**Commissioner DiChiara requested more information be shown on the complaint charts depicting the charges involving property management issues. Commissioner Griess requested the new complaint chart be sent as a slide to the education providers.**

### **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of August 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of August 30, 2014, there were 25,025 active licensees, 764 inactive licensees and 7,556 retired licensees, 350 broker release (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,891 active firms and 202 retired firms. Grand total of firms and licensees 40,508. Applications approved in August 2014 were 340.

### **BUDGET**

Ms. Maxwell had previously sent a copy of the July 31, 2014 budget to the Commissioners for their review. No Commissioners had questions on the July 31, 2014 budget.

### **E&O UPDATE/QUARTERLY CLAIMS REPORT**

Ms. Maxwell updated the Commissioners on the number of E&O suspensions and the number of licensees previously in suspension who have paid the statutory penalty fee and shown proof of E&O in order to be placed back into active status. Ms. Maxwell stated that as of 8/31/2014, approximately 719 people have been revoked for failing to provide proof of E&O coverage as required by TCA 62-13-112. The amendments to TCA 62-13-112 (effective 7/1/2013) require the staff to automatically revoke the licenses of those licensees who have been suspended for more than 1 year. 53 people are in suspension for not having E&O Insurance. Currently 19,772 individuals are insured with RICE Insurance. Ms. Maxwell stressed the importance of licensees renewing their E&O before 12/31/14 so that TREC would not have to place them in a suspended status.

Ms. Maxwell stated that Principal Brokers who have not paid their \$400 Privilege Tax due June 1<sup>st</sup> will NOT be able to RENEW their license. The revenue department is implementing this new procedure. The revenue department will be providing a list of Principal Brokers who have not paid their Privilege Tax. Revenue has indicated there are 337 Principal Brokers on the delinquent list.

### **LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL**

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Cropp read it into the record: “Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.”

Attached to the end of these minutes is a copy of the legal report with all decision indicated.



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
**OFFICE OF LEGAL COUNSEL**

Davy Crockett Tower,  
500 James Robertson Parkway  
NASHVILLE, TENNESSEE 37243  
(615) 741-3072 fax 615-532-4750

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: SEPTEMBER LEGAL REPORT

DATE: September 10, 2014

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**\*Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.**

- 1. 2014006331**  
**Opened: 5/2/14**  
**First License Obtained: 2/3/00**  
**License Expiration: 12/15/14**  
**E&O Expiration: 1/1/15**  
**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**2. 2014006332**

**Opened: 5/2/14**

**First License Obtained: 12/3/07**

**License Expiration: 12/2/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

*\*This Respondent was broker released on or about 3/7/14.\**

***August 2014 Meeting:***

*This is the same Complainant as the previous matter and concerns the same property but is a separate complaint against different Respondents (Respondent 1 is a principal broker; Respondent 2 is an affiliate broker). Complainant states that Respondent 2 listed Complainant's home after the parties discussed the property and items which needed cleaning and repairing. Complainant alleges that Respondent 2 assured Complainant that Respondent 2 would video record evidence of damage done by previous tenants, ensure that repair, maintenance, and cleaning was done, and would appear as an expert witness in the lawsuit discussed in complaint 2014006311. Complainant states that an invoice for repairs was paid by Complainant, but the repairs promised were not made, and the property was not prepared correctly for listing. Complainant alleges that Respondent 2 promised to forward a listing agreement for the property, but this was never received. Complainant states that the property was listed on MLS by Respondents' firm, and Complainant alleges that Respondents stated there was interest in the home and the property was being shown. Complainant alleges that, in lieu of a listing agreement for sale of the property, Respondent 2 forwarded a proposal to become property manager, listing agent and purchase the property with early occupancy. Complainant states that Respondent 2 sent a proposed lease agreement for monthly payments for a period not to exceed 3 years, with a balloon payment for the balance of the purchase price. Complainant alleges that, soon after, the MLS was canceled. Complainant states that Respondent 2 moved in the property with small children without authority prior to the period in the agreement. Complainant further alleges that damage was incurred, and Respondent 2 refused to meet with a new agent to turn over the keys after failing to provide monthly installments per the contract. Complainant alleges Respondent 2 later abandoned the home and left it in awful condition.*

*Respondent 2 submitted no response. Respondent 1 submitted a response through an attorney stating that the actions taken, correspondence, signed documentation and contracts with Complainant were conducted by Respondent 2, and Respondent 1 was never contacted and did not learn of the complaint until it was received by TREC. Respondent 1 states that all documents referenced are from the file held by Respondents' firm. Respondent 1 states that a referral agreement was received and signed by Respondent 2, and Respondent 2 prepared and signed a confirmation of agency status form for Complainants as well as a listing agreement and disclosure forms. Respondent 1 admits that the posting appeared on a website without Respondent 1's approval, and a listing agreement was requested. Respondent 1 states that Respondent 2 assured that there was a fully executed listing agreement, though one was not provided to Respondent 1. Further, Respondent 1 states that the lease installment and sales contract provided by the Complainant states that no commission was to be paid, but Respondent 1 would not have allowed an agreement if made aware of one. Respondent 1 agrees that Respondent 2 failed to disclose to Respondent 1 and the firm the true status and intention of Respondent 2's activities with regard to Complainant's property, and alleges that Respondent 2 purposefully misrepresented to Respondent 1 that there was an executed listing agreement. Respondent 1 states that affiliate brokers are not allowed to recommend anybody for the repair work and has no knowledge of work performed by a third-party company as alleged. Respondent 1 states there was no knowledge of negotiations or lease proposals or an installment purchase lease agreement. Respondent 1 states that the MLS listing was pulled by Respondent 1 when contacted by another agency stating they were listing the property. Respondent 1 states that corrective measures have been put in place at the firm to be sure that no advertising is done without a listing agreement.*

*Both Complainant and Respondent sent additional responses further setting out their positions. Respondent 1 states that Respondent 1 has no knowledge of Respondent 2's location and states that Respondent 2's license was sent back to TREC. Respondent 1's failure to insist upon receiving the signed listing agreement which Respondent 2 states existed appears to constitute a failure to supervise. With regard to Respondent 2, it appears that there are issues of failing to disclose Respondent 2's true position (§ 62-13-312(b)(18)) and improper, fraudulent or dishonest dealings (§ 62-13-312(b)(20)). Also there appears to be a failure to disclose a personal interest (§ 62-13-403(7)(A) and Rule 1260-02-.11). The failure to secure the signed listing agreement appears to be a failure to diligently exercise reasonable skill and care (§ 62-13-403(1)) and the MLS listing stating that Respondent is the listing agent appears to be misleading or untruthful advertising (§ 62-13-312(b)(4)). Finally, Respondent 2 failed to respond to the complaint (§ 62-13-313(a)(2)) and has not taken administrative measures for the transfer or retirement of Respondent 2's license (§ 62-13-312(b)(16) and Rule 1260-02-.02(2)). It is recommended that the Commission discuss any further violations by Respondent 2.*

***Recommendation: As to Respondent 1, Consent Order for \$1,000 for failure to supervise the activities of a licensed affiliate in violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$4,000 for violations of T.C.A. §§ 62-13-312(b)(4), (14), (16), (18), and (20), 62-13-313(a)(2), 62-13-403(1) and (7)(A) and Rules 1260-02-.02(2) and 1260-02-.11(1), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.***

***DECISION: The Commission voted to authorize, as to Respondent 1, Consent Order for \$2,000 for failure to supervise the activities of a licensed affiliate in violation of T.C.A. § 62-13-312(b)(15) and violation of Rule 1260-02-.12, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. The Commission voted to authorize, as to Respondent 2, Consent Order for \$8,000 for violations of T.C.A. §§ 62-13-312(b)(4), (14), (16), (18), and (20), 62-13-313(a)(2), 62-13-403(1) and (7)(A) and Rules 1260-02-.02(2) and 1260-02-.11(1), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.***

Office of legal counsel was able to locate Respondent 2, and it appears from conversations that Respondent 2 did not receive TREC's copy of the complaint. However, Respondent 2 admits that Respondent 2 did receive an e-mailed copy of the complaint from Respondent 1 but was told by Respondent 1 that it was too late to respond. Respondent 2 submitted a response stating that the Complainant gave Respondent 2 consent to list the home over e-mail and over the phone. Respondent 2 states that Complainant was mailed two (2) copies of the listing agreement and faxed a copy. Respondent 2 states that a phone call with Complainant confirmed that the agreement was signed and faxed back to the office, and the office assistant confirmed a fax was received but did not confirm that it was the document. Respondent 2 admits that Respondent 2 should have followed-up with the office to verify. Respondent 2 denies misleading Complainant, hiding any interest in the home, or misrepresenting anything. Respondent 2 states that Complainant knew everything going on at all times and agreed to Respondent 2's efforts to market the home. Respondent 2 states that Respondent 2 spoke with Complainant about renting the home but continuing to be the agent and sell the property but stated that, if rented, it would have to be run through the office as a rental. Respondent 2 states that Complainant requested Respondent 2 to take pictures of the home to use against a previous realtor, and Respondent 2 advised that the home was not in bad condition except that some items in the garage had mold

growing on them. Respondent 2 states that Complainant's statements about Respondent 2 and children staying in the home are not correct. Respondent 2 states that Respondent 2 went above and beyond complying with Complainant's requests to clean the house and barn to Complainant's specifications without charging Complainant any money, and sometimes Respondent 2's kids came along to help. Respondent 2 further states that Complainant knew that Respondent 2 brought in a fax machine and work table for customers. Respondent 2 states that nothing was done that Complainant did not agree to and requests that Commission reconsider the violations and monetary amount within the Consent Order, stating that they are not justified for overlooking contract paperwork being in the file at the office.

**Recommendation: Discuss.**

**DECISION: There was no motion from any Commissioner. Therefore, the Chairman determined that the matter died for lack of motion and that the Commission's original decision would stand.**

**ACTION: Chair rule request dies due to lack of motion; original decision stands.**

3. **2014006791**  
**Opened: 5/15/14**
- First License Obtained: 11/30/88**
- License Expiration: 2/13/15**
- E&O Expiration: 1/1/15**
- Type of License: Principal Broker**
- History: No Prior Disciplinary Action**

***August 2014 Meeting:***

*A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014006731 ("broker").*

*While there does not appear to be a failure to supervise, Respondent submitted no response to the complaint, which was sent to the firm address on file with the Commission and signed for by an individual at that address.*

***Recommendation: Consent Order for \$1,000 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.***

***DECISION: The Commission voted to accept the recommendation of legal counsel.***

Respondent contacted legal counsel upon receipt of the authorized Consent Order for failure to respond to the complaint. Respondent stated that Respondent was under the impression that Respondent had responded through the paperwork which was sent in with the response to complaint 2014006731. Respondent states that Respondent worked very hard with the broker Respondent of that complaint getting the information together for the response. Respondent states that both complaint letters arrived at the firm on the same date, and a huge assumption was made by everyone that they were the same letter and Respondent's letter was just a copy to the principal broker as is sometimes done with other TREC correspondence. Respondent asks forgiveness for not responding and states that Respondent would never intentionally not respond to anything from TREC. Respondent states that Respondent has been licensed for thirty (30) years and states that this is a mistake that will never happen again.

**Recommendation: Discuss.**

**DECISION: There was no motion from any Commissioner. Therefore, the Chairman determined that the matter died for lack of motion and that the Commission's original decision would stand.**

**ACTION: Chair rule request dies due to lack of motion; original decision stands.**

**4. 2014008931  
Opened: 5/19/14**

**First License Obtained: 3/24/99**

**License Expiration:** 4/1/16  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

5. **2014009001**  
**Opened:** 5/19/14  
**First License Obtained:** 2/5/07  
**License Expiration:** 10/28/14  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** No Prior Disciplinary Action

An anonymous complaint was filed stating that Respondent 1 (affiliate broker; Respondent 2 is principal broker) is practicing real estate unsupervised at a branch office, stating that contracts and listing agreements are initiated and stored on the premises, that buyer and sellers come and go, that closings are conducted on site, that there is no firm real estate sign posted or any managing broker, and that Respondent 1 is supervising other affiliates.

Respondents submitted a joint response stating that Respondent 2 assisted a group of agents formerly affiliated with another firm (including Respondent 1) because their former principal broker suddenly released the agents without notice due to a personal family matter, and several of the affiliates transferred to Respondent 2's firm with Respondent 2 acting as their managing broker since the time that the transfer was approved by TREC. Respondents state that the dissolved former firm's rental space was vacated, but Respondent 1 was left with the rental payments and used that office as personal workspace. Respondents state that it never was nor ever will be the principal address for Respondents' firm. Respondent 2 states that the affiliates have not worked unsupervised, and Respondent 1 has not acted as supervisor. Respondents state that Respondent 1's personal real estate closing was conducted on the premises because the title company (owned by Respondent 2) tries to accommodate clients by closing at a location which is convenient. Respondent 2 states that Respondent 2 has no knowledge of contracts or any other documents being stored on the premises or people visiting the location. Respondent 1 states that

Respondent 1 was left with the lease when the former firm dissolved, and, at that time, the firm sign came down and the phone number was disconnected. Respondent 1 states that the lease was ending soon at the time of the response, but the office has not been used as a real estate office but only for Respondent 1 and spouse's own use. Respondents state that all listing files and documents are at the firm's office. The response indicates and Respondents attached statements from other individuals which state that the circumstances surrounding the dissolution of Respondent 1's former firm arose from very contentious personal matters, and the responses speculate that the complaint was filed by someone as a result of those personal matters in an attempt to cause harm to Respondent 1. The statements from other agents also state that Respondent 2 has been their principal broker and Respondent 1 has not provided supervision. It does not appear from the information within the file that a branch office as defined in Rule 1260-02-.03 was being operated without a license.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; vote 5 yes 2 no Commissioner DiChiara and Commissioner Hills; motion carries.**

6.     **2014010231**  
      **Opened:     6/17/14**

**First License Obtained:   10/10/90**

**License Expiration:       11/14/14**

**E&O Expiration:         1/1/15**

**Type of License:       Principal Broker**

**History:   No Prior Disciplinary Action**

7.     **2014010232**  
      **Opened:     6/17/14**

**First License Obtained:   10/12/82**

**License Expiration:       7/9/16**

**E&O Expiration: Uninsured**

**Type of License: Firm**

**History: No Prior Disciplinary Action**

Complainant states that Complainant purchased a time-share from Respondents (Respondent 1 is principal broker; Respondent 2 is a real estate firm), which included adding an annual week and trading back six (6) time-shares that Complainant did not wish to keep. Complainant states that the firm arranged for Complainant to obtain a credit card at 0% interest for six (6) months to purchase the time-share. Complainant states Complainant was contacted by a title company which was supposed to take care of taking the six (6) time-shares out of Complainant's name and was told that Complainant had to pay a processing fee for each. Complainant states that Complainant called the firm to cancel the purchase ten (10) business days after executing the contract. Complainant states the contract gave ten (10) days to cancel or fifteen (15) days if no inspection was made. Complainant states that Complainant was unable to inspect the unit because it was occupied. Complainant states that Complainant faxed the cancellation and mailed the cancellation, but Respondent 1 refused to cancel the contract because it was past the deadline. Further, Complainant learned that the title company will not take over the timeshare but will arrange for a third party to purchase it, and Complainant states this was not explained.

Respondent 1 states that Complainant stayed at the resort and met with a salesperson and disclosed that Complainant no longer wanted Complainant's other six (6) timeshares. Respondent 1 states that the firm helped Complainant prepare paperwork for the title company to get rid of the six (6) timeshares and was told Complainant would pay fees for each week. Respondent 1 attached a Purchase Worksheet that shows the credit/trade-in value Complainant received for the trade-ins, which was deducted from the purchase price of the new timeshare. Respondent 1 states that the cancellation was postmarked March 13, 2014, and the contract is dated February 26, 2014. Respondent 1 further states that, if Complainant is unwilling to pay the fees due to the title company, the problem is with the title company and not the firm.

It appears from the documentation provided that the contract was entered on February 26, 2014, and it states that buyer may cancel the contract within ten (10) days from the contract date, or within fifteen (15) days from the contract date if the buyer has not made an on-site inspection of "the time-share project." The contract does not appear to reference business days. Other documentation signed by Complainant states in part that "...having made an on-site inspection..." of the resort, purchaser understands the legal obligations/responsibilities.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

8. **2014010601**  
**Opened: 6/12/14**  
  
**First License Obtained: 8/12/68**  
  
**License Expiration: 7/7/16**  
  
**E&O Expiration: 1/1/14**  
  
**Type of License: Principal Broker**  
  
**History: 201202012 – Closed \$250 Agreed Citation**
  
9. **2014010602**  
**Opened: 6/12/14**  
  
**First License Obtained: 5/23/05**  
  
**License Expiration: 2/19/16**  
  
**E&O Expiration: 1/1/15**  
  
**Type of License: Affiliate Broker**  
  
**History: No Prior Disciplinary Action**

Complainants state that they purchased a lot, and Respondent 1 (principal broker) is one of the three developers of the community. Complainants state that they were given the bylaws of the section of the subdivision and for the entire subdivision. Complainants state that that the section's bylaws were not legal as there was not a homeowners association for the section, and

the section was not turned over to the entire subdivision's HOA until 2013. Complainants state that Respondent 2 (affiliate broker) is under the direction of Respondent 1 (Respondent 2 is affiliated with Respondent 1's firm) and was one of three home owners that formed a section homeowners association before the 2013 date. Complainants state that the section HOA was never recorded at the city, county or state level, and Complainants state that Respondent 2 filed for a tax ID number for the section's HOA, hired a bookkeeper to handle the accounting, set up a bank account for the section's HOA, and filed federal tax returns requested to be completed by a CPA (which Complainants state was not legal because the section HOA was not a legal HOA). Complainants allege that the section HOA was an illegal HOA. Complainants state that they were asked to pay a quarterly fee for lawn care, water for the street's irrigation system, and for tree trimming, and Respondent 1 did not pay money into those funds in the time prior to turning over the section to the main HOA even though trimming was done on lots owned by Respondent 1. Complainants state that Respondent 1 did not properly supervise Respondent 2 in Respondent 2's actions in the HOA that caused Complainants to have to pay two association fees and that the issues of the new association were not addressed correctly.

Respondents state that the restrictions and reservations for the entire subdivision were filed in the county in 2005, and, pursuant to a paragraph therein, a committee of three homeowners was put together to manage the common irrigation system and landscaping through hiring and supervising a contractor. After selling five (5) homes, Respondent 1 states that Respondent 1 turned over the management responsibilities to the homeowners, who elected a committee. Respondents state that the committee homeowners established their own unofficial homeowners association for the original purpose, and one member (the treasurer) obtained a tax ID number for the purpose of opening a bank account but never established an actual non-profit corporation with the state. Respondents state that the treasurer hired a CPA to prepare tax returns (not realizing it was unnecessary), and, when the treasurer of the committee could no longer continue, Respondent 2 was asked to be treasurer, as Respondent 2 was a homeowner. Respondent 2 then moved the bank account to a different bank and hired a different CPA to file the annual return, which Respondents state was not required but was also not illegal. Respondents state that the restrictive covenants stated that dues were to be paid monthly, but the committee decided instead to collect quarterly. Respondents state that, by May 2011, the neighborhood had grown so that the home owners decided to hire a professional management company to address the concerns of the neighborhood. In 2013, another management company took over for the master HOA but did not take over the part of the development in question until the second quarter of 2013. Respondents state that Respondent 1 paid all dues as homeowner, and the committee homeowners kept appropriate records and no money was mismanaged or improperly spent. Respondents further state that Respondent 2 did not represent Complainants or make any representations to them as a licensee.

Based on a review of all of the documents, it would appear that, if there is an issue, it is an issue more appropriately handled by a civil lawsuit, as it does not appear that either Respondent's actions constitute violations of TREC's statutes and/or rules.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner DiChiara; unanimous vote; motion carries.**

10. **2014010691**  
**Opened: 7/22/14**  
  
**First License Obtained: 4/20/99**  
  
**License Expiration: 12/31/14**  
  
**E&O Expiration: N/A**  
  
**Type of License: Time-Share Registration**  
  
**History: 2014012651 – Under review by legal**  
**2014015161 – Under review by legal**
  
11. **2014010692**  
**Opened: 8/1/14**  
  
**First License Obtained: 5/31/12**  
  
**License Expiration: 5/30/16**  
  
**E&O Expiration: 1/1/15**  
  
**Type of License: Time-Share Salesperson**  
  
**History: No Prior Disciplinary Action**

**12. 2014010693**  
**Opened: 8/1/14**  
**First License Obtained: 6/6/06**  
**License Expiration: 6/5/16**  
**E&O Expiration: 1/1/15**  
**Type of License: Time-Share Salesperson**  
**History: No Prior Disciplinary Action**

**13. 2014010751**  
**Opened: 7/22/14**  
**First License Obtained: 3/6/00**  
**License Expiration: 8/14/14**  
**E&O Expiration: 1/1/15**  
**Type of License: Principal Broker**  
**History: No Prior Disciplinary Action**

Complainants attended a time-share presentation given by Respondents (Respondent 1 is time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is principal broker). Complainants state that the presentation was longer than described, and several misrepresentations were made which have led Complainants to want their purchase and contract cancelled. Complainants state that the misrepresentations included that the time-share would increase in value, that Respondent 1 would help Complainants sell their time-share if Complainants ever decided to do so, that Complainants would receive discounts on airfare and resort stays, that Respondent 1 would assist Complainants with renting their unit, and that Respondents 2 and 3 were paid hourly instead of by commission. Complainants state that they were rushed through signing documents. Further, Complainants state that they have had to stay in a smaller unit than promised since the purchase, and maintenance fees have gone up when Complainants were promised they would not.

Respondents submitted a response through an attorney stating that Complainants are familiar with the time-share industry and have been attending presentations and purchasing for years. Respondents deny that any representations were made as to investment or resale potential and deny that any representations were made as to a resale or rental program and pointed to an Acknowledgement of Representations signed by Complainants confirming their understanding. Respondents state that Complainants received a membership to a program giving Complainants access to discounts, and, if there are issues with that program, Complainants should contact the third party program that administers it. Respondents state that some employees are paid hourly and deny that any misrepresentations were made regarding the nature of employment or engagement. Respondents state that the rescission period was outlined in the contract just above where Complainants signed the contract. Respondents deny that Complainants were rushed through closing or told that maintenance fees would not increase and point to the contract which states that maintenance fees are an estimate. Respondents state that Complainants' contract is binding and Complainants were provided with their unit in accordance with the contract. The documentation in the file does not appear to evidence a violation by Respondents.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries. Ms. Cropp asked Commissioners if it was ok to provide them an extra 14 days since they were waiting for Commission decision. Commission approved extra days.**

14. 2014011291

Opened: 6/27/14

First License Obtained: 2/5/10

License Expiration: 2/4/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants were moving from out of state and Respondent (affiliate broker) showed them homes. Complainants state that they contracted on a home, had a home inspection, and signed a proposal to repair or replace items that did not pass inspection. Complainants state they never received a copy of the contract signed by seller (who was an owner/agent) to do any of the repairs. Complainants state that Respondent had seller verbally agree to repairs, but repairs were not done, including window replacement, plumbing, and HVAC. Complainants state that they were far away in another state working with Respondent by phone and e-mail to be sure the repairs were completed. Complainants state that they were told by Respondent that Complainants could put a hold on funds after closing until the repairs were made. During the move, Complainants contacted the title company to release the funds so that Complainants could go ahead and move in and learned that it was not possible to hold funds, and the house was theirs. Complainants feel that they were misled by Respondent with regard to the repairs and state that they are now stuck with a house requiring costly repairs.

Respondent states that a constant line of communication was made with Complainants in an effort to make the move from out of state easier. Respondent states that Respondent submitted the repair proposal form to the seller and did not receive a response for a few days. Respondent states that the seller responded within the five (5) day resolution period via text message and email agreeing to make the repairs. Respondent states that one of Complainants' family members conducted the walk through prior to closing and noted some of the repair items still need to be addressed. Respondent states that Respondent contacted Complainants to notify them of incomplete repairs and to inform them they needed to delay the closing (and the lender advised them to delay as well – a statement was included from the lender that Complainants were given the option to delay), but Complainants closed on the home anyway from their home state. Respondent states that seller was contacted multiple times, and Respondent met with seller's contractor multiple times to check on repairs. Respondent states that seller promised to have repairs made by a certain date, but, when Complainants arrived in town, repairs had not been made, and seller quit responding to calls, emails and text messages. Respondent states that Respondent gave the Complainants contact information for seller and contractor, and Complainants stated they were going to contact an attorney. Respondent regrets that the repairs were not made by the seller, but Respondent states Respondent did everything as Respondent should have.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(1), plus attendance by**

**Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**ACTION: Commissioner McMullen made a motion to site violation of T.C.A. §§ 62-13-403(1); motion seconded by Commissioner Blume; Commissioner Blume friendly amendments to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; unanimous vote; motion carries.**

**Ms. Cropp requested clarification as to what they should have done, so she can explain it to them. Commissioner Collins stated they should have instructed buyer to hold money until repairs were done or tell them not close until repairs were done and always have it in writing.**

**15. 2014011321  
Opened: 6/27/14  
  
First License Obtained: 11/10/03  
  
License Expiration: 12/17/14  
  
E&O Expiration: 1/1/15  
  
Type of License: Principal Broker  
  
History: 2014014662 – Under review by legal  
2014017781 – Under review by legal**

TREC opened a complaint against Respondent (principal broker) for failure to supervise Respondent affiliate broker in case no. 2014011291 above (hereinafter "affiliate broker").

Respondent states that all affiliated agents are independent contractors and states that company policies are distributed to affiliates, an extensive mandatory orientation program is given, and many educational opportunities are provided. Respondent outlines the orientation program, educational opportunities and listing and sales contract compliance process utilized by the firm. Respondent works full time as a principal broker and dedicates 100% of the work day to these responsibilities and is easily accessible to agents. Respondent further states that the disclaimer notice which was signed by Complainants states that they clearly understood the role and expertise of the broker and affiliates and are very clear in outlining the buyer's role in performing

due diligence and satisfying themselves as to property condition. Respondent further states that the contract gives Complainants the right to a final inspection to ensure completion of agreed upon repairs and states that closing of the sale constitutes acceptance of the property in its condition at the time of closing, and the closing could have been delayed. Respondent further states that the firm and agents do not arrange when closing should occur or what to do with closing funds. Respondent further states that the Purchase and Sale Agreement and supporting documents were submitted and approved by the compliance broker and Respondent. Respondent states that the new TAR repair/replacement forms were not available for use in the transaction and were not at that time part of the compliance process, but the seller (owner/agent) confirmed in a phone conversation that the seller agreed to all the repair requests per the repair/replacement form signed by the buyers. Respondent further states that affiliate broker, mortgage officer, and title company advised Complainants not to close until repairs were completed and met their satisfaction, but Complainants elected to close knowing the repairs had not been completed and verified. Respondent concludes stating that it is Respondent's belief that the repairs agreed to by seller are seller's responsibility, that affiliate broker did not mislead the Complainants, and that the firm's supervisory functions exceed TREC's guidelines.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

16.    **2014012651**  
      **Opened:     7/22/14**

**First License Obtained:    4/20/99**

**License Expiration:     12/31/14**

**E&O Expiration:        N/A**

**Type of License:     Time-Share Registration**

**History:            2014010691 – Under review by legal**  
                          **2014015161 – Under review by legal**

**17. 2014012652**  
**Opened: 8/19/14**

**First License Obtained: 8/28/13**

**License Expiration: 8/27/15**

**E&O Expiration: 1/1/15**

**Type of License: Time-Share Salesperson**

**History: No Prior Disciplinary Action**

Complainant states that Complainant attended a time-share presentation given by Respondents (Respondent 1 is time-share registration; Respondent 2 is time-share salesperson). Complainant states that Respondent 2 pointed out several people around the room as “state people” who were there to make sure everything was done correctly. Complainant states that these people were really time-share employees who were described as state employees and attorneys specializing in real estate. Complainant states that the presentation lasted much longer than it was supposed to last, and, after Complainant told Respondent 2 no to the purchase multiple times, Respondent continued to harass Complainant. Complainant left the presentation.

Respondents submitted a response through an attorney stating first that Complainant is not a time-share owner with Respondents. Also Respondents deny that Respondent 2 told Complainant that other employees present were state employees and attorneys specializing in real estate. Respondents state that Respondent 2 did advise Complainant that Respondent 2 and other salespeople were licensed through TREC, but Respondents deny that Respondent 2 misrepresented sales representatives as state employees. Respondents state that, prior to the end of the presentation, Complainant advised that Complainant would not be able to stay for the entire presentation and demanded the gift for attending, and Respondents gave Complainant the gift and allowed Complainant to leave the presentation prior to its end. The documentation in the file does not appear to evidence a violation by Respondents.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

**18. 2014012921**  
**Opened: 6/27/14**  
**First License Obtained: 1/11/01**  
**License Expiration: 8/1/16**  
**E&O Expiration: 1/1/15**  
**Type of License: Broker**  
**History: No Prior Disciplinary Action**

A complaint was filed against Respondent (broker) regarding Complainant's purchase of five (5) acres of land. Complainant states that Respondent, who was originally the listing agent and acted as transaction broker, stated that around one (1) acre of the property was in a hay field. Complainant states that Respondent told Complainant that a survey had been done in 2000 and a surveyor had recently been out and found pins to a recently purchased adjoining parcel. Complainant states that Complainant asked Respondent if the adjacent owner of the rest of the hay field would be willing to sell the rest to Complainant, but Respondent stated that a previous buyer had already asked, and the owner did not want to sell. Complainant states that, a few months after the closing, upon speaking to the neighbors and then having a survey done, Complainant discovered that the adjacent owner owned the entire hay field, and the land that Complainant purchased was actually a gully. Complainant states that Complainant would have never purchased the land with the gully because it does not meet Complainant's needs, and Complainants would not have paid the price Complainant paid for that land. Complainant states that Respondent violated the code of ethics and misrepresented the property. Complainant provided pictures of the property and survey documents provided by Respondent to Complainant. Complainant also provided copies of the transaction documents.

Respondent states that Complainant approached Respondent and was interested in purchasing the subject land, and Respondent provided the MLS printout, tax record sheet, and the survey. Respondent states that Complainant was advised of Complainant's rights to inspections, surveys, etc., which Complainant waived, and an offer was submitted to the seller, and the transaction

closed. Respondent states that Respondent met with Complainant on two (2) occasions after the purchase to discuss the position of the land, in which Complainant was advised that Respondent used tax records and survey to establish the land position. Respondent denies viewing the property with Complainant or stating property lines. Respondent further states that no conversations were had with the owner of the adjacent land. Respondent further states that a surveyor located some property pins for a recent buyer to an adjacent property, but the surveyor was not paid and did not locate the entire location of the property but only found line pins for the adjacent property. Respondent states that Complainant signed all documents including disclaimers and property disclosures.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; Commissioner Collins request a call to the question; no objections; vote 6 yes and 2 no by Commissioner DiChiara and Commissioner McMullen; motion carries.**

**19. 2014013241**  
**Opened: 6/27/14**

**First License Obtained: 5/5/05**

**License Expiration: 3/19/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**20. 2014013242**  
**Opened: 6/27/14**

**First License Obtained: 9/23/89**

**License Expiration: 11/14/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent 1 (affiliate broker; Respondent 2 is principal broker) called Complainant and stated that Respondent 1 was with a property management firm and requested to verify information regarding individuals that had applied for a rental property. Complainant states that Respondent 1 asked open-ended questions regarding trustworthiness, habits, financial payments, transactional history, and character but did not request to verify any information the applicants had supplied. Complainant states that Respondent 1 hung up quickly when asked about the line of questioning. Complainant states that Respondent 1 willfully misrepresented the purpose of the call, made a substantial and willful misrepresentation, and was engaged in conduct which constitutes improper, fraudulent, or dishonest dealing.

Respondent 1 answered through an attorney stating that Respondent 1 is an agent employed with the property management firm as identified to Complainant and works in the leasing/sales department. Respondent 1 states that two (2) applicants identified Complainant as their current landlord, so Respondent 1 called to verify rental history. Respondent 1 states that Respondent 1 mistakenly had misplaced paperwork, and Complainant chastised Respondent 1 for being unprepared and asked Respondent 1 to call back when paperwork was in order. Respondent 1 called Complainant back and attached a copy of the questionnaire used during the phone call. Respondent 1 states that Complainant became abusive in the phone call, so Respondent 1 quickly hung up the phone. Respondent 1 states that Complainant called back, but Respondent 1 did not answer, and Respondent 1 sent in a copy of the voicemail message. Respondent 1 denies allegations of improper, fraudulent or dishonest dealings and states that it is common practice for rental property managers to contact applicants' current or previous landlords to verify rental history. Further, Respondent 1 denies the accusations of willful misrepresentation and denied questioning Complainant about applicants' trustworthiness, habits, character, or transactions. The questions included in the rental verification document supplied include start date of tenancy, amount of monthly payment, if tenant has paid late, if lease term was fulfilled, and if tenant is eligible to resign a lease with the landlord. Respondent 2 states that the attorney's response outlines the circumstances, and Respondent 1 was following policy. Respondent 2 states that the documentation clearly shows that Respondent 1 was being supervised before and after the occurrence. Respondent 2 states that it is top priority to ensure agents are trained and operate within the firm's policy at all times.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Hills; unanimous vote; motion carries.**

**21. 2014014081**  
**Opened: 8/19/14**  
**First License Obtained: 5/4/09**  
**License Expiration: 10/21/15**  
**E&O Expiration: 1/1/15**  
**Type of License: Broker**  
**History: No Prior Disciplinary Action**

Complainant contacted Respondent (broker) regarding a home listed and states that Respondent stated the home was livable needing floor replaced and a good cleaning, and owners would take \$8,000 cash. Complainant states the appraised value on a third party website stated \$28,000. Complainant states that Respondent gave Complainant the contract on July 24, 2012 before seeing the home on August 7, 2012, with a closing date of August 8, 2012. Complainant states that, at the showing, Complainant was only allowed to see part of the house because somebody was sleeping in the home, and Complainant was told by a co-owner of the home that the field next to the home was part of the property. Complainant states that the previous owners were to move out on August 10, and, when Complainant arrived at the home, there was a padlock on the front door and the window air conditioners and the refrigerator were missing. Complainant states one of the air conditioning units was returned. Complainant further states that the exterior walls are deteriorated; there is mold inside the walls; the central heat and air does not work; there are gas leaks; there is sewage build up in the yard; and the home is infested with mice, ants and cockroaches. Complainant also later discovered that the field was not part of the purchase.

Respondent states that Complainant called looking for an investment under \$10,000, discussed the subject property with Respondent, and placed an offer a few days later on the subject property

for \$8,000. Respondent states that the online ad clearly states “FIXER UPPER,” Complainant was aware that the home was not in good condition, and Respondent specifically told Complainant that it needed repairs but the extent of repairs is not known. Respondent states that, when asked if it was livable, Respondent said people were living in the home currently. Respondent states that the closing went okay, but, when taking possession, Complainant called to say there was a padlock on the door. Respondent states that Respondent tried to call the sellers, but they did not reply. Respondent also left a message for sellers regarding the window units and refrigerator, but Respondent has not seen or heard from sellers since closing. Respondent further states that, after completing a few repairs, Complainant listed the property for sale and gave Respondent the listing. Respondent states that, after Respondent left the first firm, Complainant withdrew the listing since Respondent was no longer at that firm, but Complainant did not ultimately list with the new firm. Respondent denies doing anything wrong.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

22.     **2014014661**  
          **Opened:     7/18/14**

**First License Obtained:     4/26/06**

**License Expiration:     4/25/16**

**E&O Expiration:     Uninsured**

**Type of License:     Firm**

**History:     No Prior Disciplinary Action**

23.     **2014014662**  
          **Opened:     7/18/14**

**First License Obtained:     11/10/03**

**License Expiration: 12/17/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2014011321 – Under review by legal**

**2014017781 – Under review by legal**

**24. 2014014663**

**Opened: 7/18/14**

**First License Obtained: 5/18/05**

**License Expiration: 11/11/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainants state that they submitted an offer to purchase a home listed by Respondent 3 (affiliate broker; Respondent 1 is firm and Respondent 2 is principal broker). Complainants state that a counter-offer was signed on June 2, and Respondent 3 told Complainants' agent that the contract was valid. Complainants state that there was an inspection period and a quick closing date set for June 13. Complainants state that Respondent 3 contacted Complainants' agent stating that two contracts were executed on June 2, and Respondent 3 had been trying to determine who had the legal contract. On June 10, Complainants state that Respondent 3 told Complainants' agent that Complainants were not the primary contract and that Respondent 3 would like to buy Complainants out of the contract. Complainants state that they canceled inspections set for June 11 and made alternate moving arrangements. Complainants state that, on June 11, Respondent 3 again contacted their agent, stating that Respondent 3 had settled with the other buyers and that Complainants are the new primary offer, but did not furnish any documentation to confirm that Complainants were the primary and only contract.

Respondent 3 denies the allegations and states that Respondent 3 asked Complainants' agent if they were willing to assign their contract for a fee since Respondent 3 made a mistake and unknowingly contracted with another offer received before Complainants' offer. Respondent 3

states that six (6) hours later (before Complainants' agent responded with Complainants' answer) Respondent 3 notified Complainants' agent that the other party had resolved their dispute and Complainants could move forward as planned. Respondent 3 states that Complainants' agent requested money in costs since Complainants had spent the day making alternate arrangements, but sellers declined the change to the terms of the agreement. Respondent 3 further states that they received automatic notification later that evening that the inspection was rescheduled for June 17. Respondent 3 states that Complainants were only willing to move forward if the sellers lowered their price \$10,000, delayed the closing to allow time for the rescheduled inspection, and provided proof that they were the only contract (and Complainants signed an amendment stating same). Respondent 3 states that the sellers responded with an amendment A to extend the closing date to allow for rescheduling the inspection and confirming that Complainants were the only contract. Respondent 3 further states that Complainants did not perform as agreed in the contract, and Respondent 3 did not ever tell them they were not under contract. Respondent 2 states that all affiliated agents are independent contractors and states that company policies are distributed to affiliates, an extensive mandatory orientation program is given, and many educational opportunities are provided. Respondent 2 outlines the orientation program, educational opportunities and listing and sales contract compliance process utilized by the firm. Respondent 2 works full time as a principal broker and dedicates 100% of the work day to these responsibilities and is easily accessible to agents. Respondent 2 states that Respondent 3's response was reviewed and is believed to be detailed and accurate. Respondent 2 acknowledges that Respondent 3 may have unknowingly executed a contract on another offer before withdrawing the offer with Complainants. Respondent 2 states that the information requested by Complainants was provided to them and signed for in writing and their claim of unethical behavior is unfounded because Respondent 3 never told Complainants that they were not under contract. Respondent 2 further states that Respondent 3 sought advice of legal counsel, the firm CEO, and Respondent 2 to determine legitimacy of the two offers and the impact it would have on the sellers. Respondent 2 further states that a meeting was set with Respondent 3 to review in detail the steps involved in accepting and binding a real estate contract and how to work with multiple offers. Respondent 2 also required Respondent 3's attendance at a meeting regarding form review. Respondent 2 is confident that Respondent 3 now clearly understands how to steward an offer from initial receipt to final acceptance and binding. Respondent 2 outlines the firm's extensive supervisory efforts and compliance process and states that Respondent 2 did not fail to supervise Respondent 3. In light of these unusual circumstances, it is recommended that the Commission discuss.

**Recommendation: Discuss.**

**DECISION:** As to Respondent 1, the Commission voted to dismiss. As to Respondent 2, the Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order. As to Respondent 3, the Commission voted to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. § 62-13-312(b)(14) and 62-13-403(1), plus attendance by Respondent 3 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 3's execution of Consent Order.

**ACTION:** Commissioner Blume made a motion to Respondent 3 to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. § 62-13-312(b)(14) and 62-13-403(1), plus attendance by Respondent 3 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 3's execution of Consent Order; motion seconded by Commissioner McMullen; unanimous vote; motion carries. Commissioner Griess made motion to dismiss respondent 1 and 2; motion dies due to lack of second. Commissioner McMullen made motion to Respondent 2 to authorize a Consent Order with a \$1,000 civil penalty for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order; motion seconded by Commissioner Blume; unanimous vote; motion carries. Commissioner Griess made motion to dismiss; motion seconded by Commissioner McMullen; unanimous vote; motion carries.

25. 2014015161  
Opened: 8/8/14

First License Obtained: 4/20/99

License Expiration: 12/31/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2014010691 – Under review by legal

2014012651 – Under review by legal

Complainants attended a time-share presentation given by Respondent (time-share registration). Complainants allege that misrepresentations were made and Complainants would like contract cancellation. Complainants state that they were bused to the presentation and could not leave the long presentation. Complainants further state that they were told that the time-share was a good investment that would increase in value, that the time-share could be a tax write off, that the time-share would be easy to rent out and Respondent would assist with that, that Complainants would have extra weeks to use in a year and could stay at any other resort, and that the interest rate was very high. Complainants also state that they were not told about maintenance fees until after Complainants signed the contract and Complainants were told that they could return the time-share if they were not happy.

Respondent submitted a response through an attorney stating that almost all of Complainants' allegations are contradicted by written documents signed by Complainants. Respondent points to an Acknowledgement of Representations signed by Complainants affirming understanding that no representations were made as to investment or resale potential and that the developer has no rental or resale program. Further, Respondent points to a form which discloses the interest rate and payments. With regard to the extra weeks, a signed disclosure states that getaway weeks are subject to availability and a fee. Respondent states that Complainant signed a proposal before the contract referencing estimated maintenance fees. Finally, as to tax implications, Respondent states that time-share owners do have the ability to write off interest paid on their mortgages on taxes, but Respondent mails appropriate tax forms but does not give tax advice. Respondent states that Complainants' contract is valid. The documentation in the file does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

**26. 2014015171  
Opened: 8/8/14**

**First License Obtained: 11/4/10**

**License Expiration: 11/3/14**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: No Prior Disciplinary Action**

Complaint was submitted by an attorney on behalf of time-share purchasers who attended a time-share presentation in another state. The complaint states that the purchasers attempted to trade two (2) time-shares in Tennessee for an upgraded time-share interest in that state. During the presentation, the complaint alleges there were verbal misrepresentations. A few months after the purchase, the complaint states that the purchasers became unhappy with the new time-share and spoke with a representative for Respondent who indicated that the contract was cancelled. The complaint states that the two (2) Tennessee properties were quitclaimed out of the names of the owners, and there is nothing on file in the other state showing that the purchasers own a new time-share in that state. The complaint states that the upgraded time-share purchase in the other state was not cancelled as the purchasers were told, that the purchasers have not used that time-share, that the purchasers have received no value for their equity in the two (2) Tennessee time-shares, and that nothing has been recorded in the other state evidencing ownership.

Respondent submitted a response through an attorney attaching a copy of the purchasers' contract relating to the upgraded purchase which involved the transfer and trade of the two (2) Tennessee time-shares. Respondent states that, despite the purchasers' intention to cancel their contract through attempting to schedule an appointment and phone calls, the contract is clear that a cancellation must be made within a specified number of days from the date of the contract, and the intent to cancel must be expressed in writing to Respondent at the address in the contract. Respondent states that this was not done, and the contract is valid and binding. Respondent further denies any misrepresentations and points to an Acknowledgment of Representations signed by the purchasers. The documentation within the file does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Franks made a motion to accept legal counsel**

**recommendation to dismiss; motion seconded by Commissioner Hills; unanimous vote; motion carries.**

**27. 2014015251**  
**Opened: 7/17/14**  
  
**First License Obtained: 6/18/98**  
  
**License Expiration: 12/22/15**  
  
**E&O Expiration: 1/1/15**  
  
**Type of License: Affiliate Broker**  
  
**History: No Prior Disciplinary Action**

**28. 2014015252**  
**Opened: 7/17/14**  
  
**First License Obtained: 6/20/94**  
  
**License Expiration: 6/3/15**  
  
**E&O Expiration: 1/1/15**  
  
**Type of License: Principal Broker**  
  
**History: No Prior Disciplinary Action**

Complainant states that Complainant's spouse contracted with Respondent 1 (affiliate broker; Respondent 2 is principal broker) to sell their home. Complainant states that Complainant signed a warranty deed as seller, and the property contained several items of personal property not owned by Complainant's spouse. Complainant states that Respondent 1 assisted Complainant's spouse with a side sales contract with the buyer regarding the personal property. Complainant states that the buyer notified Complainant of a leather sofa that was included in this transaction and conveyed to buyer, and both realtors were involved. Complainant states that Complainant requested a copy of this separate contract from Respondent 1 but Respondent 1 refused. Complainant further states that a prior conversation with Respondent 1 made Respondent 1 aware that this was joint marital property.

Respondent 1 submitted a response stating that Respondent 1 only represented Complainant's spouse and was given instructions that Complainant should not be allowed on the property and Respondent 1 should not give Complainant any information, as Complainant had no rights to the property. Respondent 1 agrees that Complainant called and stated there were items in the home that Complainant considered joint marital property. Respondent 1 states that the buyers asked for some personal items in the offer, and those items were removed and transferred to a Personal Property Agreement, and all items except the sofa, recliners and ottoman were the spouse's property, and the spouse stated that the spouse could work the situation out with Complainant before closing. Respondent 1 states that, shortly before closing, the spouse gave Respondent 1 an executed Joint Personal Property and Joint Property Sale Approval regarding the sale of the joint property. Respondent 1 states that they waited at the closing for an extended period of time while the buyer contacted Complainant to confirm that the sofa could be included in the purchase, and Complainant allowed the buyer to purchase the sofa. Respondent 1 states that the title company worked with Complainant's attorney to have the HUD and Warranty Deed signed by Complainant since the parties were still married. When Complainant requested copies of the contract documents, Respondent 1 states that Respondent 1 was instructed by Respondent 1's client (the spouse) not to give Complainant any documentation. Respondent 1 sought advice from Respondent 2 and was told that, since Complainant was not a party to the contract, Respondent 1 could not give copies. Respondent 1 submitted a copy of a Quit Claim Deed and Agreed Order stating that the spouse must pay Complainant for Complainant's interest in the property, and Complainant would sign a quit claim. Also submitted was an executed Joint Personal Property agreement stating that spouse is allowed to sell joint personal property and proceeds would be split as well as a Joint Property Sale Approval stating that the sofa with recliners and ottoman and a tractor would be sold after closing and the proceeds divided.

Respondent 2 submitted a response reaffirming the information provided by Respondent 1. Respondent 2 states that, when asked by Respondent 1 about giving documentation to Complainant, Respondent 2 sought legal advice and received information that, if Complainant was not a party to the contract, then it is unlikely that Respondent 2 is required to provide Complainant with a copy of the documents. Respondent 2 was advised that, if copies were to be provided, permission should be granted from the spouse. Respondent 2 states that Respondent 1 acted in good faith to the spouse and acquired all documentation necessary regarding the rights to the personal property. Respondent 2 further states that buyers were made aware of the circumstances and listing and selling agent were in communication throughout the entire transaction. Respondent 2 states that Respondent 2 supervised Respondent 1 properly and provided the best information possible to Respondent 1.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Blume made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Hills; unanimous vote; motion carries.**

**29. 2014015271**

**Opened: 7/21/14**

**First License Obtained: 9/12/05**

**License Expiration: 9/11/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent (affiliate broker) misrepresented Complainant and siblings, yelled inappropriately, was rude to Complainant's daughter who has a mental disorder, was not up front about the sales price of the home, encouraged Complainant to be secretive to other family members regarding the transaction, lied about things, and was only after the commission.

Respondent states that Respondent knew Complainant's sibling previously, and the sibling was trustee of their father's estate (hereinafter "trustee"). Respondent states that Respondent met with Complainant and trustee at the subject property, made a listing presentation, and suggested improvements upon request. A listing agreement was signed to list the home "as is" with the family trust listed as seller, and the trustee signed in that capacity. Respondent states that five (5) offers were received within forty-eight (48) hours, and the trustee accepted an offer. Respondent states that an anonymous phone call was received asking if the subject property had been sold, but, in the conversation, it was divulged that the anonymous caller was another sibling and requested confidential information to which Respondent stated that the trustee would have to grant permission. Respondent states that the call was immediately divulged to the trustee, who stated that the sibling was disgruntled regarding the estate and not to worry. Respondent states that the first contract fell through due to discovery of fungus, and Respondent followed the trustee's instructions and another offer was accepted which was a lower price. Respondent states

that, if Respondent was only out for commission, it would have been suggested to accept one of the higher offers. Respondent submitted a testimonial letter from the trustee commending Respondent for excellent work, which was submitted to Respondent's principal broker shortly after closing. Respondent denies all allegations, stating Respondent did not lie to the sibling but was not permitted to divulge certain information to anyone other than the client. Respondent further denies encouraging the trustee to be secretive to other family members. Respondent further denies being rude to Complainant's daughter and states that Respondent has never spoken with her. Finally, Respondent denies lying about things, stating Respondent lives with a personal code of integrity, morality, and honesty. Respondent states that the only interaction with Complainant was during the initial presentation, and all other communication has been with the trustee of the trust.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

**30. 2014017781**  
**Opened: 7/28/14**

**First License Obtained: 11/10/03**

**License Expiration: 12/17/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2014011321 – Under review by legal**  
**2014014662 – Under review by legal**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014015271 (hereinafter "affiliate broker").

Respondent states that Respondent spoke with the affiliate broker after receiving the complaint and believes that the affiliate broker provided a detailed and accurate response that supports the fact that the Complainant's allegations are incorrect and without merit. Respondent states that it appears that the complaint was filed as a result of an internal family feud resulting in the settlement of the estate of Complainant's late father, and the affiliate broker properly did not divulge confidential information to anyone other than the client. Respondent denies failing to supervise the affiliate broker, stating that each affiliate is given a policies and procedures handbook, orientation courses, regular educational opportunities, and Respondent works full-time as the principal broker dedicating 100% of the work day to these responsibilities and is easily accessible to agents. Respondent submitted an independent contractor agreement for affiliate broker, policy and procedures manual, an orientation PowerPoint, and other documentation.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Griess made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner McMullen; unanimous vote; motion carries.**

31.     **2014015291**  
      **Opened:     7/28/14**

**First License Obtained:   6/14/12**

**License Expiration:       6/13/16**

**E&O Expiration:         1/1/15**

**Type of License:       Affiliate Broker**

**History:   No Prior Disciplinary Action**

32.     **2014015292**  
      **Opened:     7/28/14**

**First License Obtained: 10/27/95**

**License Expiration: 3/9/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant, a retired licensee, states that Respondent 1 (affiliate broker; Respondent 2 is principal broker) listed two (2) properties pursuant to a court order regarding a divorce. Complainant states that Respondent 1 conspired with the husband to defraud the wife, and information can be obtained from an audit of the file regarding the properties. Complainant also states that Respondent 1 failed to place all property on the market (a vacant land tract).

Respondent 1 submitted a response via an affidavit of the husband's attorney. The attorney states that a motion was granted to list/sell the marital home, which encompasses only one property and not two as alleged. The attorney states that Respondent 1 was selected to list, all parties executed a listing agreement, and an agreed upon appraiser performed an appraisal to determine the list price. The attorney states that Respondent 1 presented an offer to purchase to both spouses, but the wife refused to accept the offer. The attorney's motion was granted for the property to be sold to the buyers, and the husband could sign the deed if wife did not cooperate. The attorney states that the offer expired. A second offer was received, which the wife refused to accept, and Respondent 1's listing agreement expired. The attorney states the wife did not cooperate to have the home re-listed, so the husband put a sign stating the house and lot were for sale, and the husband was contacted with an offer. The attorney states that Respondent 1 routed communication to both parties through their attorneys and acted professionally, and the attorney believes the complaint to be frivolous and filed by a person who was not a party to the transaction, who had no ownership interest, and who interfered with the transaction. Respondent 2 states that both Respondents fulfilled their duties and were able to obtain multiple offers. Respondent 2 states that this was a difficult divorce proceeding, and Complainant imposed himself between the two parties and Respondent 1. Respondent 2 states that the husband was cooperative and eager to accept offers, but the wife resisted attempts to sell even though she signed a listing agreement. Respondent 2 states that the wife berated and threatened Respondent 2. Respondent 2 states that an order was granted for their office to process one of the offers and stipulated that the husband could proceed with the sale if the wife refused to cooperate. Respondent 2 states that they continued to handle the sale pursuant to the court order but were unable to close, and, since the listing expired, they removed their sign and lockbox. A copy of the court order was provided directing acceptance of the offer on the marital home at a specified

sale price to the first buyer and stated that, should the wife refuse to convey the real property to the buyers, the husband is authorized to execute the deed. The order also states that the tract of land should be sold to a family member for a specified amount.

Office of legal counsel followed up with Respondent 2 to obtain the transaction file, which does not appear to evidence a violation by Respondents.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Collins made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

**33. 2014015311**  
**Opened: 7/21/14**

**First License Obtained: 6/6/14**

**License Expiration: 6/5/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**34. 2014015312**  
**Opened: 7/21/14**

**First License Obtained: 10/27/99**

**License Expiration: 11/20/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that, in February 2014, Respondent 1 (affiliate broker; Respondent 2 is Respondent 1's current principal broker) was going through Complainant's and a neighbor's mail boxes. Complainant states that Respondent 1 stated that Respondent 1 owned the home below Complainant, but Complainant states that another person is the owner and alleges that Respondent 1 later stated that Respondent 1 was the property manager, which could be found on Respondent 1's Facebook page. Complainant states that, upon checking the website, Respondent was not found as a real estate licensee.

Respondent 1 denies meeting or speaking with Complainant and states that Complainant is the sibling of a former tenant of the property (the property was owned by a friend of Respondent 1), who was later evicted by the owner's attorney. Respondent 1 states that there is no such property management company as the Complainant referenced, that Respondent 1 did not manage a property management company, and that Respondent 1 never received compensation from the owner of the property. Respondent 1 further states that, at the time the alleged incident occurred, Respondent 1 had not begun attending real estate school. Respondent 1 states that Respondent 1's Facebook page was updated after Respondent 1's license was obtained to reflect the real estate firm as Respondent 1's occupation though not stating that Respondent 1 was a Realtor. Respondent 1 states that a license number was assigned then unassigned then re-assigned due to a mix up with another licensee, but Respondent 1 did not attempt to list or sell properties until confirmation that the license was fully vetted, stating that the first Facebook post regarding selling property was after license approval. Office of legal counsel reviewed Respondent 1's licensing information and Respondent 1's Facebook page. It does not appear that Respondent 1 was practicing as an agent prior to licensure. Respondent 2 states that, at the time of the alleged incident, Respondent 2 had not met Respondent 1 as Respondent 1 was not licensed until a later time. There does not appear to be a failure to supervise by Respondent 2.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Griess made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

**35. 2014015351**  
**Opened: 7/22/14**

**First License Obtained: 6/5/06**

**License Expiration: 6/4/16**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

**36. 2014015352**  
**Opened: 7/24/14**

**First License Obtained: 7/3/07**

**License Expiration: 8/2/16**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent 1 (broker; Respondent 2 is principal broker) was hired to sell Complainant's home as a short sale. Complainant states that two (2) offers came in after being on the market for two (2) months, and the information was sent to the mortgage lender for approval but sat for about ten (10) months, when Respondent 1 contacted Complainant stating Respondent 1 was no longer going to handle the transaction. Complainant states that it was discovered that Respondent 1 refused to accept additional offers on the property, reporting it was under contract with a closing date or sold. Complainant believes the process should have been completed much quicker and states that Respondent 1 was trying to force the home into foreclosure, meanwhile ruining Complainant's credit.

Respondent 1 submitted a response stating that Respondent 1 has earned a designation of "Certified Distressed Property Expert" with the goal of helping homeowners avoid foreclosure. Respondent 1 attached a listing agreement with Complainant. Respondent 1 states that

Complainant owed an amount on the property between two (2) different lien holders, and, because repairs were needed for unfinished projects, the property was first marketed at a lower amount. Respondent 1 states that the price was gradually reduced until an offer was received, and two (2) offers were presented to Complainant. After inspections, a cash offer was accepted. Respondent states that, over the next ten (10) months, the first lien holder had the property appraised three (3) times, and Respondent 1 states that paperwork was re-submitted multiple times and over fifty-five (55) calls were placed to the lien holder. Respondent 1 denies allegations that Respondent 1 did not accept or present additional offers, stating that another licensee contracted Respondent 1 multiple times, and Respondent 1 disclosed that a cash offer had been accepted, and the licensee was encouraged to submit a back-up offer but never did. Respondent 1 further denies telling anyone that the short sale was expected to close in two (2) weeks, stating the timeframe of a short sale is subject to lender's approval. Respondent 1 admits contacting Complainant in April 2014 and stating that the first lender was being un-responsive, and Respondent 1 did not know how else to help Complainant, and the listing agreement had expired. Respondent 1 suggested a deed in lieu of foreclosure as long as the second lien holder would release its lien and encouraged Complainant to contact the first lien holder about it. Respondent 1 states that Respondent 1 handled this transaction professionally and to the best of Respondent 1's ability, and unfortunately short sales are not always successful, which was disclosed to Complainant at the onset. Respondent 2 states that Respondent 2 oversees Respondent 1's work, and Respondent 1 does everything by the book, but short sales are difficult transactions to pull off and usually only occur after a seller is under some sort of duress. Respondent 2 states that Respondent 1 went through the steps of a short sale with Complainant, and all necessary documentation was executed including a Short Sale Addendum and third-party negotiator documentation which explains that not all short sales work out.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Collins made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Hills; unanimous vote; motion carries.**

**37. 2014015361  
Opened: 7/29/14**

**First License Obtained: 8/26/02**

**License Expiration: 6/24/16**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant, a licensee, submitted a complaint against Respondent (affiliate broker) on behalf of Complainant's grandparent, stating the grandparent was a victim of elder abuse by the grandparent's only child who is Complainant's parent (hereinafter "Complainant's parent") and Respondent, a family friend. Complainant states that Complainant's parent invested the grandparent's money in a development of Complainant's parent and Respondent. Complainant states that Complainant's parent attempted to sell the grandparent's current home and purchase a home in another city, although the grandparent was clear about not wanting to live in that city. Complainant states that a rental agreement and purchase and sale agreement contingent on the sale of the grandparent's home were signed by Respondent as president of an LLC, and Complainant states that the grandparent never knowingly signed the rental agreement or the purchase agreement and always indicated that the grandparent did not want to move. Complainant states that Respondent eventually removed the listing of the first home upon request of the grandparent, and Complainant called Respondent's principal broker to request another agent, but the principal broker would not speak with Complainant without a Power of Attorney ("POA") and did not assign a new agent. Complainant states that a POA was obtained, and a court order was obtained voiding the contracts on the new home with instructions from the judge to attempt to recover the earnest money. Complainant states that Complainant found out from Respondent's principal broker that the earnest money had been released to the sellers of the home, and Complainant states that the original earnest money check was forged. Complainant states that Respondent ignored fiduciary duties and assisted someone (Complainant's parent) in taking advantage of the grandparent and did not do anything to help the grandparent get the earnest money back. Complainant submitted a copy of an order terminating Complainant's parent's emergency conservatorship, sustaining Complainant's POA, and requiring Complainant's parent to produce financial documentation. Further, the order states that Complainant has authority to rescind or terminate any agreement or pending contract for the property involved with the lease purchase and is authorized to seek reimbursement of earnest money. Another order provided states, in relevant part, that Complainant's parent testified that Complainant's parent signs documentation on behalf of the grandparent with verbal permission using the grandparent's full name to differentiate between the grandparent's actual signature.

Respondent states that Complainant is not a blood relative of the grandparent and was not in the grandparent's life until recently. Respondent states that it was made clear to Complainant's parent by a physician that the grandparent could not live alone, but the grandparent did not want to live in an assisted living facility. Respondent states that a POA was not necessary since Complainant's parent was an only child, and there was no one else to designate to take care of the grandparent. To Respondent's knowledge, the grandparent's money was not invested in Complainant's parent's real estate developments but in stocks. Respondent states that Respondent was hired to look for a suitable home for Complainant's parent, spouse, and the grandparent, stating that they needed a mother-in-law apartment and enough room to house the grandparent's antiques, which was not affordable in the current city. Respondent states that a lease purchase was arranged until the grandparent's current home could be sold and Respondent states that the grandparent understood that earnest money had to be put down. Respondent states that Respondent does not recall who wrote the check but states that the check was written with the grandparent's full knowledge. Respondent further states that Complainant's parent and spouse were making rental payments. Respondent states that Respondent and spouse (also a licensee) went over to speak with the grandparent and have the grandparent sign the lease purchase paperwork. Respondent states that the grandparent understood what was being signed and signed the document with the aid of a magnifying glass, also expressing hope that the existing home would sell so the lease purchase would work out. Respondent states that the condo was overpriced and did not sell quickly, and, since repairs needed to be made, Respondent took the home off the market for a couple of months until completed. Respondent states that, a few months later, it was listed with Complainant's firm. Respondent states that Complainant requested documents, but Complainant was not their client, so Respondent initially refused but eventually gave them to Complainant because there was nothing to hide. Respondent states that Respondent is saddened by the situation and states that Respondent was trying to help a family friend. Office of legal counsel obtained a copy of the transaction file. The documentation does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Blume made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

**38. 2014017911**

**Opened: 8/8/14**

**First License Obtained: 4/7/00**

**License Expiration: 3/14/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2014016132 – Under review by legal**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014015361 (hereinafter “affiliate broker”).

Respondent states that the relationship with the previous Complainant has been contentious from the beginning. Respondent states that the affiliate broker alerted Respondent that the previous Complainant was not a signer or support person for the grandparent. Respondent states that Respondent reviewed the listing agreement and lease purchase and states that all signatures look right and do not seem out of the ordinary. Respondent states that the listing on the first home was close to expiring when the previous Complainant began calling, so it was removed. Respondent states that Respondent called the previous Complainant’s broker, who spoke with Complainant about being involved in this transaction without legal POA. Respondent states that Respondent spoke with the previous Complainant just before the lease purchase expired and stated that contractually Respondent could not tell that anything had been mishandled. Respondent states that Respondent reviewed the earnest money check, the contract, and the listing agreement, stating that all signatures looked the same. Respondent states that Respondent and the affiliate broker requested an earnest money release from the listing agent of the new property, and Respondent spoke to the broker, who had already released the money to the sellers without signatures since it was clear to the listing broker that it was a nonrefundable check based on the transaction documents. Respondent is sympathetic to this painful situation.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Griess; unanimous vote; motion carries.**

**39. 2014016031**  
**Opened: 7/22/14**  
**First License Obtained: 11/2/06**  
**License Expiration: 11/1/14**  
**E&O Expiration: 1/1/15**  
**Type of License: Affiliate Broker**  
**History: No Prior Disciplinary Action**

**40. 2014016032**  
**Opened: 8/21/14**  
**First License Obtained: 6/29/83**  
**License Expiration: 9/10/16**  
**E&O Expiration: 1/1/15**  
**Type of License: Principal Broker**  
**History: No Prior Disciplinary Action**

Complainant toured a home with Complainant's agent that was listed by Respondent 1 (affiliate broker; Respondent 2 is Respondent 1's principal broker). Complainant states that it was discovered that the square footage was considerably less than listed. Complainant states that the MLS listing was later updated reducing the price, stating it was reduced due to a short sale. Complainant believes that the appraisal was done on the larger square footage rather than the smaller actual square footage. Complainant states that Complainant submitted a contract on the property and is willing to pay up to the appraised value of an independent appraiser. Complainant states that Respondent 1 is not working in the best interest of the seller and the bank that is involved in the short sale.

Respondent 1 states that the original price was based on the seller's request, and the price was reduced because that was the bank's later approved price. Respondent 1 states that the square-footage was listed according to the tax records with a disclaimer in the addendum that the square-footage is approximate. Respondent 1 attached an MLS listing and a property assessor's report. Respondent 1 states that Complainant's agent submitted an initial offer for much lower than listing price with a clause in "special stipulations" stating the buyer personally assessed the square footage as lower. Respondent 1 states that Respondent 1 contacted the bank to request that it verify the accuracy of its appraisal. Respondent 1 states that Respondent 1 received a request directly from Complainant stating that Complainant wanted an independent appraisal, but Respondent 1 advised Complainant's agent that the bank does not accept independent valuations. Respondent 1 states that the seller rejected both of Complainant's offers, and an additional offer has not been made by Complainant. Respondent 1 states that Complainant's agent was contacted when the seller was approved for the short sale and notified that the seller may be willing to consider a lower offer, and the agent indicated that Complainant may write another offer, but it has not been received. Respondent 1 states that another offer (higher than Complainant's) was received, and the seller signed it. Respondent 1 states that Respondent 1 works for the seller and not the bank and is working in the best interest of the client and honoring seller's instructions.

Respondent 2 states that Complainant indicates Complainant will pay an amount equal to a future appraisal, but the firm's client is not willing to accept those terms and has not signed any offer from Complainant. Respondent 2 further states that Respondent 2 does not know where Complainant is getting Complainant's square footage claim, and Complainant's calculations do not match the county tax records. Respondent 2 states that Respondent 1 has performed duties professionally and timely, and the property has a pending contract awaiting final approval.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Collins; unanimous vote; motion carries.**

**41. 2014016121  
Opened: 8/4/14**

**First License Obtained:** 10/17/07  
**License Expiration:** 10/16/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

42. 2014016122  
**Opened:** 8/4/14  
**First License Obtained:** 2/24/82  
**License Expiration:** 3/8/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** No Prior Disciplinary Action

Complainant's parent was the seller of a property who states that the buyer's agent, Respondent 1 (affiliate broker; Respondent 2 is principal broker) gave the lockbox code to the buyers, who gained access to the property before closing. The original closing was scheduled on February 25, 2014, and Complainant states the seller moved out and paid for a storage unit. Multiple extensions were signed, and the closing was scheduled for March 31, 2014. Complainant states that Respondent 1 asked seller's agent if the buyers could move in over the preceding weekend, and the seller responded no but allowed the buyers to put some of their belongings in the garage. Complainant states that the property did not close on March 31, but the buyers moved in unauthorized. Complainant states that, upon contacting Respondent 1 it was realized that Respondent 1 gave the buyers the code to the lockbox giving the buyers access to the home. Complainant filed police report on April 2, 2014. Complainant does not believe that Respondent 1 is entitled to a commission because the buyers trespassed with Respondent 1's help. Complainant attached documentation, including transaction documents and e-mails. Included is an e-mail from Complainant to seller's agent stating, in relevant part, in response to the question of permission for early move in that, "...They can put their stuff in garage."

Respondent 1 submitted a reply stating that Respondent 1 got permission from the seller through the seller's agent for the buyer to move belongings into the garage prior to closing. When the closing did not occur on March 31, Respondent 1 states that the seller discovered that someone was in the house and called seller's agent who called Respondent 1. Respondent 1 states that Respondent 1 contacted the buyer and asked if the buyer had moved in, and the buyer confirmed this, and Respondent 1 informed the buyer that this was not the arrangement. Respondent 1 states that the police did not do anything since the seller allowed the buyer to move into the garage, which is part of the property. Respondent 1 states that the seller then said that they buyer had to pay for every day that the buyer stayed in the property. Respondent 1 states that the closing took place approximately eight (8) days later, and the buyer paid the seller for the time that the buyer stayed in the house. Respondent 2 states that the closing date was moved several times, and documents were executed extending the closing until ultimately April 9, 2014. Respondent 2 states that the seller verbally allowed the buyer to place things in the garage only, and the buyer moved into the home without knowledge of seller, seller's agent, or Respondent 1. Respondent 2 states that the seller, the seller's agent, and Respondent 1 spoke and resolved the issue with the buyer paying for the time spent in the home until closing.

Office of legal counsel obtained transaction documents relating to the transaction. With regard to whether there was an agreement as to how the buyer was to gain access to the garage and how the buyer ultimately gained access to the garage to move belongings in, Respondent 2 stated that there was only a verbal agreement between Respondent 1 and seller's agent to gain access to the garage, and the seller's agent gave Respondent 1 the lockbox combination to gain access to the garage.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Collins made a motion to dismiss; motion dies due to lack of second; motion made by Commissioner Griess to accept legal counsel recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

**43. 2014016131  
Opened: 7/18/14**

**First License Obtained:** 5/3/13  
**License Expiration:** 5/2/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

44. **2014016132**  
**Opened:** 7/18/14  
**First License Obtained:** 4/7/00  
**License Expiration:** 3/14/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** 2014017911 – Under review by legal

Complainant purchased a home from Respondent 1 (affiliate broker; Respondent 2 is principal broker) as owner/agent. After the purchase, Complainant discovered moisture problems and water intrusion in the basement into the garage. Complainant states that Respondent 1 reassured that the only water intrusion was by the door and had been addressed by FEMA after a flood. Complainant further states that after the flood, drywall was replaced but the framework was left in the walls to rot and a drainage system was installed, but it caused foundation problems—both of which Complainant had to repair. Complainant states that Complainant would never have bought the home if proper disclosures were made regarding the water intrusion problems or the drain system that was installed in the basement. Complainant further states that upon purchasing, Complainant was not given keys that opened the front door, the drapes were missing, there was frozen food left in the freezer, the refrigerator was left filthy, and the main water valve was shut off which almost caused the pipes to freeze while Complainant was out of town. Complainant further states that neighbors relayed that plumbers were frequently at the home, but the plumbing work was not disclosed either.

Respondent 1 denies any misrepresentations in disclosures. Respondent 1 states that the only moisture problems Respondent 1 and spouse experienced in the basement were due to the flood,

and they cannot speak to any problems that arose after Complainant purchased the property. Respondent 1 states that the only work done to the foundation was to install a radon mitigation system (requested by Complainants in the inspection contingency) in order to close the home. Respondent 1 states that the system's warranty states the company is not liable for any flooding or water damage that occurs due to installation and wonders if it affected the moisture in the basement. Respondent 1 further states that, after the flood, they repaired the home according to FEMA suggestions, and Respondent 1 answered Complainant's questions regarding FEMA during contract negotiations. Respondent 1 further states that, during the inspection, the inspector hired by Complainants did not notice any foundation issues. Further, Respondent 1 did not have the drain installed and was unaware of drain lines beneath the foundation. Respondent 1 further states that a plumber replaced an old cast iron kitchen drain line with PVC, and the main drain line was never replaced so it was not disclosed. Respondent 1 further states that a water line was replaced because it was leaking water into the ground in the front yard and was disclosed properly. Regarding the keys, Respondent 1 states that Complainant was given a key to every exterior door deadbolt per the disclosure. Respondent 1 states that the front door has a separate key for the doorknob which Respondent 1 did not have a key to, and Respondent 1 apologizes if the doorknob was inadvertently locked. Regarding the drapes, Respondent 1 states that the MLS stated "blinds only," and the drapes were not requested in special stipulations of the contract but were provided to Complainant when Complainant later asked for them. Respondent apologizes if there were items which were unintentionally left in the freezer and states that the house was cleaned when movers were done. Respondent 1 states that they just became aware that the main water was shut off and believe the movers turned it off while disconnecting the washing machine and apologizes for the oversight. Respondent 2 states that Respondent 1 approached Respondent 2 because Complainant continued to contact Respondent 1 regarding the property even after closing. Respondent 2 states that Respondent 1's spouse stated that the basement was a living area and a studio and was not moist while they lived there. Respondent 2 states that Respondent 1 gave proper disclosures regarding licensure and that they lived in the home. Respondent 2 further states that plumbing repairs upstairs and flood damage repairs were disclosed. Respondent 2 further states that radon was discovered during the inspection, and Complainant requested installation of a remediation system, which was buried in the basement. Respondent 2 states that Respondent 1 was careful to disclose everything and continues to study contracts and understand policies and procedures.

Office of legal counsel reviewed the transaction documents. Per the TN Residential Property Condition Disclosure, the seller marked "no" to being aware of any defects/malfunctions in interior walls, floors, plumbing system, basement, and foundation among others. Further, Respondent marked "yes" for being aware of "any past or present interior water intrusion(s) from outside home, standing water within foundation and/or basement" and explained further "...Some water did come in through the garage and basement doors up to 2 inches. No water came in through the foundation. All damage has been repaired. No issues since." The disclosure further

states, "Most of the plumbing has been replaced with PVC pipes, including new main line (2 years old)."

**Recommendation: Dismiss.**

**DECISION: The Commission voted to accept the recommendation of legal counsel.**

**ACTION: Commissioner Blume made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; unanimous vote; motion carries.**

### **CONSENT ORDER TRACKING**

Ms. Cropp presents her tracking system of consent orders. No questions from the Commissioners.

**Chairman Griess adjourned the meeting on Wednesday, 10<sup>th</sup> 2014 at 3:30p.m.**