

TENNESSEE REAL ESTATE COMMISSION MINUTES

April 2, 2014

The Tennessee Real Estate Commission convened on Wednesday, April 2, 2014 at 9:00 a.m. in Meeting Room 1 A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Wendell Alexander, Commissioner David Flitcroft and Commissioner Marcia Franks. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, and Assistant General Counsel Julie Cropp.

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, March 27, 2014. Also, this meeting has been notice on the tn.gov website since Friday, March 28, 2014.

The first order of business was the adoption of the agenda for the April 2014 Commission meeting. Ms. Maxwell requested that the Commission defer approval of the March, 2014 Minutes in order that some revisions to the March, 2014 minutes could be made.

Commissioner McMullen made a motion to approve the April, 2014 Agenda, as amended, seconded by Commissioner Franks. **The motion was approved.**

SUNSHINE LAW PRESENTATION

Samuel Payne, Deputy Senior Counsel for the Department of Commerce and Insurance introduced Damon Romano with the legal department of Commerce and Insurance. Mr. Romano gave a presentation on the Open Records Act and the Sunshine Law.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

TREC CORE COURSE

Mr. McDonald presented proposed topics for both the Commercial and Residential 2015-2016 TREC CORE courses. After discussion, the Commission requested that some topics be deleted and that certain additional topics be included in each of the 2015-2016 TREC CORE courses and directed Mr. McDonald to make the additions and deletions and bring the TREC CORE topics back for discussion at the May, 2014 Commission meeting.

OFFICE BROKER MANAGEMENT COURSE AND COURSE FOR NEW AFFILIATES

Mr. McDonald presented proposed outlines to update two of the required prelicense courses: Office Broker Management Course (OBM) and the Course For New Affiliates (CNA). The Commission discussed several topics which they thought should be included in the OBM or the CNA. The Commission directed Mr. McDonald to make more detailed outlines and suggestions based upon the discussions and to present them at the May, 2014 Commission meeting.

COURSE REVIEW

Mr. McDonald presented the Courses for Commission Evaluation for April 2014.

Commissioner Flitcroft made a motion to approve the Courses for Commission Evaluation A1 through A20; seconded by Commissioner Collins. **Motion carried**, 8 votes in favor of approval, Commissioner McMullen abstained.

Commissioner Alexander made a motion to deny approval of Course A21, seconded by Commissioner Flitcroft. After discussion, a roll call vote was taken. The motion to deny approval of Course A21 passed 5 yes votes (Flitcroft, Franks, Alexander, Collins and Stephenson) and 4 no votes (McMullen, Blume, Griess and DiChiara). **Course A21 denied approval.**

INSTRUCTOR REVIEW

1. Cheryl Harris, administrator of Fast Track Real Estate School (#1413) requests the Commission to review her credentialing to allow her to teach the Basic Principles of Real Estate Course internet delivery- 6019, Course for New Affiliates classroom delivery- 6043 and Basic Principles of Real Estate classroom delivery- 7379. Currently, Keith Harris has been instructing these courses. Mrs. Harris holds affiliate license #256902 and has been licensed since 1995 and TREC has record of 264 hours of education. Mrs. Harris states she has been a classroom instructor at the secondary and university level for the past 30 years. Mrs. Harris has a B.S. and M.A. degree. She has been issued a Teacher Certification and a Certificate in English as a Second Language. This request to instruct pre-license courses is a result of T.C.A. § 62-13-324 (1) (d).

Commissioner Franks made a motion to approve Cheryl Harris to teach Basic Principles of Real Estate Course pursuant to TCA 62-13-324(4), seconded by Commissioner DiChiara; unanimous vote. **Motion Carried.**

2. Stacy Dudley of RealTracs (#1349) requests the approval of Tammy Russell to teach these currently approved courses:

3829	REALTRACS PLUS
5504	REALTRACS CRS TAX
5505	REALTRACS ADVANCED
5506	REALTRACS STATISTICS
6199	TRANSACTION DESK ADVANCED
6200	TRANSACTION DESK BASIC
6597	REALTRACS TAX II
6680	REALTRACS MAPPING
6840	BASIC REALTRACS
6841	LISTING MGMT

Ms. Russell holds Tennessee Affiliate license #295319 and was first licensed in 2004. She has 27 years managing and sales experience and holds a B.S. Degree.

Commissioner DiChiara made a motion to approve Tammy Russell to teach Real Tracs Courses: 3829, 5504, 5505, 5506, 6199, 6200, 6597, 6680, 6840 and 6841, seconded by Commissioner Griess; unanimous vote. **Motion Carried.**

NOTE: Commissioner McMullen was absent for the remainder of the April 2, 2014 Commission Meeting and therefore did not vote or participate in any further discussions or decisions after the Commission recessed for lunch at 11:30 a.m. CST.

INFORMAL APPLICANT APPEARANCE

APPLICANT: JOHN RHEA ROBINSON; PRINCIPAL BROKER: H. LYNN BYRD #250985

H. Lynn Byrd is the Principal Broker of The Byrd Home Team, Inc. d/b/a Re/Max Results (#257425) located in Kingsport, TN. Mr. Byrd was first licensed as an affiliate broker on 2/10/1993 and was first licensed as a broker on 2/9/2000. Mr. Byrd became the PB of The Byrd Home Team, Inc. d/b/a Re/Max Results on 7/18/2002. The TREC records reflect that the firm currently has 13 affiliates and 3 brokers. Mr. Byrd has had no disciplinary action taken against him by TREC. The Applicant John Rhea Robinson has completed an Application for Decision Regarding Prior Criminal Convictions and/or Disciplinary Sanctions expressing an interest in applying for a Tennessee affiliate broker license, but wishes to get an indication from the Commission prior to moving forward in the licensure process. Mr. Robinson has not yet taken the licensing exams. Mr. Robinson answered "Yes" to Question 5 on the Application for Decision and has revealed that in the past, he has had felony and misdemeanor convictions, primarily relating to issues surrounding controlled substances.

After discussion, Commission Griess made a motion to approve applicant John Rhea Robinson to move forward in the licensure process; seconded by Commissioner DiChiara; unanimous vote. **Motion Carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented to the Commission the following Reports, which were discussed by the Commission. No motions were made and no additional action was required to be taken in regard to the information contained in the reports presented.

COMPLAINT STATISTICS REPORT

LICENSING STATISTICS

UPDATE TESTING RFP

LOCATION of OCTOBER 2014 MEETING

The Greater Chattanooga Area Association of Realtors invited the Commission to hold the East Tennessee Commission meeting scheduled for October 9-10, 2014 in Chattanooga. Commissioner DiChiara made a motion to have the Commission Meeting scheduled for October 9-10, 2014 in Chattanooga, seconded by Commissioner Collins; unanimous vote. **Motion Carried.**

PRINCIPAL BROKER MANDATORY AUDIT FORM

Commissioner Blume made a motion to approve the final version of the Principal Broker Mandatory Audit form, seconded by Commissioner Griess. **Motion Carried,** Commissioner Flitcroft abstained.

E& O UPDATE

MANUAL UPDATE and NOTIFY. GOV UPDATE

FINGERPRINT UPDATE

BUDGET

The February, 2014 Budget numbers had been previously sent to the Commissioners for their review. There were no questions concerning the February 2014 budget information.

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.”

Below is a copy of the legal report with the motions made by the Commission noted and decisions 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: APRIL LEGAL REPORT
DATE: April 2-3, 2014

***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. 2012014061
Opened: 7/5/12
First License Obtained: 10/2/95
License Expiration: 2/16/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

2. 2012014062
Opened: 7/5/12
First License Obtained: 7/21/86
License Expiration: 12/6/14
E&O Expiration: Uninsured (retired license)
Type of License: Broker
History: No Prior Disciplinary Action
Respondent placed license into retirement on 12/8/11

January 2013 Meeting:

Complainant is the executor of Complainant's father's estate. Complainant alleges that Complainant's father entered into a trust agreement with Respondent 2 (retired broker – Respondent 1 is Respondent 2's spouse and is a principal broker) for the purchase of a piece of property. Pursuant to the agreement, Respondent 2 and Complainant's father were beneficiaries of this trust. The Trust Agreement, in part, empowered Respondent 2, as the trustee, "...to sell, lease, grant, option, mortgage, convey, encumber and contract to sell and convey the Property and any parts thereof..." with the consent and at the direction of the beneficiaries. Specifically, these actions could be performed only "...upon written order and direction signed by the Beneficiaries..." In 2011, Complainant states that Respondent 2 entered into a deed of trust with a bank (creating a mortgage on the property) constructed a home there, and Respondent 1 listed the property for sale (at this time, it is unknown to counsel whether the property has been sold). Complainant states all was done without the consent or knowledge of Complainant or the estate.

Respondents submitted a response denying the allegations and stating the matter was in active litigation based on an arbitration agreement between the parties regarding this trust issue with the subject property and an issue regarding an automobile. Complainant withdrew from arbitrating the matter prior to a determination, and Respondent 2 filed the complaint to enforce the arbitration agreement. Respondents deny wrongdoing and state that TREC should wait until the pending litigation is concluded before considering the issue.

The aforementioned automobile issue involves a dispute between the parties regarding the rightful possession of an automobile which belonged to Complainant's deceased

father and was in Respondent 2's possession. Criminal charges were filed against Respondent 2 regarding the automobile, and it appears that Respondent 2 has pled guilty to a misdemeanor relating to Respondent's application for lost title which included a false vin number and entered into a diversion agreement without an adjudication of guilt with a period of probation after which the matter (if there are no violations) is expungeable with the outcome of the automobile's possession dependent upon the civil proceedings. Recently, the arbitrator issued his findings to the court at the court's direction. The arbitrator determined that Complainant's father's estate was entitled to payment for half of the fair market value of the unimproved lot as of the date of Complainant's father's death minus the expenses of Respondent 2 for maintaining and/or improving the lot in exchange for quitclaiming the estate's interest. The arbitrator also found that the transfer of the automobile from Complainant's father to Respondent 2 constituted a gift and found that the automobile should be delivered to Respondent 2. Though the arbitrator has issued the findings, this civil matter is still open, and there is a possibility that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring as to both Respondents.

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

Since the Litigation Monitoring Consent Orders were executed, Respondent 2 notified legal counsel that the criminal matter relating to Respondent 2's application for lost title was expunged and provided court documentation regarding same. Additionally, Respondents stated that the parties settled the civil litigation matter and provided a copy of an Agreed Final Order filed in the civil litigation, which provided that the matter was dismissed with prejudice. It does not appear, based on all of the information, that there was a violation by Respondents.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

**3. 2013016141
Opened: 9/5/13
First License Obtained: 3/2/11
License Expiration: 3/1/15**

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

January 2014 Meeting:

Complainant, the owner of a firm, released Respondent (broker) as principal broker of Complainant's firm, and Complainant reinstated Respondent as principal broker of the firm. Complainant states that Respondent became angry, withdrew listings from the MLS, and contacted the sellers instructing them to withdraw their listing contracts with the firm and re-list with Respondent at Respondent's new firm. Complainant also alleges that Respondent removed a lockbox from someone's home, and when the two parties met to return the key, it appears that Complainant and Respondent got into an altercation. Complainant states that, on the day following the release of Respondent, the firm received multiple contacts from sellers who stated that Respondent informed them that Respondent had been fired. According to Complainant, some sellers entered into a new listing agreement with Respondent at Respondent's new firm, and some sellers have not entered into a new listing agreement with anyone. Complainant attached documentation which included multiple written requests from sellers asking that their listings be withdrawn as the sellers understood that Respondent had been fired and the sellers no longer wished to be represented by Complainant or Complainant's company. Complainant also attached copies of a sign that does not include the entire firm name as well as what appears to be a post card which does not include the entire firm name or firm telephone number.

Respondent submitted a response describing what appears to be a personal disagreement between Complainant and Respondent. Respondent states that Complainant was the owner of the firm, and Respondent was the principal broker. Respondent states that Respondent was asked to sign a TREC 1 form releasing Respondent as principal broker of the firm, and Respondent was told to get Respondent's signs off of Complainant's properties and remove all of Respondent's belongings from the office, and the two parties got into an altercation. Respondent then states that Respondent removed yard signs, brochure boxes, and key boxes off of the listings that Respondent had listed as principal broker. Respondent states that Respondent then withdrew the listings from the MLS because Respondent had not yet signed the TREC 1 form removing Respondent as principal broker. Respondent states that Respondent informed the owners why she was removing the signs and lockboxes at the instruction of Complainant, and many clients asked where Respondent would be going and asked how they could move their listings to continue working with Respondent at Respondent's new firm, which was the reason Complainant received the numerous written requests to have listings withdrawn. Regarding advertising, Respondent states that Respondent has corrected the sign issue and post cards all include the firm number, which Respondent states was a mistake with regard to some post cards.

Recommendation: Letter of warning regarding Rule 1260-02-.02(3) which states that when a licensee terminates affiliation with a firm, the licensee shall neither take nor use any property listings secured through the firm unless authorized by the principal broker and Rule 1260-02-.12 regarding advertising.

DECISION: The Commission voted to authorize a Consent Order for \$1,000 for a violation of Rule 1260-02-.02(3) and complete four (4) hours of continuing education in ethics plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission, both within one hundred eighty (180) days of Respondent's execution of Consent Order.

4. 2014001291

Opened: 2/6/14

First License Obtained: 3/2/11

License Expiration: 3/1/15

E&O Expiration: 1/1/15

Type of License: Broker

History: 2013016141 – Closed \$1,000 CO (taking listings)

March 2014 Meeting:

Originally, a complaint was filed by this Respondent (broker) against another licensee (the two were formerly affiliated with the same firm), and this Respondent alleged in that complaint that the other licensee had been running ads which offered a free one (1) year home warranty if an individual buys or sells a home with the firm. In that complaint, this Respondent argued that the advertisement does not list the basic disclosure requirements as required by the Gifts and Prizes Rule regarding the offer details and states only that some stipulations apply, which this Respondent called a bait and switch tactic where the only way to know the stipulations was to schedule a listing or buyer appointment where the individual would find that the free home warranty only applied under certain circumstances. That complaint's Respondent argued that the firm no longer advertised in that manner and the disclosure had been changed to include more specific language. Further, that Respondent attached copies of ads for this Respondent (who was at that time the Complainant) which included the same inducement. After making a determination regarding that complaint, the Commission voted to open a complaint against this Respondent regarding this Respondent's advertisement which was provided in the response to the first complaint. Therefore, this complaint was opened at the direction of the Commission.

Respondent submitted a response stating that, as Respondent's defense for this complaint, Respondent was doing what Respondent was told by the other licensee from the earlier complaint (who was the owner of the firm where Respondent was previously

the principal broker). Respondent states that the other licensee was in complete control of advertising while Respondent was at the firm, and all ads had to be uniform. Respondent attached a number of ads for several licensees (including this Respondent and the other licensee as well as several others) within that same firm which had the same language referenced above. Respondent states that, at Respondent's new firm, the ads featuring offers such as this give the value and no stipulations.

Recommendation: Consent Order for \$250 for violations of Rules 1260-02-.12(5)(b) and 1260-02-.33 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 signed the Consent Order for complaint 2013016141 on February 4, 2014 and returned the signed Consent Order with payment of the \$1,000.00. On March 25, 2014, legal counsel was contacted by the Respondent of complaints 2013016141 and 2014001291, who stated that Respondent had also already signed and mailed the Consent Order for complaint 2014001291 along with \$250.00, but, due to a recent surgery after which Respondent developed severe physical complications necessitating a second surgery, Respondent is physically unable to attend two (2) entire Commission meetings within the original one hundred eighty (180) day period provided in each Consent Order. Respondent requested that the Commission provide Respondent with more time to complete the meeting attendance requirement of both Consent Orders (the first was executed on 2/4/14; the second was executed on 3/22/14) or possibly remove the meeting attendance requirement from the second Consent Order, as Respondent is already required to attend an entire meeting by executing the first Consent Order. After speaking with Respondent, the second executed Consent Order (for complaint 2014001291) was received. Respondent provided information that Respondent is scheduled for a third surgery at the beginning of April and asked that, due to Respondent's health, the Commission pardon Respondent from the two (2) meetings or at least give Respondent until the end of the year to complete the meeting requirements. Respondent apologized for Respondent's actions against the code, stating that this will not happen again. Respondent included a note signed by Respondent's physician stating that Respondent cannot do any activities that would require sitting or standing for prolonged periods over the next six (6) months.

It is recommended that the Commission discuss whether it would authorize amendment of the meeting requirement schedule contained in the recently received Consent Order for complaint 2014001291 and also discuss whether the Commission would authorize an alternate meeting attendance schedule in an addendum to the Consent Order for complaint 2013016141, which was executed on February 4, 2014.

Recommendation: Discuss.

Action: Commissioner Flitcroft made a motion to accept legal counsel's recommendation to extend Respondent's time for compliance with the Consent Order signed 2/4/2014, Commissioner DiChiara made a friendly amendment to extend the time for compliance until 2/28/2015, seconded by Commissioner Franks. After discussion, previous motion, as amended and second were withdrawn and Commissioner Blume made a motion to extend the time limit for the meeting attendance requirement in the Consent Order signed 2/4/2014 until 2/28/2015 and to remove the meeting attendance requirement from the Consent Order signed 3/22/2014; seconded by Commissioner Griess; roll call vote, **Motion Carried: 5 Yes** (Franks, Alexander, Blume, Griess and Stephenson), **3 No** (Flitcroft, Collins and DiChiara). Commissioner Alexander made a motion to remove the meeting attendance requirement from each of Respondent's Consent Orders, seconded by Commissioner Griess. Motion failed 5 No votes, 3 Yes votes. Original Decision stands.

DECISION: The Commission voted to extend the time limit for the meeting attendance requirement in the Consent Order for complaint 2013016141 until February 28, 2015 and to remove the meeting attendance requirement from the Consent Order for complaint 2014001291.

5. 2013022521
Opened: 11/25/13
First License Obtained: 8/8/00
License Expiration: 2/12/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainants state that they entered into an agreement with Respondent (affiliate broker) to sell their home and told Respondent that Complainants did not want to buy another home until their current home sold. Complainants state that Respondent arrived without comps but stated an opinion regarding the price per square foot and the listing documents were signed, and Respondent asked that Complainants fill out the Residential Property Condition Disclosure Form, but Respondent never collected the completed form. Complainants also allege that they never received a copy of the signed listing agreement despite requests. Complainants further state that Respondent put the "for sale" sign in the yard but did not put a lockbox on the house or list the house on the MLS, which was due to the fact that Respondent was reluctant to share the listing. Complainants state that

Respondent showed a previous client the house, and Respondent stated that the buyer was pre-approved. Soon after, Complainants state that the buyer submitted an offer to purchase, and, before signing the agreement, Complainants again asked Respondent about the buyer's loan status, to which Respondent stated he did not know where buyer was getting the loan but reassured Complainants that the buyer was pre-approved. Complainants state that Respondent became aggressive about finding Complainants another home, insisting that the buyer was "good to go." Complainants found a home, and Respondent was their agent. Complainants state that they happened to see the buyer's credit file, including a score which prompted Complainants to ask Respondent how the buyer was pre-approved for a mortgage. Complainants state that Respondent offered an explanation and stated Complainants should not worry because the buyer would be able to obtain a loan if the closing was delayed until Complainants' new home was ready, which would be enough time for the buyer's credit score to bounce back. Complainants closed on the new house, and the sale of Complainants' home was supposed to close a week later, but it was delayed another month because the loan was not ready. Although Complainants had two (2) mortgages, Complainants state that they refused to let buyer lease the house. The closing was pushed back again, but Complainants state that they never received the addendum. Complainants state that they contacted the buyer, who told Complainants that the buyer had never spoken to a mortgage company about a loan, that Respondent had been informed of the buyer's credit issues, and that the buyer was in a program to clean up credit, and Respondent advised the buyer to get out of the program and Respondent would get the buyer financed. Complainants confronted Respondent about his misrepresentation of buyer's pre-approval status and loan application and terminated the agency relationship.

Respondent states that Respondent had represented one of the Complainants before on the purchase of the home which Complainants were now selling. Respondent states that Respondent did show Complainants comps (and attached a copy) and Respondent also attached a copy of the MLS listing for the home showing that the home was listed within two (2) days of the parties' initial meeting, which was the same day that Respondent states Respondent placed a for sale sign in the yard and delivered copies of the listing agreement. As to the lockbox, Respondent states that Complainants did not want a lockbox on the house because one of the Complainants worked the night shift and would be sleeping during the day. Respondent states that Respondent told Complainants that the buyer had certain credit issues that a mortgage company would need to address before the buyer would qualify for a loan, but Complainants were anxious to get out of the neighborhood immediately. Respondent further states that Respondent wanted to continue to show the home and two (2) other agents wanted to show the home, but Complainants refused the showings because Complainants did not want people parading through the home with Complainants' belongings in the house. Respondent states that the buyer also

had a judgment come on the buyer's credit file, and Respondent stated that Respondent told this to Complainants, and then one of the Complainants contacted the buyer and upset the buyer so much that the buyer decided that the buyer did not want the house. Respondent denies pressuring Complainants to buy the second home and states that Respondent warned Complainants about proceeding with the purchase before their current home closed.

Complainants submitted an additional response stating that Complainants never alleged Respondent failed to provide comps but stated that Respondent had pulled them online but did not bring a print-out. Complainants also state that the complaint regarding the MLS listing was that there were no interior photos and the exterior photos were poor quality. Complainants deny that they did not want a lockbox. Complainants re-state that Complainants were led to believe that their property was as good as sold, which led to their purchase of a new home. Complainants state that no copy of the listing agreement was provided to Complainants and the copy provided by Respondent with the response does not include the selling Complainant's true signature. Complainants state that they never received copies of the addendums regarding the rescheduled closings. Based on documentation submitted by Complainant, it appears that an ethics complaint was also filed by Complainant with Respondent's local association. Respondent's principal broker provided copies of the transaction file and again denied Complainant's allegations of wrongdoing by Respondent. The documentation provided and obtained does not appear to substantiate a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote. Motion Carried.

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

6. 2013022601
Opened: 11/25/13
First License Obtained: 3/14/90
License Expiration: 9/25/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complaint opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker. This Respondent states that the previous Respondent has spent most of the previous Respondent's fourteen (14) year real estate career affiliated with this Respondent's firm and is a very good agent with a high referral and repeat business. Respondent states that Respondent meets with the previous Respondent once a week and has ongoing communication. Respondent states that the previous Respondent told Complainants that the prospective buyer had some issues that the prospective buyer needed to resolve before the respective buyer would qualify for a home loan, but Complainants wanted to continue with the purchase of their new home before the closing on the current one was finalized, even though the previous Respondent warned them of the risk involved. Respondent states that the previous Respondent did not pressure or mislead Complainants. Respondent submitted a copy of the transaction file and re-stated that the subject property was listed on the MLS two (2) days after the listing agreement was signed, that the comps were provided at the time the listing agreement was signed, that the previous Respondent made the sellers aware that the buyer had items in the credit file that needed to be resolved before the buyer was qualified, that the previous Respondent cautioned the sellers regarding buying a new home prior to selling the existing home, that the sellers did not want a lockbox, and that the previous Respondent did give signed copies of all signed documents to the sellers either in person or by leaving them at the property. There does not appear to be a failure to supervise by Respondent.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote. Motion Carried.

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

7. 2013022621

Opened: 11/25/13

First License Obtained: 4/24/98

License Expiration: 7/27/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is the former principal broker of Respondent (affiliate broker). Complainant states that Complainant released Respondent for attempting to list

and sell a side deal outside of the firm. Complainant states that a potential buyer came to Complainant's office to complain about Respondent, telling Complainant that the buyer looked at a house that was owned by a friend of Respondent and was unlisted. Complainant states that the buyer said that the buyer gave a security deposit to Respondent made payable to Respondent. Complainant states that the buyer told Complainant that Respondent then told the buyer that there were foundation problems with that house, and Respondent showed the buyer another house. Complainant states that the buyer said that the buyer contracted to buy the second house but did not receive a copy of the contract and rented the property for several months until closing without a rental agreement. Complainant states that Respondent told the buyer that the buyer's security deposit from the first house would transfer to the second house; however, the buyer was not able to close, so the seller and Respondent made the buyer move out immediately and billed the buyer for repairs. Complainant states that the seller, when contacted by the buyer, was not aware of the deposit that the buyer paid to Respondent. Complainant states that Complainant contacted the seller, who told Complainant that this was a side deal with Respondent. Complainant states that Complainant then released Respondent and obtained a copy of the sales contract from Respondent, which was written as a "for sale by owner" although the contract was written on a form with Complainant's firm letterhead at the top. Complainant states that Respondent said that the buyer did not get the security deposit back because the buyer backed out of the agreement for the first house (which was the house of Respondent and Respondent's friend).

Respondent states that Respondent has property with a person that Respondent calls her father (although the person is not Respondent's biological father), and the two have several properties that they rent, lease purchase, and sell. Respondent states that sometimes they are handled through the office and some are listed as "for sale by owner," but Respondent advises everyone that Respondent has a real estate license. Respondent states that Respondent met with the buyer, who needed a place to rent, about purchasing rather than renting and showed the buyer a home that Respondent/Respondent's father were renovating. The property was not finished, and Respondent states that the buyer needed time to get qualified, so the parties agreed to do a three (3) month lease purchase with a security deposit to be sure that the buyer would follow through (to be used on carpet and new countertops). Respondent states that the buyer was told the security deposit would be non-refundable due to the money going into the house. However, Respondent states that, even though the buyer was not told the money would be transferred to the second property, Respondent refunded the security deposit to the buyer. Because the buyer could not move in immediately and needed a place to live, Respondent had the buyer meet Respondent at the second property which was being worked on as a flip house (which Respondent had sold to the owner who was now flipping it). Respondent states that the owner would charge rent for ninety (90) days until the

house was ready to close. Respondent states that the house was not listed for sale at the time, and the buyer moved in the next day. Respondent states that Respondent wrote up a For-Sale-By-Owner Purchase and Sale Agreement for the second house because of the buyer trying to get qualified for a loan, and Respondent was going to do an actual sales contract closer to the end of the ninety (90) days. However, Respondent states that the buyer began to delay and then backed out of the purchase agreement, stopped paying rent to the seller, and moved out. Respondent states that the buyer trashed the house, so the seller charged the buyer for the repair costs, which the buyer refused to pay and insisted on a return of the nonrefundable security deposit from the first house.

The only documentation provided is the Purchase and Sale Agreement for the sale of the second property “for sale by owner” although it is on an agreement showing Complainant’s firm letterhead, a copy showing that a payment for a security deposit was made to Respondent, and a copy of the TREC Form 1 releasing Respondent. It appears that the use of a firm contract for a “for sale by owner” transaction, the payment of a security deposit directly to Respondent (not Respondent’s broker), the lack of a personal interest disclosure on behalf of Respondent, and the failure to disclose Respondent’s status in the transactions constitute violations by Respondent.

Recommendation: Consent Order with \$2,000.00 civil penalty for violation of T.C.A. §§ 62-13-312(b)(1)(11)(14), 62-13-403(7)(A), 62-13-405(a)(b), 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 Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; Commissioner Alexander made a friendly amendment to include in the Consent Order the completion by Respondent of a 4 hour Ethics course, friendly amendment accepted by Commissioners Griess and Franks, unanimous vote. Motion as Amended Carried.

DECISION: The Commission voted to accept the recommendation of legal counsel with the addition that the Consent Order also include a requirement that Respondent must complete a course for four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent’s execution of the Consent Order.

8. 2013022761
Opened: 11/19/13
First License Obtained: 9/2/05
License Expiration: 9/1/15

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

9. 2013022762
Opened: 11/19/13
First License Obtained: 3/17/06
License Expiration: 3/16/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

10. 2013022763
Opened: 11/19/13
First License Obtained: 7/11/90
License Expiration: 1/25/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants were the sellers of a property. Respondents 1 and 2 (affiliate brokers) were Complainants' listing agents, and Respondent 3 is the principal broker of Respondents 1 and 2. Complainants allege misrepresentation of the brokerage fee and misrepresentation of the buyer's address. Specifically, Complainants state that the sale documents show the address of the property being sold as the buyer's address, and Complainants allege that Respondents agreed to a substantially reduced commission, and then later refused to honor the reduced commission agreement. Complainants provided documentation including, but not limited to, a copy of part of a HUD-1 statement signed by Complainants and prepared before closing that shows the commission reductions alleged by Complainants. Complainants allege that, when it came time to close, Respondents refused to honor the commission discount. Complainants claim that, because of Respondents' actions, the closing was delayed, the house went into foreclosure, and Complainants were forced to sell more land to make up for the commission costs that were supposed to be discounted pursuant to the agreement between Complainants and Respondents. Complainants also claim a lack of communication and state that Respondents did not show up as scheduled to allow the home inspector into the residence to complete the inspection.

Respondents submitted a response stating that Respondents worked very hard to get the transaction closed. With regard to the buyer's address on the sale documents, Respondents state that this was the title company's choice to use the address because the buyer was moving into Complainants' house. With regard to

the alleged commission reduction, Respondents deny that there was any agreement, written or otherwise, for the commission reduction alleged by Complainants. In fact, Respondents state that Complainants did not disclose that the property was under a second mortgage, and the buyers' agent discovered this from the title company and informed Respondents two (2) days before the date of the first scheduled closing (and attached an e-mail from the buyers' agent reflecting this chain of events). Instead of paying for the extra mortgage from the sale price, Respondents state that Complainants attempted to get the money from the commissions of both the buyers' and sellers' agents. Respondents state that the HUD produced by Complainants was not approved by any of the agents in the transaction and was prepared by the title company at the request of Complainants in an attempt to get the agents to agree to a commission reduction. Respondents state that the buyer's chosen loan process was the main reason for any delays and not due to the actions of any involved agents. Respondents state that, shortly before closing, Complainants agreed to sell extra land to cover the costs of the second mortgage, and Respondents were informed by the title company (and never by Complainants) that the home was in foreclosure and Complainants would still not have enough proceeds to close so the buyers' and sellers' agents both agreed to a small commission reduction at closing to cover the remaining amount due. As to Complainants' allegation of lack of communication, Respondents attach a number of e-mails to prove communication and cite Complainants' failure to communicate. With regard to the inspector, Respondents state that the buyer and his agent scheduled the appointment, and Respondents were not scheduled to be there, but later, as a courtesy because the inspector could not get in, Respondents arranged to let him in.

Documentation and correspondence regarding this transaction were provided, but none of the documentation appears to prove the alleged commission reduction alleged by Complainants. The information does not appear to indicate a violation by Respondents.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

**11. 2013022861
Opened: 12/10/13**

First License Obtained: 6/22/95

License Expiration: 9/5/14

E&O Expiration: 1/1/15

Type of License: Broker

History: 201003376 – Closed Agreed Citation (\$600) failure to timely complete education

******License was placed in inactive status on 3/19/14.******

Complainant states that Respondent (broker) managed three (3) of Complainant's properties from 2010 through September 2013. Complainant states that Respondent owes Complainant rents and that Respondent is withholding escrow repair funds that were held by Respondent for repairs from monthly rents. The Property Management Information Packet states that the Property Manager will "Provide owner with a monthly operating statement, net rent proceeds, and copies of any applicable invoices or documents" and will "Provide owner with monthly financial recap prepared by outside Accountant," and Complainant states that Respondent did not do either of these. Complainant states that, in 2013, Respondent was difficult to reach and did not disburse rents in the month that they were due. Complainant also states (and included a copy) that, upon request in August 2013, Respondent sent an Excel spreadsheet showing escrow repair account balances and disbursements from January 2013 through July 2013. On September 2, 2013, Complainant e-mailed Respondent to terminate their management agreement, and Complainant received a letter from Respondent terminating services on October 15, 2013. Complainant followed up with Respondent requesting funds on multiple occasions by text message and e-mail. On September 20, 2013, Complainant states that security deposits from all properties were received. However, back rent and escrow funds are still owed according to Complainant. Complainant also states that Complainant requested records of rents paid to Respondent but states that the records were not received. Complainant also states that Complainant has not received monthly statement on a regular basis, and Complainant has not received any invoices pertaining to repairs or maintenance.

Respondent is currently a real estate broker (whose license was placed into inactive status on or about March 19, 2014) but was principal broker of the firm until on or about October 9, 2013. Respondent states that, during this time, Respondent was dealing with personal medical matters. Respondent states that rents have been distributed for the properties owned by Complainant, and there were differences in accounting between Complainant's calculations and Respondent's calculations. Respondent further states that, on multiple occasions, one of the repair escrow accounts was depleted, so the funds were drawn from another one of the properties to cover expenses. Respondent attached an Excel spreadsheet which shows escrow repair balances for December 2010, September 2011, November 2011, and May 2011. Respondent states that, after termination of the agreement on October 15,

2013, the disbursement of funds and files was initiated, and it was discovered that a ten percent (10%) premium on repairs and a \$200 dollar prepaid advertising expense per leasing agreement had not been collected. In response to Complainant's allegations that rents were not distributed properly in 2013, Respondent states that the property management company switched to an automatic electronic funds transfer (EFT) system and technical issues were discovered, which the firm worked diligently to correct. Additionally, Respondent states that Complainant received a monthly report until the firm switched to the automatic payment system, and the owner was able to sign in to the system to receive reports and receipts for repairs were uploaded to the system. Respondent also states that the bullet point stating the firm will "Provide owner with monthly financial recap prepared by outside Accountant" was removed from the agreement. Respondent states that an evaluation was completed after Respondent received the complaint, and it was determined that there was one (1) rental payment due for two (2) of the properties, but the escrow amounts for those months were accounted for in the final payment of escrow which was already paid to Respondent, and it was determined that neither the prepaid advertising expenses nor the 10% repair premium were paid, and an outstanding amount was owed to Respondent's firm. Respondent also attached tax documents for years 2010 and 2011 regarding one property, summaries and income and expense reports for various months prepared internally, invoices and receipts for various time periods throughout Respondent's management of the properties, as well as various checks to Complainant throughout 2013 to support Respondent's statements.

Complainant submitted an additional response stating that some additional money was received, and Complainant adjusted the total money owed accordingly. Complainant also states that Complainant believed Respondent collected the advertisement and 10% premium fees at the time, and Respondent provided no bank statements to show that the receipts were paid without the commissions/fees being taken. Also, Complainant states that these fees are over three (3) years old, and the property management agreement does not state that these can be collected retroactively. Further, Complainant states that, if Respondent's claims are true with regard to uncollected commissions/fees, the accountings on the tax documents provided are incorrect, which would require Complainant to re-file federal income taxes. Finally, Complainant states that Complainant did not have access to the new online system to view monthly reports online.

Complainant also referenced that Respondent was associated with a number of businesses, including the licensed firm where Respondent was affiliated as well as two (2) separately named entities relating to property management which Complainant states were divisions of the licensed firm, but appear based on the information provided (including the Property Management Information Packages for both separately named entities, a Tenant Information Packet, and

documentation relating to leases) to be advertised and referenced as if they are branch offices without Respondent having had a license for either of these entities. Respondent states in the response that one of the separately named property management entities was a division of the licensed firm and states that the second entity was also a division of the licensed firm, and the name changed to align with the licensed firm changing its name. As stated above, Respondent attached miscellaneous tax filings, summaries, income & expense reports, invoices and receipts, as well as checks to Complainant throughout 2013 to support Respondent's claim that no money is owed to Complainant and, in fact, money is owed to Respondent. However, Respondent's documentation does not appear to provide a clear accounting of the money paid to Respondent, nor does it appear to account for the amounts which Respondent represented were in the escrow repair account in the Excel spreadsheet provided to Complainant in August 2013, nor does it appear that Respondent provided adequate documentation to demonstrate that money which Respondent claims is owed for repair premiums and advertising was not already paid.

Recommendation: Consent Order with \$2,000.00 civil penalty for violations of T.C.A. §§ 62-13-312(b)(5)(14) and 62-13-309(a)(1)(A), 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 Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

12. 2013022981

Opened: 12/16/13

First License Obtained: 12/2/10

License Expiration: 12/1/14

E&O Expiration: Uninsured (Retired)

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

****License was placed in inactive status on 12/20/11. Education completed and license retired on 1/4/13.****

Complainants are property owners who state that they signed a property management agreement with Respondent (affiliate broker – retired license) in December 2010. Complainants state that Respondent placed tenants in

Complainants' property in February 2011 and collected rents, subtracting a ten percent (10%) management fee per month and an agent fee. Complainants state that Respondent placed a new tenant in the home in October 2012, and collected rent and subtracted the ten percent (10%) management fee and agent fee. In September 2013, Complainants state that they gave Respondent notice that they were not renewing the management agreement, and Respondent refused to give Complainants the security deposit and emergency funds and instead stated that Respondent was giving the security deposit back to the tenants. At this time, Complainants became aware that Respondent's license was retired in January 2013 and there was no record of the entity which Respondent claimed to be acting through when dealing with Complainants. According to TREC records, it appears that Respondent's license was changed to inactive status in December 2011 and then retired in January 2013. Complainants provided documentation which included an unexecuted management agreement between Complainants and Respondent (which included the d/b/a entity referenced by Complainants which is not licensed as a firm with TREC). Complainants also included copies of e-mails from Respondent regarding management of Complainants' property. Also included were copies of lease agreements between tenants to the property and Respondent and the unlicensed entity for rent of Complainants' property as well as 1099s for 2011 and 2012 for Complainants showing rent money collected by Respondent and the unlicensed entity.

Respondent did not submit a response to the complaint.

Recommendation: Consent Order with \$3,000.00 civil penalty for violations of T.C.A. §§ 62-13-312(b)(5)(11)(14), 62-13-309(a)(1)(A), 62-13-313(a)(2), 62-13-318(a)(4), 62-13-403(6), 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 Alexander made a motion to accept legal counsel's recommendation to authorize a Consent Order, with the addition that the civil penalty amount be raised to \$6,000.00; seconded by Commissioner Blume; unanimous vote; Motion Carried.

DECISION: The Commission voted to authorize a Consent Order with \$6,000.00 civil penalty for violations of T.C.A. §§ 62-13-312(b)(5)(11)(14), 62-13-309(a)(1)(A), 62-13-313(a)(2), 62-13-318(a)(4), 62-13-403(6), 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.

13. 2013023141
Opened: 12/3/13
First License Obtained: 8/30/01
License Expiration: 9/7/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 201101037 – Closed CO (\$750) FTS advertising

A complaint was opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2013022981 (“affiliate broker”), who was previously affiliated with Respondent’s firm.

Respondent states that, when the affiliate broker transferred to Respondent’s firm in 2011, the affiliate broker informed Respondent that the affiliate broker ran a small property management business. Respondent states that Respondent advised the affiliate broker that all payments needed to be funneled through Respondent’s firm. Respondent states that Respondent initially thought the unlicensed entity was a team name. Respondent states that the affiliate broker received a total of five (5) checks while affiliated with Respondent’s firm – once monthly during the five (5) months with the firm. After receiving the fourth (4th) request for payment (which came with a detailed income sheet from the unlicensed entity), Respondent asked questions and discovered that the affiliate broker was using the name as a business name. Respondent states that the affiliate broker was given the option to either transfer the contracts to Respondent’s firm or rename the business to be a part of the firm, as well as address the accounts. Shortly after, before a decision was made, Respondent states that the affiliate broker informed Respondent that the affiliate broker was moving to another state, and the affiliate broker received only one (1) additional payment after that time for services performed prior to the parties’ discussion. Respondent states that, since this incident approximately two (2) years ago, Respondent specifically asks each new agent if he or she is performing any property management outside of the firm. If so, they must transfer the properties to the firm or they cannot affiliate with the firm. It appears that, when Respondent learned of the affiliate broker’s outside property management activities, Respondent attempted to address the problem, but the affiliate broker soon attempted to retire the license and left the firm.

Recommendation: Letter of warning regarding requirement that each office shall have a real estate firm license and provision regarding supervision of affiliates.

Action: Commissioner Blume made a motion to accept legal counsel's recommendation to send a Letter of Warning; seconded by Commissioner Franks; unanimous vote. Motion Carried.

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

14. 2013023171

Opened: 12/6/13

First License Obtained: 6/3/88

License Expiration: 10/27/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

A complaint was opened against this Respondent (broker) on a potential failure to supervise issue regarding the affiliate broker Respondent of complaint 2013022981 (“affiliate broker”), who was previously affiliated with Respondent’s firm.

Respondent states that the affiliate broker was licensed and began work with Respondent’s firm in December 2010, and Respondent states that the affiliate broker likely had the property management actions in place or anticipated immediately upon becoming licensed and affiliating with Respondent’s firm and performed those actions outside of the firm and without Respondent’s knowledge. Respondent states that, when Respondent was hired by the owners as principal broker, Respondent had no decisions regarding hiring, financial accounts and staffing. Respondent states that the owner hired the affiliate broker, and the firm did not provide property management services while Respondent was principal broker of the firm. Respondent states that it was totally unknown that the affiliate broker was operating a property management service outside of the firm as it was all done outside of the firm. It does not appear that Respondent was aware of the affiliate broker’s outside property management activities, and therefore it does not appear that there was a failure to supervise.

Recommendation: Dismiss.

Action: Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

15. 2013023651

Opened: 12/12/13
First License Obtained: 7/24/07
License Expiration: 7/23/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was a prospective purchaser who states that Complainant contacted Respondent (affiliate broker) about purchasing a home. Complainant states that Respondent spoke with Complainant about building a home, sold Complainant a piece of land, and introduced Complainant to a builder. Complainant states that Respondent then prepared a Purchase and Sale Agreement between Complainant and the builder, which included a schedule of payments. Complainant states that Complainant fulfilled Complainant's obligation under the contract, but the builder has not finished the house or given possession and continues to demand advance payments. Complainant retained a lawyer, who advised Complainant to hire another company to finish construction, file complaints with the State, and then file a civil lawsuit to recoup costs.

Respondent submitted a response through an attorney stating that the dispute is with the builder and not Respondent. Respondent states that Complainant paid the first and second installments to the builder as agreed but did not want to fulfill the agreement when the third installment came due. Respondent states that Complainant later paid the third installment to the builder, but the builder would not complete construction due to differences between Complainant and the builder, and Respondent recommended that Complainant contact an attorney. Respondent states that Complainant employed an attorney to assist in working toward completion of the home, and the attorney re-negotiated the final payment terms of the Purchase and Sale Agreement with the builder. Further, Respondent states that the attorney told Respondent that Complainant would communicate with the builder, sub-contractors and Respondent through Complainant's attorney, but Respondent states that Complainant continued contacting Respondent asking questions about sub-contractors and completion deadlines. Respondent states that Respondent told Complainant that Complainant should be working through the attorney.

Respondent's attorney attached documentation from the land sale of the lot between Complainant and another party which resulted in a commission. It appears that, in that transaction, Respondent represented Complainant with the parties executing a Buyer Agency Agreement and the parties signing a Confirmation of Agency Status form with Respondent as Complainant's designated agent and another licensee as the designated agent of the seller. With regard to the transaction between the builder (who was not the seller of the lot in the first transaction) and Complainant,

it appears that there is only a Purchase and Sale Agreement in the transaction file and no Confirmation of Agency Status form to outline Respondent's role in that transaction. Although Respondent's firm and name are listed as the Selling Company and Independent Licensee on the Purchase and Sale Agreement, Respondent's attorney states that the transaction was a contract to build a house between the Complainant and builder, and there was no commission or listing agreement, and Respondent was acting as a middle man or interpreter who simply felt that the builder could build the size house Complainant wanted at a good price. Based on the documentation submitted, it appears that Respondent's failure to execute a written disclosure of agency status with the parties to the contract regarding construction of the home would appear to violate T.C.A. § 62-13-405(a) and (b).

Recommendation: Consent Order with \$500.00 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-405(a) and (b), 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 Blume made a motion to accept legal counsel's recommendation to authorize a Consent Order, with the addition that the civil penalty amount be raised to \$1,000.00; seconded by Commissioner Franks. Motion Carried with 6 Yes votes (Commissioners Alexander, Blume, Dichiara, Griess, Stephenson and Franks voted in favor of the motion) and 2 No votes (Commissioners Collins and Flitcroft voted against the motion).

DECISION: The Commission voted to authorize a Consent Order with \$1,000.00 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-405(a) and (b), 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.

16. 2013023751

Opened: 12/6/14

First License Obtained: 10/6/03

License Expiration: 8/13/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was a potential buyer, and Respondent (principal broker) was seller's agent. Complainant states that Complainant made an offer on the subject property,

and Complainant and Complainant's agent measured the square footage and found it to be less than what was in the listing. Complainant states that Complainant then wanted to renegotiate the offer, and Respondent refused, stating that any new negotiations would be after an inspection. Complainant states that Respondent refused to lower the price and would not admit the square footage error until after an appraisal. The appraisal indicated that the home had fewer square feet than what was listed but more than Complainant and agent's calculation, and Complainant withdrew Complainant's offer. Complainant states that Complainant later had a conversation with the appraiser, and the appraiser stated that the appraiser was trying to get the house to the value that was offered. Complainant states that, after Complainant terminated the offer, the house was re-listed with the same square footage discrepancy. Complainant states that it was Respondent's false advertising and unwillingness to correct the situation that prevented Complainant from purchasing the property.

Respondent states that the property was listed with the same square footage information as was used from the listing when Respondent's clients purchased the property. Respondent states that there were multiple offers on the property, but Complainant's offer was accepted as it was above the full asking price and the financing appeared most solid. After the inspection, Respondent states that Complainant's agent called and stated that inspector thought that the home was less square footage than the listing stated. Respondent states that Respondent told Complainant's agent that they had not measured the property it would need to be professionally measured, but it would not change the price, which was only partially made on the square footage. Respondent states that nothing formal was ever presented with regard to the square footage. Respondent states that Complainant's agent again indicated that Complainant wanted to lower the price. Respondent states that Respondent conveyed, after speaking with the seller, that the seller had no interest in lowering the price and that, if Complainant did not want to go forward with the sale, Complainant should send an earnest money release form and withdrawal letter. Respondent states that Complainant went forward with the appraisal. Respondent states that the appraisal was the first time that there was formal evidence of the square footage being less and again Complainant's agent stated that Complainant wanted lower price, which was refused. After the release of earnest money, Respondent states that Complainant called Respondent's office and the seller directly to say that Respondent was working with the appraiser to get the value to the appraised amount. Respondent states that the house was removed from pending back to active, the square footage was ultimately corrected, and the second contract was ultimately closed with additional appraisals. Respondent states that there was no intention to misrepresent the square footage, and the MLS sheet clearly states that the information is believed to be accurate but not guaranteed and buyers should independently verify all information prior to submitting an offer to purchase. Respondent attached the MLS listing from when the house was listed

earlier with the same square footage as advertised when first listed by Respondent as well as the updated MLS listing for Respondent with the corrected square footage based on the appraisal.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; Motion failed. Commissioner Griess made a motion to defer action until the May, 2014 Commission Meeting so that Commissioner Alexander could review the file; seconded by Commissioner Alexander. Motion Carried with 6 Yes votes (Commissioners Alexander, Blume, Dichiara, Griess, Stephenson and Flitcroft voted in favor of the motion) and 2 No votes (Commissioners Collins and Franks voted against the motion).

DECISION: The Commission voted to defer this matter to allow Commissioner Alexander to review the file and report at the next meeting.

17. 2013023761

Opened: 12/12/13

First License Obtained: 5/1/12

License Expiration: 4/30/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

******License was placed in retired status on 3/27/14.******

Complainant states that Respondent (affiliate broker) listed Complainant's property, and, after a few months, a potential buyer wanted to do a lease to own contract. Complainant states that the parties signed the documents for the lease to own, and Complainant states that Respondent stated that Respondent would need to get the sales commission when the lease to own contract was signed instead of waiting a year until the sale was final. Complainant states that Complainant signed an addendum that provided for payment of the commission to Respondent and stated that Respondent would not be due a commission at the time of sale. After approximately seven (7) months of leasing the property, Complainant states that the potential buyer had to move out, and Complainant asked Respondent for the sales commission and was told it was non-refundable by both Respondent and Respondent's principal broker. Complainant provided a copy of an executed Residential Lease Agreement for Single-Family Dwelling which provided for a lease

term of twelve (12) months with special stipulations regarding payment of nonrefundable deposits to Complainant and the tenant having a right to purchase the property at the end of the lease at a specified price. Complainant also provided an addendum signed by Complainant which stated that Complainant would pay the commission to Respondent and Respondent would not be due any commission when the property sold.

Respondent submitted a response stating that Respondent listed and advertised the property before another licensee contacted Respondent about a lease purchase, which was agreed to by Complainant. Respondent states that the potential buyer paid several non-refundable deposits to Complainant, and Complainant was happy to pay the commission to Respondent for binding the lease purchase agreement and sign the addendum. When Complainant contacted Respondent regarding asking for the commissions back when the potential buyer moved out, Respondent states that Respondent told Complainant that Respondent should not have to pay commissions back for a job completed on Respondent's part. Respondent states that Respondent instructed Complainant to contact Respondent once the potential buyer had moved out so Respondent could re-list the property. Respondent states that this was a lease purchase agreement, and Respondent does not feel that Respondent owes money back to Complainant because Respondent performed Respondent's job. Respondent attached the transaction documentation, as well. There does not appear to be a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

Action: Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

18. 2013023811

Opened: 12/18/13

First License Obtained: 9/22/98

License Expiration: 8/26/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

******License was placed in retired status on 12/20/13.******

Complaint opened against this Respondent (broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker ("affiliate

broker”), who was affiliated with this Respondent’s firm at the time of the transaction referenced in complaint 2013023761.

Respondent submitted a response stating that the affiliate broker did earn the commission. Respondent states that the affiliate broker completed a lease purchase after spending time, money, and marketing, and the customer paid the full commission and enjoyed substantial income from the lease purchase on the contract. Respondent states that the affiliate broker offered to not charge a commission on the next transaction. Respondent states that nothing in the contract states that the affiliate broker did not earn the commission if the lease purchase did not close. There does not appear to be a violation of TREC’s laws and/or rules.

Recommendation: Dismiss.

Action: Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote. Motion Carried

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

19. 2013023931

Opened: 12/12/13

First License Obtained: 1/24/89

License Expiration: 12/25/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201101239 – Closed \$1,000 CO (failure to supervise/E&O)

Complainant was one of the sellers of a property, and Respondent (principal broker) was seller’s agent. Complainant states that Complainant sought help from Respondent to sell property and signed a listing agreement. Just before the expiration date of the listing, Complainant states that Complainant told Respondent that Complainant had lost confidence in Respondent’s ability to be the listing agent, and Complainant let the contract expire. Complainant states that, three (3) months later, Complainant noticed a sign on the property and discovered that the property was listed on the MLS. Complainant states that Complainant contacted Respondent and demanded that the sign be removed and the MLS listing terminated. Complainant states that Respondent entered into a listing agreement with other parties without consent in writing from Respondent, and Complainant states that Complainant did not receive copies of that contract. Complainant attached a copy of the original listing agreement executed by the parties, wherein it appears that Complainant is one of the two (2) sellers of the property, along with other

documentation, including but not limited to, a printout from a website which advertises the property.

Respondent submitted a response through an attorney stating that Complainant did seek Respondent's assistance in selling the property, which was owned by Complainant and Complainant's brother. Respondent denies that Respondent continued to list the property without a listing agreement; instead, Respondent states that Respondent received contradictory instructions from the two (2) owners, who are at odds with one another. Respondent states that both owners signed the listing agreement and Respondent placed a sign on the property, listed the property on MLS, and posted the information online (and Respondent states those websites post the information on other websites including the website from which Complainant provided a printout and over which Respondent has no control). Respondent states that Respondent spoke with Complainant about the upcoming termination date, and Complainant stated that Complainant did not want to extend the contract. After removing the sign and the listing, Respondent states that Respondent was contacted by wife of Complainant's brother who stated that the contract did not expire until a month later, that Complainant, as co-owner of the property, could not unilaterally request termination of the listing, and requested that the property remain listed, and Respondent complied with the request. Respondent states that listing agreements with Respondent's firm are for six (6) month periods, and it was understood between the other parties that the same occurred here, but, due to a typographical error on the listing agreement, the listing agreement had an expiration date five (5) months after the listing date. The later date is confirmed in office listing information, and Respondent believes that Complainant was also informed. Respondent states (and attaches an MLS printout) that the listing expired, and the property was listed for one hundred fifty-six (156) days, and the listing terminated fourteen (14) days after the date specified in the listing agreement and before the intended six (6) month end period (not several months later as stated by Complainant). Respondent states that there was no subsequent listing agreement signed for the property. Respondent states that the printout provided by Complainant is from a website wherein Respondent did not personally post the information and over which Respondent has no control. Respondent states that Respondent was not contacted by anyone who expressed interest in the property after the month of the listing expiration date in the contract, and, after the listing expired, if anyone had contacted Respondent after that time, Respondent would have informed them that Respondent was no longer the agent on the property. Respondent states that Complainant and Complainant's brother are in a contentious lawsuit and that Complainant and brother did not agree on the price of the property, which made this situation difficult as Respondent was trying to represent both parties to the best of Respondent's ability.

Complainant submitted an additional response stating that the listing expiration was the date on the listing agreement. Further, several months after the expiration date, Complainant states that Complainant called Respondent's office and was told that the property was for sale and states that Respondent continued to list the property without Complainant's knowledge or consent. Respondent again replied stating that there was no supplemental contract extending the list date, and Respondent has no knowledge of anyone in Respondent's office making statements to Complainant or anyone else about the property after the termination of the contract.

It does not appear that Respondent's actions amount to a violation of TREC's laws/rules.

Recommendation: Dismiss.

Action: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

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

20. 2013023941

Opened: 12/26/13

First License Obtained: 1/17/97

License Expiration: 2/10/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was a tenant who states that Complainant leased a condo from Respondent (principal broker) who is a realtor and partner with an LLC. Complainant states that Complainant has contacted Respondent numerous times requesting a return of the deposit paid by Complainant but claims that Respondent has promised to ensure that Complainant would receive the deposit back but has failed. Complainant also asserts that Respondent approved costly repairs to be reimbursed, but this money has not been returned. It appears from the Residential Lease Agreement for Single-Family Dwelling provided by Complainant that the rent and security deposits were paid to the LLC.

Respondent states that Respondent represented the LLC that owned the building in the sale, and Respondent never personally held the funds, but, instead, the deposit

was in an LLC account. Respondent states that the problems started when the chief manager of the LLC fell ill with cancer, and things were not addressed. Respondent states that the building in question as well as the accounts associated with the LLC were taken back by the bank, and the chief manager died during this time. Respondent states that Respondent made attempts to get the deposit back for Complainant, but was not able to complete the task due to the chief manager's health. Respondent states that Respondent authorized the repairs as president of the homeowners association of the units. Respondent states that, after the bank took control of the properties, Respondent resigned the post, and a new president took over the responsibilities. Respondent states that it is the home owner's association that owes the repayment of repair costs. Respondent states that Respondent wishes that the deposit situation could get worked out, but Respondent states that Respondent has never had any real estate dealing with Complainant personally as a broker or leasing agent.

Recommendation: Dismiss.

Action: Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote. Motion Carried.

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

**21. 2013024811
Opened: 1/8/14
First License Obtained: 2/9/98
License Expiration: 3/19/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action**

**22. 2013024831
Opened: 1/8/14
History: No Prior Disciplinary Action - Unlicensed**

Complainant is a property owner who states that, in January 2013, Complainant signed a management agreement with Respondents (Respondent 1 is an affiliate broker and Respondent 2 is unlicensed – they are spouses) who were representing themselves as a property management company. Complainant states that, after filing suit against Respondents for breach of contract, Complainant discovered that the property management company was not a licensed real estate firm, that Respondent 2 was not a licensee, and that Respondent 1 held Respondent 1's license

at another licensed firm (which was not involved with the management agreement). Complainant attached a Management Agreement with the unlicensed property management company's name on the heading which is executed by Complainant and Respondents. Said Management Agreement provides, in relevant part, that Respondents and their company will perform services such as collect rents, render monthly accountings, maintain and repair the property, advertise, screen and select tenants, and handle security deposits in exchange for receiving a ten percent (10%) management fee as well as a monthly owner's statement showing the money collected from the tenant and deducting the management fee. Complainant also provided a business card featuring the names of Respondents and their unlicensed property management company as well as a civil warrant for a civil action brought by Complainant against Respondents and their company for breach of contract, reimbursement for stolen appliances and property damage.

Respondent 1 submitted a response stating that Respondent 1 manages a few rental properties owned by Respondent 1 and also managed a few that Respondent 1's family owns (not realizing that it was a violation). Respondent 1 states that Complainant was referred by a friend asking Respondent 1 to help with Complainant's rental property, and Respondent 1 admits signing a management agreement. Respondent 1 states that Respondent 1 did not represent that the property management company was licensed and that Respondent 2 (spouse) did not represent that Respondent 2 was licensed. Respondent 1 states that Respondent 1 completed a lease for Complainant's property with a tenant who prepaid several months but then quit paying due to job problems, and Respondent 1 had the tenant evicted at Complainant's request. Respondent 1 states that the tenant took the appliances and caused damage. Respondent 1 states that Complainant tried to hold Respondent 1 responsible for the tenant's actions and filed a civil suit, where Respondent 1 states the judge found in Respondents' favor. Respondent 1 states that Respondent 1 was recently informed by Respondent 1's broker the problems regarding Respondent 1's management situation, and Respondent 1 states that Respondent 1 has ceased managing any property except Respondent 1's own property. Respondent 1 attached documents including an executed Residential Lease Agreement for Single-Family Dwelling between the tenant and Respondents as well as a police report regarding the theft.

Respondent 2 submitted a response stating that Respondent 2 was unaware that any such rule existed with TREC and that Respondent 2 was only managing Respondent 2's own property and the property of a few family members. Respondent 2 admits that Respondent 2 is not licensed and states that Respondent 2 has never represented that Respondent 2 was licensed nor has Respondent 2 solicited business for the unlicensed property management company. Respondent 2 states that this complaint is filed in retaliation to a court ruling in Respondent 2's favor.

Respondent 2 states that Respondent 2 has ceased managing any property but Respondent 2's own property, and Respondent 2 apologizes for any wrongdoing.

Recommendation: As to Respondent 1, Consent Order for \$1,500 for operating an unlicensed property management company and accepting valuable consideration from someone other than Respondent 1's principal broker in violation of T.C.A. §§ 62-13-312(b)(11)(14) and 62-13-309(a)(1)(A) and 1260-02-.01(1), 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 \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

Action: Commissioner Blume made a motion to accept legal counsel's recommendation to authorize a Consent Order, with the addition that the civil penalty amount be raised to \$3,000.00 for Respondent 1 and \$2,000.00 for Respondent 2 and order Respondent 2 to cease and desist all unlicensed activity; seconded by Commissioner Franks; unanimous vote. Motion Carried.

DECISION: The Commission voted to authorize a Consent Order as to Respondent 1 for \$3,000 for operating an unlicensed property management company and accepting valuable consideration from someone other than Respondent 1's principal broker in violation of T.C.A. §§ 62-13-312(b)(11)(14) and 62-13-309(a)(1)(A) and 1260-02-.01(1), 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 and to authorize a Consent Order as to Respondent 2 for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

**23. 2013024821
Opened: 1/8/14
First License Obtained: 6/15/88
License Expiration: 6/19/15
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action**

Respondent (broker) was the principal broker of the Respondent affiliate broker in the previous matter (2013024811) at the time, and a complaint was opened for a potential failure to supervise issue. Respondent submitted a response stating that

Respondent was unaware that the Respondent affiliate broker was managing rental properties for others or handling clients' money. Respondent states that due to Respondent's lack of knowledge, Respondent does not know how Respondent could have prevented or intervened. Respondent states that Respondent has always been diligent in ensuring that the firm's policies mirror TREC's rules and Respondent has always been proactive in ensuring that agents follow the rules. It does not appear that there is any evidence to suggest that this Respondent knew or had any way of knowing of the previous Respondent affiliate broker's outside activities.

Recommendation: Dismiss.

Action: Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins. Motion Carried with 7 Yes votes (Commissioners Collins, Blume, Dichiara, Griess, Stephenson, Franks and Flitcroft voted in favor of the motion) and 1 No vote (Commissioner Alexander voted against the motion).

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

24. 2013025311

Opened: 1/15/14

First License Obtained: 6/20/83

License Expiration: 8/31/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened complaint based on a received MLS printout of multiple listings (some of which are in active status and some show a status of closed) wherein Respondent (principal broker) is the listing agent and Respondent's firm is the listing office. The MLS printout is dated in December 2013, and, at that time, Respondent's firm license was expired. According to TREC records, it appears that Respondent's firm license expired on May 6, 2013.

Respondent reapplied for re-licensure of the firm, and Respondent's firm again obtained an active license on January 7, 2014. Respondent submitted no response to the complaint.

Recommendation: Consent Order for \$1,500 for failing to have an active firm license and failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), 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.

Action: Commissioner Alexander made a motion to accept legal counsel's recommendation to authorize a Consent Order, seconded by Commissioner Franks. Commissioner Griess made a friendly amendment to increase the amount of the Consent Order to \$2,000.00, seconded by Commissioner Franks. Commissioners Alexander and Franks accepted the friendly amendment; unanimous vote. Motion as Amended Carried.

DECISION: The Commission voted to authorize a Consent Order for \$2,000 for failing to have an active firm license and failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), 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.

**25. 2013025551
Opened: 1/21/14
Type of License: Time-Share Registration
History: No Prior Disciplinary Action**

**26. 2013025552
Opened: 1/21/14
First License Obtained: 10/6/08
License Expiration: 10/5/14
E&O Expiration: 10/30/14
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action**

**27. 2013025601
Opened: 1/21/14
First License Obtained: 10/2/02
License Expiration: 11/26/14
E&O Expiration: 10/30/14
Type of License: Principal Broker
History: No Prior Disciplinary Action**

Complainants are time-share purchasers who made three (3) purchases in a year. At the second and third meetings, Complainants state that they were talked into buying more points with promises made regarding low rates available only that day.

The third meeting involved Respondents (Respondent 1 is a time-share registration, Respondent 2 is a time-share salesperson, and Respondent 3 is Respondent 2's principal broker). At the presentations, Complainants state that verbal misrepresentations were made regarding the ability to use free weeks at a certain resort or sell for money, that Complainants could refinance the whole deal at a bank for a better rate or move the balance to a credit card and get store discounts, and that Complainants could receive help selling the time-share when they wanted. Complainants state that all meetings were long, and Complainants were never shown a right to cancel within a certain period. Complainants state that their complaints have been ignored, and Complainants state that they do not want a refund but want out of the contracts.

Respondents submitted a response denying the misrepresentation allegations and stating that the presentations are typically shorter, but, when a customer decides to make a purchase, additional time is required to answer questions and sign sales documents. Respondents also point to documentation which was signed by Complainants just below bolded language which outlined Complainants' rescission rights regarding the purchases, but Respondents state that Complainants did not utilize those opportunities to cancel but instead utilized the benefits of membership. Respondents state that the sales documents at purchase adequately describe the products and services purchased and that Complainants would not have continued to make purchases if they were unhappy with the original purchase, and Respondents state that Complainants were advised regarding the type location and use of the time-share interest being purchased. The documentation does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

Action: Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote. Motion Carried

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

28. 2014003621
Opened: 3/21/14
First License Obtained: 1/30/97
License Expiration: 9/15/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

29. 2014003622
Opened: 3/21/14
First License Obtained: 9/9/02
License Expiration: 12/15/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

30. 2014003623
Opened: 3/21/14
First License Obtained: 8/3/83
License Expiration: 5/14/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

31. 2014003641
Opened: 3/21/14
First License Obtained: 7/31/87
License Expiration: 3/2/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 201400348 – Agreed Citation (\$250) FTS advertising

Complaints were opened by TREC against Respondents (Respondents 1, 2, and 3 are affiliate brokers; Respondent 4 is their principal broker) based on Respondents' failure to satisfy Agreed Citations which were sent to Respondents. Respondents were sent Agreed Citations which contained civil penalties for Respondents 1, 2, and 3 due to an advertising violation and for Respondent 4 for failure to supervise the advertising. Specifically, Respondents 1, 2, and 3's team name (which included the last name of those Respondents) was much larger than the firm name on a sign. Because Respondents had not signed and returned their Agreed Citations with payment, these matters were opened in legal as complaints.

Soon after this matter was opened in legal, Respondents submitted their executed Agreed Citations and paid the civil penalties included therein.

Recommendation: Close as to all in light of satisfaction of Agreed Citations.

Action: Commissioner Blume made a motion to accept legal counsel's recommendation to close against all Respondents; seconded by Commissioner Alexander; unanimous vote. Motion Carried.

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

32. 2014004961

Opened: 3/26/14

First License Obtained: 12/23/87

License Expiration: 8/31/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint opened at the direction of the Commission. When the complaint below was presented, the Commission made a motion to open a complaint against this Respondent, who is the principal broker of the Respondent in complaint 2013022241.

March 2014 Meeting:

Complainant was the seller of a property, and Respondent (affiliate broker) was initially the seller's agent. The property went under contract with potential buyers but ultimately fell through due to financing. Complainant alleges that Respondent allowed the couple (the potential buyers) to move into Complainant's home and collected rent without Complainant's knowledge. Complainant states that, when Complainant told Respondent that Complainant was coming in town, Respondent instructed that a rent check (made out by a family member of the people residing within the home to Complainant) be paid to Complainant (a copy of the check was included). Complainant attempted to cash this "rent" check of \$400, but it was denied for insufficient funds. Complainant states that Respondent collected rent money from the individuals without giving them a receipt. When Complainant contacted Respondent's principal broker, Complainant states that the principal broker did not do anything.

Respondent states that Complainant signed a Purchase and Sale Agreement, but the closing never went through due to loan denial. Before the loan was denied, Respondent states that the loan officers required certain repairs to the house that were needed to pass inspection, and Complainant refused to pay but agreed that the buyers could make the repairs themselves and wanted all utilities in the buyers' names while the work was being done. Respondent states that this was an offer to purchase and in no way was a rental agreement done, but the potential buyers sent Complainant a check which Complainant signed and cashed. Respondent's principal broker stated that buyers came into his office and told him that they had rented the house and paid rent to Respondent. The principal broker states that he informed them that his office did not handle rent property or collect rent for other people. The principal broker states that the buyers told him different things about how they had given rent money to Respondent. The principal broker states that he encouraged the buyers to get out of

Complainant's house. He also stated that he has satisfactorily worked with Respondent for thirteen (13) years and Respondent had never lied to him. Respondents provided the transaction documentation, which included the Purchase and Sale Agreement which noted that possession of the property would be given with delivery of warranty deed and payment of purchase price and did not reference access for either renting or repairs. Further, the Purchase and Sale Agreement does not include a termination date as required by T.C.A. § 62-13-312(b)(9). Additionally, the Purchase and Sale Agreement lists Respondent as both the licensee for the Listing Company as well as the Selling Company, but there was no executed Confirmation of Agency form between the parties as required by T.C.A. §§ 62-13-312(b)(7) and 62-13-405(a) & (b).

Complainant responded again stating that an insurance agent called Complainant to complain about "debris" around her house, which was there because the buyers were living there and doing some work. Complainant states that this was the first time she heard of the buyers doing repair work, and this phone call was how she discovered that they were living there. She claims the buyers put utilities in their name without her knowledge (Respondent says that Complainant agreed to this), and that repairs were not needed because the house was sold "as is." Complainant also addresses the check and states that Respondent called Complainant and encouraged Complainant to accept it because "she wanted the buyers to give something for holding up the Contract." Complainant claims the buyers were in the house for eight (8) months.

Legal counsel spoke with the potential buyers who were allegedly residing in the property. They stated that they entered the Purchase and Sale Agreement and were given keys by Respondent's broker around the time the agreement was signed. The potential buyers state that they moved into the home around that time, and the lender was stalling for a while, and the sale finally fell through. The Complainants state that there was no rental agreement, but they lived in the home and paid rent of \$400.00 per month cash to Respondent, who would not give them receipts, from December 2012 until July 2013. The potential buyers state that they were not aware that Complainant did not want to rent the property, and Respondent told them that Complainant did want to rent the home. The potential buyers state that they eventually moved out when Respondent's broker told them that they should.

Recommendation: Consent Order for one (1) year license suspension in addition to \$1,700.00 for violations of T.C.A. §§ 62-13-312(b)(1)(3)(5)(7)(9)(14)(20), 62-13-403(1) and (4), 62-13-404(2), and 62-13-405(a) and (b).

DECISION: The Commission voted to authorize a Consent order for one (1) year license suspension in addition to \$11,400 for violations of T.C.A. §§ 62-13-312(b)(1)(3)(5)(7)(9)(11)(14)(20), 62-13-403(1) and (4), 62-13-404(2), and 62-13-405(a) and (b), plus attendance by Respondent at one (1) entire regularly scheduled

meeting of the Commission within one hundred eighty (180) days after Respondent's suspension is lifted.

Respondent submitted a response stating that Respondent was never told by anyone that the potential buyers had moved into the house until the Complainant above contacted Respondent's office and later one of the potential buyers came by the office. Respondent states that the potential buyer told Respondent that the potential buyer rented the property, and Respondent states that Respondent told her that the office did not handle rental property for other people. Respondent states that Respondent does not accept rent for anyone. Respondent states that Respondent told the Complainant above that Respondent would encourage the potential buyers to get out of the property so the Complainant could avoid an eviction. Respondent states that there has been a lot of "he said, she said," between the affiliate broker in complaint 2013022241, the potential buyers, and the Complainant, but Respondent was not there to hear what was said. Respondent states that Respondent recently did some research on the potential buyers and discovered that they have criminal records for various matters. Respondent states that Respondent has always tried to make sure that all parties in a transaction are treated with care and respect, and Respondent has never had any negative findings with TREC. Respondent regrets that the matter happened with the subject property, but Respondent feels that Respondent did supervise the activities of the affiliate broker Respondent in complaint 2013022241 that Respondent had knowledge of, and Respondent states Respondent cannot supervise what Respondent is not aware of.

Recommendation: Discuss.

Action: Commissioner Alexander made a motion to authorize a Consent Order for \$1,000.00 plus the completion of the approve 30 hour Office Broker Management Course, plus attendance at a Commission Meeting, the course and meeting attendance to be completed within 180 days of execution of the Consent Order; seconded by Commissioner DiChiara; unanimous vote. Motion Carried.

DECISION: The Commission voted to authorize a Consent Order for \$1,000 for violation of T.C.A. § 62-13-312(b)(15) plus completion of a thirty (30) hour office broker management course within one hundred eighty (180) days of Respondent's execution of Consent Order 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.

ATTORNEY GENERAL OPINION No. 14-27

Ms. Cropp reviewed Opinion No. 14-27 Exemption from the Real Estate Broker License Act, which was issued by the State of Tennessee Office of the Attorney General on March 6, 2014 pursuant to a request by the Commission.

PROPOSED RULES

Ms. Cropp discussed several specific questions which were raised by the Deputy Commissioner during his review of proposed additions/revisions to Rule 1260-01.

The Commission took the following actions after discussion of each question:

Rule 1260-01-.18—Commission determined at this time all parts of this Rule should remain as written and approved by the Commission.

Rule 1260-01-.19—Commissioner Alexander made a motion to allow Assistant General Counsel Julie Cropp and Executive Director Eve Maxwell to designate alternate terminology for the language in the Rule heading “informal appearance” that will satisfy the concerns of the administration and to retain the requirement that the principal broker appear with his prospective affiliated licensee; seconded by Commissioner DiChiara; unanimous vote. **Motion Carries.**

Rule 1260-01-.21—Commissioner Collins made a motion to remove section (3)(ii); seconded by Commissioner Flitcroft; unanimous vote. **Motion Carries.**

There being no further business to come before the Commission, Chairman Stephenson adjourned the Tennessee Real Estate Commission meeting at 5:10 p.m. CST on April 2, 2014.