

TENNESSEE REAL ESTATE COMMISSION MINUTES

JUNE 4, 2014

The Tennessee Real Estate Commission convened on Wednesday, June 4, 2014 at 9:15 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman 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, Assistant General Counsel Robyn Ryan, 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 Friday, May 30, 2014. Also, this meeting has been notice on the tn.gov website since Friday, May 30, 2014.

Commissioner DiChiara made motion to add to the agenda at the end of the Executive Director’s report a discussion of retiring commissioners.

Commissioner Griess made motion to add to the agenda following the education report, a discussion and possible action related to the retirement of Charles “Pug” Scoville.

Commissioners Griess made motion to add to the agenda following the acceptance of the agenda, to have a recitation of the Pledge of Allegiance.

Commissioner Alexander made motion to grant permission to licensee Dan R. Rutledge to appear before the Commission to request reinstatement of his broker license #12724 and that he be allowed to appear directly following the scheduled informal applicant appearance of Ms. Smotherman and her Principal Broker Don Day.

Commissioner McMullen made a motion to adopt the Agenda as amended; seconded by Commissioner Collins. The motion carried.

Commissioner Collins made a motion to approve the March 2014, April 2014 and May 2014 meeting minutes; seconded by Commissioner Flitcroft. The motion carried. Commissioner McMullen abstained.

INFORMAL APPLICANT APPEARANCE

APPLICANT: NOVASHIA KANET SMOTHERMAN #329471; PRINCIPAL BROKER: DONALD R. "DON" DAY #250056

Donald R. "Don" Day is the PB of Intero Middle Tennessee, LLC located in Murfreesboro, Tennessee. Novashia Kanet Smotherman #329471 has applied for an affiliate broker license. Ms. Smotherman has passed the affiliate broker exams and has revealed that she has had several misdemeanor convictions and one felony conviction. The convictions not involving traffic offenses are: 3/2000- misdemeanor conviction and a felony theft conviction; 8/2002- misdemeanor theft conviction; 9/2007-misdemeanor theft conviction.

After hearing from the applicant and her principal broker and much discussion, **Commissioner Flitcroft made a motion to approve Novashia Kanet Smotherman to move forward in the licensure process; seconded by Commissioner Blume, roll call vote the Motion Carried 6 to 3. Commissioners McMullen, Alexander, and DiChiara voted against the motion.**

REINSTATEMENT APPLICANT: BROKER DAN R. RUTLEDGE #12724; Mr. Rutledge had requested by formal letter, reinstatement of his expired broker license #12724 and this matter was on the Agenda for discussion of the Letter request. Mr. Rutledge decided to drive in from Johnson City, TN. to attend the June, 2014 and to request permission to appear personally before the Commission in the matter of his reinstatement request. The Commission voted earlier in the meeting to amend the agenda to allow Mr. Rutledge to appear personally. Mr. Rutledge stated that he has been licensed since 5-1-1974, had always paid renewals on time and had no complaints filed against him. His license expired 4-6-13, placing him beyond the 12 month period for reinstatement established in 2013-CPS-002, Reinstatement of an Expired License. Thus requiring him to retest and apply for licensure. Mr. Rutledge requested that the Commission allow him to reinstate his broker license without retesting and reapplying, noting that he had ceased all real estate business and transferred his listings upon finding out that his license was expired.

After many questions and much discussion, **Commissioner Franks made a motion to deny reinstatement of Dan R. Rutledge license; seconded by Commissioner Blume. Discussion followed with Commissioner Alexander speaking against the motion to deny reinstatement. Upon the request of Commissioner Griess, Commissioner Franks withdrew her motion and Commissioner Blume withdrew his second and Commissioner**

Griess made a substitute motion that the Commission make an exception to the Reinstatement Policy and allow Mr. Rutledge the opportunity to reinstate his broker license#12724 under the following conditions: 1)The immediate payment of a civil penalty in the amount of \$1,400.00; 2) The immediate payment of the renewal fee of \$80.00; 3) Attend the remainder of the Wednesday, June 4, 2014 meeting; and 4) Complete the 6 hour TREC CORE course within 4 months from June 4, 2014. The motion was seconded by Commissioner DiChiara; motion carried 8 in favor and 1 against (Commissioner Franks voted against the motion).

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of May 30, 2014, TREC had a total of 125 open complaints. The total number of closed complaints for the current Fiscal Year 2013-2014 is 312. The total civil penalties that were collected in May 2014 were \$293,381.00.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of May 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of May 30, 2014, there were 24,350 active licensees, 1,128 inactive licensees and 7,798 retired licensees (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,879 active firms and 209 retired firms. There were 263 new applications approved in May 2014.

E&O UPDATE/QUARTERLY CLAIMS REPORT

Ms. Maxwell updated the Commissioners on the number of E&O suspensions and the number of licensees previously in suspension who have paid the statutory penalty fee and shown proof of E&O in order to be placed back into active status.

Ms. Maxwell presented the Quarterly E&O Claims Report submitted by the state E&O vendor, RICE Insurance. Commissioner Collins requested that staff try to get similar claims information from alternate E&O carriers who insure Tennessee real estate licensees.

Ms. Maxwell stated that as of 5/30/2014, approximately 490 people are in suspension for failing to provide proof of E&O coverage as required by TCA 62-13-112. The amendments to TCA 62-13-112 (effective 7/1/2013) require the staff to automatically revoke the licenses of those licensees who have been suspended for more than 1 year. As of 7/1/2014, many of the suspended licenses will be revoked. TCA 62-13-112(1)(3) states that “[T]he licensee may, upon written notice to the commission, request a formal hearing on any license revoked pursuant to this section.” Ms. Maxwell asked the Commission how it would prefer to handle licensees who request a formal hearing seeking relicensure and/or a reduction in the penalty fee which must be paid as set forth in 62-13-112 and/or waiver of re-examination.

After discussion, **Commissioner Alexander made motion to follow the procedures regarding revoked licenses established in Tenn. Code Ann. § 62-13-112 and Rule 1260-01-.16; seconded by Commissioner DiChiara. Motion carried unanimously.**

BROKER MAIL AUDIT UPDATE 6-2-2014

Ms. Maxwell stated on 5-19-14 staff sent the new Mandatory Broker Audit Form out to 191 randomly selected firms throughout the state. As of 6-2-14, TREC has received 24 completed audits.

Ms. Maxwell included a portion of the letter we send out to the principal broker when the completed Mandatory Broker Audit Form is received by the TREC office.

MANDATORY BROKER AUDIT-PROCESS TO ENFORCE COMPLIANCE

Ms. Maxwell asked the Commission what steps it wanted staff to take if a principal broker does not submit the completed Mandatory Broker Audit Form within 30 days of the date of the cover letter included with each Form. The Commissioners discussed several possible actions to enforce compliance.

Commissioner DiChiara made a motion to give the principal brokers who received the initial Audit Form mailing an additional 14 days to submit the completed Audit Form and to add language to all future Audit Form cover letters which advises the principal broker that failure to return the completed Audit Form, with all attachments/exhibits in the proper time frame shall result in disciplinary action by the Commission including civil penalties of up to \$1,000.00 per violation and that along with the civil penalty the Audit Form must be completed.; seconded by Commissioner Franks. Motion carried unanimously.

ADVERTISING

Commissioner Blume had requested that the Agenda include a discussion on whether the Commission considered website addresses and/or email addresses a form of advertising which is, or should be, regulated by Rule 1260-02-.12. After discussion, the Commission decided that these issues could be raised during the public hearing on the rules currently proposed and/or could be discussed at later meetings.

FINGERPRINT UPDATE

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(l).

BUDGET

Ms. Maxwell had previously sent a copy of the April, 2014 budget to the Commissioners for their review. No Commissioners had questions on the April, 2014 budget. Ms. Maxwell reported that June 30, 2014 marks the end of the fiscal year..

ARELLO

Ms. Maxwell asked which Commissioners were interested in attending the ARELLO annual conference in Philadelphia from September 17- 21, 2014. Ms. Maxwell stated that there was a Commissioner College scheduled at the end of this Conference on Sunday, September 21, 2014. Ms. Maxwell stated that the travel request justification forms and documents would need to be submitted at least 60 days in advance of the Conference. The Commissioners decided that a request for Commissioner DiChiara, Executive Director Maxwell and Attorney Julie Cropp would be submitted. It was decided that this matter would be discussed again at the July 2, 2014 meeting to confirm the availability of the requested attendees.

DISCUSSION OF RETIRING COMMISSIONERS

Commissioner DiChiara made a motion authorizing staff to procure recognition plaques, similar to plaques given to past Commissioners, for all outgoing Commissioners from the June 4, 2014 meeting forward, without the necessity for further individual authorization from the Commission; seconded by Commissioner Franks. Commissioner Collins made a friendly amendment to Commissioner

DiChiara's motion, that in addition to the plaque outgoing Commissioners be presented with a William C. (Bill) Tune Award (pursuant to 96-CPS-004); amendment seconded by Commissioner Franks Motion carried unanimously. Motion as amended carried with 8 yes and 1 abstention by Commissioner Flitcroft.

INFORMAL APPLICANT APPEARANCE

APPLICANT: ROBERT BYRON MCEWEN #329710; PRINCIPAL BROKER: VON R. RICHCREEK #321649

The applicant, Robert Byron McEwen appeared and advised the Commission that his principal broker had contacted him earlier in the day and stated that he would not be able to appear at the June, 2014 meeting.

Commissioner Alexander made motion to defer appearance of informal applicant Robert Byron McEwen until the July, 2014 meeting or until such time as his Principal Broker can attend the Commission meeting with the applicant; seconded by Commissioner Franks. The motion carried unanimously.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

TREC CORE

Ms. Maxwell presented the Commission with a list of topics for the 2015-2016 TREC Residential CORE and the 2015-2016 TREC Commercial CORE revised to reflect the changes requested by the Commission during the May, 2014 meeting. Commissioner Griess asked if the Commercial CORE course should address practices of certain out of state licensees involved in commercial leasing, specializing primarily in the representation of national clients as potential tenants of properties in Tennessee.

Commissioner DiChiara made motion to accept 2015-2016 TREC Residential CORE and the 2015-2016 TREC Commercial CORE courses as presented and to make any which might be necessary at a later date; seconded by Commissioner Franks. Motion carried.

PSI EXAM RETAKE

Upon request by staff for direction by the Commission and discussion, motion made by Commissioner Griess that if a candidate passes either the national or state portion of the licensure exam, the passing score for the section passed will be valid regardless of the number of times the failed portion of the exam is retaken, but only during the 6 month period immediately following the initial date upon which the candidate received the passing score and that all additional requirements and restrictions currently applicable to licensure exam retakes remain unchanged; seconded by Commissioner DiChiara. Motion carries.

COURSE REVIEW

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

Commissioner Collins made a motion to approve the Courses for Commission Evaluation J1 through J17; seconded by Commissioner DiChiara. Motion carries.

INSTRUCTOR REVIEW

- Von Richcreek of the Success Real Estate School (1585) requests the approval of David Floyd as instructor.

Commissioner DiChiara made a motion to approve David Floyd as an instructor; seconded by Commissioner Griess; unanimous vote. Motion carries.

DISCUSSION OF CHARLES “PUG” SCOVILLE RETIREMENT

Commissioner Griess stated that he wanted to publicly acknowledge Mr. Scoville’s great service and devotion and contribution to the entire real estate industry throughout the years he worked as Director of Education for the Tennessee Association of Realtors. In recognition of Mr. Scoville’s dedicated service and professionalism in the real estate education of all Tennessee licensees, Commissioner Griess made a motion to award Charles “Pug” Scoville the William C. (Bill) Tune Award, as established in 96-CPS-004; seconded by Commissioner Collins. Motion carried.

UPDATE ON LITIGATION MATTERS

Assistant General Counsel Robyn Ryan presented for the Commission's approval a Consent Order signed by Respondent Catherine Marie Brouwer in which licensee agreed to a permanent termination of her Tennessee Broker license #290477. The Commission, in an emergency suspension hearing held 3/25/2014, voted to place license of Catherine Marie Brouwer #290477 in suspension to protect the health, safety and welfare of the public. A formal hearing for Catherine Marie Brouwer #290477 had been scheduled for July 3rd, 2014.

Commissioner Alexander made a motion to accept the Consent Order signed by Respondent Catherine Marie Brouwer #290477 in which licensee agreed to a permanent termination of her Tennessee Broker license #290477; seconded by Commissioner DiChiara. Motion carried.

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. Ryan 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 June, 2014 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: JUNE LEGAL REPORT
DATE: June 4-5, 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. 2013008231
Opened: 5/24/13
First License Obtained: 1/24/89
License Expiration: 12/25/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 2011012391 – Closed \$1,000 CO (failure to supervise/E&O)

September 2013 Meeting:

Complainants (who were represented by a broker) entered into a Purchase and Sale Contract to purchase a property under a lease-purchase arrangement due to Complainants needing to sell another home, and Respondent (principal broker) represented the seller. Complainants state that the home was listed as a modular home on the MLS listing. Complainants state that, after their home sold in another state, and after Complainants had been leasing the home for several months prior to closing, Complainants' lender informed Complainants the home was a mobile home - not a modular home – and thus would not qualify for the loan. Complainants state that they invested a large amount of money into the home during the time Complainants were leasing the property to make improvements, which Complainants state were necessary as the home was not livable. Complainants state that they never would have entered into a contract to purchase a mobile home. Complainants state that they were told that the home was reclassified by the county where the home was located, which Complainants state is not possible. Complainants have since purchased another home and placed a lien on the subject property for the repairs/modifications which were done by Complainants. Complainants believe that Respondent knew the home was a mobile home and not a modular home, and the MLS listing was a misrepresentation. Complainants included a copy of a complaint which they filed pro se against Respondent, Respondent's firm, and the seller in court, which is currently pending.

Respondent, through an attorney and by Respondent's own affidavit, states that Respondent, as the listing agent, did not believe that the designation was incorrect when it was entered into the MLS, and further, Complainants had access to the property before making the offer and before making repairs and modifications to the home. When Respondent listed the property, Respondent was aware that the property was a mobile home at one time (because Respondent was the listing agent when the seller purchased the home). However, Respondent was also aware that, while the seller owned the home, the seller refinanced the home, and the mobile home was "de-titled" and was considered a fixture to the property. Respondent states that Respondent did not look into the crawl space, but Respondent observed brick at the home's foundation area and believed a block foundation was behind the brick. Based on this information, the designation on the MLS was listed as modular, and Respondent's attorney argues that the RealTracs definitions of a mobile home and a modular home are not entirely clear, and Respondent's attorney further states that the MLS listing states that the information is believed to be accurate but not guaranteed and encourages buyers to independently verify all information before making an offer. Respondent states that the Purchase and Sale Agreement provided that Complainants would lease the property for about six (6) months before the property would close. Respondent further states that Complainants included a list of costly repairs in the Purchase and Sale Agreement, which Complainants requested credit for in the sale, which Respondent states shows that Complainants had inspected the home in order to know what repairs were necessary. Further, Respondent states that Complainants e-mailed the seller approximately (1) month after moving in, and part of the e-mail stated that one of the Complainants had replaced duct work (which

Respondent states is in the crawl space) and had jacked up portions of the home. Approximately one (1) month before closing, Complainants listed additional repairs for which Complainants wanted credit in the sale, and the seller did not agree. In an e-mail from Complainants to Respondent, Complainants stated that one of the Complainants had been in the contracting business, and the repairs were necessary, which Respondent states evidences that Complainants were aware that the home was a mobile home. Respondent further states that, after Complainants received notice that their mortgage company would not give a loan, the insurance company issued a check to Complainants for damage to the roof, which was cashed by Complainants shortly before Complainants terminated the contract and was never returned to the seller after Complainants vacated the property.

Based on the circumstances, the modular vs. mobile issue appears unclear. Nor does it appear clear that Respondent knew the home was mobile vs. modular. However, there is a pending lawsuit. Often facts are revealed throughout litigation process that could have a bearing on the ultimate issue.

Recommendation: Consent Order for Litigation Monitoring.

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

Since the Litigation Monitoring Consent Order was executed, Respondent's attorney notified legal counsel that the parties settled the civil litigation matter and provided a copy of an Agreed Order filed in the civil litigation, which provided that the matter was dismissed with prejudice and the earnest money being held by the court would be disbursed to the seller. The parties signed an agreement wherein the parties released each other from any claims arising from the subject transaction and in which liability was not admitted and was expressly denied. The documentation within the file does not appear to evidence a violation by Respondent.

New Recommendation: Dismiss.

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

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

2. 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.*****

April 2014 Meeting:

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.

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.

The authorized Consent Order was mailed to Respondent, who contacted legal counsel upon receipt and stated that Respondent would be willing to voluntarily surrender Respondent's license if the Commission would approve that in lieu of the Consent Order's current terms. Respondent states that Respondent no longer lives in or works in Tennessee, and Respondent moved to another state for what Respondent thought was a temporary move which turned out to be permanent. Respondent states that Respondent has severed all ties in the area and will not be conducting any business pertaining to real estate in Tennessee.

Recommendation: Discuss.

Action: Commissioner Alexander made a motion to accept legal counsel's recommendation to permanent license revocation in lieu of the civil penalty and meeting attendance requirement for the above-referenced violations; seconded by Commissioner DiChiara; motion carries 8 in favor and 1 against(Commissioner Collins voted against the motion).

DECISION: The Commission voted to authorize a Consent Order which provides for permanent license revocation in lieu of the civil penalty and meeting attendance requirement for the above-referenced violations.

3. 2013025671

Opened: 1/10/14

First License Obtained: 2/14/12

License Expiration: 2/13/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants state that Respondent (affiliate broker) was Complainants' agent from December 2012 through July 2013 for the listing and attempted sale of Complainants' home and the purchase of another property. Complainants state that Respondent represented both parties involved in the attempted sale of Complainants' property, did not keep Complainants' best interest in mind, failed to give copies of sale documents, failed to provide documentation regarding their status as clients, and failed to disclose a bonus commission that Respondent received from Complainants' property purchase. Complainants state that they met Respondent who recommended that they call a mortgage company about qualifying for purchasing a property, and Complainants state that they could not purchase until their own property sold. Complainants state that, when Respondent met with Complainants the same day to take pictures and list their home, Respondent did not provide copies of paperwork. Soon after, Complainants state that

Respondent notified Complainants that there was an interested buyer who wanted to close in August 2013 but move in Complainants' property in late December 2012. Complainants state that Respondent expressed uncertainty of the buyers obtaining the full loan amount, and the buyers were working with a mortgage company, but Complainants state they later found out that the buyers had just been denied a loan with the mortgage company. Complainants state that Respondent produced a Purchase & Sale Agreement signed by the buyers and other documents. Complainants further state that Respondent advised Complainants to waive earnest money and a security deposit. Complainants state that they signed and accepted the offer, and the contract copies that were finally supplied do not have Complainants' signatures. Complainants also state that they signed a Temporary Occupancy Agreement and never received a copy. Further, Complainants state that they were told that the buyers were represented by another agent at Respondent's firm, and Complainants allege this was not true. Complainants state that the buyers made the home uninhabitable, and when things broke in the house, Respondent told Complainants that it was their obligation to fix it under the contract. Complainants state that the buyers abandoned the home a few months later, and Respondent said the buyers separated and could no longer purchase, and Respondent noted in a final inspection with the buyers that the home was in the same or better condition than given. Complainants contacted Respondent's principal broker at the time the parties began working together, and the broker evaluated the condition of the property and informed Complainants that the firm had no documents regarding the attempted purchase of the home. Complainants state that the broker contacted Respondent regarding paperwork, and Complainants state that the copies provided by Respondent at that time were not the contracts originally signed by Complainants. Complainants state that the documents were missing signatures, had scanned signatures over Complainants' original signatures, and Respondent filled in time stamps and dates over dates that Complainants previously filled in. Complainants state that the copy was missing a contingency clause that Complainants had attached with the executed Purchase and Sale Agreement.

Complainants state that once the Purchase & Sale Agreement for the sale of their property was signed, Respondent advised Complainants to apply for a loan to purchase property. Complainants state that Respondent contacted the mortgage company to request a second commitment letter for a higher loan amount, but Complainants state that they never requested this and never designated Respondent their agent in buying the property. Complainants state that Respondent presented them with a new construction Purchase & Sale Agreement for the property, and Complainants said that the purchase would have to be contingent upon the sale of Complainants' home. Complainants state that this contingency was never relayed to the owner/agent. Complainants state that the Purchase & Sale Agreement that is on file with Respondent's firm is different than what the owner/agent has on file. Complainants also state that they were unaware that Respondent received a bonus for the purchase. Complainants state that the documents Respondent produced were forged, scanned, altered, traced and/or duplicated.

Respondent submitted a reply stating that Respondent protected and promoted Complainants best interests, and Complainants received copies of all transaction documents in a timely manner. Respondent states that Respondent only represented Complainants in the attempted sale of Complainants' home and attached a fully executed Confirmation of Agency Status form showing that the buyers were unrepresented and Respondent was the designated agent for Complainants. Respondent states that the Complainants were told that the potential buyers had special circumstances that would not allow for a quick closing, and Complainants accepted the circumstances and were happy that the home had sold. Respondent states that Respondent e-mailed Complainants and the potential buyers the sale documents from Transaction Desk on the same day that all parties were in agreement on the sale. On the following day, Respondent states that the buyers stated that they would sign the documents and give them to Respondent in a few days, and, when the documents were received from the buyers, Respondent states that they were not dated. Respondent states that the paperwork was turned into Respondent's firm and was sent a memo stating the dates were missing so Respondent dated the documents on the date of agreement and bound the documents before turning them in to the firm. Respondent states that Complainants allowed the buyers to move into the property shortly after, and the buyers paid a sum of money up front for early occupancy. Respondent states that the buyers had a home inspection, and the parties agreed to the items in need of repair, and one of the Complainants decided to do the repairs. Respondent states that the Complainant did not complete repairs until a few months later, when Respondent states that the buyers signed a Temporary Occupancy Agreement. Respondent states that Complainants were notified when the buyers notified Respondent that they were separating and could no longer purchase the property. Respondent states that Respondent met the buyers to pick up keys, and Respondent facilitated the process at Complainants' request.

Respondent states that Complainants were prequalified for a home purchase, and there was no contingency for selling Complainants' home in the approval letter. Respondent states that Complainants received pre-qualification the same day they met Respondent at the property for the full purchase price of the home; however, the next day, the seller raised the price of the property, and Complainants contacted the mortgage company about updating the purchase price. Respondent states that Complainants were upset that the purchase price rose and asked Respondent to contact owner/agent and ask if the lower price would be accepted. Respondent also states that Complainants had the MLS for the property, and it clearly stated that there was a \$1,000 bonus offer in the realtor remarks section. Respondent states that the Complainants insisted on putting in an offer once Complainants felt their property was in a position to be sold, and Complainants' offer with the lower price was accepted. Upon closing, Respondent admits the \$1,000 bonus was still given, and that the bonus information was listed on the HUD so that all parties were aware. Respondent states that Respondent's broker had access and copies of the transactions and was made aware of any updates to the transactions. Respondent further

states that Respondent only has copies of paperwork and the first firm retained all original documents. Respondent also states that the Complainants and Buyers received copies of all contracts, signed and unsigned, and Respondent emailed Complainants copies as well. Respondent states that Respondent's former broker later sold Complainants' property. Further, Respondent states that Respondent never was Complainants' property manager, but the buyers of Complainants' property were given occupancy through an early occupancy agreement.

Complainants question and dispute the dates included on many of the forms for both transactions and allege that their signatures were scanned or altered. It is difficult to determine if these allegations have any merit from examining the documents. It appears that there is no fully executed Purchase and Sale Agreement for the attempted sale of Complainants' home to the buyer, and there is not a fully executed Temporary Occupancy Agreement for that property either, as one was not provided to TREC with either the complaint or response. Due to that, it appears that either there is a failure to preserve documents by Respondent in violation of T.C.A. § 62-13-312(b)(6), and also a failure to furnish a copy of the documents in violation of T.C.A. § 62-13-312(b)(8), or Respondent did not ever have Complainants execute these two (2) documents, and this would appear to be a failure to represent the best interest of the client (T.C.A. § 62-13-404) and a failure to diligently exercise reasonable skill and care (T.C.A. § 62-13-403). Further, Respondent's actions, specifically the payment of no earnest money in the contract for the purchase of Complainants' home in light of the delayed closing and Respondent's insistence that Complainants were responsible for repairs while the tenant was in Complainants' property, although the Temporary Occupancy Agreement states otherwise, appears to be a failure to be loyal to the interest of the client.

Recommendation: Discuss.

Action: Commissioner Blume made a motion to issue a Consent Order for a Civil Penalty in the amount of \$4,000.00; plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission; seconded by Commissioner DiChiara; Commissioner Griess made a friendly amendment, seconded by Commissioner Dichiara, that the Consent Order also include completion of six (6) hours of continuing education in contracts, both within one hundred eighty (180) days of Respondent's execution of Consent Order; motion as amended carries by unanimous vote.

DECISION: The Commission voted to authorize a Consent Order for \$4,000.00 for violations of T.C.A. §§ 62-13-312(b)(6),(8),(14), 62-13-403(1), and 62-13-404(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission and completion of six (6) hours of continuing education in contracts, both within one hundred eighty (180) days of Respondent's execution of Consent Order.

4. 2014001191

Opened: 2/6/14

First License Obtained: 3/13/95

License Expiration: 12/5/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2013025671 (“affiliate broker”), who was affiliated with Respondent’s firm during part of the time that the events took place which gave rise to complaint 2013025671.

Respondent submitted a response stating that, when the affiliate broker requested that Respondent release the affiliate broker to another firm, the office policy is to check the status of active listings and pending deals. Respondent states that it was discovered that the property listed for sale by Complainants of complaint 2013025671 (“2013025671 Complainants”) was in pending status in the MLS but not in the firm’s bookkeeping program. Respondent states that Respondent reviewed the office listing file, and there was no contract in the file. When questioned about this, Respondent states that the affiliate broker said that there was no contract and the sellers had decided to rent the property, and the affiliate was going to pull the property from being listed for sale. Respondent states that Respondent had no reason to doubt the affiliate broker at this point, and the MLS archive report had a notation stating, “Do not show. Tenant occupied,” and the owners of the property had signed the transfer form for the property to be transferred to the affiliate broker’s new firm. Several months later, the 2013025671 Complainants contacted Respondent requesting copies, and Respondent states that, upon viewing Respondent’s firm file, the 2013025671 Complainants stated they never received copies of listing paperwork and inquired about a copy of the Purchase and Sale Agreement. Respondent states that Respondent was shocked and tried to contact the affiliate broker, who eventually e-mailed a copy of the paperwork, which Respondent states included a Purchase and Sale Agreement without all signatures, dates, and times. Respondent states that Respondent then contacted the principal broker at the firm where the affiliate broker had transferred after leaving Respondent, who had no paperwork on the property. Respondent states that the paperwork for the property purchased by that 2013025671 Complainants which the affiliate broker assisted with was processed and reviewed and was in a complete status. Respondent states that the 2013025671 Complainants explained the tenant under the Occupancy Agreement had vacated and left the house a mess, and Respondent agreed to visit the home and view the damage. Respondent states that Respondent assisted in getting the home ready to be re-listed, re-listed the home at a reduced commission, and the home ultimately sold and closed. Respondent states that the affiliate violated the firm’s agreement to provide copies to the

firm immediately. Respondent states that the affiliate broker was aware of the office policies and knowingly withheld pending contract information from the firm and Respondent. Respondent states that Respondent did all Respondent could to help the 2013025671 Complainants through the situation once Respondent became aware of the issues, and Respondent cannot supervise an agent's activities of the agent is being deceptive. It does not appear that there was a failure to supervise by Respondent.

Recommendation: Dismiss.

Action: Commissioner Alexander made a motion to issue a Consent Order for \$1,000.00; 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; seconded by Commissioner Blume; roll call vote 5 in favor of the motion (Commissioners Franks, Alexander, McMullen, Blume and DiChiara) and 3 against the motion (Commissioners Flitcroft, Griess and Stephenson) Commissioner Collins abstained. Motion carried.

DECISION: The Commission voted to authorize a Consent Order for \$1,000.00 for violation of T.C.A. § 62-13-312(b)(15), 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.

5. 2014001201

Opened: 2/11/14

First License Obtained: 4/1/03

License Expiration: 4/25/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the Respondent affiliate broker in complaint 2013025671 ("affiliate broker"), who was affiliated with Respondent's firm during a later part of the time that the events took place which gave rise to complaint 2013025671.

Respondent submitted a response stating that, when the affiliate broker transferred to Respondent's firm, the affiliate broker had the home listed which was the property listed for sale by the Complainants in complaint 2013025671. Respondent states that the property had no contract on it when the affiliate broker transferred the listing to Respondent's firm. Respondent attached a copy of a document releasing several properties from the affiliate broker's former firm to Respondent's firm – the subject property was included among a header for current listings and not included under the

heading for pending properties. Respondent further states that the MLS showed that the home was listed as active with no contingencies prior to the affiliate broker working with Respondent's firm. Respondent states that the affiliate broker had issues regarding one of the affiliate broker's personal relationships, which partially involved the filing of criminal charges (which were ultimately dismissed). Respondent states that Respondent broker released the affiliate broker. Respondent states that Respondent requested seller contact information regarding the transferred properties and sent letters to the property addresses, but Respondent was not contacted by Complainants of complaint 2013025671 so Respondent visited the property and found it vacant and withdrew the listing after again trying to contact the owners. Respondent states that Respondent was later contacted by the affiliate broker's other former principal broker, but Respondent had the same paperwork as the former principal broker. Regarding the property purchased by the Complainants of complaint 2013025671, Respondent states that the transaction closed before the affiliate broker transferred to Respondent's firm, and therefore Respondent has no information on that property. Respondent states that Respondent feels that Respondent did supervise the affiliate broker during the sixty-three (63) days that the affiliate broker was at Respondent's firm, and Respondent takes Respondent's role as broker seriously and makes every attempt to be aware of Respondent's agents' activities and correct them. It does not appear that there was a failure to supervise by Respondent.

Recommendation: Dismiss.

Action: Commissioner Alexander 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.

6. 2014000141

Opened: 2/5/14

First License Obtained: 3/17/80

License Expiration: 6/9/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was a buyer/lessee of a property, and Respondent (principal broker) was President of the company which constructed the home and was the seller/lessor. In 2011, Complainant signed a New Homes Sales Contract to purchase a home from Respondent/Respondent's company. The sales contract incorporated a lease agreement providing for a deposit and was for a one (1) year period with the sales contract specifying a closing date at the end of the lease. In 2013, Complainant states that the

house did not appraise for the contract price, and Complainant attempted to negotiate a lower price. Complainant provided correspondence, including a letter to Respondent stating that, because the property did not appraise for the original purchase price, and the parties could not reach an agreement regarding a new purchase price, Complainant did not wish to continue discussions and would vacate as well as a letter from Respondent stating Respondent intended to evict tenants and seek damages due to Complainant not consummating the contract in a timely manner. Complainant states that, on several occasions, Respondent harassed Complainant and used racial terms regarding Complainant's race and made comments regarding where Complainant should be purchasing a home. Complainant states that the house did sell months later to another party at a price lower than what Complainant had tried to negotiate as the new sale price. Complainant also states that another licensee, who was at the time affiliated with Respondent's real estate firm, represented both parties when the contracts were executed and did not adequately represent both parties, wrote the contracts in favor of Respondent, and failed to represent Complainant's interests regarding purchase price, comps, and the appraisal issue. The New Home Sales Contract indicates that the licensee signed as the selling agent and the listing agent.

Respondent submitted a response through an attorney with a copy of a lawsuit filed by Respondent's company for breach of contract against Complainant. Respondent states in the lawsuit that Complainant failed to purchase the property as provided, but Respondent allowed Complainant to continue to lease for an additional twelve (12) months. Respondent states that Complainant did not purchase at the end of this period, claiming that a new appraisal showed a significant decrease in value. Respondent states that, approximately six (6) months prior to execution of the sales contract and lease, there was an appraisal showing the property had a value higher than the contract price, and any decline in value did not affect the sales contract. Respondent further states that the contract provided for an appraisal at the time of loan application, but the contract did not provide for an appraisal contingency. Respondent states that the property later sold for a lower price, and, even giving Complainant credit for the security deposit paid, Respondent suffered a significant loss.

There are a number of disputes between the parties, including, but not limited to, the appraisal issue and whether the deposit paid by Complainant was refundable. This matter is currently in active litigation with a counterclaim and third party complaints filed by Complainant against Respondent individually and the other licensee who was involved in the transaction, and other information could be uncovered in the process which may be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation of Consent Order for litigation monitoring; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

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

7. 2014000401

Opened: 1/22/14

First License Obtained: 8/15/02

License Expiration: 2/15/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property, and Respondent (affiliate broker) was the listing agent. This was a sale of a house pursuant to a divorce so both Complainant and Complainant's ex-spouse signed the Listing Agreement. Complainant states that it took a while to get the listing posted, that Respondent was dealing with the ex-spouse behind Complainant's back, that new pictures were not put on the listing, that Respondent claimed to have shown the house more than fifty times but Complainant did not receive notice or feedback, that feedback claimed that the house was cluttered and referenced the paint, and that there was a bar in the home that was supposed to stay with the home pursuant to the divorce, but that the bar was sold by the ex-spouse without Complainant's knowledge. Complainant states that Complainant's main complaint is that the home was sold for well under the original list price, and Complainant did not agree to pay for a home warranty and should be reimbursed for same. Complainant states that when Complainant signed the final counter offer, Complainant told Respondent that Complainant would not come down further in price or pay for anything else. At closing, Complainant states that Complainant discovered that Complainant was also supposed to pay for the home warranty and saw the signed counter offer at closing that Complainant states had a hand written note about the home warranty underneath Complainant's signature. Complainant included copies of the executed listing agreement and sales contract (including counter offer) signed by Complainant as well as part of the divorce agreement. The Purchase and Sale Agreement included a clause stating that that the seller would pay a specified amount for a home protection plan to be funded at closing. The counter offer submitted states that the undersigned agree to and accept the Purchase and Sale Agreement "...with the following exceptions..." and only includes a provision regarding a change to the sales price and a statement that the seller would not pay buyer's closing costs or prepaid expenses.

Respondent submitted a response denying the allegations and stating that the Purchase and Sale Agreement provided for the seller to pay for a home warranty, and Complainant

signed the counter offer which included only exceptions for the change in purchase price and exclusion of paying for closing costs. Respondent states that there was never any handwritten provision concerning the warranty nor was there anything else handwritten under Complainant's signature on the counter offer as alleged in the complaint. Further, Respondent states that the home was listed promptly when the listing agreement was signed, that Respondent represented both spouses and maintained professional integrity while upholding the duty to communicate with both about the home, and that new photos were not placed because Complainant wanted the house repainted and there was an offer to purchase before the issue of repainting was resolved. Respondent denies stating that the home was shown 50 times, but the house had been shown 32 times, and each notification was automatically forwarded to Complainant's email and feedback was provided by the appointment desk when it was given. Respondent states that Complainant did see feedback as Complainant commented about the feedback. Respondent states that the bar in question was not in the house when Respondent first visited the home, which Respondent told Complainant about, and Respondent was told by the ex-spouse that it was sold in a garage sale. Based on the information in the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

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

8. 2014000431

Opened: 2/5/14

First License Obtained: 3/27/75

License Expiration: 10/15/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant contacted Respondent (principal broker) regarding Complainant's interest in purchasing a foreclosure home. Due to income, Respondent was assisting Complainant in locating someone to finance Complainant's mortgage. Complainant states that Complainant was interested in three (3) homes but the homes were bought out from under Complainant. Complainant states that Complainant then contacted Respondent about another foreclosure home which Complainant was interested in purchasing. Later, Complainant met with Respondent, and Complainant states that Complainant discovered that the price of the home was much higher than Complainant had offered to pay.

Complainant states that Respondent told Complainant that Respondent had to get an investor to purchase the house, and the investor paid a certain amount and needed to make a profit.

Respondent submitted a response stating that Complainant's credit was below normal, and Complainant had insufficient income for a home loan. Respondent states that Complainant wanted a foreclosure home and to pay a specified amount as down payment and do a lease purchase. Respondent states that Respondent told Complainant that mortgage companies would not consider this type of transaction on a foreclosure and stated that the only way Complainant could buy the foreclosure home that Complainant wanted was for Respondent to find an investor to purchase the home and finance it for Complainant. Respondent states that Respondent did find an investor willing to do this, and the investor negotiated to purchase the home, but Complainant did not want to pay the price initially requested by the investor. Respondent states that there was verbal negotiation back and forth before Complainant would agree to pay a price which was acceptable to the investor. Respondent states that Complainant ultimately closed on the home. After the complaint was filed, Complainant wrote a letter wanting to drop the complaint as the matter was a misunderstanding which had been resolved. The information in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

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

9. 2014000501

Opened: 2/14/14

First License Obtained: 2/8/06

License Expiration: 9/8/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

This is a security deposit issue between Complainant, who was a tenant, and Respondent (principal broker) who provided property management services. Complainant states that Complainant paid a security deposit of one thousand four hundred dollars (\$1,400.00). At move out, Complainant received a damage report and security deposit itemization which provided that \$1,200.00 would be forfeited and \$0 refunded to Complainant. Complainant states that Respondent tried to state that Complainant paid only one

thousand two hundred dollars (\$1,200.00). After conversations, Respondent paid Complainant the two hundred dollar (\$200.00) difference. Complainant states that a lawsuit was filed for return of the security deposit, and the parties settled, but Complainant states that Complainant's settlement check had a notation on the check stating that it was "for being a crybaby." Complainant states that Respondent did not appropriately account for the security monies actually paid by Complainant, and Respondent was unprofessional. Complainant included a copy of the Residential Lease Agreement which stated that a \$1,400.00 security deposit was paid, copies of checks for \$200.00 and the settlement amount, and copies of the damage report itemizing security deposit return. Letters between attorneys for the parties regarding the settled litigation were also included.

Respondent submitted a response stating that Complainant and two (2) others were tenants, and within five (5) days of tenants' move out notice, Respondent's office sent a letter to schedule an inspection of the premises and requesting a forwarding address, to which Respondent states there was no response. After move out, Respondent states an inspection was completed, and \$1,438.86 was found in work that needed to be done which was the responsibility of the tenants. Respondent states that the security deposit was \$1,200.00, and \$200.00 was paid as a deposit for the tenants' dogs. Respondent states that the document detailing the deposit return/forfeit was sent to the last known address of the tenant. Respondent states that Complainant then called the office upset about not having received the deposit, and a copy of the document was mailed to Complainant at an address given by the Complainant during the phone call. Respondent states that the document reflected a \$1,200.00 forfeiture, and the \$200.00 pet deposit was not mentioned although it was forfeited due to damages. When this was pointed out, Respondent states that \$200.00 was immediately sent to Complainant because it was left off the document (and not because the refund was deserved). Respondent states that a lawsuit was filed regarding the remainder of the deposit, and a settlement was reached. Respondent denies wrongdoing.

Complainant submitted an additional response stating that the deposit amount was \$1,400.00, and not \$1,200.00 with a \$200.00 pet deposit, which Complainant states was not mentioned in the lease. Complainant states that a forwarding address was provided, and the address originally typed on the damage report was the forwarding address provided. Complainant states that Complainant never received a letter scheduling an inspection.

It appears that the lease states that the security deposit is \$1,400.00. Although Respondent claims that the deposit was only \$1,200.00 with a \$200.00 pet deposit, this was not referenced in the lease; however, when brought to Respondent's attention, Respondent paid the \$200.00.

Recommendation: Letter of warning regarding T.C.A. § 62-13-312(b)(5) regarding accounting for or remitting moneys coming into licensee's possession within a reasonable time.

Action: Commissioner Collins made a motion to accept legal counsel's recommendation for a Letter of Warning; seconded by Commissioner Franks; motion carried with Commissioner DiChiara abstaining from the vote because she was not in the room for the entire discussion.

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

10. 2014000691
Opened: 2/5/14
First License Obtained: 3/26/13
License Expiration: 3/25/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

11. 2014000692
Opened: 2/5/14
First License Obtained: 5/9/02
License Expiration: 12/31/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 2014000701 – Under review by legal

12. 2014000701
Opened: 2/5/14
First License Obtained: 5/9/02
License Expiration: 12/31/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 2014000692 – Under review by legal

Complainant was the seller of a property. Respondent 1 (affiliate broker) was the buyer's agent. Respondent 2/3 is the same individual who is Respondent 1's principal broker, and a separate complaint was opened on a potential failure to supervise issue. Complainant states that the closing did not occur on time and the contract expired due to Respondents' unprofessional handling and submission of paperwork. To extend the contract for an additional six (6) weeks, Complainant states that Complainant demanded forfeiture of the earnest money paid plus an additional amount of non-refundable earnest

money, which Complainant states the parties agreed to and was sent in writing, but then the buyer signed only the extension document and not the other documentation regarding the earnest money. Specifically, Complainant signed and submitted an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement as well as a Closing Date Amendment, and Complainant states that Respondent 1 only had the buyer sign the Closing Date Amendment and disregarded the Earnest Money Disbursement form. The closing occurred, but Complainant states that the earnest money amount was never released to Complainant as agreed upon.

Respondent 1 states that an offer on Complainant's home was accepted, but the lender would not have paperwork done in time to close so, prior to the scheduled closing date, an extension was delivered to Complainant's agent, but Complainant's agent never returned the paperwork or answered Respondent 1's calls. Respondent 1 states that Complainant's agent called after the scheduled closing date requesting release of earnest money to Complainant. Respondent 1 states that Respondent 2 reviewed the paperwork and felt that Complainant would not necessarily get the earnest money because the lender had not approved the loan, and the agreement was contingent upon financing, and Respondent 2 recommended writing a new contract. Respondent 1 states that Respondent 1 again requested that Complainant's agent present the extension to Complainant. Respondent 1 states that Complainant wanted additional money, and the buyer told Respondent 1 that the buyer would pay additional earnest money if the additional earnest money would be credited back to the buyer at closing. Respondent 1 states that an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement (which provided for release of the earnest money and payment and release of additional earnest money) was forwarded along with a Closing Date Amendment from Complainant's agent. Respondent 1 states that both forms were presented/explained to the buyer, and the buyer chose not to terminate the contract by signing the Earnest Money Disbursement and Mutual Release but signed the extension. Respondent 1 prepared a new Purchase and Sale Agreement extending the closing date and providing for the payment of additional earnest money, making the original amount non-refundable, and allowing for credit of the additional earnest money at closing to the buyer and sent it to Complainant's agent, and Complainant's agent added that the additional earnest money would be taken out of Respondent 1's commission. Respondent 1 states that this was submitted to the buyer, but the buyer refused to sign. Respondent 1 states that the new Purchase and Sale Agreement was discussed with the loan officer, who stated that the paperwork would have to be re-submitted, which the parties discussed and decided not to delay the closing.

Respondent 2/3 submitted a response to the complaint stating that the property ultimately closed successfully, and the delay was due to the lender being unable to process the loan in time. Respondent 2/3 states that Respondent 1 submitted extension paperwork to Complainant's agent but did not receive a response, and Respondent 2/3 advised re-writing the contract. Instead, Respondent 2/3 states that Complainant's agent submitted a

Closing Date Amendment to extend the closing which did not mention earnest money release as well as an Earnest Money Disbursement and Mutual Release, which Respondent 2/3 states would have terminated the Purchase and Sale Agreement. Respondent 2/3 advised Respondent 1 that the documents contradicted each other, and Respondent 1 should re-write the Purchase and Sale Agreement to reflect the new closing date and earnest money arrangement. Respondent 2/3 states that the buyer was willing to forfeit the original earnest money and pay an additional amount, but wanted a credit at closing for the additional amount if closing occurred by a specified date. Respondent 2/3 states that the buyer signed the Closing Date Amendment and not the Earnest Money Release, and Respondent 1 drafted a new contract. Complainant's agent drafted an Addendum to the Purchase and Sale Agreement draft stating that the additional earnest money would come from Respondent 1's commission, but this was not agreed to or signed. Respondent 2/3 states that a new Purchase and Sale Agreement would require the lender to re-submit the paperwork and delay the closing, so the parties did not sign the new Purchase and Sale Agreement. Respondent 2/3 states that there were a number of verbal proposals and many written proposals which were not agreed to by both parties. Respondent 2/3 further states that there was not enough money for Complainant to cover payment of the home warranty, so the buyer purchased the home warranty out of the earnest money held. Respondent 2/3 states that the earnest money was handled appropriately according to the signed contract. Respondent 2/3 further states that there was no failure to supervise, and Respondent 1 completed training and was mentored. Based on the information in the file, there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

Action: Commissioner Alexander 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.

13. 2014001051

Opened: 3/6/14

First License Obtained: 4/4/94

License Expiration: 7/4/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2011011941 – Closed \$1,000 CO (fail to supervise/E&O)

2011020211 – Closed \$500 CO (failure to account or remit)

Complainant states that earnest money for the purchase of a hotel was submitted to Respondent's firm (Respondent is principal broker) in November 2013. The sale did not go through, and Complainant states that Respondent hand delivered the earnest money in the form of a check in December 2013. However, Complainant states that the check could not be cashed due to insufficient funds. Complainant states Respondent was called multiple times, and Respondent stated the earnest money would be returned. Complainant also filed a police report regarding the undistributed funds. Complainant included a copy of the original earnest money check to Respondent's firm, the earnest money reimbursement check from Respondent's firm, the bank record showing insufficient funds, and a copy of the Commercial Purchase and Sale Agreement.

Respondent submitted a response stating that Respondent acted as a facilitator. Respondent states that the first earnest money check submitted by Complainant could not be deposited into Respondent's account without a hold being placed on it due to insufficient funds, and Respondent ultimately obtained a certified check to deposit the earnest money. Respondent states that negotiations broke down on December 13, 2013, which led the parties to wait until foreclosure proceedings were complete. Respondent states a check was given to Complainant, but Respondent states that a release was not signed by the sellers in order for Respondent to move the funds over to allow Complainant to cash the check. Respondent states that Respondent was unable to get in touch with the sellers since the property had closed. Respondent states that the signatures have since been acquired, and the check was corrected. Respondent also states that Respondent will be closing Respondent's firm and searching for a new firm to practice as broker in order to relinquish the responsibility of handling escrow money.

Office of legal counsel contacted Complainant and Respondent for confirmation documents as to how the issue was resolved. Complainant provided a copy of a demand letter, sent on behalf of Complainant by an attorney in February 2014, to Respondent regarding return of the money. An update and documents were also provided that Complainant has not received the \$50,000.00 earnest money from Respondent, that a grand jury returned a True Bill on the matter in March 2014, that Respondent was arrested, and that the first court date was set for early June 2014. On June 2, 2014, Respondent provided a copy of the Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement, which was signed by Complainant on 12/16/13 and the seller on 12/25 or 12/26/13. Respondent states that Complainant's money was not returned because Complainant had filed a police report and this complaint, and Respondent states that Respondent's attorney advised that Respondent not return the money until all charges were heard through the court system.

Recommendation: Consent Order for voluntary revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(5) and (20).

Action: Commissioner McMullen made a motion to accept legal counsel's recommendation for a Consent Order for voluntary revocation of Respondent's license; seconded by Commissioner Alexander; unanimous vote; motion carried.

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

14. 2014001091

Opened: 2/12/14

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Complainant hired a company to manage Complainant's rental home. It appears that the company is a licensed real estate firm which is now retired, and Respondent (unlicensed individual) is the president of the corporation holding the same name as the firm. Complainant alleges that Respondent told Complainant that the home was vacant while collecting rent money from a tenant. When Complainant demanded to see a lease agreement, Complainant alleges that Respondent told the tenant to tear up an old lease and sign a new one with new dates so that it would appear that the tenant had just moved in. Complainant submitted e-mail correspondence between Complainant and Respondent regarding management of the property and placing a tenant. Complainant submitted copies of two (2) lease agreements: one copy, Complainant states, was provided by Respondent and signed later for a later occupancy date and lower deposit amount and appears to have been signed by the tenant and Respondent; the second copy, Complainant states, was provided by the tenant to Complainant's new management company and was signed earlier for an earlier occupancy date and a higher deposit amount and appears to have been also signed by the tenant and Respondent. Complainant also submitted receipt copies for a deposit paid and three (3) months' rent.

Respondent submitted a response stating that the real estate firm was licensed under a licensed real estate broker at the time and attached a copy of the firm license. The firm license was retired in January 2014. Respondent states that Respondent closed the firm after realizing that only the real estate broker could sign a lease with tenants and collect money. Respondent also states that Respondent is no longer managing properties for Complainant or anyone else, and all financial issues have been resolved with Complainant. Respondent attached an accounting for the property which included the income, expenses, management fees and a final amount due to Complainant as well as a check to Complainant for that amount. It appears based on the information provided that Respondent was engaged in unlicensed activity.

Recommendation: 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 Griess made a motion to accept legal counsel's recommendation for a Consent Order, but to increase the civil penalty amount to \$2,000.00 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301 and for the Consent Order to also include an order to cease and desist all unlicensed activity; seconded by Commissioner McMullen; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order 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.

15. 2014001241

Opened: 2/11/14

First License Obtained: 4/22/87

License Expiration: 10/9/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

In 2010, Complainant responded to a real estate ad and purchased a property from Respondent (broker) who was owner/agent of the property. Complainant states that Respondent carried the mortgage, and Complainant alleges that this violated laws regarding the licensing of mortgage lenders, loan brokers and loan servicers. Further, Complainant states that Respondent failed to disclose hidden damage to the septic system of the subject property which Complainant states was caused by a neighbor connecting his front and rear gutters to a flex pipe and running the pipe onto the subject property and emptying into the leech field on the subject property, causing gutter water over time to damage the leech field. Complainant alleges that Respondent knew of this and did not disclose it to Complainant. Complainant attached a civil complaint against Respondent which alleged that Complainant did not discover the problem until June 2013 when a contractor dug up the field lines and the problem was discovered. Complainant also provided a copy of documentation relating to the sale, including a Real Estate Sales Contract between the parties, which disclosed that Respondent was a licensee.

Respondent submitted a response stating that Respondent had owned the subject property for three (3) years (during which time the property was rented) before selling to Complainant. Respondent states that a home inspection was done, and Respondent was asked to correct water seepage coming under a door leading to the garage, which Respondent states was done (Complainant disputes that this was done to Complainant's satisfaction). Respondent denies awareness of any french drains connected to the neighbor's home but states that Respondent knew and told Complainant about drains on the home that Complainant purchased. Respondent states that Respondent never had septic problems prior to selling to Complainant. Respondent also denies that it is illegal

to do owner financing. Respondent attached an MLS listing of the property from 2010, which also disclosed that Respondent was owner/agent.

Complainant submitted an additional response again stating that the french drain issue was not disclosed. Complainant also states that the MLS listing states that the home is “modular” and Complainant states it is really a “manufactured home,” and the MLS listing also references the walls as “drywall” when Complainant states that the walls are “vinyl.” Complainant states that no mortgage lending company will mortgage a used double wide manufactured home with a conventional or FHA mortgage, which Complainant states Respondent knew and Complainant states was confirmed by several banks in March 2014. Complainant states that when Complainant’s balloon payment comes due on 2015, Respondent knew Respondent would get the property back because Complainant would not be able to get a mortgage. It appears that the matter is currently in litigation, and it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission’s determination.

*It was verbally reported to the Commission that the Complainant contacted legal counsel just before the meeting and stated that Complainant was sending two (2) deposition transcripts and asked that legal counsel wait until the evidence was received before the Commission makes a determination.

Recommendation: Consent Order for litigation monitoring.

Action: Commissioner Griess made a motion to accept legal counsel's recommendation for Consent Order for litigation monitoring; seconded by Commissioner Franks; unanimous vote; motion carried.

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

16. 2014001271

Opened: 2/11/14

First License Obtained: 9/9/76

License Expiration: 10/28/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

A complaint was opened against Respondent (broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014001241 (“broker”), who was affiliated with the firm where Respondent was formerly principal broker at the time that the initial transaction referenced in complaint 2014001241 took place in 2010.

Respondent submitted a response confirming that Respondent was the principal broker of the real estate firm where the broker was affiliated and had the property listed at the time that the transaction took place in 2010. Respondent states that it is Respondent's belief that no fraudulent acts were committed by the broker. Respondent states that the broker listed the home, disclosing that the broker was owner/agent and also disclosing this in the sales contract. Respondent states that the broker stated that the broker was not aware of any problems with the septic system and, prior to Complainant purchasing the property, the property had been rented for three (3) years to a tenant who had no issues with the septic system. According to Respondent, the broker states that the broker was unaware of any french drains from the neighbor's house which encroached onto the property, but the broker was aware of drains coming from Complainant's gutters to the backyard and shared that information with Complainant. It does not appear from the information provided at this time that there was a failure to supervise by Respondent.

Recommendation: Close.

Action: Commissioner Griess made a motion to accept legal counsel's recommendation to Close; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

17. 2014001331

Opened: 2/26/14

History: No Prior Disciplinary Action - Unlicensed

Complainant contacted Respondent (unlicensed individual from another state) regarding selling a home in Tennessee. Complainant states that Respondent confirmed that Respondent buys property in other states. Complainant states that Respondent agreed to purchase the property and would fax or email the documents and overnight the check, which Complainant states was never received. Complainant states that Respondent also requested a key be given to a family member. A couple of months later, Complainant states that Respondent and Respondent's family member each sent a cancellation form. Complainant further states that Respondent continued to advertise the property for sale and has failed to respond to Complainant's requests to stop advertising the property. Complainant further states that there was never any discussion for Respondent to become the agent/broker to sell the property. Complainant submitted documents, including multiple websites advertising the property, which were printed several months after the notice of cancellation of contract was signed. Respondent did not submit a response to the complaint.

Recommendation: 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 Griess made a motion to accept legal counsel's recommendation for a Consent Order, but to increase the civil penalty amount to \$2,000.00 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301 and for the Consent Order to also include an order to cease and desist all unlicensed activity; seconded by Commissioner Franks; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order 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.

18. 2014001421

Opened: 2/26/14

History: No Prior Disciplinary Action - Unlicensed

Complainants state that they purchased investment property from a company of which Respondent (unlicensed individual) was principal with guaranteed rent and no maintenance costs for twelve (12) months. Complainants also state that they had Respondent take over a second rental property owned by Complainants which already had tenants in place. Complainants state that Complainants have not received all rent money due for the properties from Respondent. Complainants state Respondent ignores their calls and has not answered their e-mails. Complainants also state that they never received copies of a lease agreement from the first property or a lease renewal from the second property from Respondent. Complainants provided a copy of a lease agreement with tenants for one of Complainants' properties which appear to be executed by Respondent as well as e-mail correspondence, some of which directed that management of Complainants' other property would be transferred to Respondent. Respondent also attached income statements showing rent payments received by Respondent's company, management fees deducted, and balances due to Complainants as well as a check copies from Respondent to Complainants for amounts due to Complainants.

Respondent submitted a response stating that Respondent's company buys and then rehabs houses and places tenants in the houses when the rehab is complete. Respondent states that they have ceased management of rental properties that Respondent's company sells, and all investor houses are now going to a licensed real estate firm for property management, and letters have been sent to owners informing owners of this.

Recommendation: 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 Griess made a motion to accept legal counsel's recommendation for a Consent Order, but to increase the civil penalty amount to \$2,000.00 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301 and for the Consent Order to also include an order to cease and desist all unlicensed activity; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order 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.

19. 2014002461

Opened: 2/21/14

First License Obtained: 3/28/02

License Expiration: 4/7/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants were buyers, and Respondent is principal broker of the listing firm. Complainants state their purchase agreement was contingent upon the sale of their existing home. Buyers for Complainant's home were unable to close due to a financing situation, which Complainants state voided Complainants' contract to purchase the property at issue. An earnest money disbursement and mutual release was sent to Respondent in November 2013. Complainants state that Respondent has ignored requests and has not returned the funds. Complainants submitted a copy of the earnest money check and the earnest money disbursement and mutual release of purchase and sale agreement form, which was executed by Complainants on 11/26/13 as well as letters from attorneys to Respondent regarding the earnest money issue.

Respondent states that the earnest money was received and deposited into the firm escrow account. Respondent states that various parties told Respondent the proposed sale went forward with both parties going to closing. Respondent states that the seller/seller's title company received notification that Complainants closed on the home and proceeded to move in, but the seller was later notified that Complainants did not close and funds would not be disbursed. Respondent states that Complainants remained living in the home, and the seller had to find temporary housing while attempts were made extend the contract and have Complainants sign a temporary occupancy agreement to give Complainants time to fund the closing, but ultimately Complainants refused to sign the documents. Respondent states that Complainants' agent sent a request for earnest money, but, after speaking with the seller, the request was sent back that Complainants forfeit the earnest money, and Complainants refused. Respondent states that Respondent spoke

with Complainants' broker, and they agreed that the title companies should be contacted to determine why the seller was notified that Complainants had signed the closing documents. Respondent states this took a while because the holidays made it difficult to get in touch with the appropriate parties. Respondent states that Respondent emailed Complainants' broker on 12/16 notifying Complainants' broker that Respondent did not feel comfortable making a determination, and Respondent felt an interpleader action would need to be filed. Respondent states that Respondent received a letter from Complainants' attorney demanding the earnest money on February 5, and Respondent states that Respondent called the attorney and stated that Respondent could not make a determination regarding the money so an interpleader action was filed, and then Respondent states Respondent received the complaint.

Complainants assert that Respondent advised that an interpleader was filed on February 10, 2014; however, Complainants' attorney was unable to get confirmation of this from the court. Complainants also state they were never informed that they were being asked to forfeit their earnest money. Office of legal counsel contacted Respondent for copies of the documentation relating to the interpleader action. It appears that the Petition to Interplead Funds was filed with the court on February 24, 2014. After filing, the parties resolved the court matter which was filed and approved on May 6, 2014. Respondent provided a copy of an email from Respondent's attorney stating the money had been disbursed via the attorney's escrow account.

Recommendation: Consent Order for \$1,000.00 for violation of Rule 1260-02-.09, specifically referencing subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, 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 the recommendation of legal counsel; seconded by Commissioner Franks; unanimous vote; motion carried.

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

20. 2014002491
Opened: 2/27/14
First License Obtained: 6/25/99
License Expiration: 4/4/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker

History: No Prior Disciplinary Action

21. 2014002492

Opened: 2/27/14

First License Obtained: 5/10/11

License Expiration: 5/9/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants are sellers and Respondents 1 and 2 (both affiliate brokers) were seller's agents. Complainants state that they listed their home with Respondents but never received a listing agreement. An offer was presented and counter offers were made with a final offer accepted on 11/13/13 with a closing date of 11/22/13. (Complainants state that the offer was on November 5 and that Complainants did not receive it until the 7th but it appears that it was e-signed by the buyer on the 6th and emailed to Respondents on the date Complainants reviewed the offer.) Complainants requested that closing be extended to 11/25, but Respondents stated that since this was a great deal since it was an all cash offer. On 11/21/13, Complainants state that they were asked to offer \$750 in repair credit but were not provided with an inspection report or list of repairs. Complainants state that Respondent 1 stated they needed to treat the property for termites, and Respondent 2 suggested a company. Complainants state that they never received a termite inspection report. Complainants moved out of the property and closed on Friday, 11/22/13 and were told that the buyer was running late, and Complainants would not get their funds until the following Monday. The day after Complainants signed the closing documents, Complainants followed-up with Respondent 2 and were told that the buyer did not show up to closing. On 11/25/13, Complainants state that they contacted Respondents' principal broker requesting a release of the earnest money but were advised that earnest money had not been collected. Complainants submitted emails between Respondents, Respondents' principal broker, and the buyer's agent, in which the buyer's agent indicates that the buyer's agent did not receive an earnest money check. The e-mails also indicate that a verification of funds was not received from the buyer.

Respondent 1 states that the home did not close on 11/21/13 because the buyer chose to ignore the closing date and cannot be located. Respondents state that their records indicate that Complainants received a copy of the listing agreement. Respondents state that the buyer was asked for a closing extension, but the buyer was not willing. Respondents state that it is their understanding that providing a full buyer's home inspection report could pose potential disclosure issues should the property not close, and Respondents recommended a \$750 credit in lieu of Complainants having to take the time to fix up the property for each requested item. Respondents state that Complainants agreed to this even after a second option was presented. Respondents state that the contract requires the sellers to treat to eradicate an infestation if one is found, and that

was what was relayed to Complainants. Respondents state that, because the closing was to occur in eight (8) days, earnest money was requested in the form of a cashier's check, and Respondents state that the buyer's agent said he would get that to them. Respondent 1 states that earnest money was not received by closing, and the HUD had to be adjusted to make up for the difference. Respondent 1 states that Respondents asked about proof of funds and were told that one was being sent. Respondent 1 states that the method for providing proof of funds was not stipulated in the purchase and sale agreement, and the five (5) day deadline passed without the buyer providing proof of funds. Respondents state that the buyer continued with other contract deadlines including a home and termite inspection, which led Respondents to believe the closing would occur. Respondent 1 states that the buyer not closing at the same time is not unusual, but Respondents became concerned when the buyer's agent could not contact the buyer. Respondent 1 states that the buyer had until midnight to close, and Respondents spoke to Complainants the following morning. Respondent 2 added that, on the closing date, Respondent 1 repeatedly attempted to get in touch with the buyer's agent, and on the following morning, Respondent 2 was contacted by Complainants and explained the situation.

No inspection report was submitted, and it does not appear that there was any earnest money collected although Respondents state that the buyer's agent said there was a check in the mail. It appears that the failure to ensure that earnest money was collected and deposited, the failure to follow up regarding the buyer's proof of funds, and the failure to keep Complainants updated that these items had not been received constitutes a failure to be loyal to the client's interests.

Recommendation: For each Respondent: Consent Order for \$1,000.00 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) and Rule 1260-02-.09(9) stating earnest money shall be deposited into an escrow/trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as "Earnest money to be deposited by.", 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, but to increase the civil penalty to \$2,000.00 for each Respondent; seconded by Commissioner Blume. After discussion, Commissioner Griess made a substitute motion for Commissioner Alexander's original motion, to authorized a Consent Order for each Respondent with a civil penalty of \$1,000.00 for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), plus attendance by each Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.

DECISION: For each Respondent: The Commission authorized a Consent Order for \$1,000.00 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(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.

22. 2014002511

Opened: 2/27/14

First License Obtained: 7/16/09

License Expiration: 5/2/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate brokers in complaint 201400249 above (hereinafter "affiliate brokers").

Respondent states that multiple discussions have ensued with the affiliate brokers and Complainants regarding the situation. Respondent states that the affiliate brokers advocated for Complainants and agreed to a reduced commission and successfully moved the closing from 11/15 to 11/22. Respondent states that one of the affiliate brokers told Complainants it was in their best interest not to see the inspection report, and Complainants did not object and chose to agree to the repair allowance. Respondent states that the affiliate brokers received word that the buyers was running late to closing and did not find out until the next morning that the buyer did not show up to closing, and Complainants were notified that morning. Respondent states that Respondent was made aware that the closing did not occur on the following Monday, and Respondent spoke with one of the affiliate brokers as well as one of the Complainants about the earnest money. Respondent states that at the request of Complainants, the listing agreement with the firm was withdrawn. Respondent states that there was no earnest money received. Respondent states that buyer's agent was contacted, and buyer's agent stated that an earnest money check had not been received; however, at one point, buyer's agent told the affiliate brokers that a check was in the mail. Respondent states that the affiliate brokers never told Complainants they received proof of funds, only that they had requested it from buyer's agent. Respondent states that, from the time Respondent was made aware, Respondent did what Respondent could to gather as much information as possible. It appears that, when Respondent became aware of the situation after the closing did not occur, Respondent attempted to get all information requested by Complainants.

Recommendation: Dismiss.

Action: Commissioner Blume made a motion made a motion to authorize a Consent Order for \$3,000.00 for violations of T.C.A. §§ 62-13-312(b)(14)(15) and 62-13-404(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; seconded by Commissioner Franks. After discussion, Commissioner Griess made a motion to amend the original motion of Commissioner Blume by reducing the civil penalty amount to \$2,000.00; seconded by Commissioner Flitcroft unanimous vote; motion carried.

DECISION: The Commission authorized a Consent Order for \$2,000.00 for violations of T.C.A. §§ 62-13-312(b)(14)(15) and 62-13-404(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.

23. 2014003821

Opened: 4/1/14

History: No Prior Disciplinary Action

Complainant states that Complainant had two (2) properties in an adjoining state which were managed by Respondent's company. In the past few years, Complainant states that Respondent did a terrible job managing the properties so Complainant became licensed as a vacation lodging service. Complainant states that Respondent and Respondent's company are not licensed. Complainant provided the web address for Respondent's website. The offices of regulatory board and legal counsel searched the website and found that it shows Respondent is the owner of the VLS company and provides a list of properties for vacation rental.

Respondent responded to the complaint stating that, since Respondent started the company, Respondent has had a business license in the county where the business is conducted, and Respondent asked if there were any other state/federal guidelines or classes required for the business, and Respondent was told that nothing more was needed. Respondent further states that Respondent began taking real estate classes for a real estate license in 2000 and was told by the instructor that Respondent should not continue the class and needed to take a class on property management instead. Respondent attached a license verification application form showing that Respondent completed the class and passed the exam required for a license in Tennessee. Respondent was licensed as an affiliate broker from 2000 until 2002. Respondent also states that a VLS class was completed in 2000, as well. Respondent states that Respondent went to work for a licensed real estate firm and was told that the VLS business was a conflict of interest, so Respondent continued with the VLS and allowed the real estate license to expire.

Respondent obtained a VLS firm license for Respondent's business in April 2014, and Respondent is the licensed designated agent. It appears that Respondent is now complying with the VLS licensure requirements; however, Respondent would likely benefit from a letter of instruction regarding the statute and rules regarding vacation lodging service requirements.

Recommendation: Letter of instruction regarding T.C.A. § 62-13-104 and Chapter 1260-07 of the rules regarding vacation lodging services.

Action: Commissioner Alexander made a motion to accept the recommendation of legal counsel; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

24. 2014004441
Opened: 4/9/14
First License Obtained: 4/20/99
License Expiration: 12/31/14
E&O Expiration: N/A
Type of License: Time-Share Registration
History: No Prior Disciplinary Action

25. 2014004442
Opened: 4/9/14
First License Obtained: 8/21/13
License Expiration: 8/20/15
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

26. 2014004443
Opened: 4/9/14
First License Obtained: 11/15/12
License Expiration: 11/14/14
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

27. 2014004451
Opened: 4/9/14
First License Obtained: 3/6/00

License Expiration: 8/14/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant attended a time-share presentation given by Respondents in November 2013 (Respondent 1 is time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is principal broker). Complainant states that the presentation was six (6) hours long, and Complainant purchased a time-share. Complainant alleges verbal misrepresentations by Respondents 2 and 3 during the presentation, including, but not limited to, the cost of travel after membership, income potential of renting the time-share out, buying back the time-share from Complainant at the same price paid if Complainant was unhappy, maintenance fees staying the same or only increasing 1-2%, and increased value in the future of the time-share. Complainant also alleges that Complainant was rushed through signing documents at closing. Complainant would like contract rescission and a refund of money paid.

Respondents submitted a response through an attorney acknowledging Complainant's time-share purchase and stating that Complainant's account had been cancelled and a full refund had been remitted. Respondents state that this was done without any admission of liability or wrongdoing. The documentation in the file does not appear to evidence a violation by Respondents.

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.

28. 2014008871
Opened: 5/23/14
First License Obtained: 12/8/11
License Expiration: 12/7/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
Respondent was broker released on 5/9/14

Complaint opened by TREC against Respondent (affiliate broker) based on information received from Assistant District Attorney notifying TREC of Respondent's guilty pleas

and sentencing as to two (2) counts of felony theft in April 2014. A statement of facts read at Respondent's guilty plea was also attached, which states that Respondent was hired by an acquaintance to assist with the administration of the acquaintance's family member's estate, and Respondent began forging checks on the estate account without the acquaintance's knowledge in 2011, which totaled approximately \$104,340.27. In addition, according to the statement of facts, Respondent sold some of the property of the estate in 2011 for \$7,500 and kept the proceeds without permission. The court documents indicate a guilty plea to two (2) counts of felony theft with payment of restitution to the estate of \$108,763.00 and ten years of supervised probation.

Respondent submitted a response through an attorney. Respondent's attorney states that the statement of facts was relied upon as a basis for the charges and do not give a full account of the actual circumstances. Respondent's attorney states that Respondent could no longer afford to move forward with an aggressive defense and agreed to the plea, which involved no incarceration, because Respondent was out of money. Respondent's attorney states that nothing in the charges relates to Respondent's real estate license, and Respondent's attorney asks that the Commission allow Respondent to maintain licensure, as real estate is Respondent's exclusive source of income. Respondent's attorney states that Respondent is an affiliate broker, and, as such, there would be nothing relating to trust funds or escrow accounts that would be a risk, and Respondent would be willing to provide whatever assurance is needed to ensure that real estate clients are adequately and ably protected. Respondent states that, had Respondent gone forward in defense, Respondent would have shown that the implication of forgery was not supported, and Respondent earned the money alleged to have been stolen, and the items sold were authorized by the acquaintance.

It appears to legal counsel that the guilty pleas to two (2) felony theft counts evidence improper, fraudulent, or dishonest dealing on the part of Respondent in violation of T.C.A. § 62-13-312(b)(20). Further, it appears that Respondent was broker released on May 9, 2014. As of June 3, 2014, it does not appear that Respondent has completed administrative measures within ten (10) days to either retire Respondent's license or transfer to another firm in violation of T.C.A. § 62-13-312(b)(16) and Rule 1260-02-.02(2).

Recommendation: Consent Order for voluntary revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(16) and (20) and Rule 1260-02-.02(2).

Action: Commissioner Alexander made a motion to authorize a Consent Order providing for permanent revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(16) and (20) and Rule 1260-02-.02(2); seconded by Commissioner DiChiara; unanimous vote; motion carried

DECISION: The Commission voted to authorize a Consent Order providing for permanent revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(16) and (20) and Rule 1260-02-.02(2).

29. 2014008911

Opened: 5/19/14

First License Obtained: 6/12/00

License Expiration: 6/5/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014008871 ("affiliate broker").

Respondent submitted a response stating that, until Respondent received the copy of the TREC complaint, Respondent was unaware of the affiliate broker's felony convictions. Based on the information received from TREC, Respondent states that Respondent felt it was necessary to immediately release the affiliate broker from Respondent's firm, and Respondent did so. It does not appear that there is a failure to supervise by Respondent.

Recommendation: Dismiss.

Action: Commissioner Alexander 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.

Chairman Stephenson adjourned the meeting on Wednesday, June 4th, 2014 at 5:07pm

TENNESSEE REAL ESTATE COMMISSION MINUTES

June 5, 2014

The Tennessee Real Estate Commission convened on Thursday, June 5, 2014 at 9:03 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman 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, Assistant General Counsel Robyn Ryan, and Assistant General Counsel Julie Cropp.

The formal hearing of TREC vs. Gary T. Moore, Docket # 12.18-1254518 convened at 9:04 a.m. with Administrative Law Judge Mary Collier presiding. The Respondent, Gary T. Moore #16853 was not present. Commissioner McMullen made a motion to proceed in default against the Respondent Gary T. Moore; seconded by Commissioner Griess; motion carried.

After the initial briefing on the matter by Judge Collier and Assistant General Counsel Robyn Ryan, Commissioner Franks recused herself from the Hearing and Commissioner Blume recused himself from the Hearing.

The Hearing proceeded to a decision and concluded at 11:12 a.m.

Chairman Stephenson adjourned the meeting on Thursday, June 5th, 2014 at 11:17a.m.