



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE REAL ESTATE COMMISSION
TENNESSEE REAL ESTATE COMMISSION MINUTES

April 1, 2015

The Tennessee Real Estate Commission convened on Wednesday, March 4, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Marcia Franks, Commissioner Gary Blume, and Commissioner Austin McMullen. Absent from meeting were Commissioner Grover Collins, Commissioner Diane Hills, and Commissioner Wendell Alexander. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, Paralegal Jennaca Smith, and Administrative Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 12, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Fridays March 27, 2015. Also, this meeting has been notice on the tn.gov website since Friday, March 27, 2015.

Commissioner DiChiara made a motion to approve the April 2015 agenda as modified by Assistant General Counsel Julie Cropp; seconded by Commissioner Franks; motion carries.

Commissioner Franks made a motion to approve the March minutes; motion seconded by Commissioner DiChiara.

INFORMAL APPLICANT APPEARANCE

Request for Waiver of the 50 Mile Rule

Distance 1,564 Miles

PRINCIPAL BROKER: Jeffery Marshall King #325758
Memphis, TN.

APPLICANT: Michael Charles Finn
Carlsbad, CA.

FIRM: MERIDIAN NATIONAL REALTY, LLC. #262242
Memphis, TN.

Principal Broker, Jeffery Marshall King #325758 PB of Meridian National Realty, LLC. located in Memphis, TN. appeared to request a waiver of Rule 1260-2-.01 for affiliate Michael Charles Finn located in Carlsbad, CA., who wishes to affiliate with the Memphis office. This office is located in excess of 50 miles from Mr. Finn's home in Carlsbad, CA.

After lengthy discussion, Commissioner Franks made a motion to deny request for Wavier of 50 Mile Rule 1260-2-.01; motion seconded by Commissioner DiChiara; motion carries.

UPCOMMING TREC EDUCATIONAL SEMINARS REMINDER

The schedule for the initial round of the TREC Educational Seminars was presented as follows:

4-21-15 Greater Nashville Association, 4-22-15 **Davy Crockett Tower**, 4-23-15 Middle TN Association of Realtors, 4-24-15 Sumner Associations, 4-27-15 **Davy Crockett Tower**, 4-28-15 Williamson County, 4-29-15 Eastern Middle TN Association, and 6-23-15 Clarksville

1 hour seminar from 9-10 am geared primarily for Principal Brokers. TREC Auditor Ahmad Lewis will go over items needed when a firm is selected for audit, explanation of reconciliation, and Ms. Maxwell will discuss PB responsibilities and supervision of affiliated licenses. Any licensee is welcome to attend.

2 hour seminar from 10-12 am discussing issues pertinent to all licensees. Currently all licensees who attend both parts of the seminars will get 3 hours of continuing education.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

E&O UPDATE/QUARTERLY CLAIMS REPORT

Ms. Maxwell stated on **1/13/2015**, a total of **2,822** licensees were suspended for failure to

provide proof of E&O coverage. Of that total, **25 were already in suspension** for another matter, **312 were in a Broker Release** status (broker released at time E&O renewals were due), **7 were in a problem status** and **2,474 were in an active status**. Pursuant to TCA 62-13-112, letters were sent to the licensee at their last known business address and home address as registered with the Commission and to the licensee's principal broker at the principal broker's address as registered with the Commission.

As of **3/30/2015**, there were **575 licensees who remain suspended for E&O**. The table below shows the breakdown of those remaining in suspension. Licensees who show proof of E&O coverage within 30 days of suspension shall be reinstated without the payment of any fee. Starting with 31st day of suspension, the licensee must pay a penalty fee and show proof of E&O in order to be reinstated.

April 1, 2015

E&O Suspended/Insured Breakdown By Licensee Status

(3/30/2015)

Status	3/30/2015 Suspended	Percentage Suspended	Insured	Total Insured & Suspended
Affiliate	311	2%	17,271	17,582
Broker	44	1%	3,161	3,205
PB	83	2%	3,628	3,711
Timeshare	137	16%	726	863
Total	575	2%	24,788	25,361

3/30/2015

RISC (Rice Insurance)	18,532
Alternate	6,256
None	15
Total Active Licensees	24,803

The table below shows the E&O breakdown as of 1/5/2015

E&O Breakdown By Active Licensee Status (1/5/2015)

Status	Uninsured	%Unins	Ins-RISC	Ins-Alt	Total
Affiliate	6,144	35%	8,153	3,063	17,360

Broker	970	30%	1,709	599	3,280
PB	1,252	33%	2,009	499	3,759
Timeshare	82	11%	188	484	756
Total	8,448	34%	12,059	4,645	25,152

Rule 1260-01-.16

Lapsed Errors and Omissions Insurance (Effective 5/8/2014)

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days: (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;
3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$1 00.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for

Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such

Ms. Maxwell states the annual **Professional Privilege Tax is due June 1, 2015**. A manual hold will be placed on the renewal of the licensee's license if the current year or past years have not been paid. Licensees will need to submit a tax clearance letter in order for hold to be lifted.

Monies Collected 3/1/15 – 3/31/15

Consent Orders Fees \$17,000.00; Reinstatement Fees \$24,060.00, E&O Penalty \$3,000.00. Total: \$44,060.00.

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of March 30, 2015, TREC had a total of 174 open complaints. There have been 316 closed this fiscal year.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of March 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of March 27, 2015, there were 24,759 active licensees, 1,197 inactive licensees, retired licensees 7,148, broker release 383, and 682 suspended. There were 546 exams administered in month of March 2015. The total of exams taken year to date is 1,309. There were 386 approved applications in March 2015. Year to date total of approved applications 938. The number of licensees in retired and inactive status was 8,345. TREC total number of individual; licensees in active, inactive, retired, and broker release is 33,169. There were 3,823 active firms and 170 retired firms. Grand total of firms and retired firms 3,993.

FINGERPRINT UPDATE

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 1,036 individuals fingerprinted, 206 had an indication, 506 had no indication, and 20 were retaken.

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review.

INFORMAL APPLICANT APPEARANCE

Reinstatement Request

PRINCIPAL BROKER: Wallace McClure #145

FIRM: MCCLURE REALTY CO. #247029

Mr. Wallace McClure #1455 appeared to request that he be allowed to renew his real estate license which has been expired since 6/22/2013 for failure to pay the \$80.00 renewal fee. Mr. McClure is requesting that the Commission grant him an exemption from the Reinstatement Policy, 2013- CPS-002, Reinstatement of an Expired License and waive the requirement in the Reinstatement Policy which requires licensees expired over 12 months to retest and reapply and meet all current licensure and educational requirements. Mr. McClure requests that the Commission allow him to reinstate his license without retesting and reapplying and without meeting all current licensure requirements, but instead, to pay the renewal amount and have his broker license #1455 reinstated.

Commissioner Blume made a motion for Mr. McClure to pay \$80.00 renewal fee to have his license reinstated without meeting all current licensure requirements, retesting and reapplying to have his Principal license reinstated; motion seconded by Commissioner Franks; motion carries.

EDUCATION REPORT

Mr. White, the Education Director, presented the educational courses set forth on the April, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve A1 – A35 courses; motion seconded by Commissioner Franks; Commissioner McMullen abstains from vote on A10; motion carries.

A-36 D&D School Of Real Estate - The school provider has previously been approved for TREC CORE 2015-2016 through Hondros the internet approved provider at March 2015 meeting. The school now wants a second TREC CORE internet course to be approved through Dearborn/Kaplan.

Commissioner DiChiara made motion to approve A36; motion seconded by Commissioner Franks; vote 4 yes and 1 no by Commissioner Blume; motion carries.

A-37 Home Buying Consultants Real Estate Institute - The school provider (the contacts are both professor's at Christian Brothers University in Memphis) are requesting that a 40 hour course online training and teaching certificate be substituted in lieu of the required internet IDEC certificate, to satisfy the Commission's and ARELLO's current internet requirement. The Commission office has been requiring compliance with this requirement from all distance internet providers.

Commissioner Franks made a motion to deny approval A-37; motion seconded by Commissioner Blume; motion carries.

EDUCATION COURSES FOR DISCUSSION

Mr. White addressed Commission for approval of 3 hour added course being sponsored and taught by TREC for their Education Seminars with the understanding if licensees stay for the entire 3 hours; they will get 3 hours of continuing education.

Commissioner DiChiara made motion to accept 3 hours added on course sponsored by and taught by TREC; motion seconded by Commissioner Franks; motion carries.

Instructors Approvals

Education Director, Mr. White presented instructors some are previously approved and some need approval they are marked in red, A-1 – A37 to be approved as Instructors and to also include TREC's auditor Ahmad Lewis on the April Educational Report:

Commissioner DiChiara made a motion to approve all instructors and TREC'S Auditor Ahmed Lewis since Education Director White recommended for approval A1 – A37; motion seconded by Commissioner Franks; Commissioner McMullen abstains; motion carries.

INFORMAL APPLICANT APPEARANCE

APPLICANT: Tony A. Gainous, Jr.

PRINCIPAL BROKER: Benjamin C. "Ben" Wilson #289414

FIRM: TEAM WILSON REAL ESTATE PARTNERS, LLC. #262304

Principal Broker: Benjamin C. "Ben" Wilson #289414 is the Principal Broker of Team Wilson Real Estate Partners, LLC. # 262304 located in Mt. Juliet, TN. Applicant: Tony A. Gainous, Jr. has not taken exams for licensure, but has submitted an Application for Preliminary Decision Regarding Prior Criminal Convictions and/or Disciplinary Sanctions and plans to pursue his real estate affiliate broker license, if approved by the Commission to move forward with the licensure process. Mr. Courtney has revealed the following in his Application for Licensure:

Mr. Gainous, Jr. had misdemeanors and entered into a Consent Order with the State of TN Board of Licensing Contractors agreeing to a voluntary surrender of his Contractor's license; he has completed all requirements ordered by the Courts and his probation has been completed.

Commissioner McMullen made a motion to defer for one month so that legal department can research into TG Constructors bankruptcy and Great Americans Insurance issues just to confirm information provided by Mr. Gainous, Jr.; motion seconded by Commissioner Franks; motion carries.

LEGISLATIVE UPDATES

Assistant General Counsel Julie Cropp reported the Legislative Updates currently only one showing recent activity is **House Bill 248 and Senate 145** regarding the one hour Continuing Educating courses it has been sent to the Governor's office for signature on

3-26-15 no additional movement has been noted.

CONSENT ORDER TRACKING

Ms. Cropp asked if the Commissioners had any questions about the consent order log. **The Commissioners did not have any questions.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

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

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

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: APRIL LEGAL REPORT

DATE: April 1, 2015

***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. 2014020471

Opened: 10/22/14

First License Obtained: 2/17/12

License Expiration: 2/16/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

February 2015 Meeting:

This complaint was opened by the staff of the Tennessee Real Estate Commission after receiving information from the Virginia Department of Records. Respondent plead guilty to a misdemeanor larceny on or about May 16, 2013 and did not disclose the conviction upon renewal of Respondent's license on February 14, 2014.

Respondent states that the misdemeanor charge was reported to a neighboring state while attempting to obtain a broker's license in that state. Respondent states that the neighboring state held a fact-finding conference regarding the charge and granted Respondent licensure in that state. Respondent is remorseful that Respondent did not disclose this information to TREC and states that Respondent did not know it was required but has since read the code and takes full responsibility for the mistake. Respondent also attached a summary of the fact-finding conference which concludes by stating it does not appear that the convictions involved the profession of real estate, and it appears that Respondent's current Tennessee employer is aware of the criminal background. In consideration of Respondent's criminal history and conduct and work activity following the incident, the Board approved Respondent's application for licensure. Character references were also included in the response.

Recommendation: Consent Order for \$2,000 for failure to report larceny conviction in violation of T.C.A. §§ 62-13-312(b)(12) and 62-13-312(f), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

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

Respondent signed and returned the authorized Consent Order with payment. Upon receipt, legal counsel reviewed the information and determined that an error was made on initial presentation. T.C.A. § 62-13-312(f) does not provide the Commission with discretion to offer a Consent Order. Instead, it mandates automatic revocation when proper notification is not made to the Commission, which was not done here. This was confirmed with the Deputy General Counsel. Therefore, the Consent Order was returned to Respondent with a refund of payment, and Respondent was notified of the automatic revocation of Respondent's license. Because T.C.A. § 62-13-312(f) mandates automatic revocation, it is recommended that the Commission rescind the previously authorized Consent Order by motion.

Recommendation: Rescind previously authorized Consent Order and close the complaint.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to Rescind previously authorized Consent Order and close the complaint; motion seconded by Commissioner McMullen; motion carries.

2. 2014026241

Opened: 11/5/14
First License Obtained: 6/14/99
License Expiration: 1/4/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

March 2015 Meeting:

Respondent is Principal Broker for Respondent above. This matter was opened on a failure to supervise. As of this preparation, there is no response from Respondent.

Recommendation: Consent Order for \$1,000.00 for failure to respond in violation of Tenn. Code Ann. §§ 62-13-312(b)(14) and 62-13-313(a)(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

At the March 2015 meeting, the Commission dismissed the complaint (number 2014026211) against the affiliate broker, and the Commission authorized a Consent Order for this Respondent only due to failure to respond. When this Respondent received the Consent Order, Respondent contacted legal counsel by e-mail with a scanned copy of the response and transaction file that the Respondent mailed to the TREC office on October 26, 2014. Respondent asked for reconsideration in light of the fact that Respondent submitted the response within the time requested in the complaint cover letter. Legal counsel reviewed the materials provided, and it appears to be a thorough response to this complaint for failure to supervise. It is legal counsel's opinion that this Respondent is being truthful in having sent a response which somehow did not make it into the complaint file for review. Therefore, it is recommended that the Commission discuss possible reconsideration of this Consent Order for failure to respond to a complaint.

Recommendation: Discuss.

DECISION: The Commission voted to reconsider this matter, rescind the previously authorized Consent Order and dismiss the complaint.

Commissioner McMullen made a motion to reconsider this matter, rescind the previously authorized Consent Order and dismiss the complaint; motion seconded by Commissioner Franks; motion carries.



INFORMAL APPLICANT APPEARANCE

APPLICANT: James Dale Courtney #331886

PRINCIPAL BROKER: Charles A. Rodgers #235297

FIRM: REALTY EXECUTIVES ASSOCIATES, INC. #255219 and
SOUTHEAST REFERRAL ASSOCIATES #260801

Principal Broker: Charles A. Rodgers #235297 is the Principal Broker of Realty Executives Associates, Inc.# 255219 and Southeast Referral Associates #260801 both located in Knoxville, TN. Applicant: James Dale Courtney #331886 has taken and passed the national and the state exams and has applied for licensure as an affiliate broker. Mr. Courtney has revealed the following in his Application for Licensure: Mr. Courtney had felonies and misdemeanors; he has completed all requirements ordered by the Courts and his probation has been completed.

Commissioner DiChiara made a motion to approve Mr. Courtney to continue with the licensure process; motion seconded by Commissioner Franks; motion carries.

Assistant General Counsel Robyn Ryan addressed the Commission regarding a case heard by an Administrative Law Judge. AGC Ryan request to dismiss notice of appeal due to response not being received by deadline of 3-5-15 and for the judge's order becomes the final order; they had 30 days to respond.

Commissioner McMullen made a motion to dismiss for lack of prosecution; motion seconded by Commissioner DiChiara; motion carries.

3. 2014026181

Opened: 11/5/14
First License Obtained: 11/18/98
License Expiration: 8/10/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2011026541 – Closed Agreed Citation

A complaint was filed regarding Respondent (principal broker)'s advertising. A photo was included of a sign which appears to have been below a yard sign. Said sign advertises a giveaway to win \$100,000 toward your dream home. Further, Respondent's website was printed on September 12, 2014, and the phone number advertised on each page of the website is not the firm phone number listed with TREC. Further, there is a page on the website entitled "Agents," but the other two individuals listed are not licensees.

Respondent states that the proper disclosures were on the bottom of the sign which discloses, "NO PURCHASE NECESSARY. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING. LEGAL RESIDENTS OF THE 50 UNITED STATES (D.C.) 21 YEARS AND OLDER. VOID WHERE PROHIBITED. Sweepstakes ends 1/31/15. For official rules, prize descriptions and odds disclosure, how to enter without pre-qualifying for a mortgage, visit [website url]..." A close-up photo of the sign and a copy of the official rules were provided by Respondent. Regarding the website, Respondent states that Respondent changed the website design in August 2014, but the servers were maliciously hacked on August 19, 2014, and the site reverted back to the older design. Respondent states that Respondent was not aware that the site had changed back to the default until mid-September, and the screen shot of the site in the complaint was taken during the time that the old site had reverted. Respondent included email correspondence with the server host corroborating the timeline of events. Respondent states that the issues were corrected as soon as it was brought to Respondent's attention, but the changes were initially made without Respondent's knowledge or permission.

Office of legal counsel followed-up and reviewed the website on March 18, 2015. The firm's phone number is now found on every page of the website. The "agents" page has been edited to say, "Meet the Team." One of the individuals listed has a title of "expert buying advisor," and the other, "client services manager." It is legal counsel's opinion that the disclosure on Respondent's sign discloses "all pertinent details on the face of such offer or advertisement," and does not appear to be a violation of 1260-02-.12(5)(b). However, it does appear that Respondent's website, for at least a month, did not contain the firm telephone number as required by 1260-02-.12(2)(b) and (4)(a). Further, the page titled "Agents" which contained photos and names of unlicensed individuals appears to be misleading advertising in violation of 1260-02-.12(2)(e). It appears that Respondent has corrected these issues, but Respondent admits that this information existed on the

website for approximately a month before Respondent (who is a principal broker) noticed that the site had reverted to an old design.

Recommendation: Consent Order in the amount of \$500 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (2)(b) (firm name and number must be on all advertising), (4)(a) (firm name and phone number must appear on each page of the website), and (2)(e) (prohibiting advertising in false, misleading or deceptive manner) - 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 authorized a Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (2)(b) (firm name and number must be on all advertising), (4)(a) (firm name and phone number must appear on each page of the website), and (2)(e) (prohibiting advertising in false, misleading or deceptive manner) - 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.

Commissioner DiChiara made a motion to accept legal counsel recommendation of Consent Order in the amount of \$500 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (2)(b) (firm name and number must be on all advertising), (4)(a) (firm name and phone number must appear on each page of the website), and (2)(e) (prohibiting advertising in false, misleading or deceptive manner) - 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; motion seconded by Commissioner McMullen. Friendly amendment made by Commissioner Blume to make Civil Penalty \$1000.00; for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (2)(b) (firm name and number must be on all advertising), (4)(a) (firm name and phone number must appear on each page of the website), and (2)(e) (prohibiting advertising in false, misleading or deceptive manner) - 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 motion seconded by Commissioner Franks; motion carries.

4. 2014026191

Opened: 11/3/14
First License Obtained: 1/11/06
License Expiration: 8/27/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

A complaint was opened against Respondent (principal broker) regarding Respondent's firm Facebook page that was printed on September 8, 2014 which features as its photo and cover photo information that states, "Win \$100,000 towards your dream home...\$100,000 Grand Prize...\$10,000 Bi-Weekly Prizes." The Facebook page does not appear, from the printout, to have any disclosures. It appears that you can click on a link to Respondent's firm website, where there is a box to REGISTER NOW! Where an individual fills out his or her name and contact information. Below the registration box, there is limited disclaimer language that states, "NO PURCHASE NECESSARY. Legal residents of the 50 United States (D.C.) 21 years and older. Ends 1/31/15. To enter and for Official Rules, including odds, and prize descriptions and how to enter without pre-qualifying for a mortgage, visit [website URL]..." It appears from the printout that, on the same page of Respondent's website, there is information explaining that, if you fill out the contact form, an agent will contact you to take you through a prequalification process and a link that states, "For official rules, click here."

Respondent states that the brokerage prides itself on professionalism, honesty and integrity and would never intend to mislead clients or potential clients. Respondent states that over 200 real estate agents from across the nation partnered with a sponsoring company and mortgage company to pool money to have one massive giveaway. Respondent states that a name is drawn every two weeks for the giveaway. Respondent states that seventeen (17) \$10,000 prizes are awarded and a grand prize of \$100,000 is awarded. Respondent states there is no cost to enter and entry can be either: (1) mailed in with name, address, phone number and email; or (2) through pre-qualification for a home if the contestant is seeking to purchase a home in the future. Respondent states that the prize money is awarded, and the recipient can do whatever they wish with the prize, stating that one (1) of the eight (8) prize winners so far has chosen to use the money for a down payment on a home, but the rest have used the money for other purposes. Respondent states that there is no obligation to buy a house, use a real estate agent, or anything else. Respondent states that because there is no cost, no obligation, and winners can choose how to spend their prize money, there is no inducement.

In legal counsel's opinion, although there is no cost, obligation, and a choice in how prize money is spent, the TREC rule on offers and guaranties states, "any offer, guaranty, warranty or the like, *made to induce an individual to enter into an agency relationship or contract*, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement." This language says that the offer only has to be made to induce someone to enter into an agency relationship or contract. It does not require

actual inducement. It seems difficult to believe that this advertisement was not made for the purpose of acquiring business for Respondent's firm. Additionally, although there are disclosures on Respondent's website about the giveaway, the Facebook page does not appear to have any disclosure language at all – differentiating this Respondent's advertising from the previous Respondent's advertising in legal counsel's opinion. Additionally, the Facebook page appears to be that of Respondent's firm but does not include the firm name or telephone number anywhere on it – just a web address which links to a website for the firm. This appears to violate 1260-02-.12(2)(b) requiring the firm name and telephone number on all advertising and (4)(a) requiring firm name and telephone number on each page of the website.

Recommendation: Consent Order in the amount of \$500 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (5)(b) (provision regarding offer, guaranty, and warranty), (2)(b) (requiring firm name and number on all advertising) and (4)(a) (requiring firm name and number on each page of website) - 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 authorized a Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (5)(b) (provision regarding offer, guaranty, and warranty), (2)(b) (requiring firm name and number on all advertising) and (4)(a) (requiring firm name and number on each page of website) - 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.

Commissioner McMullen made a motion to authorize a Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 – highlighting (5)(b) (provision regarding offer, guaranty, and warranty), (2)(b) (requiring firm name and number on all advertising) and (4)(a) (requiring firm name and number on each page of website) - 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; motion seconded by Commissioner DiChiara; motion carries.

5. 2014026291

Opened: 11/6/14

First License Obtained: 11/7/07

License Expiration: 4/2/15

E&O Expiration: 1/1/17

Type of License: Broker

History: 2013017781 – Closed \$750 Consent Order

Complainant states that Respondent (broker) resided in Complainant's rental property. Complainant alleges that Respondent drafted a fraudulent Lease with Option to Purchase contract and pasted Complainant's signature on the contract. Complainant states that Respondent has been Complainant's agent over the years, selling and managing rental properties. Complainant states that, while a tenant in Complainant's property between November 2010 and May 2014, Respondent made numerous attempts to buy the home but was unable to secure financing. Complainant further states that, at one point, Respondent attempted to credit the 6% commission to the sales price without involving Respondent's firm. Complainant further states that Respondent stated the home appraised for \$220,000—without providing a copy of the appraisal—and told Complainant that the home would not sell for more than the appraised value. Complainant alleges that, while residing in the home, Respondent refused Complainant access to show the home to a potential buyer. Complainant provided Respondent with a thirty (30) day notice to vacate and states that Respondent's attorney responded to Complainant noting a Lease with Option to Purchase contract that Complainant had never seen nor signed. Complainant alleges that the signature block was copied from the original lease onto the lease with option to purchase and states that the font and size are different. Complainant further states that Respondent left considerable damage to the home, and Complainant sent a letter regarding damages, needed repairs, and requesting reimbursement. Complainant provided a copy of a General Sessions judgment which was awarded to Complainant in the amount of \$12,770.95, plus costs against Respondent for legal fees incurred while enforcing the lease, May rent, and costs incurred to repair damage to the property during tenancy.

Respondent sent a response through an attorney stating that not all of Complainant's allegations are accurate or relevant, and there are no specific allegations of a violation with TREC's rules and statutes. Respondent states that Respondent managed a number of Complainant's properties and approached Complainant about personally renting the subject property in October or November 2010. Respondent states that Respondent's tenancy occurred without incident and Respondent continued to assist Complainant with managing other rental properties, without compensation. Respondent alleges that Complainant was unable to refinance the home, so Respondent approached Complainant about purchasing the home. Legal counsel notes that there were no disclosures of agency status or regarding Respondent's personal interest. Respondent attached a copy of a Purchase and Sale Agreement for the subject property. Respondent states that, pursuant to the Purchase and Sale Agreement, an inspector found a three-foot layer of water and mold beneath the house, and Respondent alleges that Complainant refused to repair the

problem. Respondent states that Respondent was unable to obtain financing for the home because of this problem, and Complainant placed the home on the market while Respondent continued to reside under the lease terms. Respondent states that Complainant advised Respondent that Complainant would like to show the property to potential buyers but delivered a Notice to Vacate on April 1. Respondent states that Respondent's attorney contacted Complainant in an effort to arrange an inspection and protect Respondent's rights and provided a copy of the lease agreement. Respondent states that Complainant alleges that the lease referenced was not the lease Complainant recalled executing, and Complainant's attorney provided a copy of an alternative lease. Respondent acknowledges vacating in May 2014. Respondent states that Respondent regrets the way the situation unfolded, but it is not a representation of Respondent's conduct as a realtor. Respondent further states that Respondent is relieved to know that nobody was injured or suffered serious harm, and the situation resolved favorably for Complainant who ultimately sold the home for an amount exceeding the appraisal.

Complainant submitted additional information stating that Respondent failed to address the complaint regarding Respondent's alleged fraudulent lease. Complainant further states that Complainant has been harmed by the situation due to legal fees incurred and states that Complainant is not able to collect the judgment because Respondent has filed bankruptcy. Complainant further states that Respondent was also a defendant in another General Sessions court case in which the judge ruled against Respondent, in the capacity of property manager, for similar allegations. After attending that hearing, Complainant recalled a conversation with Respondent in 2012 when Complainant had noticed rent deposits for three (3) months were missing from Complainant's account. Complainant states that Respondent said that one of the tenants had lost a job and Respondent had agreed rent could be made up later. Complainant states that the money was later put into the account, but, after the 2015 general sessions case, Respondent checked with the tenant, who stated that there was no job loss, that they had never missed a rent payment, and that rent checks were made payable to Respondent personally at Respondent's instruction. Complainant states that Complainant caught Respondent attempting to steal rent money for that three (3) month period.

It appears to legal counsel that the signature block from the Lease Agreement was copied over to the Lease with Option to Purchase, as the date immediately above the signature had an error and was written over, which does not seem to be a common mistake that would be identically repeated on two (2) different documents. In addition, the signatures and dates are identical. It appears that Complainant's allegations of Respondent fraudulently altering a document are supported, and Respondent did not deny the allegation in the response, which appears to be a violation of T.C.A. § 62-13-312(b)(20). Additionally, it appears that a tenant was paying Respondent directly for rental payments. Information from former principal broker below further indicates that Respondent was managing property outside of Complainant's firm, and it appears to be a violation of T.C.A. § 62-13-312(b)(11). Further, (and of significant less concern to legal counsel), it appears that there was no written disclosure of agency status or a written personal interest disclosure to accompany the Purchase and Sale Agreement executed between Complainant and Respondent in 2013.

Recommendation: Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(11) (accepting any valuable consideration for performance of acts specified within chapter from anyone other than principal broker), (14) and (20) (any conduct that constitutes improper, fraudulent, or dishonest dealing), 62-13-403(7)(A) (disclosure of personal interest in writing), 62-13-405(a) and (b) (written disclosure of agency status).

DECISION: The Commission voted to accept the recommendation of legal counsel. Commissioner DiChiara made a motion to accept the recommendation of legal counsel of a Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(11) (accepting any valuable consideration for performance of acts specified within chapter from anyone other than principal broker), (14) and (20) (any conduct that constitutes improper, fraudulent, or dishonest dealing), 62-13-403(7)(A) (disclosure of personal interest in writing), 62-13-405(a) and (b) (written disclosure of agency status); motion seconded by Commissioner Franks; motion carries.

6. 2014026311

Opened: 11/5/14

First License Obtained: 7/17/14

License Expiration: 7/16/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (broker) for failure to supervise previous Respondent ("broker") in case number 2014026291 above. Respondent was the broker's principal broker from on or on or about July 14, 2014 through on or about October 13, 2014.

Respondent states that Respondent was not principal broker of the firm during the time period which is the subject of the complaint, stating Respondent moved from out of state in July 2014. Respondent states Respondent had no knowledge of the General Sessions proceedings with the broker and the previous Complainant until receipt of a complaint letter from the local association of realtors. Respondent further states that the complaint allegations are regarding activity outside of the firm. Respondent further acknowledges that previous Complainant stated the broker's actions were not conducted in the role of a realtor but as a tenant. Respondent states that the firm does not condone any of the actions that caused the lawsuit and complaints, but states that the firm had no knowledge of the matter. Respondent states that when inquired, the broker dismissed the matter as personal and Respondent released the Broker on October 10, 2014. Respondent further states that the broker's previous principal broker reached out to the previous Complainant and was informed that the broker was operating a property management business outside of the firm. Respondent states that this additional information, which Respondent received after broker releasing the broker, confirmed Respondent's original decision that

Respondent had done the right thing. Respondent strongly encourages the Commission to look into the broker's dealings outside of the firm. It does not appear to legal counsel that the events giving rise to the recommended disciplinary action against the broker above took place during the time period that Respondent was the broker's principal broker. Additionally, it is legal counsel's opinion that there was not a failure to supervise by this Respondent.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

7. 2014027271

Opened: 11/7/14

First License Obtained: 10/24/07

License Expiration: 9/2/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2013017783 – Closed \$1,000 Consent Order

TREC opened a complaint against Respondent (principal broker) for failure to supervise previous Respondent broker in complaint 2014026291 above (hereinafter "broker"). Respondent supervised the broker from on or about September 16, 2008 through on or about November 7, 2013 and again from on or about June 16, 2014 through on or about July 14, 2014.

Respondent states that Respondent was not aware of any of the subject events between the broker and previous Complainant, including the General Sessions lawsuit. Respondent states that the firm is not a named party in the lawsuit. Respondent states that the broker's failure to share this information with Respondent is against company policy, and Respondent attached a copy of the policy documents with the broker's signature. Respondent studied the documents received by the local association of realtors on October 8 and discussed the matter with the broker on October 9. Respondent states that the firm released the broker on October 10 and included a copy of the TREC 1 form. Respondent states that the only information that the firm has on the subject property is that it was the broker's home address on file. Respondent states that Respondent contacted previous Complainant to discuss the matter, and Complainant confirmed that there was never any attempt to contact Respondent or the successor principal broker (Respondent in case number 2014026311) because the broker's business was conducted outside of the firm. Respondent states that the broker went out of the way to hide this information because the broker was aware it was illegal. Respondent states that the broker was fully aware that all original contracts, lease purchase agreements and rental agreements were to be turned into the office, but the broker never provided any documents regarding the subject address. Respondent further states none of the

documents have the firm referenced in them. Respondent states that the firm offers excellent supervision of their agents by providing a policy and procedures manual, ongoing training, and full time broker accessibility. Respondent feels it was impossible to supervise the broker in this particular case because the actions were outside of the office and deliberately withheld from the office.

Among documentation submitted, Respondent provided an email from previous Complainant stating that the broker manages three (3) rental properties for Complainant outside of the firm to offset the discounted rent of the subject property between 2011 through April 2014. Previous Complainant states that the broker accepted rent checks at a P.O. Box, sent tenant letters, deposited checks into owner's account, fielded calls regarding repairs, hired repairmen, found tenants, and prepared leases. It does not appear to legal counsel, based on the current information within the file, that Respondent had knowledge of the broker's activities. It seems likely that the broker took all possible steps to conceal the wrongful activities. Therefore, in legal counsel's opinion, there does not appear to be evidence of a failure to supervise by Respondent.

Recommendation: Dismiss.

DECISION: The Commission authorized a Consent Order in the amount of \$1,000 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.

Commissioner Franks made a motion to accept counsel recommendation to dismiss; motion seconded by Commissioner DiChiara. Commissioner Blume made substitute motion of a Consent Order in the amount of \$1,000 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; motion seconded by Commissioner DiChiara; vote 3 yes and 2 no's by Commissioner McMullen and Commissioner Franks; motion carries.

8. 2014028611

Opened: 11/18/14
First License Obtained: 4/20/99
License Expiration: 12/31/15
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2014028621 – Under review by legal

Complainants purchased a time-share from Respondent (time-share registration) in July 2013. Complainants state that they made the purchase because of verbal representations that were made which Complainants state turned out to be untrue. Complainants state that they were told that it would be a great investment, that Complainants could make money, that values would double or triple upon completion, that getaway vacations would be available to Complainants at low prices, and that Respondent would buy the time-share back. Complainants state that they would not have purchased the time-share if they had known the truth, and Respondent has been unwilling to resolve the misrepresentation issues.

Respondent submitted a response through an attorney. Respondent denies making the misrepresentations listed within the complaint, and Respondent points to the Contract for Purchase and Sale which was executed by Complainants to refute the claims of misrepresentation. Specifically, Respondent points to a signed Acknowledgement that no representations had been made as to investment or resale potential, that Respondent has no form of resale or rental program and no one is authorized to make representations to the contrary, that getaways are subject to availability and charges from the third party company administering the program. Respondent maintains that the Contract is a valid and legally binding document, and Respondent declined to cancel the contract and issue a refund. Respondent included copies of the executed paperwork from the purchase. The information in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

9. 2014028621

Opened: 11/21/14
First License Obtained: 4/20/99
License Expiration: 12/31/15
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2014028611 – Under review by legal

Complainants state that a representative of Respondent (time-share registration) made misrepresentations during a lengthy sales presentation. Specifically, Complainants state that they were told that they were getting a discount which was only available to certain individuals. Complainants also state that they were told that they could refinance the time-share to receive a lower interest rate. Complainants state that they signed up for a credit card without their knowledge. Complainants further state that they were told the time-share would be a great investment opportunity, that Complainants were never fully apprised of prices, and that Complainants were never informed of their right to cancel the purchase. Complainants feel as though they were deceived and would like contract cancellation and a refund.

Respondent submitted a response through an attorney. Respondent denies any misrepresentation, omissions, or wrongdoing. Respondent states that the documents executed by Complainants refute many of the claims. Respondent points to an Acknowledgement signed by Complainants which states that no representations have been made as to investment or resale potential and that Respondent has no resale or rental program (and no one is permitted to make representations to the contrary). Respondent states that a signed credit card approval shows that Complainants knew that they were applying for a credit card. Respondent states that the signed Contract includes information on the right to cancel directly above where Complainants signed. Complainant states that it is not a misrepresentation that owners regularly refinance their timeshares utilizing alternative financing. Respondent states that the contract is valid and legally binding, and Respondent declined to cancel the contract and grant a refund.

Complainants submitted an additional reply asserting that verbal misrepresentations were made. Complainants claim that they did not realize what they were signing. However, the paperwork is signed by Complainants. The information in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

10. 2014028651

Opened: 12/4/14
First License Obtained: 8/13/02
License Expiration: 4/13/16
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant entered into a sales contract to purchase a property owned by Respondent (affiliate broker)'s spouse, who is owner and builder. Complainant alleges that the title company confirmed there was "a complaint against the property" and the title could not be released. Complainant believes that it is unlikely that Respondent did not know about this when listing the property.

Respondent submitted a response stating that both Respondent and Respondent's spouse are agents, and Respondent's spouse is the president of the corporation which was the seller of the property. Complainant was represented by another agent in the transaction. Respondent states that the home was not on the market when Complainant's offer was received, but Complainant's agent contacted Respondent to see if there were any properties available in the complex. Respondent states that the original offer was received on October 20, 2014 and bound on October 23, 2014. Respondent states that, on October 30, the day before closing, the title company contacted Respondent regarding the chain of title, and the parties agreed to extend the closing to November 7, 2014 to allow the title company to research the title in more detail. Respondent states that, in good faith, the seller offered a different property in the same complex with the same floor plan and wrote an amendment to the contract on November 3, 2014, which included an eight thousand dollar (\$8,000) nonrefundable change order to be applied to the closing statement. Respondent states that Complainant did not agree to the amendment, and correspondence and/or counter-offers ensued between the parties for alternative options. Respondent further states that Complainant was given a last chance offer on November 6, 2014, but Complainant rejected that afternoon. Respondent submitted a statement from Complainant's agent who stated that the original home could not close due to title insurance, and Complainant attempted to purchase a different property, but seller and Complainant could not agree upon the terms. Respondent included a timeline of events and the transaction file. The information within the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carriers.

11. 2014028661

Opened: 12/4/14
First License Obtained: 7/20/95
License Expiration: 5/1/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise the previous Respondent affiliate broker in complaint 2014028651 above (hereinafter “affiliate broker”).

Respondent states that the events, timelines, contracts, and correspondence seem to show that there was no intent to harm, and there do not appear to be any violations of the law or ethical violations during the transaction. As principal broker, Respondent states that Respondent reviewed the supporting documentation and can find no wrongdoing.

Recommendation: Dismiss.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.

12. 2014028691

Opened: 12/12/14
First License Obtained: 2/19/04
License Expiration: 11/2/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant states that Complainant lived with Respondent (principal broker), and they built and bought a home together. Complainant alleges that, upon separation, Respondent attempted to have Complainant Quit Claim Deed the home over to Respondent. Complainant states that Respondent filed an order of protection against Complainant, and Complainant was kicked out of the home. Complainant further alleges that Respondent told Complainant about a transaction in which Respondent did not think the property would close because the buyers were not aware that they did not have rights to use the road because of a cemetery. Complainant alleges that Respondent did not notify the parties involved, and the sale closed. Complainant further alleges that Respondent gives out lock box codes to friends to go into people’s homes without the listing agent or homeowners’ permission. Complainant also alleges that Respondent stole sign holders and an information box from another agent. Complainant also alleges that Respondent allows friends to hunt and fish on a listed property—that has a lockbox on the gate—without the owner’s permission and alleges that one person started a fire on the

property and a boat was stolen off the property. Complainant further alleges that Respondent did not relay an interested buyer to a client/seller because the seller was about to foreclose on the property, and instead Respondent contacted the banker and received a cash commission for referring the interested buyer. Complainant further states that Respondent has received cash for real estate transactions.

Respondent apologized that TREC has been involved with this issue, which arose out of domestic issues and Complainant's promise to ruin Respondent. Respondent stated that Respondent offered \$50,000 to Complainant for their joint property when they separated and further states the order of protection was taken out due to Complainant's threats and behavior. Respondent states that Respondent has allowed Complainant to live in their joint property, but the power has been cut off, and Complainant took all of their joint belongings. Respondent states that the property near the cemetery has a recorded right of way that was verified by the title company at closing. Respondent denies giving out lockbox information to anybody except other agents. Respondent denies stealing an information box and sign frame and states that the other agent verified that Respondent bought the items. Regarding the property that had a fire, Respondent states it was a ground fire and the individuals who were there had done business with the owner and were invited by the owner. Respondent states that Respondent does not know who stole the boat and states that the owners are not concerned because there is no value to it. Respondent states that the other people given access to this property were the landscapers, and the owners were aware of them. Respondent further states that the kids in the area know about the lake on the property, and it is used without permission, as there are multiple ways to get on the property. Respondent denies being paid outside of a closing and denies telling somebody to wait for a bankruptcy sale to purchase a property. Respondent states that Complainant has attempted to ruin Respondent's reputation by contacting Respondent's business contacts, alleging similar things and encouraging them to file complaints with TREC. Respondent states that Complainant has also contacted association boards and tampered with Respondent's business Facebook page. Respondent further states that Complainant listed their joint home for sale, but Respondent has no signed listing agreement.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel. Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

13. 2014028701

Opened: 11/26/14
First License Obtained: 10/9/03
License Expiration: 7/12/15
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainants state that Respondent (affiliate broker) was Complainants' agent in the attempted purchase of property. Complainants state that Respondent showed the property to Complainants several times, but Complainants were unsure of where the property lines were. Complainants state that they had a map, that Respondent and one of the Complainants walked the property, and a surveyor's marker was found and used to establish where one corner of the property was located. Complainants entered into a contract to purchase the properties (three (3) parcels). On the day of closing, Complainants state that they met Respondent's principal broker (the listing broker on the property), who went over the property Complainants were purchasing. Complainants state that his description was very different than what Complainants were shown. Complainants decided not to go through with the purchase. Complainants believe that they should have received a return of their earnest money and payment of other expenses.

Respondent states that the subject property was listed by Respondent's principal broker, and the principal broker had provided Respondent with a plat that was clearly marked that the drawings on the plat were "not to scale." Respondent states that the owner had hired a surveyor to mark the property lines, but those were not visible from the house. Respondent states that when Respondent met Complainants the second time, Respondent brought the plat map provided by the seller to show to potential buyers as well as the printed plat map from courthouse records. Respondent states that Respondent explained to Complainants that the courthouse plat maps have no guarantees as to accuracy and are often inaccurate. Respondent states that one of the Complainants wanted to walk the property to look for boundary markers, so they did but were only able to find one (1) marker that could have been the boundary marker for any of the three (3) properties. Respondent states that one of the Complainants made an assumption based on the map provided, and Respondent states that neither Respondent nor Respondent's principal broker would make any assumptions or guarantees regarding the boundaries. Complainants made an offer, and Respondent states that Respondent told Complainants that, as outlined in the Purchase and Sale Agreement, Complainants had the right to obtain a survey, and a survey is the best means for identifying boundary lines, encroachments, and/or easements. Respondents state that Complainants also signed a Disclaimer Notice advising buyers to get a survey. Respondent states that the issue was discussed at length with Complainants, who stated that they would discuss a survey amongst themselves. On closing day, Respondent states that the buyers and Respondent's principal broker arrived about ten minutes before Respondent and began a serious discussion about boundary lines. Respondent states Complainants were questioning the principal broker about a particular line, and the principal broker stated

that he could not commit to identifying the boundaries, which upset one of the Complainants. Respondent states that one of the Complainants stated that, if he could not be assured of the boundary, then he would not purchase the property. Because neither Respondent nor the principal broker could guarantee the boundary placements, Complainants left the closing and did not complete the purchase. Respondent states that Respondent enjoyed working with Complainants and wishes the transaction had ended differently. There does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

14. 2014028711

Opened: 11/26/14
First License Obtained: 9/27/95
License Expiration: 12/26/16
E&O Expiration: 1/1/16
Type of License: Principal Broker
History: 2014029681 – Under review by legal

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014028701 above (hereinafter “affiliate broker”).

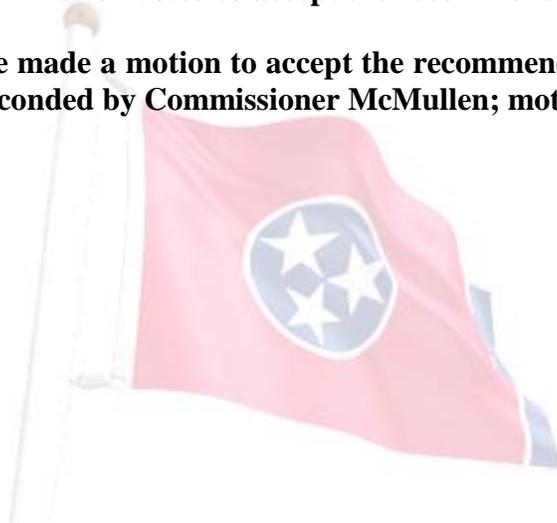
Respondent states that Respondent is very familiar with the transaction because Respondent was the listing agent on the property. Respondent states that the affiliate broker submitted an offer, and the property went under contract. Respondent met Complainants for a final walkthrough of the property, and one (1) of the Complainants asked whether the entire pasture alongside of the house went with it. Respondent states that Respondent did not know where the property boundary lines were located and told Complainants that they should have obtained a survey to know the exact property boundary lines. Respondent states that Respondent showed Complainants a plat Respondent had but stated that the owner inherited the land, and Complainants should not go by the fence lines. Respondent states that Complainants had a copy of the plat, and Complainants thought that all of the pasture should convey. Respondent states that Complainants stated that they had walked the property and found a stake that they assumed was the line. Respondent repeated that a survey was needed. Complainants then told Respondent that they would not be closing. Respondent informed the affiliate broker of this, and the affiliate broker stated that one of the Complainants had been insistent that he was sure that all of the land was part of it. Respondent states that the affiliate broker said that the affiliate broker had recommended a survey, but one of the Complainants did not see the need for it and refused to spend the money. Respondent attached signed transaction documents and points out that those documents stress the

importance of a survey. Respondent states that it has always been company policy to never point out property boundary lines and to always recommend a survey. Respondent states that the affiliate broker was aware of this through training, and Respondent feels sure that the affiliate broker followed the policy. Respondent offered to delay closing for a survey and states that Complainants declined. Respondent states that the company offered to split the cost of a survey with Complainants, but Respondent was told by the affiliate broker that the Complainants still refused. Respondent states that it was explained that the seller refused to allow the earnest money to be returned because Complainants had not acted in good faith to do due diligence before closing and backed out on the day of closing. Respondent feels that both Respondent and the affiliate broker did their best to protect the interest of the client, but Respondent states that they cannot force someone to have inspections or surveys done when that person is given every opportunity to do so.

Recommendation: Dismiss.

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

Commissioner Blume made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.



15. 2014028721

Opened: 12/4/14
First License Obtained: 8/3/88
License Expiration: 8/17/16
E&O Expiration: 1/1/17
Type of License: Broker
History: No Prior Disciplinary Action

A complaint was opened against Respondent (broker) based on the allegations contained within complaint 2014028701 above. This Respondent was never referenced in the narrative of the Complainants regarding the subject property, and Complainants never described any alleged wrongdoing on the part of this Respondent within the complaint.

Respondent states that, in September or October 2013, Respondent was contacted by Complainants' daughter (an acquaintance of Respondent) who informed Respondent that Complainants wanted to look at property listed by the firm. Respondent was out of town and had the affiliate broker in complaint 2014028701 above (hereinafter "affiliate broker") contact Complainants to assist them. Respondent states that, from that point on, Respondent was not involved in the transaction. Respondent states that the affiliate broker made several trips to the property with Complainants, wrote the offer, and took the earnest money check to the firm. Respondent states that, when the offer was written, the affiliate broker typed Respondent's name as well as the affiliate broker's name at the bottom of the contract because the affiliate broker was, at that time, unsure whether Respondent would be assisting when Respondent returned to town. Respondent states that Respondent never got involved in the transaction. Respondent states that Complainants refused to close. Respondent states that Complainants were given several opportunities to have a survey done of the property as shown in the F-14 Disclaimer Notice and as evidenced by a document from a credit union wherein Complainants signed that they waived a survey at the time they made their loan application. Respondent reasserts that Respondent never showed the property to Complainants, never wrote the offer, never had discussions regarding the property with Complainants, and never handled the earnest money. Respondent requests that the complaint against Respondent be dismissed. It does not appear to legal counsel that there is evidence that Respondent was involved or engaged in wrongdoing.

Recommendation: Dismiss.

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

Commissioner Blume made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

16. 2014028731

Opened: 11/18/14
First License Obtained: 9/16/85
License Expiration: 5/18/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

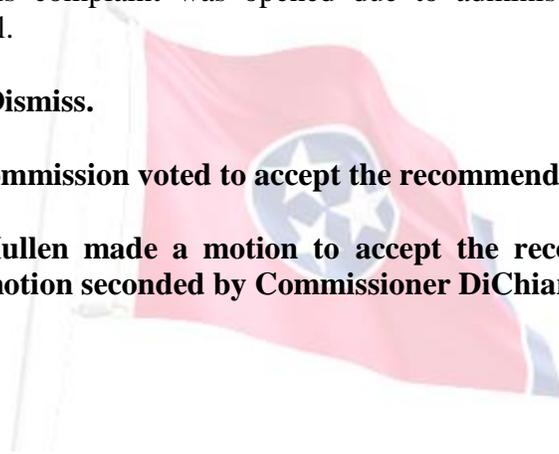
This complaint was opened against Respondent (principal broker) who is the current principal broker of the broker Respondent in complaint 2014028721 above (hereinafter "broker"). It was an administrative error for staff to have opened this complaint, as this was not the broker's principal broker at the time in which the incidents giving rise to the complaint took place.

Respondent submitted a response including the executed TREC Form 1 evidencing when the broker affiliated with Respondent's firm, which was long after the allegations took place. Respondent states that Respondent's company was never involved in any way in this transaction. This complaint was opened due to administrative error. Counsel recommends dismissal.

Recommendation: Dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.



17. 2014029681

Opened: 12/11/14
First License Obtained: 9/27/95
License Expiration: 12/26/16
E&O Expiration: 1/1/16
Type of License: Principal Broker
History: 2014028711 – Under review by legal

This complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the Respondent broker in complaint 2014028721 above (hereinafter “broker”). This is the same Respondent principal broker as in complaint 2014028711 above, and there are two (2) complaints because both the affiliate broker in complaint 2014028701 above (hereinafter “affiliate broker”) and the broker were affiliated with this Respondent at the time that the complaint allegations took place.

Respondent states that the broker referred the clients to the affiliate broker but did not show or in any way assist the Complainants on the subject property. Because it does not appear that the broker had any involvement in the transaction or the events giving rise to the complaint, it does not appear that there was a failure to supervise the broker by Respondent.

Recommendation: Dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

18. 2014028761

Opened: 12/8/14
First License Obtained: 3/23/92
License Expiration: 6/26/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant purchased Respondent (principal broker) and spouse's residence in 2005. Complainant states that Respondent had done extensive remodeling, including a large A-frame addition. In, 2014, Complainant listed the home for sale, and the property was under contract to sell, but the bank rescinded the buyer's loan because it was discovered that a large portion of the septic tank was under the concrete floor of the extension, making it impossible to remove the top of the tank. Complainant further states that Respondent installed an electric under floor heating system which could be dangerous due to build-up of methane gas from the septic tank. Complainant further states that the septic permit is for 2 bedrooms, but the property has 3 bedrooms. Complainant attached documentation including septic permits from 1985 and 1993.

Respondent states that, because this closed in 2005, Respondent does not have a copy of the transaction documents other than what is available in the MLS. Respondent states that everything relating to the construction and exterior of the home was carried out by a licensed contractor who arranged architectural drawings to be completed and submitted to the Architectural Control Committee. Respondent states that the addition was completed in full compliance of any codes that were in place at the time of the addition. Respondent further states that the home itself is on a concrete slab, but the addition was constructed with footings. Respondent states that Respondent has no knowledge of any works being carried out in 1993, as the septic permit is unsigned by Respondent's spouse. Respondent states that, at the time Complainant purchased the home from Respondent in 2005, it was not required to apply for the septic report when listing a property, and, to the best of Respondent's knowledge, the home was a 3 bedroom home. Respondent further states that Complainant contacted Respondent in March 2014 to list the property, and Respondent printed tax information and prepared a TAR form requesting septic information from the State. Respondent states that the information was not received, and the listing was put on hold waiting to hear back from Complainant. Respondent states that Complainant contacted Respondent regarding the issue, but under the advisement of an attorney, Respondent did not return Complainant's call. Respondent denies allegations of misconduct, false documentation or wrongdoing. It does not appear that Respondent's spouse signed the 1993 permit, and Rule 1260-02-.37 regarding septic system inspection letters was not effective until 2008. It does not appear to legal counsel that there is proof of Respondent having knowledge and failing to disclose adverse facts during the 2005 sale.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

19. 2014028771

Opened: 12/4/14

First License Obtained: 4/26/05

License Expiration: 10/11/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

A complaint was filed by sellers against Respondent (buyers' agent) regarding the potential sale of a home that was set to close on October 30, 2014. Complainants allege that Complainants were told that buyers were pre-approved for \$175,000 loan. Complainants allege that the potential lender withdrew the pre-approval, that alternate lending was made available to buyer, but that buyer did not pursue the alternate lending. Complainants state that Complainants' agent requested a copy of the denial letter several times from Respondent and principal broker, but that it was not provided. Complainants state that one of the Complainants went to Respondent's office on October 15 requesting a copy of the withdrawal for approval and alleges that the principal broker advised that principal broker did not have it but that buyers were approved for \$147,000. Complainant alleges that the principal broker called the lending institution who stated the lender who signed the letter was on vacation, and they could not provide a copy until the lender returned.

Respondent sent a response addressing buyers' obligations regarding the loan as stated in the purchase and sale agreement and sellers remedies if buyer did not perform. Respondent states that sellers, at no time, presented any written demand for compliance and failed to exercise the remedies provided in the contract. Respondent further states that the contract was contingent on buyers' ability to obtain a loan in the principal amount up to 90% of the purchase price. Respondent states that the buyers were provided with a letter from a lender dated October 20, 2014 that stated while they were conditionally approved for \$175,000, further underwriting requirements made the maximum loan amount \$148,100. Respondent further states that Respondent initially offered to send Complainants' agent a pre-approval letter, but the agent declined. Respondent further states that there is no evidence of Complainants' allegation that buyers were offered alternative financing but did not pursue it. It is Respondent's opinion that Complainants did not pursue remedies available to them in the binding contract and buyers should obtain a full refund of their earnest money.

Complainants submitted additional information stating that Complainants' agent initially agreed that the pre-approval letter was not needed at that stage but did not imply that it was not expected at any point. Complainants state that Complainants' agent's numerous requests for same verifies that the pre-approval letter and/or denial letter was requested. Complainants further state that Complainants' agent gave Respondent information regarding a different lender who was willing to work with buyers in lieu of their debt to income ratio. Complainants further state that the October 20 lender letter was not provided until October 29, which was one day before closing was to occur, which kept Complainants' house off the market.

Office of legal counsel requested and reviewed the transaction documents. It appears that the offer was faxed with comments on the fax cover sheet dated September 18, 2014 that states that the buyer is pre-approved through a bank. The contract was contingent upon buyer obtaining a loan for 90% of the \$180,500 purchase price. The contract was bound on or about September 18, 2014 for a closing date of October 30, 2014. There is a personal interest disclosure stating that Respondent's immediate family member is the prospective buyer. The earnest money in the amount of \$1,000 was to be held at Respondent's firm. There was no pre-approval letter provided with the documentation, but there is a letter from the lender dated October 20 stating that the buyer was conditionally approved for a \$175,000 mortgage but further underwriting stated only \$148,100 would be approved. It appears this letter was faxed to Complainant's agent on October 28, 2014. It appears that approximately two (2) weeks passed before the lender sent the denial letter to the buyers on October 20, 2014. Respondent then sent this letter to Complainants' agent via fax on October 28, 2014 it appears. This is still two (2) days prior to the scheduled closing. It is legal counsel's opinion that this did not constitute wrongdoing.

Recommendation: Dismiss.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

20. 2014028791

Opened: 12/4/14
First License Obtained: 8/5/68
License Expiration: 12/25/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise the previous Respondent affiliate broker in complaint 2014028771 (hereinafter “affiliate broker”). Respondent’s response was substantially the same as the affiliate broker’s response above.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

21. 2014028801

Opened: 12/1/14
First License Obtained: 6/7/06
License Expiration: 6/6/16
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant states that the subject property was listed on May 15, 2014 by Respondent (affiliate broker). Complainant states that Complainant contacted Respondent on May 17, 2014 to see the property and was told that there was a contract on the house, and Complainant could not see the house. Complainant states that Respondent purchased the property and put it back on the market for a substantially higher price later in the year. Complainant states that another realtor advised Complainant that Respondent had an obligation to show the property to Complainant as it could have been a back-up offer. Complainant states that Complainant followed up when the house was still on the market a couple of months later and Respondent advised that Respondent was trying to get a new roof. Complainant states that, if this was Complainant’s house and the realtor advised a listing at one price and then it was listed a few months later for a substantially larger amount, Complainant would be very upset.

Respondent states that the subject property was listed on May 14, 2014. The seller was the trustee of an estate (a bank) who Respondent had been working with since March 2013. Respondent states that the home was in a poor condition but had good bones, and Respondent liked the location. Respondent states that Respondent e-mailed an informal offer on May 14, but, before a reply was given, the first written offer arrived on May 15. Respondent then wrote the second offer on May 15. A third and fourth offer arrived on May 15, 2014. Respondent states that all parties were aware that it was a multiple offer situation. On the morning of May 16, the seller accepted Respondent's offer. Respondent states that Complainant called Respondent on May 17, but it was not Respondent's recollection that Complainant could not see the house. Respondent states that Respondent tells buyers if there is an accepted contract and allows them to make the decision as to whether or not they would like to see it. Most, Respondent states, ask to be contacted if the contract does not work out. Respondent states that Complainant e-mailed through a website on May 20 stating that Complainant spoke with Respondent on May 17 and Respondent advised there was a contract with Respondent buying the property, and, if Respondent changed Respondent's mind and the house was going to be listed at the current list price, please contact Complainant. Respondent states that home inspection noted termite infestation and a failing roof, so Respondent requested termite treatment and roof replacement by Repair/Replacement Amendment, which was agreed to by the seller. Ultimately, the seller's insurance would not pay for the roof, and the seller agreed to pay for it, but the process took a significant period of time according to Respondent. Respondent states that Respondent put a significant amount of money into the home and sold the home a few months later for an increased price. Respondent denies misleading anyone. Respondent provided documentation, including but not limited to before and after photographs of the house, transaction documents from the initial listing, the initial offers, and Respondent's purchase as well as Respondent's subsequent listing and sale of the subject property after purchase, along with many e-mails between Respondent and the Vice President of the bank which served as the trustee of the estate which was the first seller of the subject property.

Complainant submitted an additional response reasserting that Complainant was told that the property could not be shown. In legal counsel's opinion, the documentation in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; vote 4 yes and 1 no by Commissioner DiChiara; motion carries.

22. 2014028901

Opened: 12/5/14
First License Obtained: 12/28/87
License Expiration: 1/28/17
E&O Expiration: 1/1/17
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 2014028801 above (hereinafter “affiliate broker”).

Respondent submitted a response stating that the affiliate broker came to Respondent’s firm as an experienced realtor in 2009. Since that time, Respondent states that the affiliate broker’s dealings with consumers and other agents has been beyond reproach, and Respondent does not think that the affiliate broker acted any differently in this transaction. Respondent states that Respondent viewed the transaction with Complainant, and Respondent is comfortable with the fact that the affiliate broker made the property available to the Complainant, and Respondent supports the affiliate broker’s point by point response. Respondent states that Respondent is a full time broker who is available to Respondent’s licensees at all times.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; vote 4 yes and 1 no by Commissioner DiChiara; motion carries.

23. 2014028981

Opened: 11/26/14
First License Obtained: 9/13/02
License Expiration: 10/16/15
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2014006371 – Formal Charges Authorized

Complainant searched Zillow.com for a home in a specified area of the state. Complainant states that a home appeared which Zillow stated was in foreclosure and Zillow said to contact a licensee's team for more information. The licensee is affiliated with Respondent (principal broker)'s firm. Complainant contacted the licensee, who Complainant states informed Complainant that the home is in pre-foreclosure and is not on the market, but the licensee offered to help Complainant find a home. Complainant believes that the listing is false and an attempt to solicit new leads illegally.

Respondent states that Complainant is upset that Zillow.com features pre-foreclosures and foreclosures that are not for sale as pre-market or potential listings. Respondent states that Zillow includes disclaimers that all of these pre-market homes are not for sale, and Respondent included a printout of the property referenced by Complainant highlighting Zillow's disclaimer language. Respondent states that Respondent can understand why an individual who did not read the disclaimer might be upset with Zillow, but Respondent states that this was not Respondent's licensee's listing. Respondent states that the licensee just showed up on Zillow as a buyer's agent. Respondent states that Respondent realizes that many home buyers do not realize that third-party aggregator sites like Zillow get their listings from different sources and not from a direct MLS feed. Respondent states that it was not the licensee's listing, but Respondent wishes that Complainant would have reached out to Respondent before filing a complaint so that Respondent could have explained the situation and hopefully resolved it. It appears that this was not Respondent's licensee's advertising, and there appears to be no violation by Respondent.

Recommendation: Dismiss.

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

Commissioner Blume made a motion to accept the recommendation of legal counsel dismiss; motion seconded by Commissioner Franks; motion carries.

24. 2014028991

Opened: 12/11/14
First License Obtained: 5/31/96
License Expiration: 8/7/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant states that Complainant called and submitted an online request to view a foreclosure property. Receiving no reply, Complainant states that Complainant emailed Respondent (principal broker), listing agent, a few days later. Complainant states that Complainant received a phone call from Respondent, who stated there was an offer on the house already. Complainant states that, upon inquiry, Respondent stated that the offer had not been accepted, and Complainant expressed interest in making an offer. Complainant states that Respondent stated that Complainant had not seen the property yet, but Respondent would verbally relay the offer to the bank. Complainant offered to sign paperwork and turn over earnest money, but Complainant alleges that Respondent said that was not necessary. On the following day, Complainant states that Complainant asked Respondent to send paperwork so Complainant could submit a written offer, but Respondent replied stating it was too late because the bank accepted the first offer. Complainant alleges that Respondent delayed communication and did not act appropriately.

Respondent submitted a response stating that the property address was not provided in the complaint. Respondent states that Respondent does not have a website in which online requests can be submitted. Respondent notes that Complainant states that Complainant was out of town and had not viewed the property. Respondent states that the liability risk is too great for Respondent to write a contract for a purchase with the buyer not having viewed and inspected the property. Respondent states that Respondent represents several banks and market foreclosures and states that their addendums request the buyer to view and perform inspections on the properties because the banks are not liable for the condition of the property. Respondent further states that, often when a bank is negotiating a contract on their online platform, it does not accept an additional offer until it completes negotiations with the first offer. Respondent further states that all offers have to be in writing with proof of purchase or a pre-approval letter from the lender. Respondent states that Respondent can email an asset manager and advise that there may be an interested buyer that has inquired regarding the property and may use a back-up offer if the first contract should fall through.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Blume; vote 4 yes and 1 no by Commissioner DiChiara; motion carries.

25. 2014029011

Opened: 11/26/14
First License Obtained: 8/27/08
License Expiration: 8/26/15
E&O Expiration: N/A
Type of License: Time-Share Registration
History: No Prior Disciplinary Action

Complainants were existing time-share owners who purchased time-share points during a stay with Respondent (time-share registration). During the presentation, Complainants state that the salesperson made verbal misrepresentations regarding converting points to maintenance dollars. Complainants state that it was a very lengthy presentation, and Complainants were promised free weeks but then got coupons and realized a fee would apply. Complainants would like the additional purchase cancelled and want to go back to their previous ownership.

Respondent submitted a response stating that, in April 2013, Complainants traded in a fixed week contract to purchase a contract based on points. Respondent attached affidavits from the salesperson and principal broker denying the alleged verbal misrepresentations. At that time, Respondent states that Complainants were given bonus week certificates which disclosed the terms and conditions on the certificate. Respondent states that the contract documents signed by Complainants fully disclose the agreement between Complainants and Respondent, and Respondent states that the contract gives a rescission period allowing Complainants plenty of time to fully review all of the terms of the documents. Respondent states that its investigation did not yield information substantiating Complainants' allegations, but, as a gesture of goodwill, Respondent has agreed to cancel the recent contract and reinstate the previous contract. The information in the file does not appear to substantiate a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

26. 2014029021

Opened: 12/9/14

History: No Prior Disciplinary Action – Unlicensed

27. 2014029022

Opened: 12/9/14

History: No Prior Disciplinary Action - Unlicensed

A complaint was filed against Respondents (unlicensed individuals – husband and wife) regarding potential unlicensed activity. On or about October 15, 2014, Respondents advertised on a website that “We specialize in helping good people get into the home of their dreams through our Lease Option/Rent to Own program.” The About Us section states that Respondents are a husband and wife team of real estate investors who specialize in helping people buy homes, even in difficult market conditions. The website further states, “We will work closely with you as a potential buyer, helping you to find the right home, getting you accepted by the seller, and helping you qualify to buy the home after your lease period is over...”

Respondents state that they have been real estate investors for years and just started investigating lease options in the last eighteen (18) months or so. Respondents state they received contracts from a mentor who has done lease options for over twenty-five (25) years, and they were reviewed by two (2) real estate attorneys. Respondents state that they decided to pursue their real estate licenses long before the complaint had been received. Respondents state that they purchased a course and are working through it and have a broker they want to work with after they pass the test. Respondents state that they will not handle any more lease option transactions until fully licensed.

Office of legal counsel performed additional research. It appears that the corporation was inactive - dissolved in August 2013 and changed to inactive – revoked in January 2015. There was also an LLC registered with the same name and was inactive – dissolved in August 2014. There were ten properties listed on the website printout—none of which were owned by Respondents nor sold since the advertised listing on Respondents’ website. Office of legal counsel reviewed the website again on March 26, 2015, and it appears that the same properties are still advertised, some of which are advertised as sold. It does not appear that either Respondent has obtained licensure with TREC.

Recommendation: For each Respondent - 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.

DECISION: For each Respondent, the Commission authorized a Consent Order for \$20,000 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.

Commissioner Franks made a motion to accept counsel recommendation of 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; motion seconded by Commissioner DiChiara. Friendly amendment made by Commissioner McMullen to increase Civil Penalty to \$20,000 per person 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; motion second by Commissioner Franks; motion carries.

28. 201429071

Opened: 12/12/14

History: No Prior Disciplinary Action – Unlicensed

A complaint was filed against Respondent (unlicensed) for potential unlicensed activity. Respondent is the contact person for a company who advertises on a website stating they are a multi-service company which buys, repairs, manages, and sells homes. The website states they work with buyers who move into the property then work to qualify and secure the loan.

Respondent submitted a response stating that Respondent falls under the exemption in T.C.A. § 62-13-104(a)(1)(D) which states that the chapter does not apply to, “A person acting as a receiver, trustee in bankruptcy, administrator, executor or guardian, trustee acting under a trust agreement, deed of trust or will or while acting under a court order or instrument.” There is also another person who signed as “Manager” stating that he falls under the exemption found at T.C.A. § 62-13-104(a)(1)(E) for resident managers. However, a complaint is not currently open on that individual. Respondent signed the complaint as trustee. Respondent also included a copy of two warranty deeds, one of which grants Respondent as trustee for one of the six (6) properties advertised on the website. The Warranty Deed states that the property is being conveyed to a land trust (an executory trust) with Respondent as trustee. Office of legal counsel researched the properties advertised. It appears that Respondent shows up in the sale history as Trustee for two (2) of the properties but does not even appear on the others. It appears to legal counsel that this use of a land or executory trust is not included within the exemption found at § 62-13-104(a)(1)(D) cited above.

Recommendation: 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.

DECISION: The Commission authorized a Consent Order for \$12,000 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.

Commissioner DiChiara made a motion of a Consent Order for \$12,000 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; motion seconded by Commissioner Franks; motion carries.

29. 2014029081

Opened: 12/12/14

History: No Prior Disciplinary Action - Unlicensed

A complaint was filed alleging that Respondent (unlicensed individual) is an unlicensed agent and company. Respondent's website was printed on October 14, 2014, in which approximately ten (10) properties were advertised for sale or lease purchase. The "About Us" section of the website states that the company prides itself in being a real estate investment company that provides creative win-win real estate solutions for home sellers, home buyers, and investors. It states that they buy and sell all types of real estate and work with buyers who want to secure a home and live in it now. There are applications and agreement forms that can be filled out on the website. Respondent is the contact person for the website.

Respondent sent in a response stating that Respondent is not in violation and falls under the exemption but does not specify which exemption or go into further detail.

Office of legal counsel performed additional research, and it does not appear that Respondent's company is registered with the Secretary of State. Office of legal counsel was able to research seven out of the ten properties listed on Respondent's website, and it does not appear that any of them are owned or have been owned by Respondent. Thus, it does not appear that Respondent falls under a licensing exemption based on the information obtained and within the file.

Recommendation: 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.

DECISION: The Commission authorized a Consent Order for \$20,000 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.

Commissioner McMullen made a motion of a Consent Order for \$20,000 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; motion seconded by Commissioner Blume; motion carries.

30. 2014029931

Opened: 12/5/14

First License Obtained: 4/30/99

License Expiration: 11/23/16

E&O Expiration: 7/13/15

Type of License: Firm

History: No Prior Disciplinary Action

Complainant states that she visited a resort associated with Respondent in Florida. Complainant states that the salesman asked if Complainant wanted to sell and combine two (2) time-share ownerships Complainant owned. Complainant states that Complainant was unaware that Complainant would owe more money to do this which was put on a credit card. Complainant states that no one explained the contracts to Complainant, and Complainant was never given information on maintenance fees, was told that Respondent would buy back the property. Complainant states that Complainant attempted to call and cancel the contract but was told that it could not be cancelled. Complainant wants contract cancellation.

Respondent submitted a response stating that the content and format of the complaint leads Respondent to believe that Complainant is working with an entity who is giving Complainant advice regarding cancellation of the contract. Respondent attached affidavits from staff with knowledge of the circumstances who assert that all documents and the costs associated with the purchase were explained in detail. Respondent states that it reviewed the complaint allegations and documentation regarding the purchase, and Respondent states that the signed documentation fully outlines the purchase. Respondent states that it did not find information substantiating the allegations, but, as a gesture of goodwill, Respondent agrees to cancel the purchased contract and reinstate the previous two (2) contracts. The information in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

31. 2014029951

Opened: 12/11/14

First License Obtained:

License Expiration:

E&O Expiration:

Type of License:

History: No Prior Disciplinary Action – Unlicensed

Complainant states that Complainant wired \$5,550.00 to Respondent (unlicensed individual) in August 2013 with Complainant attempting to make a resale purchase of a timeshare owned by other individuals. Complainant states that the deed sent is not valid because only one of the two grantors signed it. It appears from the documentation provided by Complainant that Complainant, the grantors of the time-share, and Respondent are all located in other states. The only apparent tie to Tennessee is that the location of the time-share appears to be in Tennessee. Respondent, by all appearances, represents that Respondent is working out of Florida. Attempts to mail the complaint to Respondent were returned with notations that the complaint was "Not Deliverable As Addressed." This appears to be a time-share resale scam, and it is likely that Respondent is not even at the address represented. A copy of the complaint has already been transmitted to the Attorney General of Florida.

Recommendation: Close.

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

Commissioner Franks made a motion to accept the recommendation of legal counsel to close; motion seconded by Commissioner McMullen; motion carries.

**Chairman Griess adjourned the meeting on Wednesday,
April 1th, 2015 at 3:09 p.m.**