



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

May 7, 2015

The Tennessee Real Estate Commission convened on Thursday, May 7, 2015 at 9:00 a.m. at 6400 Stage Road, Bartlett, TN. 38134. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Marcia Franks, Commissioner Gary Blume, Commissioner Grover Collins, Commissioner Diane Hills, and Commissioner Wendell Alexander. Absent from meeting was Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, 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 Friday, May 1, 2015. Also, this meeting has been notice on the tn.gov website since Friday, May 1, 2015.

Commissioner DiChiara made a motion to adopt the agenda; motion seconded by Commissioner Franks; motion passes unanimously.

Commission received an e-mail from Chris Edwards to be added on the agenda as an informal appearance today.

Commissioner DiChiara made a motion to add Mr. Edwards as an informal appearance to the agenda; motion dies due to lack of second.

Commissioner DiChiara made a motion to approve the March minutes; motion seconded by Commissioner Franks; Commissioner Alexander, Commissioner, Hills, and Commissioner Collins abstains from voting due to their absence at March meeting; motion passes 4 yes and 3 abstentions.

Executive Director Eve Maxwell gives Update on Educational Seminars

3 hour Educational Seminar at 6 locations was presented by Executive Director Eve Maxwell, Educational Director Ross White, and Auditor Ahmad Lewis mainly in the Davidson county area. The first hour was devoted mainly to Principal Broker's topics which included supervision expectations and audit process. The turnout was about 40 attendees at each location. During the fall TREC plans to branch out to go all over the state with the 3 hour Educational Seminar.

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 **4/30/2015**, there were **501 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 30, 2015

E&O Suspended/Insured Breakdown by Licensee Status

(4/30/2015)

Status	4/30/2015 Suspended	Percentage Suspended	Insured	Total Insured & Suspended
Affiliate	266	1%	17,535	17,801
Broker	33	1%	3,168	3,201
PB	64	2%	3,640	3,704
Timeshare	132	17%	755	887
Total	496	2%	24,788	25,593

4/30/2015

RISC (Rice Insurance)	18,812
Alternate	6,289
None	67
Total Active Licensees	25,168

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

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

Status Affiliate	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 licensees if renewal has not been paid up to date. Licensee will need to submit a tax clearance letter in order for hold to be lifted.

Commissioner Franks made a motion for TREC staff to notify affiliates and brokers if their Principal Broker license is suspended for any reason; motion was seconded by Commissioner DiChiara; motion passes unanimously.

Discussion of LexisNexis Manual

LexisNexis is in the process of producing a new version of the Tennessee Real Estate Manual. The Manual will be updated through the 2015 legislative session. As the official publisher of the Tennessee Code Annotated, this publication will contain the most accurate and up to date information available.

INFORMAL APPLICANT APPEARANCE

PRINCIPAL BROKER: Byron Salyer Banks #332284
Nashville, TN.

APPLICANT: Byron Salyer Banks #332284
Nashville, TN.

FIRM: Centennial Management, LLC. #262962
Nashville, TN.

Principal Broker, Byron Salyer Banks #332284 applying for licensure as a broker so that he can be PB of his proposed new firm Centennial Management, LLC. The firm will be located in Nashville, TN.

Applicant: Byron Salyer Banks has taken and passed the broker exam and has applied for his broker license and the firm license for Centennial Management, LLC. If approved to

continue in the licensure process, Mr. Banks would upgrade to PB once his broker license was approved for issuance. The TBI/FBI report of Mr. Banks revealed the followings:

Mr. Banks had a misdemeanor and he has completed all requirements ordered by the Courts and his probation has been completed.

After lengthy discussion, Commissioner Franks made a motion to approve Mr. Banks to continue with the licensure process to become a Broker; motion seconded by Commissioner DiChiara; motion carries.

Chairman Griess discussed Executive Director Eve Maxwell contract with TREC which is up for renewal.

Commissioner DiChiara made a motion to renew Executive Director Eve Maxwell contract for another 4 years; motion seconded by Commissioner Hills; motion carries unanimously.

Audits and Citations Discussion

If TREC’S auditor discovers earnest money that has not been deposited per terms of contract, how would the Commission like the auditor to proceed? In accordance to deposit of earnest money rule 12602.09 sub section 3 states: “Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate broker in accordance to the terms of the contract.” The range of current Civil Penalty is \$50 - \$1,000.

Commissioner DiChiara made a motion when TREC’S auditor finds earnest money has not been deposited in accordance to terms of contract that the Principle Broker will be sent a citation and fined an amount of \$50.00 Civil Penalty per day, per transaction; motion seconded by Commissioner Franks; motion passes unanimously.

All Out of State Firms-Regardless of where PB lives:

<u>State</u>	<u>Firms</u>	<u>PB</u>	<u>Affiliate</u>	<u>Broker</u>	<u>Total Indiv</u>
<u>AL</u>	<u>73</u>	<u>73</u>	<u>55</u>	<u>13</u>	<u>91</u>
<u>AK</u>	<u>22</u>	<u>22</u>	<u>13</u>	<u>0</u>	<u>35</u>
<u>AZ</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>CA</u>	<u>8</u>	<u>8</u>	<u>0</u>	<u>2</u>	<u>10</u>
<u>CO</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>
<u>DC</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>FL</u>	<u>31</u>	<u>31</u>	<u>6</u>	<u>1</u>	<u>38</u>
<u>GA</u>	<u>169</u>	<u>169</u>	<u>190</u>	<u>46</u>	<u>405</u>
<u>IA</u>	<u>3</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>3</u>

<u>IL</u>	<u>4</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>4</u>
<u>IN</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>KY</u>	<u>60</u>	<u>60</u>	<u>34</u>	<u>8</u>	<u>102</u>
<u>LA</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>
<u>MA</u>	<u>4</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>4</u>
<u>MD</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>
<u>MI</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>
<u>MN</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>MO</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>5</u>
<u>MS</u>	<u>63</u>	<u>63</u>	<u>94</u>	<u>15</u>	<u>172</u>
<u>MT</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>NC</u>	<u>86</u>	<u>86</u>	<u>17</u>	<u>23</u>	<u>126</u>
<u>NH</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>NJ</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>NM</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>2</u>
<u>NV</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>OH</u>	<u>3</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>3</u>
<u>OK</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>3</u>
<u>PA</u>	<u>4</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>4</u>
<u>SC</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>5</u>
<u>TX</u>	<u>19</u>	<u>19</u>	<u>0</u>	<u>0</u>	<u>19</u>
<u>UT</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>VA</u>	<u>40</u>	<u>40</u>	<u>61</u>	<u>12</u>	<u>113</u>
<u>WI</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>WY</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>

Commissioner Blume makes a motion to go back and reconsider the \$50 fine citation for Principle Brokers past contract date; motion seconded by Commissioner Hills; roll call vote 4 yes and 3 no.

Commissioner Alexander makes motion to defer discussion until June meeting; motion seconded by Commissioner Blume; motion passes unanimously.

Discussion of ARELLO from Attendees

Commissioner Hills stated the conference was very interesting and that across the US to Canada, we all have the similar issues and interest. Another interesting point made was there are many states that do not recognize teams in their law. For example, the state of AZ has their Department of Labor and the IRS has taken an interest in teams.

Chairman Griess found to be an interesting discussion at ARELLO was the topic of no more Hud Ones. Everyone must sign off on the paperwork 3 days prior to closing if not the closing is delayed, no more 30 day closing, and no more back to back closings starting August 1, 2015.

Assistant General Counsel Julie Cropp thought the Fair Housing department having 19 protected classes in District of Columbia was interesting topic. The other states thought TRECS mail in audit was an interesting concept.

Executive Director Eve Maxwell had not heard of the idea of using gift cards as an incentive before; she found it to be interesting topic discussed at ARELLO. If the recipient of the gift card sells their house; they have to use the company that sent the sent gift. The company is licensed in 37 states, but not in TN. Another interesting topic discussed at ARELLO was drones being used to capture photos.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

Monies Collected 4/1/15 – 4/30/15

Consent Orders Fees \$10,620.00; Reinstatement Fees \$22,540.00, E&O Penalty \$4,600.00 for a Total of \$37,760.00.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of April 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of April 30, 2015, there were 25,100 active licensees, 1,176 inactive licensees, retired licensees 7,021, broker release 385, and 551 suspended. There were 599 exams administered in month of April 2015. The total of exams taken year to date is 1,908. There were 386 approved applications in April 2015. Year to date total of approved applications 1,324. The number of licensees in retired and inactive status was 8,197. TREC total number of individual; licensees in active, inactive, retired, and broker release is 33,682. There were 3,821 active firms and 168 retired firms. Grand total of firms and retired firms 3,989.

FINGERPRINT UPDATE

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(l); since 1-1-2015 there have been 1,443 individuals fingerprinted, 281 had an indication, 916 had no indication, and 23 were retaken. In the month of April 2015 there were 62 had indication, 335 had no indication, 5 had no reads
Total 402

BUDGET

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

Commissioner Alexander made a motion to defer discussion of Applicant Tony Gainous till June meeting; motion seconded by Commissioner DiChiara; motion passes unanimously.

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: MAY LEGAL REPORT

DATE: May 7, 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. 2012023631

Opened: 12/7/12
First License Obtained: 6/5/01
License Expiration: 2/27/14
E&O Expiration: Uninsured
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

March 2013 Meeting:

Complaint opened by TREC based on information received which stated that Respondent (affiliate broker) had been arrested for theft of over \$10,000 and Respondent had entered into a judicial diversion agreement regarding the charge. Based on the documentation received, it appears that, in early 2012, Respondent gave a conditional plea of nolo contendere (no contest) to the felony charge and the court deferred further proceedings without entering a judgment of guilty. Instead, Respondent entered a judicial diversion program, which, in part, provided for a three (3) year probationary period. During that probationary period, Respondent is required to complete a number of items. If Respondent violates any condition of Respondent's probation, the court may enter an adjudication of guilt and proceed accordingly. If, at the end of the probationary period, Respondent has successfully completed the diversion program, the court will discharge Respondent and dismiss the proceedings, after which point, it is possible for Respondent to petition for expungement.

Respondent submitted a response stating that there was no conviction with regard to this legal matter, and, therefore, Respondent was not required to inform TREC of the situation based on TREC's rules and regulations. Respondent appears to be correct that T.C.A. § 62-13-312(f)'s notification requirement within sixty (60) days of conviction does not apply at this point in time since, at this time, there has not been a conviction. However, it is possible under the diversion agreement that, if Respondent violates a term of Respondent's probation within the probationary period, the court could enter an adjudication of guilt, triggering the notification requirement.

Recommendation: Consent Order for litigation monitoring.

Respondent's attorney contacted legal counsel for the Commission and submitted copies of an Order of Dismissal for the charge as well as an Order of Expungement of Criminal Offender Record for Respondent.

New Recommendation: Dismiss.

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

Commissioner Collins made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Franks; motion passes unanimously.

2. 2014029111

Opened: 12/18/14

First License Obtained: 6/15/09

License Expiration: 6/14/15

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

**License is in inactive status*

A complaint was filed by Respondent (affiliate broker)'s previous principal broker upon submitting a broker release form. Complainant states that Respondent engaged in property management and failed to submit rents in the amount of approximately \$6,000 to the office. Complainant states that Respondent set up a false email account for the owner and sent a fraudulent e-mail representing that Respondent was the property owner requesting return of the security deposit which was held by the firm. Complainant states that Respondent justified the missing rent by stating that the tenants could not pay rent and the owner wanted to help the tenants during a rough time. Complainant states that a police report was also filed. Complainant requests revocation of Respondent's license. Complainant released Respondent from the firm, and Complainant paid the owners back for the amounts stolen by Respondent personally. Respondent did not respond to the complaint.

Office of legal counsel followed-up with the Complainant and the police department. It appears that Respondent has been charged with theft of property from \$1,000 to \$10,000. Complainant submitted copies of hand written receipts on various pieces of paper which the Complainant obtained from the tenant showing payments made to Respondent. It does not appear from the information provided that Respondent deposited any of the money collected with the firm except for the initial security deposit which was later withdrawn through Respondent's fraudulent e-mail, and it appears that Respondent kept almost all of the money collected.

Recommendation: Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(1) (making any substantial and willful misrepresentation), (5) (failing to account for money coming into the licensee's possession that belongs to others), (11) (accepting commission or valuable consideration from any person other than broker), (14), and (20) (improper, fraudulent, or dishonest dealings) and 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission).

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

Commissioner Franks made a motion to accept legal counsel recommendation of a Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(1) (making any substantial and willful misrepresentation), (5) (failing to account for money coming into the licensee's possession that belongs to others), (11)

(accepting commission or valuable consideration from any person other than broker), (14), and (20) (improper, fraudulent, or dishonest dealings) and 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission); motion seconded by Commissioner Collins; motion passes unanimously.

3. 2014029441

Opened: 12/18/14

History: No Prior Disciplinary Action - Unlicensed

TREC was contacted by a licensee, who states that Respondent (unlicensed company) is an out of state company that solicits real estate agents in Tennessee. Complainant states that Respondent is offering to prospect for sale by owner properties and expired listings and set listing appointments for agents. Complainant states that the firm guarantees participating agents will receive multiple listing appointments each week and guarantees closures on a certain number of transactions based on a purchased program level. Complainant states that there is a minimum \$5,000 up front fee for 10 listings plus a referral fee of 20% upon each closing. Complainant states that Respondent advised that their associates were not licensed in the state of Tennessee, stating they do not have to be licensed because they work as a relocation company. Complainant attached an email Complainant received from Respondent regarding their prospective business arrangement. Respondent's website was printed on October 15, 2014 stating the firm calls every for sale by owner and expired listing in the market three to five times per week and sets appointments until an agent received ten (10) listings. The website further states, "Our agent telemarketers are trained like real estate coaches so they know what to say in every situation so then it is a simple 'numbers game' on our end and conversion game on your end." It appears that Respondent is soliciting listings in exchange for compensation without proper licensure from TREC.

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 voted to accept the recommendation of legal counsel.

Commissioner Hills made a motion to accept legal counsel recommendation of a Consent Order in the amount of \$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 Franks; motion passes unanimously.

4. 2014029751

Opened: 12/15/14

First License Obtained: 2/27/07

License Expiration: 2/26/17
E&O Expiration: 1/1/17
Type of License: Broker
History: No Prior Disciplinary Action

5. 2014029781

Opened: 12/15/14
First License Obtained: 5/13/03
License Expiration: 7/23/15
E&O Expiration: 1/1/17
Type of License: Broker
History: No Prior Disciplinary Action

A complaint was filed by a potential buyer against Respondents (Respondent 1 is broker who was sellers' agent; Respondent 2 is also a broker who was the principal broker of the firm from on or about February 10, 2014 through on or about August 27, 2014). Complainant states that the offer on a tract of land was accepted contingent upon financing. Complainant states that the closing date was extended due to financing. Complainant states that the lender denied the loan. Complainant states that Complainant's parents offered to purchase the property for Complainant, and this was discussed with Respondent 1, but the original contract was not changed. Complainant alleges that Respondent 1 insisted on using a specific title company because they had previously done a title search from a failed contract, but Complainant chose to do an independent title search with a different title company. Complainant states that Respondent 2 called requesting that Complainant use the original title company; and Complainant felt that Respondents were trying to hide something. Complainant states that the second title company found that there were multiple liens on the property and a hundred year lease. Complainant states that this was not disclosed by sellers or Respondents' firm. Complainant notified Respondent 1 that Complainant was withdrawing the offer due to the financial contingency clause. Complainant states that the release was signed in September 2014, but sellers have refused to sign the release, and the earnest money has not been refunded.

A collective response was filed by both Respondents as well as the current principal broker of the firm (who became principal broker on or about August 27, 2014 and who is the Respondent in the complaint 2014029771 below). Respondents state that the delay of closing caused concern for the sellers because one deal had already fallen through. Respondents state that Complainant's lender contacted Respondent 1 about a title company, and Respondent 1 gave the lender the title company's name. Respondents state that the title company had already done the previous title search without getting paid since that deal fell through, and Respondent 1 was merely trying to help the title company recoup some of their costs. Respondents state that the contract listed that title company as the closing company, and it is not unreasonable to expect that the title company on the contract would complete the transaction. Respondents state that, when Complainant advised Respondent 1 that Complainant's parents would purchase the land, Respondent forwarded an amendment, but it was never returned. Respondents further state that it was

explained to Complainant that the original title company had done a title search twice and that the title company may be able to match the new title company's cost. Respondents state that Respondent 2 contacted Complainant's mother to explain that having two (2) title companies performing the same search created an added expense. Respondents state that Complainant's mother asked Respondent 2 for the names of the lien holders and offered to pay them directly then pay seller the difference, but Respondent 2 called to explain that payment of the liens must go through the title company to ensure the liens were released. Respondents state that Respondent 1 drove a copy of the purchase offer and the original lease termination that had been signed by the lessee to the new title company. Respondents state that Respondent 1 spoke with a representative at the new title company and explained that the original title company had performed the search twice and had already negotiated lesser payoff amounts regarding the liens. Respondents state that the new title company agreed to contact the original title company. Respondents state that, while the lease could have been considered an adverse condition, a lease termination had already been signed clearing the potential "cloud" on the title, and Respondents do not believe that liens must be disclosed to potential buyers because they must be cleared at closing in order for the seller to convey title. Respondents state that Respondent 1 did not feel that it was appropriate to disclose the sellers' financial situation with a potential buyer. Respondents state that the Earnest Money Disbursement and Mutual Release form was received on September 29, 2014. Respondent states that the sellers initially refused to sign, feeling that they had been lied to because it was mentioned that the property would be bought for cash and then the loan denial was cited as the reason for cancellation. Respondents state that the principal broker debated whether or not to release the earnest money upon reasonable interpretation of the contract per Rule 1260-02-.09 but, because of the seller's anger, decided to explain the interpleader process. Respondents state that Complainant expressed concern over the length of time that an interpleader would take. Respondents state that, in October, the principal broker spoke with the sellers, who agreed to sign the release when they returned to town. As agreed, Respondents state that the sellers signed the release, and the earnest money was immediately sent to Complainant.

Recommendation: Dismiss.

DECISION: The Commission voted to defer a determination on the matter until the June 2015 meeting.

Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; Commissioner DiChiara seconded motion. Commissioner Franks withdraws current motion and made a new motion to delay case till next month; Commissioner DiChiara seconded motion; Commissioner Alexander amends motion by adding the next case to be deferred till June 2015 meeting; Commissioner Franks and Commissioner DiChiara agree to amendment; motion passes unanimously.

**6. 2014029771
Opened: 12/15/14**

First License Obtained: 3/19/99
License Expiration: 8/19/16
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 a potential failure to supervise Respondent 1 above. Respondent was the principal broker following Respondent 2 above, beginning August 27, 2014 to present.

Respondent was also included in the joint response outlined above.

Recommendation: Dismiss.

DECISION: The Commission voted to defer a determination on the matter until the June 2015 meeting.

Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; Commissioner DiChiara seconded motion. Commissioner Franks withdraws current motion and made a new motion to delay case till next month; Commissioner DiChiara seconded motion; Commissioner Alexander amends motion by adding the next case to be deferred till June 2015 meeting; Commissioner Franks and Commissioner DiChiara agree to amendment; motion passes unanimously.

7. 2014029851

Opened: 12/8/14

History: No Prior Disciplinary Action - Unlicensed

A complaint was filed by a consumer stating that Respondent (unlicensed individual) is actively advertising as a local manager for vacation rentals in Tennessee. Complaint states that Complainant sought out services, but Respondent could not show licensure. A copy of the company website was printed on or about November 18, 2014, which advertised a Tennessee city as one of the cities available for rental, and Respondent is listed as the local manager. There appeared to be no Tennessee properties that were actually listed for vacation rental on or about November 18, 2014. The about us section states that the company is a full-service vacation rental manager utilizing online marketing, professional sales staff and high-tech to improve your rental business returns.

Respondent stated that the firm is applying for a vacation lodging services license and has acquired the services of a local designated agent.

Office of legal counsel reviewed the website, and as of April 10, 2015, there were multiple properties listed in Tennessee, and Respondent remains listed as the local manager. It appears that the company submitted an application for a vacation lodging

services firm license with Respondent as the designated agent in February 2015 but is not licensed with TREC.

Recommendation: Consent Order for \$1,000 for unlicensed activity in violation of TCA § 62-13-104(b)(2) stating that each vacation lodging service shall be required to have a vacation lodging service firm license and (b)(3)(B)(i) stating that each vacation lodging service firm shall designate an individual to be licensed as a designated agent.

DECISION: The Commission voted to authorize a Consent Order for \$16,000 for unlicensed activity in violation of TCA § 62-13-104(b)(2) stating that each vacation lodging service shall be required to have a vacation lodging service firm license and (b)(3)(B)(i) stating that each vacation lodging service firm shall designate an individual to be licensed as a designated agent said Consent Order to include an order to cease and desist all unlicensed activity.

Commissioner Hills made a motion to accept legal counsels recommendation of Consent order for \$1,000.00 for unlicensed activity in violation of TCA § 62-13-104(b)(2) stating that each vacation lodging service shall be required to have a vacation lodging service firm license and (b)(3)(B)(i) stating that each vacation lodging service firm shall designate an individual to be licensed as a designated agent said Consent Order to include an order to cease and desist all unlicensed activity; motion seconded by Commissioner DiChiara. Commissioner Franks amends motion by making the Consent order \$1,000.00 per location (16) for a total of \$16,000 for unlicensed activity in violation of TCA § 62-13-104(b)(2) stating that each vacation lodging service shall be required to have a vacation lodging service firm license and (b)(3)(B)(i) stating that each vacation lodging service firm shall designate an individual to be licensed as a designated agent said Consent Order to include an order to cease and desist all unlicensed activity; motion seconded by Commissioner Blume; motion passes unanimously.

8. 2014029891

Opened: 12/12/14

First License Obtained: 6/23/14

License Expiration: 6/22/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

TREC opened a complaint based on information received regarding a possible unlicensed branch office operated by Respondent (affiliate broker). Information was provided from the Tennessee Secretary of State for an LLC in which Respondent is listed as the Registered Agent. It also appears that the member count is one (1).

Respondent responded stating that Respondent is a licensed affiliate broker with a licensed real estate firm, and Respondent tries to do everything above board. Respondent is unclear regarding the allegations of the complaint.

There is an e-mail in the file from a TREC staff member explaining that two (2) staff members spoke with both Respondent and Respondent's principal broker (the next Respondent) and clarified any questions regarding the complaint. The staff member states that both Respondent and the principal broker are fully aware of the allegations.

A copy of the LLC's website was printed on December 12, 2014. There is a tab entitled "Sell Your Home," which states, "Our company specializes in solving real estate problems and we can help correct almost any financial situation at no cost to you...Our real estate specialties include: foreclosure avoidance, debt removal or renegotiation, refinancing homes in foreclosure, sell your property without realtor commissions, resolving title issues, relocation assistance, vacant properties, environmental or structural problems, apartment and house rental specialists, bankruptcy, over-leveraged properties, judgments or outside liens, little or no equity sales...here is a short list of what we can do for you: buy your property today for top dollar...refinance your existing mortgage...work out a payment plan with your existing lender...negotiate debt with existing creditors...We are real estate professionals helping provide solutions to your existing real estate problems..." Further, there is a phone number listed. The in state phone number is not the number on file with TREC for either Respondent or Respondent's firm. The FAQ page asks a question, "Are you REALTORS?" The answer states that "[Company Name] is a real estate investment and solution company. One of our owners is a Realtor in Tennessee, but we act as property acquisition specialists that buy houses; we want to BUY your home. There is never a charge or a commission when we buy your property. However if listing your property is the best solution then we can and will connect you with a recommended licensed agent." Another FAQ questions asks if the company will pay a referral fee, and the answer states, "YES! Referrals are our number one means of purchasing property. Maybe there is a vacant house on your street or you know someone who needs and wants to sell their home, please refer them to us! Better yet, provide us their information and we will do all the research and make an offer. In some cases we will pay you up to \$500 for a referral! Contact us directly to discuss the terms." Further, the home selling guide states the company is a full service professional residential redevelopment company operating in Tennessee and out of state, and it is proud to provide real estate services in the following areas: Residential Redevelopment, Short Sales/Loss Mitigation, Real Estate Investment, Foreclosure Solutions. The company advertises that it will buy a house cash, sold as is, no commissions, and no seller paid closing costs. It appears that there is no reference to Respondent specifically on the website; however, it is clear that Respondent is operating the LLC based on the Secretary of State's documents. There is no reference to Respondent's license firm on the website. Further, Respondent's LLC appears to be offering referrals to unlicensed individuals.

Recommendation: Consent Order in the amount of \$1,500 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-302 (employment of broker of unlicensed broker or broker in another state), 62-13-309(a)(1)(A) (each office shall have a real estate firm

license), and Rule 1260-02-.12 (advertising rule), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to authorize a Consent Order in the amount of \$3,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-302 (employment of broker of unlicensed broker or broker in another state), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), and Rule 1260-02-.12 (advertising rule), 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 with the exception of Consent Order in the amount of \$3,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-302 (employment of broker of unlicensed broker or broker in another state), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), and Rule 1260-02-.12 (advertising rule), 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 passes unanimously.

9. 2014029911

Opened: 12/12/14

First License Obtained: 6/3/09

License Expiration: 6/2/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014029891 above (hereinafter "affiliate broker").

Respondent submitted a response stating Respondent supervises the activities of the affiliate broker, meeting on a regular basis for training and discussion of the affiliate broker's business. However, Respondent states that it is not possible for a principal broker to supervise every interaction that an affiliate broker has on a daily basis. Respondent states that the affiliate broker is unaware what the actual allegation is. Respondent states that Respondent is willing to take whatever action is needed to address the matter with the affiliate broker and correct whatever the issues are, but Respondent needs to know the details of what the allegations are.

Recommendation: Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to authorize a Consent Order for \$2,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 Alexander made a motion to accept legal counsel recommendation with the exception of the Consent Order for \$2,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 Hills seconded motion; motion passes unanimously.

10. 2014029971

Opened: 12/16/14

First License Obtained: 8/22/02

License Expiration: 3/15/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Complainant was the seller, and Respondent (broker) was buyer's agent. Complainant states that, upon inspection, it was discovered that the home needed a new roof, and the bank released \$10,000 to Respondent's firm to be put in an escrow account for roof repair. Complainant states that the money given directly to the buyer, who was supposed to replace the roof and give receipt to Respondent. Complainant states that the roof has not been replaced, and the property closed. Complainant states that Complainant got three (3) estimates for \$9,000, and it was not agreed that the buyer could keep any of the funds not spent on the roof.

Respondent submitted a response including the home inspection report, an email confirmation from the bank and deposit slip showing that the money was wired into the firm's escrow account as well as a current bank statement showing the money was in escrow at the time of the response. Respondent states that the money has not been given to the buyer, and the firm intends to disburse the funds per the Escrow Agreement. Respondent states that the roof replacement was scheduled contingent upon weather, and attached a letter regarding same. Respondent states that, once the invoice is received, the firm will pay the invoice and disburse the remainder to Complainant. Respondent states that it was buyer's discretion regarding the timeframe of the roof replacement, and there was no time limit in the Escrow Agreement. Respondent further states that Respondent spoke to Complainant's agent regarding the roof installation and emailed a copy of the estimate.

Complainant contacted TREC soon after filing the complaint requesting that the complaint be dropped, stating that the repairs would be done that week, and Complainant

was wrong in stating that the buyers had the money. Respondent further submitted a copy of the invoice and check paid to the roofer and copy of check made payable to Complainant for the balance.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner DiChiara seconded motion; motion passes unanimously.

11. 2014030731

Opened: 12/18/14

First License Obtained: 7/5/91

License Expiration: 9/17/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker (hereinafter "broker") in case number 2014029971 above. Respondent states that the broker approached Respondent, and Respondent confirmed that the broker should be corresponding directly with Complainant's agent. Respondent further confirmed that the bank transferred the \$10,000 into the firm's escrow account, which was still in the account at the time of the response. Respondent further confirms that the roof was scheduled for replacement, and there was no timeline listed on the escrow agreement.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Franks seconded motion; motion passes unanimously.

12. 2014030261

Opened: 12/9/14

First License Obtained: 7/12/04

License Expiration: 3/19/16

E&O Expiration: 1/15/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant states that Respondent (affiliate broker) went to Complainant's home to inform Complainant that the home had been foreclosed upon and alleges that Respondent made a monetary offer to move out by November 15, 2014. Complainant states that

Complainant met with Respondent at Respondent's firm on November 6, 2014 to sign a move out agreement. Complainant alleges that Respondent stated that, if Complainant moved out on or before the move-out date, the firm would give Complainant a cashier's check. Complainant states that movers were hired to be out by November 15, and alleges that Respondent advised on or about November 12 that the check was in the mail. Complainant states that Complainant could not get in contact with Respondent on the day of move-out, and Complainant refused to leave the home. Complainant states that Respondent told Complainant that Respondent is not responsible for the check, and Complainant alleges unprofessional conduct and violations of the Broker Act. As a relevant aside, this complaint was filed on November 19.

Respondent states that a large portion of Respondent's business is listing corporate-owned/foreclosed homes. Respondent works closely with Respondent's principal broker in managing the assets from the time of foreclosure through the time of sale, including assisting the corporate owners/banks through the eviction process. Respondent states that often it is discovered that there is an occupant living in a foreclosed home, and the bank directs Respondent to communicate an offer of relocation assistance. Respondent states that Respondent spoke with Complainant, who was not aware of the foreclosure. Respondent further states that Respondent communicated the bank's offer of relocation assistance to Complainant, and it was negotiated and agreed upon via an executed Move-Out Agreement that Complainant would receive \$10,000 to vacate by November 15. Respondent states that it was explained to Complainant that the bank typically takes 7-10 business days to process the check, and it is likely that it would not arrive by November 15, but Respondent and Complainant could exchange the property once the check was received. Respondent states that the bank confirmed the check was being processed on November 7. After several conversations and follow-up with Complainants and the bank, Respondent states that the check was received November 19, but Complainant was unable to complete the exchange until November 24. A copy of Complainant's signature on the check stub and acknowledgment of receipt on November 24 was provided in the file.

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; Commissioner Hills seconded motion; motion passes unanimously.

13. 2014030271

Opened: 12/9/14

First License Obtained: 3/3/92

License Expiration: 2/8/17

E&O Expiration: 1/15/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014030261 above (hereinafter “affiliate broker”). Respondent submitted a timeline of events and states that the affiliate broker and Respondent worked on the property together, with the affiliate broker having close contact with the previous Complainant and Respondent working with the bank. Respondent states that the affiliate broker advised the previous Complainant during the month long process, and it was not under the affiliate broker’s control how quickly the bank processed, generated, and delivered the check. Respondent states they were trying to assist and not hurt the previous Complainant. Respondent states that they remitted the funds as soon as they were received and previous Complainant vacated the property.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Franks seconded motion; motion passes unanimously.

14. 2014030281

Opened: 12/16/14

First License Obtained: 10/25/00

License Expiration: 3/2/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was a potential buyer, and Respondent (affiliate broker) represented the seller. Complainant states that seller accepted Complainant’s offer, and Complainant had a home inspection performed. Complainant states that, after the inspection report was shared with Respondent, Complainant received notice that the home was no longer for sale. Complainant further states that Respondent would not reimburse Complainant for the cost of the inspection.

Respondent submitted a joint response with Respondent’s principal broker and stated that Respondent was informed by the seller that the owners of the home were the seller and his now deceased mother, and the mother’s estate was pending in probate. Respondent states that a title company informed Respondent that the property could be sold and closed before probate was closed as long as the proceeds were placed in escrow until probate closed. Respondent states that after Complainant’s inspection, Complainant’s agent provided an inspection contingency removal with a list of repairs and a summary, but not the report. Respondent contacted the seller and states that, at that time, Respondent learned that the deceased mother had adopted two minor children who needed a guardian appointed by the court, which would delay closing. Respondent states that Respondent contacted Complainant’s agent asking if Complainant would be willing

to lease or extend the contract until the probate issue was resolved. Respondent states that Complainant chose to look for another house and asked if the seller would consider a reimbursement for the home inspection. Respondent states that the seller was unwilling to bear the cost of the home inspection. Respondent further states that the seller signed a release prepared by Complainant's agent, and the earnest money was returned to Complainant. Respondent understand the unfortunate timing of the situation and states that it was unforeseen and out of Respondent's control.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner DiChiara seconded motion; motion passes unanimously.

15. 2014030291

Opened: 12/15/14

First License Obtained: 8/29/79

License Expiration: 11/13/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014030281 above. Respondent was included in the joint response outlined 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; Commissioner DiChiara seconded motion; motion passes unanimously.

16. 2014030301

Opened: 12/15/14

First License Obtained: 3/24/03

License Expiration: 6/29/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

A complaint was filed by a buyer, stating that Respondent (affiliate broker), who was seller's agent, gave false information regarding the size of land of the property listing as advertised on realtor.com and Zillow.com, stating the land was listed as 1.46 acres but

was actually 1.43 acres. Complainant further states that Respondent showed Complainant false property lines when showing the home and failed to ensure that the seller had a land survey done when the seller divided the property in the past. Complainant further states that the most recent survey on file with the county was a survey from 2002. Complainant further states that Respondent failed to ensure that the property was divided properly so that the waterline and meter was on the listed property. Complainant states that Respondent failed to ensure that the electricity and water were cut off from the barn, which the Complainant did not purchase. Complainant further states that Respondent failed to ensure that the taxes were re-assessed properly to exclude the barn. Complainant states that all the septic tank fill lines are on the adjoining property as well. Complainant alleges that Respondent failed to address Complainant's issues with the property and states that Respondent told Complainant's agent that Complainant should take the issues up with the seller directly. Complainant does not trust the seller, states the seller has been untruthful, and that Complainant has been harassed by the seller's family. Complainant states that Complainant overlooked the neglected yard and improper light bulbs in the light fixtures and the fees associated with maintenance, but the other issues noted are illegal. Complainant alleges that Respondent was not truthful, which resulted in fraud. Complainant further alleges that Respondent failed to disclose the aforementioned property conditions. Complainant states that the seller and seller's family continue to harass Complainant, as they are the owners of the adjoining property. Complainant further states that Respondent's spouse, an attorney, sent Complainant a letter stating that if Complainant did not stop contacting Respondent, Respondent would file a restraining order, which Complainant states is a conflict of interest and harassment.

Respondent submitted a response stating that the MLS sheet for the property stated the acreage was 1.46+/-, which was taken from the property assessor tax card. Respondent further states that Complainant signed a Disclaimer Notice which states that boundary lines, easements, encroachments, and acreage advertised should be verified by buyer. Respondent further denies showing the home to Complainant, stating that Complainant was represented by an agent, as demonstrated on the confirmation of agency status form. Respondent further states that the property is located on a parcel that was listed with the option to purchase the neighboring parcel where the barn and trailer are located. Respondent states that the parcels have always been separate, per the survey recorded in 2002, and the seller did not divide the property. Respondent denies having knowledge of the water and electricity lines, stating that Complainant's agent called two days after closing stating that they were connected to the barn, and Complainant turned off the breaker and cut the wire. Respondent states Respondent called the seller who forgot about it and stated he would cap off the wires. Respondent further states that the Disclaimer Notice states that utility connections, septic system capability and related services are items that the buyer should confirm. Respondent states that Complainant and seller discussed some items before Respondent arrived at closing, but Respondent has no knowledge of what was discussed. Respondent states that Respondent has responded each time to Complainant's agent, but Complainant began contacting Respondent directly. Respondent states that Respondent advised that Complainant should be communicating through Complainant's agent. Respondent states that Complainant has

sent emails containing threats, foul language, and disparaging remarks about Respondent. Respondent acknowledges that Respondent's spouse sent a letter requesting that Complainant stop contacting Respondent. Respondent further states that Complainant was given the opportunity to inspect the property before closing and signed the Buyer's Final Inspection Form, agreeing to accept the property in its present condition. Respondent further states that Complainant executed the Seller's Property Condition Disclosure Update, attesting that all requested repairs were made.

Complainant submitted additional information including an email from Complainant's agent stating that issues kept arising after closing, and Complainant's agent reached out to Respondent requesting assistance with issues surrounding septic inspection, electrical bootlegging, water meter misplacement, bush hogging, property line misrepresentation, trailer removal, etc. Complainant's agent states that multiple texts were sent to Respondent from September 8 through September 24, but Respondent stated it was between seller and Complainant. Complainant further states that Respondent accompanied Complainant during the final walk through because Complainant's agent could not be there and pointed out the property lines and where the septic fill lines were. Complainant further states that the property was originally listed to include the barn and states that Respondent took the listing down and re-listed it to divide the property. Complainant denies using threats and foul language.

Respondent submitted an additional response stating that the "bootlegging" of electricity was an oversight of the seller who does not live in Tennessee and forgot that the barn was not part of the sale. Respondent states that the seller was contacted and stated seller would cap it though Complainant had already clipped the wire and flipped the breaker. Respondent states that the seller marked where the septic was located prior to closing at Complainant's request, but the rain had washed the markings away, so Respondent pointed out the location to Complainant. Respondent states there were several issues—not part of the contract—that were discussed between seller and Complainant before closing that Respondent was not present for. Respondent states that Complainant's agent sent texts regarding these issues, but Respondent advised Respondent was not present for those conversations. Respondent further states that Complainant's agent did not email after closing, and all emails were received by Complainant. While it is possible that Complainant could pursue a cause of action against the former owner of the property in a court of law to determine if there was wrongdoing by that individual, it does not appear that there was a violation of TREC's laws and/or rules 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; Commissioner Collins seconded motion; motion passes unanimously.

**17. 2014030311
Opened: 12/15/14**

First License Obtained: 11/8/05
License Expiration: 9/30/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014030301 above (hereinafter "affiliate broker"). Respondent states that Respondent reviewed the file, and it appears that the affiliate broker followed protocol in representing the seller in this transaction. Respondent states that Respondent and the affiliate broker have advised Complainant to contact Complainant's agent. Respondent states that Respondent has never been contacted by Complainant's agent. Respondent further states that Respondent has already answered a complaint filed with the firm's franchise, as well, and that complaint was dismissed. Respondent further states that Respondent has consulted an attorney due to the harassment and continuous emails from Complainant and hopes to resolve the matter quickly. Respondent included the transaction file along with the response.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner DiChiara seconded motion; motion passes unanimously.

18. 2014030321

Opened: 12/16/14
First License Obtained: 2/19/80
License Expiration: 5/13/17
E&O Expiration: 1/1/17
Type of License: Broker
History: 2005028741 Closed with Letter of Instruction.

Complainant entered into a property management agreement with Respondent (broker) in March 2014 for the subject property. Complainant states that Respondent did not forward rent monies in a timely fashion. Complainant further states Respondent refused to send copies of rental agreements, applications, or other documents. Complainant states that Respondent did not communicate regarding repairs and states that Complainant had to find a repairman to fix a sewer problem although Complainant lives out of state. Complainant further states that Respondent emailed in September 2014 cancelling the agreement but has failed to send October 2014 rent and the security deposit. Complainant states that an unsigned check was received on or about October 21, 2014, but Complainant returned it to Respondent requesting a new check be sent via overnight mail.

Respondent states that Complainant entered a listing agreement in May 2012 to list the subject property for sale, and Complainant attempted to sell the property with three different brokerages before asking Respondent with assistance to rent the property. Respondent states that Respondent personally owns rental property that Respondent manages under a d/b/a company. Respondent told Complainant that Respondent's firm does not allow agents to manage property, but, against Respondent's better judgment, Respondent agreed to rent the property and help Complainant. Respondent states that they entered into a rental agreement in January 2014, and the property rented in March 2014. Respondent states that when the tenant paid rent, it was forwarded to Complainant. Respondent states that the tenant began to pay rent sporadically, and Respondent forwarded rent to Complainant when received, although it was not consistent. Respondent states that Complainant traveled out of the country frequently, and Respondent communicated by email. Respondent states that Complainant would get upset if emails were not responded to daily and states that Complainant's demands were exhausting. Respondent states that copies of all requested documents were forwarded but not received quickly enough for Complainant. Respondent further states that the tenant had several maintenance issues, and Respondent contacted repairmen for Complainant. Respondent states that Complainant approved all invoices. Respondent acknowledges that Respondent cancelled the agreement with Complainant and did not overnight the check as requested. Respondent denies withholding monies that belong to Complainant. Respondent states that Respondent has always acted in a professional manner. Respondent states that Respondent has listed this property and another property multiple times, and Complainant has repeatedly requested to cancel listing agreements but did not reciprocate when Respondent wanted to cancel the management contract. Respondent believes that Complainant would not have requested Respondent's services over and over again if Respondent's behavior was unprofessional. Respondent states that Respondent has been an agent for over twenty-five years and has never had a complaint. Respondent is aware of the rules, regulations, and laws governing the profession. Respondent states that, in an attempt to satisfy this client, Respondent strayed outside the parameters allowed by Respondent's broker and regrets the lapse in judgment.

Office of legal counsel requested additional documentation. It appears that the Property Management Agreement was between Complainant and Respondent, which included a 10% commission of rents and/or income plus 100% of the first month's rent for all new tenants and leases. Rent amounts received by Respondent were to be paid to Complainant by the 10th day of each month. The Lease Agreement provided was between a tenant and a management company (not consistent with Respondent's firm name) and began March 12, 2014 for a twelve month term, with rent in the amount of six hundred fifty dollars (\$650) per month due by the 5th day of each month or the assessment of a sixty-five dollars (\$65) late charge. The lease also provided for a refundable six hundred fifty dollar (\$650) security deposit with one hundred dollars (\$100) withheld for an administration fee. It appears that deposits, including the security deposit, and payments were made to and from the accounts of the management company. It appears that rent was received in varying amounts. Initially, Respondent did not disburse the funds to Complainant until the full \$650 was received from tenant.

However, in September and October, funds were disbursed to Complainant within a few days of receipt. Respondent also created a note for the file stating that all documents were mailed to Complainant on October 23, 2014 along with the final check, which was returned due to no signature and reissued on November 12, 2014. It does not appear that Respondent is withholding funds from Complainant. However, it does appear that Respondent was operating an unlicensed property management firm.

Recommendation: Consent Order with a civil penalty in the amount of \$1,500 for violation of T.C.A. §§ 62-13-312(b)(11) (accepting valuable consideration from any person except licensed broker with whom licensee is affiliated), (14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license) and Rule 1260-02-.09 subsection (2) (affiliate broker shall pay over to broker all deposits and earnest money), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to authorize a Consent Order with a civil penalty in the amount of \$3,000 for violation of T.C.A. §§ 62-13-312(b)(11) (accepting valuable consideration from any person except licensed broker with whom licensee is affiliated), (14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license) and Rule 1260-02-.09 subsection (2) (affiliate broker shall pay over to broker all deposits and earnest money), 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 Collins made a motion to accept counsels recommendation of Consent Order with a Civil Penalty in the amount of \$1,500 for violation of T.C.A. §§ 62-13-312(b)(11) (accepting valuable consideration from any person except licensed broker with whom licensee is affiliated), (14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license) and Rule 1260-02-.09 subsection (2) (affiliate broker shall pay over to broker all deposits and earnest money), 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; substitute motion made by Commissioner Blume to increase civil penalty to \$3,000; motion seconded by Commissioner DiChiara; motion passes unanimously.

19. 2014030331

Opened: 12/15/14

First License Obtained: 3/10/08

License Expiration: 5/23/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No prior disciplinary action.

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014030321 above (hereinafter "broker"). Respondent states that Respondent spoke with the broker after receiving the complaint and is confident that this was a one-time occurrence. Respondent states that, per the broker's agreement with the firm, the brokerage does not allow for management of rental properties by associates, unless owned by the associate. Respondent states that Respondent was unable to supervise the events because Respondent was unaware of the activity but would have put a stop to it immediately. Respondent states that Respondent will readdress this issue with all associates. In the broker's response outlined above, the broker admits that the firm did not allow agents to manage property, that the broker agreed to rent the property for Complainant against the broker's better judgment, and that the broker strayed outside the parameters allowed by Respondent (the broker's principal broker). It does not appear that Respondent had knowledge of the broker's outside management activity until receipt of the complaint, at which time Respondent states that Respondent addressed the issue with the broker.

Recommendation: Dismiss.

DECISION: The Commission voted to authorize a Consent Order with a civil penalty in the amount of \$50 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 the recommendation of legal counsel to dismiss; Commissioner Collins seconded motion; roll call vote 3 yes and 4 no, motion fails. Commissioner DiChiara makes a motion of Civil Penalty of \$1000 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 Alexander seconded motion; Commissioner Collins makes a substitute motion of Civil Penalty of \$50 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 Franks; roll call vote 4 yes and 3 no, motion passes.

20. 2014030341

Opened: 12/11/14

First License Obtained: 2/5/13

License Expiration: 2/4/17

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Complainant entered into an exclusive buyer's representation agreement in August 2013 with Respondent (broker), and Complainant states that Complainant felt reluctant to do

so. Complainant states that Respondent assured Complainant that Complainant could cancel the contract at any time if unsatisfied with services. Complainant states that Complainant was unhappy with the homes Respondent showed Complainant and requested to cancel the representation in October 2013. Complainant provided a copy of an email requesting to cancel the contract due to Complainant's disinterest in the homes that Respondent showed. Complainant states that Complainant did not hear from Respondent until September 2014 when Complainant received a demand letter to pay Respondent and the firm \$7,500 for purchasing a property through another agent. Complainant states that, several months later, after renting Complainant's current home, Complainant was able to purchase a property at a higher price than the amount stated in the representation agreement with Respondent. Complainant alleges that Respondent made misrepresentations, coerced Complainant to sign a contract, failed to be loyal to Complainant's interest, and the principal broker failed to supervise Respondent.

Respondent denies any coercion of Complainant to enter the representation agreement, which was explained to Complainant and is a customary practice. Respondent further states that Respondent followed Complainant's instructions in a loyal manner. Respondent states that Respondent does not recall Complainant's request to cancel, but Respondent received no further communication from Complainant. Respondent states that several properties were shown to Complainant although Complainant had already signed a lease with an apartment, and Respondent's last recollection was that Respondent would be on standby for any properties the client was interested in. Respondent states that Respondent was going through files in 2014 and discovered that Complainant purchased a property through another agency in February 2014. Respondent states that Complainant was not diligent in honoring the agreement, specifically, Complainant's communication of position and intent.

The Buyer's Representation Agreement was submitted for a single family home in one of two counties for up to \$200,000 approximately. The agreement was for 3% commission of total sale price. The term was beginning August 29, 2013 through February 28, 2014. The default letter was sent to Complainant on or about September 17, 2014, which requested 3% of the gross sales price. The property assessor's information was included stating Complainant purchased the property on 2/19/14 for \$250,000. It appears that Complainant responded to the letter on or about September 30, 2014 disputing the demand stating the contract was canceled in October. A judgment was obtained in civil court by Respondent's firm against Complainant for \$7,500 plus attorney's fees and costs for breach of contract.

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; Commissioner Franks seconded motion; motion passes unanimously.

21. 2014030351

Opened: 12/16/14

First License Obtained: 1/17/96

License Expiration: 7/1/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker (hereinafter "broker") in complaint 2014030341 above. Respondent states that Respondent spends a lot of time personally and in formal sessions training agents in the proper manner to conduct themselves in transactions. Respondent states that it appears the motivation of the complaint is in reaction to the fact that the firm is seeking damages from Complainant in a recent court action filed against Complainant for breach of contract relating to the Exclusive Buyer Agency Agreement. Respondent denies the coercion allegations, stating that Complainant knew the broker prior to the agreement and the emails between the broker and Complainant demonstrate that the broker made every effort to show Complainant homes within Complainant's parameters. Respondent notes that Complainant did not contact Respondent expressing dissatisfaction. Respondent states that Complainant stopped responding to the broker's emails with properties to consider. Respondent further states that the option to cancel the contract relates to specific requirements outlined in the Agreement, stating that the TAR form is a bilateral agreement. Respondent further states that the form states, "This agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement." Respondent alleges that, although Complainant may have been unhappy with the broker at some point, Respondent never properly canceled the representation agreement. Respondent states that the broker is properly educated regarding all aspects of Ethics, TAR forms and TREC Rules and Regulations and diligently approaches Respondent with any questions.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner DiChiara seconded motion; motion passes unanimously.

22. 2014030651

Opened: 12/22/14

First License Obtained: 11/2/11

License Expiration: 11/1/15

E&O Expiration: 1/1/17

Type of License: Broker
History: No Prior Disciplinary Action

A complaint was filed by seller and seller's agent (hereinafter referred to as "Complainant") against Respondent (broker), who was buyer's agent. The potential buyer was an LLC, who Complainant believes has ownership in Respondent's real estate firm. Complainant states that nobody from the buyer's LLC or Respondent's firm requested to see the home before presenting an offer. A day after the binding agreement date, Complainant states that a phone call was received by a person who identified himself as a property inspector with the firm requesting to be let in within the next hour to perform an inspection. Complainant called Respondent, and Complainant states that the inspector worked for Respondent's firm and the buyer LLC and is also a contractor who does construction work. Complainant stated this appeared to be a conflict of interest and states that Respondent assured that this inspector was only looking at the home to see what was needed to get it ready for rent. Complainant states that Complainant agreed to meet the inspector because it was in the best interest of the seller to move the inspection and contract along. Complainant states that Complainant and Respondent received an email from the closing coordinator at Respondent's firm with a termination form stating that the buyers do not want to move forward with the property due to the inspection report. Complainant states that the closing coordinator is not a licensed broker and should not have begun negotiating the inspection findings. Complainant requested a copy of the inspection report and a list of specific objections per the binding agreement. Complainant states that an email from the closing coordinator stated, "After inspecting the home, the 20% grade of the driveway was steeper than our client was comfortable with." Complainant further states that a photograph that appears to be from Complainant's MLS listing was provided in an email, but no inspection report. Complainant further states that Respondent called Complainant stating that they do not have a traditional inspection report to share. Complainant alleges that the seller deserved careful review of their property prior to receiving an offer, that Respondent should have been available to allow the home inspector into the home, and that Respondent's firm should not be sending unlicensed individuals to perform unsupervised home inspector activities. Complainant further alleges a conflict of interest with regard to the individual who performed the inspection.

Respondent sent a response through an attorney stating that Respondent was the principal broker of the firm from September 12, 2014 through October 28, 2014. From October 28, 2014 to present, and at all times pertinent hereto, there is a new principal broker (Respondent in 2014030671 below). Respondent states that Respondent's firm is not owned by or affiliated with the potential buyer LLC. According to an e-mail provided with the response, the LLC client is a large investor that acquires properties across the country, and the firm focuses on representing large buyers of single family properties across two (2) states. Respondent states that the inspector was obtained by the buyer, and it is Respondent's understanding that the inspector is employed by a construction company. Respondent states that the separate construction company and Respondent's firm are owned by the same parent company, but they are separate entities and Respondent has no relationship with the construction company. Respondent states that

Respondent did not recommend the inspector to the buyer. Respondent informed Complainant that, when Respondent returned to town, Respondent would arrange to have the inspection but states the inspector contacted Complainant on his own accord. Respondent states that Complainant requested a release of the inspection contingency, and the closing coordinator informed Complainant that the buyer was reviewing the inspection report. Respondent states that later the closing coordinator emailed to notify Complainant that the buyer wished to terminate the contract due to inspection, and Respondent called Complainant to inform Complainant of same. Respondent states that the driveway pitch of 20 degrees was discovered during inspection and deemed unacceptable by the buyer. Respondent states that the request to terminate the contract was sent November 13, 2014. Respondent states that Complainant appears to allege that Respondent failed to exercise reasonable skill and care, failed to disclose a conflict of interest, and employed an unlicensed; broker; however, Respondent states that Complainant has failed to establish that Respondent violated any of these statutes. Respondent states that it is not within Respondent's duty of reasonable skill and care to attempt to correctly determine whether a property meets the buyer's needs before an offer is made. Respondent states that it is likely that the complaint is related to Complainant's misunderstanding of the relationship between buyer and Respondent's firm. Respondent further states that Respondent did not recommend the inspector to buyer, and Respondent has no interest in the inspector's company, nor did Respondent profit in any way from the inspector's participation in the transaction. Further, Respondent states that the closing coordinator's communications with Complainant do not constitute the actions of a broker as defined in TCA § 62-13-102, stating that the closing coordinator prepared and distributed material that was approved by a broker.

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; Commissioner Collins seconded motion; motion passes unanimously.

23. 2014030671

Opened: 12/22/14

First License Obtained: 10/28/14

License Expiration: 10/27/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014030651 above (hereinafter "broker").

Respondent submitted a response through an attorney stating that Respondent supervised the broker appropriately and in accordance with Respondent's obligations as principal broker. Respondent states that the broker brought the issues with Complainant to Respondent's attention. Respondent states Respondent engaged an attorney to determine if the inspection report was required to be provided to the seller and acted in accordance with the attorney's advice by providing a copy of the picture of the driveway and the degree of slope that was discovered by the home inspector, which was e-mailed to Complainant by the closing coordinator at the direction of the broker and Respondent. As to the inspector, Respondent states that the inspector is not employed by the firm and never has been but is employed by a construction company which was hired by the client to do various work for properties purchased by that client. Respondent confirms that the buyer LLC does not own or have any interest in the firm. Respondent states that there is no requirement that a buyer must walk through a property prior to making an offer, and the important factor in the decision to terminate was the precise steepness of the driveway, which was not known until a full inspection was made.

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; Commissioner DiChiara seconded motion; motion passes unanimously.

24. 2014031201

Opened: 12/26/14

First License Obtained: 12/14/89

License Expiration: 3/14/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants purchased a home at an auction and planned on doing some minor remodeling but discovered many problems including leaks, mold, improperly installed electrical wiring, structural problems due to additions, severe rotting in walls and roof, water problem, and septic drainage problem. Complainants further state that they were told by neighbors of three different fires that were put out due to a defective chimney. Complainants allege that none of these problems were disclosed. Complainants state that they had to essentially tear down the entire home and allege that the home was not habitable.

Respondent sent a response stating that Complainants purchased the home at a public auction on October 12, 2013, and receipt of the complaint was the first time Respondent had knowledge of any problem with the subject property. Respondent states that the home was sold as part of an estate for someone who had lived in the home for many years. Respondent states that the firm is a reputable company that offers many properties

at auction each year, and all properties are sold in “as is, where is” condition regardless of location, price point, or condition. Respondent states that this is not done to hide anything from prospective buyers, and Respondent’s firm discloses all that is known. Respondent states that this is done so sellers understand that there are no contingencies of the property condition, appraisal, inspection, etc. Respondent states that once marketing begins on a property, it is available for viewing and inspection by potential buyers, and all inspections and due diligence are welcomed at the expense of the buyer. Respondent attached a copy of the transaction file, which included a fully executed disclaimer notice and property condition exemption notification.

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; Commissioner DiChiara seconded motion; motion passes unanimously.

25. 2015000191

Opened: 1/21/15

First License Obtained: 12/28/81

License Expiration: 7/2/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2010017441 – CO \$500 (earnest money violation)

Complainant expressed interest in purchasing a property, which was adjacent to one Complainant owned, to the property’s owner for several years and states that the owner assured that Complainant would be contacted if the owner decided to sell. Later, Complainant was advised by the owner to contact Respondent (principal broker) because the owner decided to sell. Complainant states that Respondent was contacted several times, and Complainant submitted a written offer. Complainant alleges that the offer was never presented to the owner. Complainant further alleges that Respondent improperly listed the property and agreed to sell it to a potential buyer for \$500,000, which was far below market value. Complainant further states that the owner fired Respondent after learning Respondent would not present Complainant’s offer, and the owner’s attorney represented the owner in the sale. Complainant states that Complainant ultimately purchased the property for \$600,000, which Complainant states is a significantly higher amount than the owner would have received from Respondent’s pre-arranged buyer.

Respondent submitted a response stating that Respondent and the owner of the property have had a long professional relationship and personal friendship. Respondent states that owner agreed to offer the property for \$500,000 and settle for \$400,000 as this was comparable to the neighborhood. Respondent states that, while the property was being cleaned up from the previous tenant, Complainant dropped in and spoke with Respondent regarding the plans, and Respondent agreed to contact Complainant when the owner decided to lease or sell the building. Respondent states that another prospective buyer

also contacted Respondent before the property was listed, and Respondent knew that person was capable of paying the \$500,000 that the owner wanted. Because there was a prospect, Respondent states that there was no need to list the property for sale until the prospective buyer decided not to purchase. Respondent states that Complainant dropped in when Respondent was showing the property to the prospective buyer. Respondent states that the next day, Complainant presented a Residential Contract that would require substantial edits, which Respondent states was forwarded to the owner then to the owner's attorney. Respondent states that Complainant showed up at the owner's home dressed in a full costume and presented a non-negotiable contract for more than \$500,000 to the owner. Respondent states that Respondent did not pick up the contract because Respondent was preparing to present the other offer and did not want to be accused of "shopping contracts." Respondent states that Respondent received a call from the owner's attorney who decided to draft new contracts for both potential buyers, and the buyer who accepted that contract would get the property. Respondent states that the attorney handled the transaction from there. Respondent states that Complainant caused difficulties for everyone involved.

Complainant sent additional information stating that Respondent never responded to Complainant's offer of \$550,000, and did not return calls and emails. Because Complainant was getting no response from Respondent, Complainant states that Complainant wanted to get the owner's attention, and Complainant states that Complainant showed up in the full costume to drop off a letter and hold up a jumbo check. Complainant states that the owner then fired Respondent and hired an attorney to handle the transaction. Complainant further states that the property appraised for \$715,000 when Complainant purchased it for \$600,000. Complainant denies being difficult in showing interest in purchasing the property. Complainant provided documentation with the additional information. It appears that the parties communicated via email between July and August, 2014 regarding leasing and/or purchasing the property. Complainant submitted Commercial Purchase and Sale Agreement to Respondent via email on September 24, 2014, which appears to have been drafted by a different licensee. Respondent sent an email to Complainant on September 25, 2014 stating, "Since you delivered your contract to [the owner], I am canceling your emails to me without looking what you sent." Complainant received an email from the owner's attorney on October 1, 2014 stating that he was reviewing Complainant's offer and the other prospective buyer's offer. The attorney advised that he would be preparing a shorter simpler contract to both prospective buyers, and if a deal could not be made with one, then the property would be listed. The attorney also advised that Respondent would not be handling the negotiation, and all correspondence should be directed to the attorney.

Respondent submitted an additional response stating that there was no listing agreement with the owner, but the agreed upon price was \$500,000 because the property needed to be cleaned up and the existing tenant needed to move out. Respondent states that, when Complainant and the other prospective buyer showed up unannounced, the owner had not decided to sell at that point. Respondent states that Complainant moved forward with the contract presented by the attorney and does not understand why Complainant is filing a

complaint. Respondent states that Respondent still does business with the owner and has no problems with the owner's attorney.

It appears that there was no listing agreement between Respondent and the owner, and, therefore, it does not appear to legal counsel that there was a violation of T.C.A. § 62-13-404(3)(A)(ii) regarding receiving all offers and counter offers and forwarding them promptly to the client.

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; Commissioner DiChiara seconded motion; motion passes unanimously.

26. 2015000281

Opened: 1/22/15

First License Obtained: 11/28/00

License Expiration: 12/13/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was filed against Respondent (principal broker) who was sellers' agent, by a buyer. Complainant states that, per the contract, sellers were to hire a licensed electrician to evaluate and repair the main panel two days prior to closing. Complainant alleges this was not done, and Complainant's agent stated that Complainant could not back out of the contract. Complainant states that the closing occurred after sellers replaced the panel, but the electrician unhooked the power to a separate living space in the backyard because the power was not hooked up properly. Complainant states that sellers are refusing to pay for the repairs to properly install power in the separate living space. Complainant states that, had the initial electrical issue been properly addressed before closing, this would have been discovered timely and fixed before closing.

Respondent submitted a response stating that, per the Repair/Replacement Amendment on 11/14/14, Complainant requested to have a licensed electrician evaluate the main electrical panel and repair as needed even though the inspection specifically found nothing wrong with the panel itself but noted that the type/brand of panel has been known to have issues in the past. Complainant states that, before the seller could complete the repairs, Complainant's agent notified Respondent that Complainant and spouse were seeking a divorce and no longer wished to purchase the property. Respondent states that sellers slowed down on repairs, while still maintaining the contract timeline until buyers made a final decision. Respondent states that the final inspection was one day prior to closing, and the electrician could not perform repairs within twenty-four (24) hours. Respondent states that the parties agreed for the panel to be completed within seven (7) days of closing, and sellers pre-paid the electrician at closing as noted on the HUD.

Respondent states that the issues with electrical was for a shed/storage building, which has not been listed as livable square footage per tax record, MLS, inspection or appraisal. Per Respondent's understanding of Complainant's agent, the electrician who exchanged the panel stated that the storage building was not up to current codes and reconnecting it to the new panel would violate city codes as a safety hazard. Respondent states that Complainant requested additional money from the sellers to make the repairs, but this was not in the contract as sellers' responsibility. Respondent further states that Complainant has never contacted Respondent.

The Purchase and Sale Agreement was bound on November 6, 2014 for a closing date of December 3, 2014. Buyer's inspection and resolution was for inspection within ten (10) days after the Binding Agreement date and resolution within three (3) days following receipt of written list. The final inspection was for two (2) days prior to closing. The inspection report was provided on November 10, 2014 stating that the type of panel has been identified as a possible fire hazard stating its circuit breakers may fail to trip and that it should be evaluated and repaired as needed. The Repair/Replacement Amendment was accepted on or about November 13, 2014 stating, among other things, "Seller to have a licensed electrician evaluate main electrical panel and repair as needed" and stated that seller agrees to complete the above matters three (3) days prior to closing. It appears an estimate for repairs was obtained; and the Buyer's Final Inspection was executed by Complainant on December 2, 2014 and states among other things, "Buyers wants [*sic*] to see electrical evaluation for safety," which was to be completed within seven (7) days of closing.

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; Commissioner Franks seconded motion; motion passes unanimously.

27. 2015000291

Opened: 1/22/15

First License Obtained: 5/31/00

License Expiration: 12/31/15

E&O Expiration: 12/31/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

The previous complaint in case number 2015000281 above was also filed by Complainant against Respondent, who was Complainant's (the buyer's) agent.

Respondent denies telling Complainant that Complainant could not back out of the contract. Respondent states that Complainant texted Respondent's partner (licensed agent) on December 1, 2014 stating that Complainant and spouse were separating and did

not wish to purchase the home on December 3 per the contract. Respondent states that Respondent informed the principal broker and reviewed the contract and advised Complainant to seek legal advice. Respondent states that, on December 2, Complainant called deciding to follow through with the purchase and asked to do a final walk through. Respondent states that when it was discovered at the walk through that the panel had not been repaired, Respondent called the listing agent (previous Respondent) immediately. Respondent states that the listing agent advised that the electrician could not come out to the house until December 10 to replace the panel, and Complainant agreed to give sellers seven (7) days after closing to perform all repairs. Respondent states that, on the closing day, Complainant spoke with two attorneys and walked through the house again. Respondent states that Respondent was not at closing, but Respondent's partner agent was and states that Complainant and spouse were both at closing. Respondent states that Respondent's partner agent contacted Complainant and spouse one time after closing wishing them a Merry Christmas, but Complainant has not reached out to Respondent or Respondent's firm since closing. Respondent provided screenshots of the text messages and the transaction file.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Franks seconded motion; motion passes unanimously.

28. 2015000301

Opened: 1/22/15

First License Obtained: 12/5/91

License Expiration: 12/28/16

E&O Expiration: 12/31/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015000291 above (hereinafter "affiliate broker").

Respondent states that the affiliate broker is a good agent and states that the affiliate broker approached Respondent on December 1, 2014 regarding the file. Respondent reviewed the contract with the affiliate broker and noted that Complainant's spouse was not on the contract or the loan, and Respondent recommended that Complainant seek legal advice from an attorney. Respondent states that the affiliate broker spoke with Complainant several times that day. Respondent states that, at the walk through, an agreement was reached regarding the electrical panel, and the seller agreed to replace it with a new panel instead of evaluating the old one. The walk through form specified that the seller had seven (7) days to complete the change. Respondent states that Respondent met with Complainant the evening of December 2, and Complainant informed

Respondent that Complainant had spoken with an attorney who stated there was a technicality in the contract because the panel had not been evaluated two (2) days prior to the final inspection. Respondent states that Complainant was informed that neither Respondent nor the affiliate broker were attorneys, and they could not assure Complainant that the seller would not sue if Complainant walked away from the contract, but it was Complainant's decision to make. Respondent states that the sale occurred on December 3, and an electrician replaced the panel December 10 as agreed. Respondent states that replacing the panel required electric services to be disconnected, and an inspection was completed before electricity could be restored. Respondent states that the new panel worked and passed inspection. Respondent states that neither Respondent nor the affiliate broker were privileged to the conversations with the electrician. Respondent states that Complainant's spouse called Respondent on December 15 informing Respondent that the additional living space was not reconnected. Respondent stated that Respondent was not aware of any additional living space as it was not noted on the MLS or home inspection report. Respondent states Respondent called the listing agent to inquire, and the listing agent informed Respondent that the electrician would connect it with a release of liability due to the fact that the electrician did not wire the building. Respondent states that Respondent and the affiliate broker reviewed the inspection report and noted that there was no mention of any inspection being completed on the addition. Respondent states that Respondent relayed the information to Complainant's spouse, who advised that Complainant would not agree to a release and asked about the Real Estate Commission. Respondent states that Respondent has been involved with and supervised this transaction.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Franks seconded motion; motion passes unanimously.

29. 2015000311

Opened: 1/21/15

First License Obtained: 12/8/04

License Expiration: 8/17/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

A complaint was filed by buyers. Respondent (affiliate broker) was sellers' agent. Complainants state that the home was inspected per the contract, and the inspector recommended that the HVAC be diagnosed. Complainants state that, after the information was provided to Respondent, the sellers had their own inspection done. Complainants state that, during their final walk through, the sellers would not allow Complainants' agent to enter the home or allow Complainants to turn on the heater, stating there was an open gas line. Complainants closed on the property and discovered

that the heater was not working. Complainants state that the home warranty company sent out a professional HVAC repairman who determined that the heater/furnace had not been working for quite some time. Complainants state that the sellers misrepresented that the heater was a working unit although they knew it was not working. Complainants state that the sellers' inspection report was forged or fake and the property disclosure form was not truthful.

Respondent stated that the Complainants had a home inspection and then had an HVAC vendor inspect the unit. Respondent states that the sellers also elected to have the HVAC unit inspected by their contractor. Respondent states that the parties exchanged four (4) repair/replacement proposals back and forth, and the final one stated there was nothing agreed to concerning the HVAC unit, and the Complainants decided to go through with the sale. Respondent states that Complainants did a follow-up inspection to ensure that the agreed upon repairs were completed. Respondent acknowledges that, on the final walk through, the sellers did refuse to allow Complainants' agent to enter the property against Respondent's advice, protests, and insistence. Respondent states that, since sellers refused to allow Complainants' agent to enter, the parties agreed to allow Respondent to do the walk through with the buyers. Respondent states that this was an uncomfortable position, and Respondent walked with them to be sure it was clean, vacant, and the minor repairs were completed. Respondent denies that Complainants asked sellers to turn on the heat and states that sellers told Complainants there was an open gas line for a gas dryer and suggested it be capped off if it was not going to be used. Respondent states that this was the only conversation Respondent witnessed between Complainants and sellers on the day of closing. Respondent further states that all documentation provided by the sellers was given to Complainants, and Respondent has no knowledge of them being false or forged and has no knowledge of the HVAC unit not working. Respondent states that sellers provided an invoice from a well-known HVAC company that clearly states the unit was working. Respondent states that Respondent never recommended or referred any of the vendors used by any of the parties. Respondent states that it appears the Complainants had knowledge there might possibly be a problem with the HVAC unit based on their inspection report but decided to move forward with the purchase without having work completed on the unit.

The Purchase and Sale Agreement had a ten (10) day inspection period and three (3) day resolution period, a final inspection no later than one (1) day prior to closing. The Residential Property Condition Disclosure was executed by sellers and states that sellers are not aware of any defects/malfunction in the central heating, heat pump, or central air conditioning. There are several amendments to the contract in the file, extending the inspection contingency period among other things. There are four (4) Repair/Replacement proposals, which resulted in a Repair/Replacement Amendment executed by both parties, which has eight (8) items for repair, none of which appear to involve the HVAC unit. Complainants executed the Final Property Disclosure and Buyer's Final Inspection documents, stating they have made the final inspection and confirm it to be in the same or better condition as it was on the Binding Agreement Date.

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; Commissioner Collins seconded motion; motion passes unanimously.

30. 2015000321

Opened: 1/21/15

First License Obtained: 5/14/92

License Expiration: 9/11/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015000311 above (hereinafter "affiliate broker"). Respondent states that Respondent supervised the affiliate broker who obeyed all lawful instruction of the client. Respondent states that Respondent reviewed the contract file when it was turned in to Respondent, and the affiliate broker followed all forms and procedures accordingly. Respondent states that Complainants were informed by the home inspector that the HVAC unit did have a possible problem and decided not to pursue the issue on the Repair/Replacement Amendment. Respondent states that Complainants allege that the sellers misrepresented that the heater was a working unit and states that the complaint is not directed at the affiliate broker. Respondent states that the affiliate broker conducted business in accordance with the company policies and TREC rules and has been supervised to the best of Respondent's abilities as principal broker.

Recommendation: Dismiss.

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

Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Franks seconded motion; motion passes unanimously.

31. 2015000761

Opened: 2/5/15

First License Obtained: 5/16/88

License Expiration: 3/27/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2002093431 - Close (LOW re: maintaining clear/adequate records)

200419432-Close (LOW re: maintaining clear and adequate records)

2010036741 – \$2,000 Consent Order (earnest money)

2011001101 - \$2,000 Consent Order (earnest money)

2011024031 - \$1,500 Consent Order (FTA; FTR)

Complainants hired Respondent (principal broker) to assist them with a home purchase. Complainants state that they viewed multiple houses, submitted multiple contract offers, and paid multiple earnest money deposits. Complainants state that they contacted many banks for an FHA loan and state that Respondent repeatedly told Complainants that the banks requested several deposits including money for closing costs, down payments, and reserve mortgages. Complainants state that Respondent told Complainants to call Respondent with loan questions. Complainants further state that Respondent told Complainants they owed several creditors and asked for the money so Respondent could pay the creditors. Complainants state that they later spoke to the creditors and were advised that the bills were not paid. Complainants state that they gave Respondent a total of \$20,001 but never purchased a home. Complainants further state that, in July 2014, one of the Complainants received a thirty day foreclosure notice on their existing home, and Respondent assured that their home was on the market and had a short sale contract pending. Complainants state that they forwarded the foreclosure information to Respondent. Complainants further state that they received a letter from Bankruptcy Court requesting Complainants to fill out paperwork to process their bankruptcy, but Complainants state that they never gave anybody permission to file for bankruptcy on their behalf. Complainants state that the bankruptcy Respondent filed on their behalf was dismissed but now shows up on their credit report. Complainants further state that they received a second foreclosure notice at the end of October 2014 and contacted the bank who advised that the home was not on the market, and the bank had not been in contact with Respondent since June 2014. Complainants state that they immediately contacted another agent who began processing their short sale, and Complainants withdrew the loan application for their attempted home purchase.

Complainants attached documentation including copies of receipts that Respondent provided Complainants for payments made to Respondent, which total \$20,001. Other documents include credit reports, communications provided to mortgage companies allowing Respondent to communicate on Complainants' behalf, and emails. Complainants sent an email dated November 13, 2014 to Respondent requesting \$17,849 to be refunded. Respondent responded via an un-dated letter and email dated November 14, 2014 acknowledging Complainants request to return funds, stating that there are brokerage fees in the amount of \$3,100 that will be deducted from the total. The letter stated that Respondent has received \$17,849 to date and would refund Complainants \$14,049 if agreed. Respondent stated that if not agreed, Respondent would interplead the funds. Complainants responded requesting a detailed accounting for the deductions and brokerage fees and stated that they would anticipate \$14,049 to be disbursed by December 4, 2014. There is an undated transmittal letter which appeared to be emailed on December 4 to Complainants stating that Respondent will send their refund on December 4, 2014, which should conclude their business. A copy of said check was not provided.

Additional information was submitted by Complainants stating that they sought legal counsel who advised that filing a civil lawsuit would not be in their best interest because Respondent filed bankruptcy, and they likely will not receive their money back, but

Complainants should file a consumer police report. The office of legal counsel obtained information from Criminal Court, and it appears that Respondent was booked on February 13, 2015 on a theft charge (theft of property \$10,000-\$60,000) and has an upcoming court date.

Respondent did not respond to the complaint. However, Complainants also submitted Respondent's response to an identical complaint filed with the BBB, which states that Complainants home was foreclosed on in November because Complainants had not paid on the home in over two years even while gainfully employed. Respondent further states that several key factors were misrepresented, and Respondent actively marketed Complainants' short sale to Respondent's other clients, stating a binding contract was entered making it unnecessary to list on MLS. Respondent states that Respondent attempted to guide Complainants in improving their credit. Respondent denies filing for bankruptcy for Complainants stating that at Complainants request, Respondent filed a petition to delay foreclosure which resulted in the bankruptcy court notice. Respondent states that Respondent works diligently for clients and Respondent successfully obtained loan preapproval from all lenders Complainants mentioned and states that closing failed because Complainants could not provide documentation required by the lender.

Recommendation: Consent Order for revocation of Respondent's license for violation of T.C.A. § 62-13-312(b)(1) (substantial and willful misrepresentation); (3) (pursuing a flagrant course of misrepresentation), (5) (failing to account for or to remit money), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), (19) (engaging in the unauthorized practice of law), and (20) (improper, fraudulent, or dishonest dealing); 62-13-313(a)(2) (failure to respond to complaint); and Rule 1260-02-.09 (deposits and earnest money rule).

DECISION: The Commission voted to authorize a Consent Order for revocation of Respondent's license and with a civil penalty of \$10,000 for violation of T.C.A. § 62-13-312(b)(1) (substantial and willful misrepresentation); (3) (pursuing a flagrant course of misrepresentation), (5) (failing to account for or to remit money), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), (19) (engaging in the unauthorized practice of law), and (20) (improper, fraudulent, or dishonest dealing); 62-13-313(a)(2) (failure to respond to complaint); and Rule 1260-02-.09 (deposits and earnest money rule).

Commissioner Collins made a motion to accept the recommendation of legal counsel with a Consent Order for revocation of Respondent's license for violation of T.C.A. § 62-13-312(b)(1) (substantial and willful misrepresentation); (3) (pursuing a flagrant course of misrepresentation), (5) (failing to account for or to remit money), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), (19) (engaging in the unauthorized practice of law), and (20) (improper, fraudulent, or dishonest dealing); 62-13-313(a)(2) (failure to respond to complaint); and Rule 1260-02-.09 (deposits and earnest money rule); Commissioner Hills seconded motion; Commissioner Hills withdraws motion;

motion dies due to lack of second; Commissioner Alexander made a motion to accept counsels recommendation to authorize a Consent Order for revocation of Respondent's license and to change civil penalty to \$10,000 for violation of T.C.A. § 62-13-312(b)(1) (substantial and willful misrepresentation); (3) (pursuing a flagrant course of misrepresentation), (5) (failing to account for or to remit money), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), (19) (engaging in the unauthorized practice of law), and (20) (improper, fraudulent, or dishonest dealing); 62-13-313(a)(2) (failure to respond to complaint); and Rule 1260-02-.09 (deposits and earnest money rule); motion seconded by Commissioner Hills; motion passes 6 yes and 1 no vote.

32. 2015001031

Opened: 1/14/15

First License Obtained: 6/30/95

License Expiration: 2/11/17

E&O Expiration: Uninsured

Type of License: Firm

History: No Prior Disciplinary Action

Complainants state that they made two (2) time-share purchases from Respondent (firm). Complainants state that the time-share sales people at both sales made multiple verbal misrepresentations, including but not limited to statements that the person never paid a maintenance fee, that if Complainants gave referrals they would receive credit toward the maintenance, that the time-share was in high demand with great value, that it is easy to confirm travel dates, that Complainants could sell or rent the time-share for a profit, that there would be unlimited bonus weeks, and that the company would buy back the time-share. Further, Complainants state that they were given an iPad mini as a "bonus gift" that Complainants later learned by examining the paperwork was a cost to Complainants. Complainants state that the sales staff completed and submitted a credit application on Complainants' behalf and the full purchase price was charged to the accounts without Complainants' knowledge. Complainants also state that the presentations were very lengthy and high pressure sales tactics were used.

Respondent states that Complainants received correspondence regarding the same matter from an attorney on behalf of Complainants, and Respondent states that there are ongoing communications between Respondent and the attorney. Upon reviewing the purchase documents executed by Complainants, it appears that the documents disclose that assessment fees can increase or decrease from year to year, that the purchase is for personal use only and not for financial return or expectation of profit or income, and that Complainants have received documentation regarding the purchase and no sales person cannot make oral representations to modify such documents. Further, there appears to be a credit application executed 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 Franks made a motion to accept the recommendation of legal counsel to dismiss; Commissioner DiChiara seconded motion; motion passes unanimously.

33. 2015001371

Opened: 1/29/15

First License Obtained: 6/30/95

License Expiration: 2/11/17

E&O Expiration: Uninsured

Type of License: Firm

History: No Prior Disciplinary Action

Complainants purchased two (2) time-shares on two (2) different occasions from Respondent (firm). Complainants state that both presentations were lengthy with Complainants staying well beyond the required time frame for the presentation, and Complainants could not leave. Complainants state that sales people used high pressure sales tactics and told Complainants that the offer was only good for that day. Further, Complainants state that the sales staff applied for and charged a credit account on Complainants' behalf without Complainants' knowledge. Complainants state that verbal misrepresentations were made, including but not limited to, that the time-share was of high demand with great value, that it was easy to confirm travel dates, that Complainants could sell the time-share for a profit or rent it for a profit (which Respondent would assist with), and that maintenance fees were fixed and would not increase over time.

Respondent states that, prior to the complaint, Respondent received communication from the BBB stating that Complainants' health was deteriorating and financial difficulties resulted in Complainants' desire to surrender the time-share interests and be released from the mortgage. Respondent states that, in its response to the BBB, offered as a gesture of goodwill to release Complainants from the contract if contacted by Complainants, but Complainants did not do so. Since that time, Respondent states that Respondent was contacted by an attorney on behalf of Complainants and correspondence is ongoing. Upon reviewing the purchase documents executed by Complainants, it appears that the documents disclose that assessment fees can change from year to year; that the purchase is made for personal use and not for expectation of a profit, and that staff is not authorized to make oral representations to modify the documents. Further, there appears to be a credit application executed by Complainants. 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 DiChiara made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Alexander seconded motion; motion passes unanimously.

34. 2015001431

Opened: 2/3/15

First License Obtained: 5/18/99

License Expiration: 1/27/17

E&O Expiration: 1/1/17

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

35. 2015001451

Opened: 1/29/15

First License Obtained: 10/10/90

License Expiration: 11/14/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is an existing time-share owner who states that Complainant was staying at a condo at a resort and was visited by Respondent 1 (time-share salesperson; Respondent 2 is principal broker) who gave a presentation regarding time-share ownership. Complainant states that Respondent 1 gave false information about condos being less than 10,000 points which are available all over the world and that the exchange program's agents could help Complainant make reservations for those condos. Complainant states that Complainant called the exchange program and did not find it easy to make reservations and states that there were not desirable condos available. Complainant states that Complainant did not make an on-site inspection of the condos and was not asked to tour the property or shown resort amenities. Complainant also states that when Complainant tried to call regarding cancellation of the contract, Respondent 1 was negligent in failing to call Complainant back. Further, Complainant states that Complainant spoke with Respondent 2, who would not let Complainant out of the contract because, by staying in the condo, Complainant had made an on-site inspection. Complainant mailed a request for cancellation of contract, which was received within fifteen (15) days of the contract date. The contract states that the contract can be cancelled within ten (10) days of signing the contract where there has been an on-site inspection of the time-share project and within fifteen (15) days from the date of the signing of the contract if no such inspection has been made. Complainant states that Respondent 1 misled Complainant regarding the attorney fees of the purchase and took advantage of Complainant because of Complainant's advanced age.

Respondent 1 submitted a response denying that Respondent 1 gave false information about the exchange program and the vacations which were available for less than 10,000 points. Further, Respondent 1 states that Complainant stayed at the resort for several days surrounding the purchase, and Respondent 1 was on the property every day and available by phone during the rescission period, but Respondent 1 never received any notice by Complainant that Complainant was unhappy with the purchase. Respondent 2 states that Complainant stayed at the resort for several days, making a purchase on the

second day. Respondent 2 states that the date stamps of the mailed requests for cancellation show that Complainant was past the legally mandated time period to cancel when Complainant wrote the cancellation letter. Respondent 2 states that it is absurd that a multiple day stay at the resort does not constitute an on-site inspection. Respondent 2 further states that Respondent 2 found 9,459 available units all over the world for less than 10,000 points. Respondent 2 states that Complainant is not entitled to cancellation. It does not appear to specify within T.C.A. § 66-32-114(a) or Rule 1260-06-.04 what constitutes an “on-site inspection.” It does not seem unreasonable to legal counsel for multiple days spent at a resort property to constitute an on-site inspection. Complainant’s cancellation was not mailed until after the ten (10) day period. Based on this information, it does not appear that there is a violation by Respondents.

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; Commissioner DiChiara seconded motion; motion passes unanimously.

CONSENT ORDER TRACKING

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

LEGISLATIVE UPDATES

Assistant General Counsel Julie Cropp reported the *Legislative Updates*. Currently, only one showing recent activity which is **House Bill 248 and Senate 145** regarding the one hour Continuing Education course it has been signed by the Governor on April 6th 2015 the effective date will be July 1st, 2015. During the next rulemaking session legal counsel will repeal the subsection of the rule. There is no more additional movement noted.

EDUCATION REPORT

Mr. White, the Education Director, presented the educational courses M1 – M18 set forth on the May, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve M1 – M18 courses; motion seconded by Commissioner Hills; motion carries.

Instructors Approvals

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red M1 – M18 to be approved as Instructors.

Commissioner DiChiara made a motion to approve all instructors since Education Director White recommended for approval M1 – M18; motion seconded by Commissioner Hills; motion carries.

Chairman Griess adjourned the meeting on Thursday,

May 7th, 2015 at 3:40 p.m.

