

TENNESSEE REAL ESTATE COMMISSION MINUTES
December 4, 2013

The Tennessee Real Estate Commission convened on December 4, 2013 at 9:12 a.m., in Meeting Room 1 A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman John Griess, Commissioner Grover Collins, Commissioner Austin McMullen, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Gary Blume, Commissioner Wendell Alexander and Commissioner David Flitcroft. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Robyn Ryan. Assistant General Counsel Julie Cropp was absent.

Chairman Stephenson called the Tennessee Real Estate Commission to order at 9:12 a.m. on Wednesday, December 4, 2013.

The first order of business was the adoption of the agenda for the December 2013 Commission meeting. **Commissioner DiChiara made a motion to amend the Agenda to move the appearance of Assistant General Counsel Robyn Ryan to a time after the appearance of Assistant Commissioner Giannini and to approve the Agenda as amended. Commissioner Flitcroft seconded the motion; 8 yes; 1 no; motion carried.**

The next order of business was the approval of November, 2013 minutes. The November 2013 minutes were not completed and were not available. **Commissioner Griess made a motion to defer action on the November, 2013 minutes until the January, 2014 meeting; seconded by Commissioner DiChiara; motion carried.**

Report of Mark Green Chief Legal Counsel, Regulatory Boards

Mark Green Chief Legal Counsel, Regulatory Boards updated the Commission on the status of the pending appeal of the case TREC vs. Donna Bobo. Mr. Green briefly reviewed the most recent recommendations and suggestions for settlement approved by the Commission in regard to the Bobo case. Mr. Green stated that, when contacted by the Office of the Attorney General, Ms. Bobo rejected the offer of settlement and made no counter offer. Mr. Green stated the Appeal of the Chancery Court decision was moving forward and that the brief would be due 1/2/2014. Mr., Green anticipates that the appeal might be heard sometime in the summer of 2014, but advised the Commission he will keep them updated as information becomes available.

Informal Applicant Appearances

There were four informal applicant appearances, with two applicants appearing separately with their principal broker and two applicants appearing together with their principal broker. While each applicant had an opportunity to give the Commission some history about his or her conviction and to answer questions from the Commissioners, two applicants disclosed convictions resulting from the same incident and those two applicants appeared together. Each principal broker outlined his or her training/mentoring program and discussed how that program would be implemented with the applicant.

Jason Miller Applicant; Principal Broker John Lithicum

Jason Miller Applicant appeared with his Principal Broker John Lithicum.

Commissioner Collins made a motion to approve Jason Miller to move forward with the licensing process; seconded by Commissioner DiChiara; unanimous vote; motion carried

Linda Byrd, Applicant; Mary “Alexa” Bass, Applicant; Principal Broker Dorothy Lee

Linda Byrd, Applicant and Mary “Alexa” Bass, Applicant appeared with their Principal Broker Dorothy Lee.

Commissioner Griess made a motion to approve Linda Byrd and Mary “Alexa” Bass to move forward with the licensing process; seconded by Commissioner Flitcroft; Commissioners DiChiara and Blume abstained; motion passed.

Branden Grissom, Applicant; Principal Broker Pam Johnsen

Branden Grissom, Applicant appeared with his Principal Broker Pam Johnsen. **Commissioner Flitcroft made a motion to approve Branden Grissom to move forward with the licensing process; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Assistant Commissioner of Regulatory Boards, Bill Giannini; Accountant 3 Kimberly Whaley

As requested by the Commission at the November, 2013 meeting, Assistant Commissioner of Regulatory Boards, Bill Giannini and Accountant 3 Kimberly Whaley appeared to address budget questions raised by the Commission at the November, 2013 meeting. Assistant Commissioner Giannini and Kimberly Whaley discussed the nature of overhead costs charged to the Commission, outlined the 2014 budget and explained the work plan concept. Assistant Giannini confirmed that the payment and implementation of CORE, the new computer system, would be made from current reserves and that TREC’s portion of the payment would not impact the current budget of TREC.

Legal Report, Robyn Ryan, Assistant General Counsel

At the beginning of the text of each legal report the following text is inserted and Ms. Cropp read the statement 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 decisions indicated.

1. **2013011341 - Commissioner Griess reviewed this file and reported his observations. Commissioner Alexander made a motion to issue a Consent Order for a civil penalty of \$500.00 and attendance at a TREC meeting within 180 days and to also send a Cease and Desist from unlicensed activity. This motion failed for lack of a second. After further discussion,**

Commissioner Collins made a motion to send the principal broker a Letter of Warning; Commissioner Alexander seconded; motion failed. Commissioner Haynes made a motion to issue a Consent Order for a \$500.00 civil penalty, four hours of approved property management education within 180 days and attendance at a TREC meeting within 180 days; Commissioner Dichiara seconded the motion; motion carried.

2. 2013012691 &

3. 2013012741 -

Commissioner McMullen made a motion to accept legal counsel's recommendation to close in light of license revocation; seconded by Commissioner Collins; unanimous vote; motion carried.

4. 2013013131 -

Commissioner McMullen made a motion to accept legal counsel's recommendation to close; seconded by Commissioner Haynes; unanimous vote; motion carried.

5. 2013013311 -

Commissioner DiChiara made a motion to accept legal counsel's recommendation to issue a Consent Order for \$1000.00 for failing to have an active firm license plus attendance at a TREC meeting within 180 days; seconded by Commissioner Collins; unanimous vote; motion carried.

6. 2013013451 -

Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.

7. 2013013571 &

8. 2013013581-

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

9. 2013013191 – Commissioner Alexander made a motion to accept legal counsel's recommendation to issue a Consent Order but Commissioner Alexander's motion increased the civil penalty amount to \$2,000.00, plus attendance at a TREC meeting within 180 days; seconded by Commissioner Blume; unanimous vote; motion carried.

10. 2013013192 -

Commissioner Alexander made a motion to accept legal counsel's recommendation to issue a Consent Order for \$500.00 plus attendance at a TREC meeting within 180 days; seconded by Commissioner Blume; unanimous vote; motion carried.

11. 2013013631 &

12. 2013013661 -

Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order for \$1,000.00 plus attendance at a TREC meeting within 180 days; seconded by Commissioner Collins; unanimous vote; motion carried.

13. 2013013941-

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

14. 2013013981-
Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order for \$1500.00 plus attendance at a TREC meeting within 180 days ; seconded by Commissioner Dichiara; unanimous vote; motion carried (Commissioner Alexander was temporarily absent and did not vote; motion carried.
15. 2013014241 &
16. 2013014242 &
17. 2013014251 -
Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
18. 2013014261 &
19. 2013014262 &
20. 2013014263 &
21. 2013014271 -
Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
22. 2013014311&
23. 2013014312 &
24. 2013014313 &
25. 2013014314 &
26. 2013014321 -
Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
27. 2013014341 &
28. 2013014342 &
29. 2013014343 &
30. 2013014411-
Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
31. 2013014451&
32. 2013014452 &
33. 2013014453 &
34. 2013014481 -
Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried
35. 2013015461-
Commissioner Dichiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried
36. 2013015971-
Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried

- 37. 2013018561&
- 38. 2013018571 &
- 39. 2013018581 -

Commissioner Haynes made a motion to close since the Agreed Citations had been satisfied; seconded by Commissioner Dichiara; unanimous vote; motion carried

Discussion of Proposed Rules

Prior to beginning the discussion of the proposed rules, the Commission discussed whether Commission Policy Statement 95-CPS-003 The Conduct of Receiving Fees or Rebates From Home Inspectors By Real Estate Licensees For Referring Business Constitutes Improper Dealing And As Such Violates TCS 62-13-312(20) (adopted 4/5/95) and Commission Policy Statement 2000-CPS-001 Credit For Post License Education Taken In Another Jurisdiction Prior To Licensure In Tennessee (adopted 1/5/2000) should be considered for adoption as rules.

Commissioner Dichiara made a motion to delete Commission Policy Statement 95-CPS-003 The Conduct of Receiving Fees or Rebates From Home Inspectors By Real Estate Licensees For Referring Business Constitutes Improper Dealing And As Such Violates TCS 62-13-312(20) (adopted 4/5/95); seconded by Commissioner Collins; unanimous vote; motion carried; motion carried. Commissioner Griess made a motion to delete Policy Statement 2000-CPS-001 Credit For Post License Education Taken In Another Jurisdiction Prior To Licensure In Tennessee (adopted 1/5/2000); seconded by Commissioner Dichiara; unanimous vote; motion carried

Presentation of Rule Drafts:

Ms. Ryan presented a draft of proposed rules which were drafted by Ms. Cropp for the purpose of discussion amongst the Commission. These rule drafts included amendments to multiple existing rules as well as the addition of potential new rules. The Commissioners engaged in a discussion regarding the rule drafts and determined that the Commission would review and consider the rule drafts further at its next regularly scheduled business meeting in preparation for moving forward with the rulemaking process regarding the drafted rules (as drafted by Julie Cropp for insertion into the December, 2013 minutes).

Education Report, Stephen McDonald, Education Director

Steve McDonald presented the Education Report. **Commissioner Griess made a motion to approve Courses D 1- D 30; seconded by Commissioner Collins; Commissioner McMullen abstained; Motion carried.**

Commissioner Collins made a motion to approve Course D 31, Foreclosure and Short Sales from Open to Close; Commissioner Flitcroft seconded the motion; motion carried.

Commissioner Haynes stated that the Tennessee Attorney General site listed two staff members as contact persons for predatory lending issues, including reverse mortgages. Commissioner Haynes suggested that the Commission try to work together on the reverse mortgage issue. **Commissioner Flitcroft made a motion that Mr. McDonald ask the Attorney General's**

office if they could have one of their predatory lending specialist come and discuss their findings on predatory lending, particularly as it relates to reverse mortgages and suggest ways the Commission might help combat any such predatory lending. Commissioner Haynes seconded the motion. Motion carried. After further discussion, Commissioner Alexander made a motion to defer Course D 32, Reverse Mortgages for Seniors, until the January, 2014 meeting.; Commissioner Haynes seconded the motion; motion carried. .

Commissioner Collins made a motion to approve Dan E. Luttrell as an instructor for the course Understanding Mold Restoration; seconded by Commissioner McMullen; Commissioner Haynes and Commissioner DiChiara abstained; motion carried.

Executive Director's Report, Eve Maxwell, Executive Director

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

Complaint Report and Disciplinary Action Report:

Attached to and made a part of the Minutes

Licensing Statistics:

The licensing statistics are attached to these minutes and made a part hereof

Update on Errors and Omissions:

The Update on E & O is attached to these minutes and made a part hereof.

Chairman Stephenson recessed the meeting at 4:16 p.m. Wednesday, December 4, 2013.

Thursday, December 5, 2013

On Thursday, December 5, 2013, a formal hearing in the matter of TREC v. Frank E. Cowden Docket # 12.18-122530A was held before Administrative Law Judge Johnson. The hearing commenced at 9:07 a.m. and was concluded at 3:18 p.m. A transcription was made of the hearing and the hearing may be viewed in its entirety on the TREC December 5, 2013 video, which is available on YouTube.

The meeting was adjourned by Vice Chairman Griess upon the conclusion of the Formal Hearing at 3:18 p.m.



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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: DECEMBER LEGAL REPORT

DATE: December 4-5, 2013

***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. **2013011341**
Opened: 6/28/13
First License Obtained: 11/17/86
License Expiration: 8/31/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

November 2013 Meeting:

Complainants were lessees, and Respondent is the principal broker of a licensed firm. Complainants state that they entered into two (2) leases (a twelve (12) month lease and a six (6) month lease) with a company which has substantially the same name as the firm for which Respondent is principal broker, except the firm with which Complainants state they dealt had a division name added to the end of the name. Complainants state that the property was not habitable so Complainants moved prior to the end of the second lease term. Complainants state that there was a broken window at the time Complainants moved in, windows were not air tight, and a door was not air tight or wind tight, as well as other issues which Complainants state the company refused to repair. Complainants state there were a number of matters which were not handled in compliance with the Landlord Tenant Act. Finally, Complainants state that they were sued by the company which included the division name and are in a legal battle. Complainants state that they received a letter from the Executive Director for the Real Estate Commission stating that the company with which Complainants dealt was not a licensed real estate firm.

Respondent states that Complainants signed a one (1) year lease and then another for six (6) months. Respondent states that all monthly payments were paid until January 2012, when Complainants moved out (breaking their second lease) after purchasing a home. Respondent states that all tenants are asked to send in a list of any issues with the property prior to moving in and such a list was provided by Complainants. Respondent states that the list included the cracked window and the lease provides the tenant accept the property in an “as is” condition. Respondent states that there was nothing filed to request the window be replaced or that Respondents were giving a thirty (30) day notice. Respondent states a lawsuit was filed and a judgment was entered against Complainants (this has been appealed and the appeal is currently pending). Respondent states that Respondent’s firm is a licensed firm in the State of Tennessee and addresses Complainant’s allegations as if they are alleged against Respondent’s firm. Respondent does not specifically address the allegation regarding company with the substantially similar name which dealt with Complainants and which does not have its own firm license.

Based on an internet search of the company with which Complainants state they dealt, it appears to be an LLC registered with the Secretary of State (Respondent’s licensed firm is also registered with the Secretary of State as a corporation) and also has a website with the company’s name at the top of the webpage which states that it is a property management company. The website also includes the name of Respondent’s firm at the bottom along with address and phone number, but the phone number does not match the firm telephone number of Respondent’s firm as displayed on Respondent’s firm’s website. Additionally, Complainants provided copies of the lease agreements, which included a letterhead of the company with division in its name, and a security deposit check which was written to Respondent’s firm but was stamped deposited into an account including the name of the company with division in its name. In light of recent discussions regarding topics of a substantially similar nature, it is recommended that the Commission discuss this matter.

Recommendation: Discuss.

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

New Recommendation: Commissioner Griess to discuss.

DECISION: The Commission voted to offer a Consent Order for \$500.00 for operating an unlicensed real estate firm in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-309(a)(1)(A) and complete four (4) hours of continuing education in property management 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.

- 2. 2013012691**
Opened: 8/1/13
First License Obtained: 11/25/91

License Expiration: 11/23/13
E&O Expiration: N/A (License suspended)
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
Respondent was broker released on 6/24/13

3. **2013012741**
Opened: 7/8/13
First License Obtained: 3/20/86
License Expiration: 10/6/14
E&O Expiration: 1/15/15
Type of License: Principal Broker
History: 200900050 – Closed \$1,000 CO (failure to disclose adverse facts)

TREC opened complaints based on information published on a news outlet that Respondent 1 pled guilty to wire fraud relating to Respondent 1's receipt of money via interstate wire from clients and converting said money to Respondent 1's own use. Respondent 2 was Respondent's principal broker at the time that the news story was released so a complaint was also opened against Respondent 2 regarding a potential supervision issue.

Said complaints were opened, a copy was sent to Respondent 1 at Respondent 1's home address on file with the Commission (Respondent 1 was broker released by Respondent 2 after news of this incident was published), but Respondent 1 did not respond to the complaint. Soon after, Respondent 1 was adjudicated guilty of wire fraud and sentenced. Respondent 1 had already paid restitution to the victims years prior to pleading guilty and the sentencing. Respondent 1 failed to report this plea/conviction to TREC as required by T.C.A. § 62-13-312(f), which requires that, whenever a licensee pleads guilty or is convicted of any offense enumerated in the chapter, the licensee must notify TREC of the conviction within sixty (60) days of the conviction. Without timely notification and a request for a hearing, the section provides that the licensee's license shall automatically be revoked. TREC had no records of Respondent 1 ever notifying TREC of this guilty plea or conviction for wire fraud. Therefore, once sixty (60) days passed from Respondent 1's adjudication of guilty, Respondent 1's license was automatically revoked pursuant to T.C.A. § 62-13-312(f) and notice was sent to Respondent 1 via certified mail. Therefore, there is no action necessary from the Commission with regard to Respondent 1.

Respondent 2 submitted a response stating that Respondent 2 did not know of Respondent 1's activities until seeing the news story either. Respondent 2 states that Respondent 2 was told by Respondent 1 that the underlying occurrences happened seven (7) years ago when Respondent 1 was the owner of and affiliated with another firm, which is now closed. After speaking with Respondent 1, Respondent 2 released Respondent 1's license. Respondent 2 states that Respondent 1 has not had access to any funds at Respondent 2's firm since affiliating there. There does not appear to be any failure to supervise on the part of Respondent 2.

Recommendation: Close as to Respondent 1 in light of license revocation. Dismiss as to Respondent 2.

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

4. 2013013131

Opened: 8/26/13

History: No Prior Disciplinary Action - Unlicensed

TREC opened complaint based on information submitted to TREC stating that Respondent (unlicensed individual) is engaged in unlicensed activity and asking TREC to investigate. Prior to opening the complaint, TREC was able to locate only a Facebook page for Respondent's business which includes very little information and a few postings with links to what appear to be property listings on other websites from 2011 and early 2012 (the links are no longer good). A complaint was opened and a copy of the information was sent to Respondent at the address found on the internet. The certified mail green card was not returned, and no response was received from Respondent.

Due to the nature of the complaint and because there was no response to the complaint information and legal counsel was unable to reach Respondent at the phone number found on the website, an investigation was requested regarding Respondent's activities and business. The investigator unsuccessfully attempted to contact Respondent at all telephone numbers on the website and attempted to locate other telephone numbers for Respondent but was unable to do so. Further, the investigator visited the only known address for Respondent and found the business closed and a lease sign in the window. The investigator contacted the number on the lease sign and reached the building's owner who stated that the property had been leased to Respondent's parents and the business was turned over to Respondent who was evicted for nonpayment of the lease and who, to the property owner's knowledge, moved to another state. The investigator then contacted the number for the closed business and reached Respondent's mother who stated that Respondent was unresponsive to telephone calls and she had no idea where Respondent was. At this time, Respondent's whereabouts are unknown, and there is insufficient information to confirm whether or not Respondent is engaged in unlicensed activity.

Recommendation: Close.

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

5. 2013013311

Opened: 7/24/13

First License Obtained: 11/24/76

License Expiration: 7/17/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant, a licensee, sent an e-mail to TREC stating that Complainant believed Respondent's (principal broker) website, which advertises "a buyer's rebate" offering, is a rule violation.

Respondent offers a potential buyer's rebate of one percent (1%) of the sales price, and the program applies when the seller is paying a specified percent of the sales price to the selling agency and when the sales price meets a specified amount. It is stated that this rebate is either applied toward the buyer's closing costs or by way of a gift card or by going toward services relating to the purchase of the home. The website further states that the rebate cannot be cash to the buyer and includes the Commission's rule regarding Gifts and Prizes. Respondent's website also states that, if the selling agency is structured differently, Respondent may have to devise a rebate on a different formula, and this will be discussed and determined up front with those who engage Respondent's firm.

Respondent denies any violation and states that the terms of the offer are detailed with examples and the site also includes the TREC rule regarding gifts and prizes. Respondent states that the site specifies that every home buyer and circumstance is unique and Respondent reserves the right to offer or decline to offer the buyer rebate, but this will be discussed and determined upfront for parties who engage Respondent's firm. Respondent states that the program is unique to each potential buyer and can only be achieved through direct personal contact and conversation. Respondent further states no cash is given on the incentive, and the incentive is based on something done or used like a gift card which may be used for goods or services but not redeemed for cash. Respondent further states that payment of closing costs are subject to lender approval. Respondent further states that, before offering the program, Respondent researched other such programs in other states, the TREC manual, and by speaking with TREC employees, one of which, Respondent states told Respondent that, "It sounds like you're on top of it." Respondent states that the website explicitly states that cash is not allowed as an incentive and may only be paid to a real estate licensee.

Based on legal counsel's review of the materials, it is legal counsel's opinion that this offer does not violate the rule regarding Gifts and Prizes; however, in light of the unorthodox content of the offer, it is recommended that the Commission discuss this issue. However, in preparing this matter for presentation to the Commission, and as late as December 2, 2013, Respondent's firm license is expired and has been expired since February 1, 2013, leading to the recommendation below.

Recommendation: Consent Order for \$1,000 for failing to have an active firm license in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-309(a)(1)(A) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

6. **2013013451**
 Opened: 7/24/13
 First License Obtained: 11/24/86
 License Expiration: 11/22/14
 E&O Expiration: 1/1/15
 Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the renter of a property. Respondent is the principal broker for the licensed firm which was the management company for the subject property owner. Complainant states that Complainant terminated the lease three (3) months early with permission from the owner and Respondent so long as the property was re-rented prior to Complainant's formal release from the lease. Complainant states that the tenants took possession and Complainant's last month's rent was prorated accordingly. Complainant states that, despite requests, there was no final walk through report given to Complainant, and the deposit on the property was not returned.

Respondent states that the lease specifically stated that the security deposit is forfeited if the tenant vacates the leased premises prior to the end of the lease term. Respondent further states that Complainant was reminded of this provision and told that the deposit would be forfeited when Complainant notified Respondent that Complainant was planning on terminating the lease early due to the purchase of a home (Complainant disputes this). Respondent states that Respondent told Complainant that Respondent would ask the property owner to consider a partial refund depending upon the length of vacancy, the property condition, etc. Respondent further states that, even though the lease specifically allowed that the deposit would be forfeited if the tenant vacated the property prior to the end of the lease period, Respondent did in fact send a refund with a damage recap. Respondent states that the property was not in the condition required by the lease and that some of the deposit was used to address those issues with the remaining amounts refunded. A copy of the Analysis of Tenant Security Deposit Account and Refund was provided along with invoice copies.

The lease document does specify that the tenant will forfeit the security deposit if the tenant vacates early. E-mails provided show communication regarding Complainant's responsibilities if a tenant is secured but does not address the lease provision concerning the deposit. It appears that Complainant's issues are those of a contractual nature, and, from the information provided, it does not appear that there is a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

7. **2013013571**
Opened: 7/24/13
First License Obtained: 1/15/08
License Expiration: 1/14/14
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

8. **2013013581**
Opened: 7/25/13
First License Obtained: 10/10/90

License Expiration: 11/14/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants were existing time-share owners who state that Respondent 1 (time-share salesperson; Respondent 2 is Respondent 1's principal broker) met with Complainants regarding changes to their current ownership. Complainants state that Respondent 1 told Complainants that Complainants could convert another time-share that they owned and add the points to the current points owned by Complainants, and Complainants would only have to pay one (1) yearly maintenance fee instead of two (2) maintenance fees. Complainants state that, based on this, they agreed to the purchase and were rushed through signing the papers due to the arrival of friends. Later, Complainants state that they later received a bill for an additional yearly maintenance fee. Complainants state that Complainants were not told that it was an additional agreement with an additional maintenance fee.

Respondent 1 states that Respondent 1 explained that Respondent 1 could help Complainants get rid of their time-share at another resort which Complainants said had become expensive and that a new deed would give Complainants additional points to add to Complainants' existing deed. Respondent 1 states that Respondent 1 was asked several times about the maintenance fee at new timeshare, and Respondent 1 told Complainants that the maintenance fees for the new deed would be the same as the maintenance fees for Complainants' current timeshare. Respondent 1 states Complainants signed all paperwork, it was apparent that Complainants were in a hurry with friends arriving. Respondent 1 states that Respondent 1 was rushed out of the door when friends of Complainants arrived. A few days later, Respondent 1 states that one of the Complainants called Respondent 1 at home and again asked about the maintenance fees for the new deed and was again given the price of the maintenance fees for the new deed. Respondent 2 submitted a response stating that Complainants signed several documents that specifically mentioned the maintenance fee obligation (and attached copies of these documents). Respondent 2 further states that Complainants rushed Respondent 1 through the paperwork, and Complainants could have cancelled their purchase for any reason within the first ten (10) days of ownership for a refund but did not do so. The documentation within the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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

9. **2013013591**
Opened: 7/30/13
First License Obtained: 1/22/98
License Expiration: 9/28/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

10. 2013013592

Opened: 7/30/13

First License Obtained: 5/22/06

License Expiration: 5/21/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant entered into a Listing Agreement with Respondents' firm for the sale of Complainant's home (Respondent 1 is the principal broker; Respondent 2 is an affiliate broker). During that time, Complainant states that there was one (1) offer below list price and below what the bank was owed, and the bank would not authorize a short sale. Several months after the expiration of the listing agreement, Complainant states that Complainant decided to rent the home and informed Respondent 2 of this. Complainant states that Respondent 2 said no, and Complainant states that Complainant informed Respondent 2 that Respondent 2 was fired and asked Respondent 2 to remove the yard sign, return the keys to the neighbors, and not to give Complainant's number to anyone who might want to see the home for sale. Complainant states that Complainant then sent a notarized statement to Respondent 2 stating that Respondents' firm would no longer represent Complainant and that the property was no longer for sale. Complainant states that Respondent 2 stated that because the notice was sent from another state, Respondent 2 could not accept the notice. Complainant states that Respondent 2 and Respondents' firm refused to stop trying to sell the home after the contract expired and after Complainant's request, that Respondent 2 and Respondents' firm would not explain why they would not cancel the contract, and that Respondent 2 and Respondents' firm refused to remove the key box, yard sign and return keys.

Respondents each submitted responses to the complaint. Respondent 1 states that Respondent 2 had a signed Listing Agreement for the subject property with Complainant for a period, and then Respondent 2 had a Listing Agreement for the subject property with Complainant's ex-wife for a period which began on the date following the expiration of the Listing Agreement with Complainant. Respondent 1 states that Respondent 2 maintained communication with both Complainant and the ex-wife and received an offer on the property which became an accepted contract during the period of the Listing Agreement with the ex-wife (the transaction was a short-sale that had to also be approved by Complainant's lender). Respondent 1 states that, after this purchase and sale contract was entered, Respondent 2 told Respondent 1 that Complainant wanted to cancel the contract and rent the property. Respondent 1 stated that Respondent 1 informed Respondent 2 that the contract was a bilateral agreement, and there must be a mutual release. According to Respondent 1, the buyers were still interested and waiting on the lender's determination, so Respondent 1 told Respondent 2 to contact the buyer's agent regarding Complainant's request. According to Respondent 1, the lender later gave Complainant notification of foreclosure. Respondent 1 states that Respondent 2 did not obtain signatures from all ownership parties, and Respondent 1 has taken corrective action for that matter.

Respondent 2 states that, near the end of Complainant's listing agreement period, Complainant moved out of state. Respondent 2 states that Respondent 2 spoke to Complainant's ex-wife (who

was also on the deed for the house) and entered into a listing agreement with her for the sale of the property because Complainant was going to let the home go into foreclosure and Complainant's ex-wife did not want that to happen. Respondent 2 states that Respondent 2 explained the listing agreement with the ex-wife to Complainant by phone, stating that the ex-wife signed the listing agreement because her attorney had informed her that Complainant had not performed in the divorce decree which stated that Complainant must purchase the home. Respondent 2 states that Complainant was aware of this and texts from the ex-wife to Respondent 2 indicated that Complainant was in agreement and that the ex-wife could have any money from the house. Respondent 2 states that Complainant entered into a Purchase and Sale Agreement to sell the home by short sale after expiration of Complainant's listing agreement but during the listing agreement period with the ex-wife. Respondent 2 states that Complainant was not happy with the offer but had accepted it. Respondent 2 states that the lender told Respondent 2 that Complainant was wanting to cancel the short sale and do a loan modification but this would not be possible. When Respondent 2 discussed this with Complainant, Respondent 2 states that Complainant fired Respondent 2, and Respondent 2 told Complainant that there would need to be a mutual release to cancel the contract. Then, Respondent 2 states, Complainant sent the affidavit cancelling the representation, and Respondent 1 stated that there could not be unilateral termination of the contract (not because the affidavit was prepared in another state). Respondent 2 states that it was Respondent 2's intent to help sell the property. Respondent 2 states that Respondents would have executed a release on the listing agreement with the ex-wife, but there was a contract and the potential buyer intended to purchase the home. Respondent 2 states that Complainant sent a photo of an alleged declination letter from the lender but states that Complainant then sent more documents to engage the short sale process. Upon following up with Respondent 2, it appears that, after the complaint was filed and the responses submitted, Complainant let the Purchase and Sale Agreement expire in October 2013.

Complainant submitted additional information asking why Respondent 2 would have contacted Complainant's ex-wife regarding the home when Respondent 2 had a copy of the divorce decree. Complainant states that Respondent 2 contacted the ex-wife to alarm her about possible foreclosure. Based on a review of the divorce decree, it appears that the subject property went to Complainant, as the decree specifies that the parties intended to sell the house, but, until sold, Complainant was responsible for the mortgage payments and other costs associated with the home and would be entitled to any income tax deductions or credits. The divorce decree also specified that the ex-wife would execute a quitclaim deed. Further, the decree states that neither party could unreasonably withhold acceptance of a reasonable purchase offer, and, after the sale, the proceeds would be applied to the mortgage's remaining balance, to taxes and expenses associated with the sale, toward credit card debt, and any remaining equity or deficit to be assumed by Complainant.

It would appear that, in light of the divorce decree's provisions regarding who was responsible for/stood to benefit from the subject property, the act of involving the ex-wife in the discussions and sale of the subject property and signing a Listing Agreement with the ex-wife would constitute a failure to be loyal to the interest of the client (here, Complainant) on the part of Respondents.

Recommendation: For both Respondent 1 and Respondent 2: Consent Order for \$500.00 for failing to be loyal to the interest of the client in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: As to Respondent 1, the Commission voted to offer a Consent Order for \$2,000.00 for failing to be loyal to the interest of the client in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) and failing to supervise Respondent 2 in violation of T.C.A. § 62-13-312(b)(15) plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, the Commission voted to offer a Consent Order for \$500.00 for failing to be loyal to the interest of the client in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

**11. 2013013631
Opened: 7/24/13
First License Obtained: 7/18/86
License Expiration: 10/22/14
E&O Expiration: 1/1/15
Type of License: Broker
History: No History of Disciplinary Action**

**12. 2013013661
Opened: 7/25/13
First License Obtained: 2/17/76
License Expiration: 10/18/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No History of Disciplinary Action**

Complainant, a licensee, states that Complainant had a potential client who was interested in a commercial space, and, when Complainant called the number in the window, Complainant states that Complainant reached Respondent 1 (broker; Respondent 2 is Respondent 1's principal broker) and made an appointment for Complainant to show the property to Complainant's client. Complainant states that Respondent 1 told Complainant that Respondent 1 was a realtor, that Respondent 1's license was with Respondent 2's firm, that the subject property was unlisted, and that Respondent also worked for the owner of the subject property as a property manager, leasing agent and real estate salesman. Also, Complainant states that the parties exchanged business cards from their licensed firms. There was a commission dispute relating to the lease of the property which caused a disagreement between Complainant and Respondent 1; however, the Complainant states that Complainant is not asking the Commission to resolve the commission issue but believes that Respondent 1's activities are in violation of TREC's laws and/or rules.

Respondent 1 submitted a response to the complaint stating that Respondent 1 has been a salaried employee of an LLC whose duties are to be “the right hand man” of the Chief Manager and to be a real estate consultant for properties owned by the company. When the company built developments, Respondent 1 states that Respondents’ licensed firm listed and marketed the lots and homes. Respondent 1 states that the LLC owns several commercial properties and the Chief Manager produces his own leases, rental rates, maintenance decisions, rent collection and payouts, and Respondent 1’s responsibility is to “‘look after’ his properties.” Respondent 1 states that the LLC has not listed its commercial real estate, and those properties are advertised with the LLC’s name, the office number of the Chief Manager, and the cell phone number of Respondent 1 (and has not been listed or advertised with Respondents’ firm) and so Respondent 1 will get many calls about lease terms, lease rates, etc. Respondent 1 states that it is Respondent 1’s duty to show the property in the Chief Manager’s absence, and the Chief Manager handles the money, escrow, and general bookkeeping. Respondent 1 states that the parties got into a very heated conversation about the Commission dispute, and Respondent 1 states that it was Respondent 1’s mistake of giving Complainant Respondent 1’s business card with his licensed firm and losing Respondent 1’s temper at Complainant.

Respondent 2 also submitted a response to the complaint against Respondent 2 for failure to supervise Respondent 1. Respondent 2 states that Respondent 1 is affiliated with Respondent 2’s licensed firm and also works on a salaried basis for an individual who is the owner of a considerable amount of rental properties. With regard to the subject transaction involving the Complainant, Respondent 2 states that Respondents’ licensed firm had no listing of the property, no sign or phone number posted on the property, and no involvement in the transaction and that Respondent 1 acted solely in an employment capacity for the property owner.

Based on the information included within the file, it appears that Respondent 1 is being compensated for the performance of acts specified within the Broker Act by someone other than Respondent 1’s principal broker, and it appears that Respondent 2 is aware of this.

Recommendation: As to Respondent 1, Consent Order for \$1,000 for violation of T.C.A. § 62-13-312(b)(11) plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1’s execution of Consent Order. As to Respondent 2, Consent Order for \$500 for violation of T.C.A. § 62-13-312(b)(15) plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2’s execution of Consent Order.

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

13. 2013013941

Opened: 8/7/13

First License Obtained: 4/20/99

License Expiration: 12/31/14

E&O Expiration: N/A

Type of License: Time-Share Registration
History: 2013014341 – Under review by legal
2013014451 – Under review by legal
2013015971 – Under review by legal

Complainants are time-share owners who made an upgrade purchase in 2010 with Respondent (time-share registration). Complainants state that they were told that the resort was new construction, and one of Respondent's salespeople stated that the unit was one of the last units available and that the price was good for that day only. Complainants state that the purchase terms were not explained adequately, that the resorts Complainants have visited are very congested, that check ins were chaotic and confusing, and that there is often a lack of availability of desirable newer units. Complainants want to cancel their contract but state that they were told when they contacted Respondent earlier this year that it was beyond the rescission period.

Respondent submitted a response through an attorney stating that Complainants first purchased a time-share in with Respondent in 2001 and have made a number of upgrades since that time, most recently in 2010 at the presentation referenced by Complainants. Respondent's attorney included a copy of the fully executed contract and denied that any misrepresentations were made to Complainants with regard to the terms of the purchase or the rental of units. Further, Respondent states that the use plan outlined in Complainants' upgrade purchase was the same as was in previous contracts, and Complainants have used the time many of the years since the original purchase. 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.

14. 2013013981

Opened: 8/22/13
First License Obtained: 10/23/85
License Expiration: 11/8/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 201101233 – Closed \$1,000 CO (failure to supervise E&O)

Complainant is the designation coordinator for a real estate organization where Respondent (principal broker) was formerly a member. Complainant states that the Respondent had formerly earned a designation through Complainant's organization but states that Respondent discontinued Respondent's membership several years ago. Complainant states that Respondent continues to use the designation and states that Complainant has contacted Respondent three (3) times asking Respondent to either discontinue using the designation or reinstate the membership. Complainant also provided copies of multiple written requests made by Complainant to Respondent, which were sent prior to filing the complaint and which notified Respondent of Respondent's expired designation and provided information regarding reinstating the

membership or instructed Respondent to stop using the designation if Respondent chose to remain inactive. Complainant also attached screen shots from websites in which the designation was utilized while Respondent's membership was expired. The screen shots note the designation along with Respondent's name and other information.

Respondent submitted no response to the complaint, which was sent to the firm address on file with the Commission and signed for by an individual there.

Complainant later sent additional information stating that Respondent contacted Complainant and resolved the issue by reinstating Respondent's membership, so Respondent is now entitled to utilize the designation.

Recommendation: Consent Order for \$1,500 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2) and misleading or untruthful advertising in violation of T.C.A. § 62-13-312(b)(4) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

15. 2013014241

Opened: 8/13/13

Type of License: Time-Share Registration

**History: 2013015461 – Under review by legal
2013019581 – Under review by legal**

16. 2013014242

Opened: 8/13/13

First License Obtained: 3/20/08

License Expiration: 3/19/14

E&O Expiration: 10/30/14

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

17. 2013014251

Opened: 8/30/13

First License Obtained: 3/9/95

License Expiration: 11/20/14

E&O Expiration: 10/30/14

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants attended a time-share presentation given by Respondent in 2011 (Respondent 1 is the time-share registration; Respondent 2 is a time-share salesperson; Respondent 3 is Respondent 2's principal broker). Complainants state that the salespeople, especially

Respondent 2, made a number of verbal misrepresentations during the presentation regarding the product. Complainants state that they were not given the opportunity to read the paperwork during the presentation, that they were told that it would be easy to rent or sell the time-share, that they could refinance for a lower interest rate, and that Complainants were not told about the rescission period. Complainants state that they thought that they bought a home location in Tennessee but later realized after reading the paperwork that the resort was located in another state. Complainants also state that they were told that they could exchange the time-share and go anywhere, but Complainants have found that they always need more points to go the places they wanted. Complainants would like their contract cancelled.

Respondents state that Complainants were advised of the type, location and use of the time-share interest being purchased, and the used of the exchange company was discussed with Complainants, as well. Respondents deny making any misrepresentations relating to resale for a profit or refinancing the time-share, and attached a copy of the Owner Confirmation Interview which was signed by Complainants and contained a number of disclosures relating to the purchase. Respondents state that the sales documents signed by Complainants disclosed the terms and conditions regarding the purchase and included rescission right information in a bold font just above where Complainants signed the purchase agreement. Respondents further state that they would never discourage purchasers such as Complainants not to read the documents before signing. Respondents deny any wrongdoing in connection with the subject sale and dispute Complainants' allegations of misrepresentation but state that Complainants were released from their contract. The documentation in the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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

18. 2013014261
Opened: 8/7/13
First License Obtained: 3/24/08
License Expiration: 3/23/14
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2013019131 – Under review by legal

19. 2013014262
Opened: 8/7/13
First License Obtained: 5/4/11
License Expiration: 5/3/15
E&O Expiration: 7/13/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

20. 2013014263

Opened: 8/7/13
First License Obtained: 4/15/08
License Expiration: 4/14/14
E&O Expiration: 7/13/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

21. 2013014271

Opened: 8/7/13
First License Obtained: 12/14/84
License Expiration: 12/5/14
E&O Expiration: 7/13/15
Type of License: Principal Broker
History: 2013019171 – Under review by legal

Complainants were existing time-share owners who attended an update meeting with Respondents 2 and 3 (Respondent 1 is the time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is Respondent 2 and 3's principal broker). During the meeting, which Complainants state they did not realize was a sales meeting, Complainants state that there were a number of misrepresentations made regarding the upgrade, including but not limited to, that Complainants were told that an upgrade purchase would allow Complainants to rent their time-share for a significant profit without Complainants having to do any work, that Complainants would not lose points if the time-share was not rented, and that Complainants could split their ownership with family members and members could cancel the contract without foreclosure. Complainants would like cancellation of the upgrade purchase.

Respondents state that Complainants have been owners since 2000 with an additional purchase in 2010 and the subject upgrade purchase in 2013. Respondents deny any misrepresentations and state that Complainants have the option to request that their time-share be made available for rental; however, there is no guarantee that the vacation will be rented or any guarantee as to the amount of profit to be received through a rental, and this program is not the best value for the use of the ownership. Respondents state that Complainants were told of the rental program but were also told that rental should not and could not be the reason for purchasing (which was confirmed in a signed document). Further, Respondents state that Complainants were not told that Respondents do not foreclose on ownerships. Respondents state that the contract documents signed by Complainants disclose the purchase agreement and the product being purchased as well as provide a rescission period for the contract. Respondents deny Complainants' allegations and deny any wrongdoing but state that Respondents agreed to cancel Complainants' upgrade purchase and reinstate Complainants' former contract. The documentation in the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

22. **2013014311**
Opened: 8/1/13
First License Obtained: 7/10/07
License Expiration: 7/9/14
E&O Expiration: N/A
Type of License: Time-Share Registration
History: No Prior Disciplinary Action
23. **2013014312**
Opened: 8/1/13
First License Obtained: 8/7/03
License Expiration: 4/27/15
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
24. **2013014313**
Opened: 8/1/13
First License Obtained: 2/19/08
License Expiration: 2/18/14
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
25. **2013014314**
Opened: 8/1/13
First License Obtained: 1/7/05
License Expiration: 6/16/15
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
26. **2013014321**
Opened: 8/13/13
First License Obtained: 2/14/02
License Expiration: 7/6/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants were existing time-share owners who attended a time-share meeting given by Respondents in 2011 (Respondent 1 is the time-share registration; Respondents 2, 3, and 4 are time-share salespersons; Respondent 4 was Respondents 2, 3, and 4's principal broker at the time). During the presentation, Complainants state that they were told that the company was getting rid of fixed week time-shares, and Complainants had to purchase a points package as an upgrade which was not at the resort Complainants thought but was instead at the resort where

Complainants had their previous time-share. Complainants state that they were told that, with the points system, Complainants could trade to vacation with other resorts for only an exchange fee, but Complainants later found that they did not have enough points to do this. Complainants also state that they were told that the time-share would be a financial investment.

Respondents submitted a Response through an attorney denying the allegations within the complaint and stating that all employees were properly supervised at all times. Respondents deny the allegation that Complainants were pressured into making the upgrade points purchase. Respondents deny that Complainants were told that the company was getting rid of fixed weeks, but instead an opportunity to upgrade to a points based system was presented to Complainants. Additionally, Respondents deny that Complainants did not know where they were purchasing their time-share interval and reference a form signed by Complainants which, in part, lists the name of the resort, as well as other documents such as the contract and other documents signed by Complainants. Further, Respondents state that the contract and other documents were reviewed with Complainants to ensure that they understood what their upgrade purchase entailed. Attached were multiple signed purchase documents in which Complainants signed acknowledgements regarding the product being purchased, including, but not limited to, that no further oral representations were made other than those covered within the forms. Despite denying Complainants' allegations, Respondents have cancelled Complainants' contract and issued a refund for the upgrade purchase price. The documentation within the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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

27. 2013014341

Opened: 8/26/13

First License Obtained: 4/20/99

License Expiration: 12/31/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2013013941 – Under review by legal

2013014451 – Under review by legal

2013015971 – Under review by legal

28. 2013014342

Opened: 8/26/13

First License Obtained: 4/18/11

License Expiration: 4/17/15

E&O Expiration: 1/1/15

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

29. 2013014343

Opened: 8/26/13
First License Obtained: 7/21/09
License Expiration: 7/30/15
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

30. 2013014411

Opened: 8/28/13
First License Obtained: 3/6/00
License Expiration: 8/14/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 2013014481 – Under review by legal

Complainants attended time-share presentation given by Respondents in 2012 (Respondent 1 is the time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is Respondent 2 and 3's principal broker). Complainants state that the presentation lasted nine (9) hours and a number of misrepresentations were made during the presentation, including but not limited to, that the time-share was a financial investment, that Complainants could make money from the time-share by renting it out, that the company would buy back the time-share if Complainants decided to sell it, and that Complainants could vacation at other resorts by trading their time-share without very much cost. Complainants state that the paperwork was not thoroughly reviewed with Complainants at the presentation, that Complainants were told to lie about their income on the loan application, and Complainants were not told of their cancellation right. Complainants would like the contract to be cancelled.

Respondents submitted a response through an attorney denying that any misrepresentations were made and denying Complainants' allegations. Specifically, Respondents' attorney points to acknowledgements which were initialed and signed by Complainants which state that there had been no representations with regard to investment or resale potential and that the developer had no resale or rental program. Further, Respondents deny that any misrepresentations were made with regard the costs of vacationing at another resort, and Respondents' attorney points to several disclosures regarding the exchange program and the potential costs associated with exchanges. Also, Respondents' attorney denies that Complainants were discouraged to lie on their loan application and states that all information provided and signed by Complainants is truthful. Finally, Respondents' attorney states that the rescission rights are specified in bold type just above Complainants' signatures. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

31. 2013014451

Opened: 9/11/13
First License Obtained: 4/20/99
License Expiration: 12/31/14
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2013013941 – Under review by legal
2013014341 – Under review by legal
2013015971 – Under review by legal

32. 2013014452
Opened: 9/11/13
First License Obtained: 1/24/08
License Expiration: 1/23/14
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

33. 2013014453
Opened: 9/11/13
First License Obtained: 4/17/12
License Expiration: 4/16/14
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

34. 2013014481
Opened: 9/11/13
First License Obtained:
License Expiration:
E&O Expiration:
Type of License:
History: 2013014411 – Under review by legal

Complainant attended a time-share presentation with Respondents in 2012 (Respondent 1 is the time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is Respondent 2 and 3's principal broker). Complainant met with Respondents 2 and 3 and states that the presentation and closing was very rushed, and the product Complainant purchased was not what Complainant thought it would be. Complainant states that Complainant believed that they were buying for visits in October, but Complainant later found out that Complainant purchased during the value season instead. Complainant states that it was never explained about the value season and if Complainant wanted to book outside that time period that an upgrade fee would be charged. Complainant states that a copy of the Public Offering Statement was never provided. Additionally, Complainant states that Complainant was never told that Complainant could not just split the week into two visits in a year, but would have to pay an eighty dollar (\$80.00) split fee. Complainant also states that a life insurance premium was included as part of the purchase price and Complainant was told it was required but later found out from the

insurance company that it was not required so Complainant cancelled the insurance and was credited. Complainant also states that several months later, Complainant was contacted regarding paying a fee for membership and was charged a fee. If these adjustments cannot be made, Complainant would like cancellation of the contract and a return of all money paid.

Respondents submitted a response through an attorney including Complainants' contract for purchasing the subject time-share interest. Respondents' attorney states that Complainant was informed that the purchase was within the value season at closing, and the contract signed by Complainants indicates that the unit is being purchased within the value season, and a document which is incorporated into the contract explains which weeks are included within the value season. Further, Respondent's attorney notes that Complainant was given a ten (10) day rescission period to review the paperwork and decide whether or not to move forward with the purchase. With regard to exchange fees, Respondent's attorney points to an acknowledgment signed by Complainant which states that all trading of time will be done by specified companies and an additional amount per exchange will be charged based on the policies of those companies. With regard to the contact to Complainant regarding paying a fee for membership, Respondents' attorney states that the calls were not initiated by Respondents but from an independent cruise exchange company which is not affiliated with Respondents (Complainant later stated that Complainant contacted that company and was reimbursed the fee paid). Finally, Respondents' attorney addressed the allegation that Complainant never received the Public Offering Statement, which is disputed by Respondents, and Respondents' attorney attached a signed public offering statement log signed by Complainant acknowledging Complainant's receipt of the document. Also, Respondents' attorney states that the insurance was not required for the purchase, and this was fully disclosed to Complainant and Complainant signed a document describing that information. Respondents state that no misrepresentations were made during the time-share presentation and all information was contained within documents signed and initialed during closing. The documentation in the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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

35. 2013015461

Opened: 8/13/13

Type of License: Time-Share Registration

**History: 2013014241 – Under review by legal
2013019581 – Under review by legal**

Complainant attended a time-share presentation given by Respondent in 2012 (time-share registration). Complainant states that the representatives made a number of verbal misrepresentations, including but not limited to, stating that the deal was only good for that day, that this was a deeded property, that Complainant could use the points purchased to go to other resorts throughout the country, and that Complainant could rent the property to offset the costs. Complainant also states that Complainant was told that the financing was over five (5) years but later realized that the paperwork said ten (10) years. Complainant also states that Complainant

was not aware of where the time-share was located and was not told of the rescission period. Complainant would like contract rescission.

Respondent submitted a response denying that any misrepresentations were made to Complainant. Specifically, Respondent states that Complainant was advised regarding the type, location and use of the time-share being purchased and advised that purchasers can utilize the points to book reservations at other resorts subject to availability. Further, Respondent states that the sales documents executed by Complainant fully described the product purchased. Also, Respondent states that Complainant does have the option to rent Complainant's time-share, but no guarantees are made with regard to the amount of rental income that Complainant would receive if Complainant chooses to rent the time-share. Respondent denies that Complainant was pressured to buy that day to receive special pricing. Respondent also denies that Complainant was not informed of the rescission period and states that the rescission rights were specified in bold face type above Complainant's signature. Though Respondent denies any wrongdoing, Respondent states that it has agreed to release Complainant from the contract. The documentation within the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

36. 2013015971

Opened: 9/11/13

First License Obtained: 4/20/99

License Expiration: 12/31/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2013013941 – Under review by legal

2013014341 – Under review by legal

2013014451 – Under review by legal

Complainants state that they attended a time-share presentation in 2012 given by Respondent (time-share registration). Complainants allege that they were offered a gift to attend a meeting by two different people and were told that they could receive both gifts by attending. When arriving at the meeting, Complainants state that they were told by some representatives that they could not receive both gifts for attending but the sales manager then told them that they would get everything Complainants had been promised. Complainants state that they were told that they could buy a repo unit at a special price that day and that they could put the down payment into a program and have six (6) months to pay it. Complainants state that they were told that the time-share could be a tax write off, and Complainants did not realize they could cancel the contract until after the cancellation period was over. Further, Complainants state that once they tried to book a visit, Complainants discovered there would be fees to secure the unit. Complainants would like contract cancellation.

Respondent submitted a response through an attorney stating that Complainants purchased a time-share interest during the value season, which is noted in their contract purchase documents. Respondent's attorney states that the Public Offering Statement is incorporated into this contract along with the timesharing plan, copies of which are included in the Public Offering Statement that each purchaser receives upon executing a contract to purchase. With regard to the fee that Complainants state they had to pay to book their room, Respondent's attorney states that Complainants do not have to pay a fee to book within the value season that they purchased, but do have to pay a seasonal upgrade when booked outside of the season subject to availability, all of which is disclosed on the acknowledgments signed by Complainants at the time of purchase. Respondent's attorney states that, although Respondent denies that any misrepresentations were made, Respondent agreed to cancel the transaction. The documentation within the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

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

37. 2013018561
Opened: 11/8/13
First License Obtained: 3/27/13
License Expiration: 5/26/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

38. 2013018571
Opened: 11/8/13
First License Obtained: 10/24/05
License Expiration: 10/23/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

39. 2013018581
Opened: 11/8/13
First License Obtained: 8/5/71
License Expiration: 3/30/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complaints opened by TREC against Respondents (Respondents 1 and 2 are affiliate brokers; Respondent 3 is their principal broker) based on Respondents' failure to satisfy Agreed Citations which were sent to Respondents. Respondents were sent Agreed Citations which contained civil penalties for Respondents 1 and 2 due to an advertising violation and for Respondent 3 for

failure to supervise Respondents 1 and 2. Specifically, Respondents 1 and 2's names were featured in a larger size than the firm name on a yard sign. Because Respondents had not signed and returned their Agreed Citations with payment, these matters were opened in legal as complaints.

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

Recommendation: Close in light of satisfaction of Agreed Citations.

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