

TENNESSEE REAL ESTATE COMMISSION MINUTES

January 9, 2013

The Tennessee Real Estate Commission convened on December 9, 2013 at 9:18 a.m., in 3rd floor Conference room of the Andrew Johnson Building, 710 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner John Griess, Commissioner Isaac Northern, Commissioner Wendell Alexander, Commissioner Austin McMullen and Commissioner David Flitcroft. Commissioner Janet DiChiara arrived at 9:18 a.m. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp.

Commissioner Flitcroft led the invocation.

The first order of business was the adoption of the agenda for the January 2013 Commission meeting. **Commissioner McMullen made the motion to adopt the January 2013 Commission meeting; seconded by Commissioner Northern; unanimous vote, motion carried.**

The next order of business was the approval of December 2012 minutes. **Commissioner Griess made a motion to approve the December 2012 minutes; seconded by Commissioner DiChiara; Commissioner McMullen and Flitcroft abstained; motion carried.**

Chairman Stephenson then welcomed the attendees and informed them that it had been determined that, as a result of the large number of attendees, the meeting location possibly exceeded its capacity. In order to alleviate this potential problem, the Commission decided that all licensees who were in attendance to satisfy a Reinstatement Order or to get CE, could leave the meeting once they signed out on the attendance sheet. Chairman Stephenson also told those in attendance that each of them would receive credit for the entire meeting time. Attendees that were present to satisfy a legal matter were required to stay for the meeting. Four attendees remained for the meeting.

Commissioner requested a recess at 9:25 a.m. and called the meeting back to order at 9:32 a.m.

Commissioner Alexander and Commissioner Stephenson presented new lapel Commissioner Pins to each of the other Commissioners as a gift.

Executive Director's Report, Eve Maxwell, Executive Director

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

Complaint Report

Ms Maxwell presented the Complaint statistics, the number of complaints opened and closed, the monies received from complaints for the month of December, 2012 and for the fiscal year 7/1/2012 through 12/31/2012 and the number of complaints closed for the fiscal year 2013 compared to the last fiscal year. Ms Maxwell commented on how well Ms. Cropp was doing reviewing and presenting the complaints to the Commission and that this was reflected in the TREC performance relative to the Regulatory Board Performance Measure. Ms. Maxwell explained that the overall performance measure for each Regulatory Board is to have 77% of complaints closed within 180 days from the time that the complaint is processed. For purposes of the performance measure, a complaint is deemed closed when the Commission has taken action upon it. The Real Estate Commission had a 93% closure rate according to the information received for the period ending 12/31/2012. The performance measure percentage is based upon complaints outstanding and closed within the last 18 months.

Disciplinary Action Report

Ms Maxwell discussed the Disciplinary Action Report and during this discussion, questions arose in regard to the ultimate disposition of decisions the Commission had reached on unlicensed individuals presented in the Legal Report who the Commission found to be engaged in activities which require a license. Commissioner Haynes and Griess asked what further action the Commission could take in regard to unlicensed activity. The Commission discussed that it currently assesses civil penalties for unlicensed activity and noted that Ms Cropp sends any issues of public concern to the District Attorney's office in the county in which the unlicensed person is practicing. Commissioner Haynes requested that TREC staff compile the number of the unlicensed activity complaints and work with the administration to seek additional methods to stop unlicensed activity. There was a discussion about the statutory provisions, TCA 62-13 109 and 110, which give the Commission the authority to take certain actions against unlicensed individuals. These actions include: seek an injunction, recover a penalty equal to monies received for activities which require a license and seek Class B misdemeanor charges against unlicensed persons. Ms Maxwell explained that while the Commission has the statutory authority to take certain actions against unlicensed individuals, the Attorney General's office is the office which would pursue any court actions against unlicensed individuals. The Commission discussed penalties which had been assessed against unlicensed individuals and the satisfaction of any such penalties. Ms Cropp stated that the Attorney General's office is sent a list of outstanding civil penalties, but noted that the Attorney General's office focuses its collection efforts on amounts in excess of \$10,000.

License Statistics

Ms Maxwell reviewed the 12/31/2013 license numbers, the 12/31/2012 testing numbers, the number of applicants approved, the number of firms and individuals lost and gained and how the current numbers compare with numbers from years past. Ms. Maxwell answered questions which the Commission had in regard to the numbers. The Commission discussed the current research, opinions and projections for the real estate industry going forward.

Ms Maxwell gave the Commission a brief update on the number of insured and uninsured licensees and compared the current number with the number from 2011 and 2009. Ms Maxwell stated that TREC had received hundreds of faxes and emails with certificates of insurance and a large number of broker releases from PBs releasing uninsured licensees. It appears that more the licensees are either renewing their policies in a timely fashion or sending in proof of current insurance than have done so in past renewal periods. Ms Maxwell told the Commission that the web processor for online payments for RISC had experienced some problems during the period of 12/31/2012-1/2/2013, which resulted in the site's inability to take online payments. Once the problem was resolved, renewals picked back up and RISC does not believe that this glitch will have any lasting impact. Ms Maxwell stated that RISC had informed TREC that it was about 10 days behind in actually processing applications and downloading the E&O files to TREC. RISC indicated that they expected to get all applications processed and get caught up very shortly. Those who purchase on line can print a certificate out immediately and many have done that and emailed or faxed those to TREC.

There was some discussion concerning whether only active licensees were required to have E&O. It was discussed that TCA 62-13-112 establishes that E & O insurance is a condition for licensing. Ms. Maxwell noted that Rule 1260-1-.15 clarifies the statute and states that it is a requirement for all active licensees to carry E&O, but a licensee who places his license in an inactive or retired status is not required to carry E&O.

Ms Maxwell stated that the list of licensees who do not have a current E&O policy will not be available until sometime after March 31, 2013 as licensees that purchase E & O insurance on 3/30/2013 may have their policies backdated to 1/1/2013, in which event the licensee would not be in violation of the Commission's current E&O Policy. After TREC receives the uninsured list from IS (sometime in April, 2013), TREC will send the list to RISC to be scrubbed, so that any questions of coverage with RISC can be cleared before disciplinary action proceedings are begun.

After a discussion concerning the requirement that all CE must be completed prior to **placing a license in a retired status, Commissioner Alexander made a motion that a sponsor be found to amend TCA § 62-13-318(2) to state that a licensee can retire a license without education due in their personal licensing period but require them to be current upon becoming active; if in the same renewal period must get CE deficit cleared prior to end of initial**

retirement renewal period with special consideration to Military Service members; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Ms. Maxwell stated to the Commission that the Regulatory Board System, RBS, will need to be reprogrammed to allow this action.

Ms Maxwell presented information concerning two recent incidents in which unrelated licensees self-reported their convictions for felonies involving drugs. Ms. Maxwell asked the Commission if felonies involving the sale of drugs and no charges of theft, fraud, misrepresentation or deception fell under 62-13-312(b) (12). After discussion, Commissioner Griess made a motion that in the two fact situations presented do not fall within the parameters of TCA 62-13-312(b)(12). Commissioner DiChiara seconded, motion passed.

ARELLO CONFERENCES

There was a discussion of the ARELLO conference information which Ms Maxwell presented. The Commissioners were asked to decide who wanted to attend each of the three ARELLO conferences scheduled for 2013. After discussion, Commissioners McMullen stated that he would like to attend the April, 2013 conference in Scottsdale, AZ., but that he needed to check his schedule during the lunch break.

The Commission meeting took a lunch break 11:27 a.m. and Chairman Stephenson called the meeting back to order at 1:18 p.m.

Informal Time Share Applicant Appearance: Pamela D. Carter – Examination Issue

This matter was continued to another meeting of TREC.

ARELLO CONFERENCES

The discussion concerning ARELLO conferences was resumed. Commissioner McMullen confirmed that he could attend the Mid-Year Conference in Scottsdale. The ARELLO Commissioner attendees were decided as follows:

Mid-Year Conference:

Wednesday, April 10, 2013---Saturday, April 13, 2013

Scottsdale, AZ ---Double Tree Paradise Valley

Commissioner Attendees--- Austin McMullen

Bear Stephenson

District Conference:

Monday, June 24, 2013---Wednesday, June 26, 2012

Biloxi, MS---IP Casino Resort Spa

Commissioner Attendees--- Grover Collins

Janet DiChiara

Annual Conference:

Wednesday, September 18, 2013---Sunday, September 22, 2013

Seattle, WA---Westin Seattle

Commissioner Attendees---John Griess

Janet DiChiara

REALLOCATION OF AUDITOR RESOURCE

The administration had asked Chairman Stephenson to involve the Commission in reviewing the current audit process and to suggest ways that the system might be streamlined and made more efficient. Ms Maxwell sent a memorandum and several additional items concerning the reallocation of the auditor resource to each Commissioner for review prior to the meeting. The memorandum included a breakdown of the number of audits conducted by each auditor, the counties included in each auditor's territory, the number of firms in each county, the size of the firms and the square miles included in each auditor's territory. There was a breakdown of the auditor's expenses presented, ways to make the current audit system more productive and efficient and ways to restructure the audit program. Ms. Maxwell presented pertinent portions of the memorandum for discussion by the Commission. After much discussion, Commissioner Alexander made a motion to recommend to the Administration that the auditor section be sunset, that the three auditors be taken off of TREC's payroll .Commissioner Collins seconded the motion. Commissioner DiChiara made a friendly amendment that initially one individual be hired and trained as a real estate investigator, who would work only for TREC and its legal counsel. Commissioner Northern seconded the friendly amendment; the motion as amended passes. Commissioner Griess stated that it might be beneficial to offer suggestions for continued monitoring of firms and enforcement of the Broker Act. Commissioner Griess suggested that TREC institute a system in which the PB signs an affidavit each year stating that he has looked at his escrow accounts and that he has reconciled them and found them to be accurate.

Commissioner Northern suggested that the affidavit should be supplied at PB renewal. The Commission summarized its action as follows: Sunset the auditors; train an investigator in real estate and have the PB certify upon each renewal that the firm escrow accounts are accurate, reconciled and in balance.

Education Report, Stephen McDonald, Education Director

Mr. McDonald presented the Courses for Commission Evaluation and Discussion for the month of January 2013 and the report is inserted. **Commissioner McMullen made a motion to approve all courses not Paper/Pencil delivery type on the Courses Presented to the Commission for Evaluation (J1, J3-J5, J11-33); seconded by Commissioner Collins; unanimous vote; motion carried.** Commissioner DiChiara led the discussion on Paper/Pencil correspondence courses as she is concerned that final answers are given to licensees that complete these courses. Commissioner DiChiara alluded to two providers who have been recognized for making this standard practice and wishes to do away with this delivery type.

Commissioner Alexander made a motion to appoint Commissioner DiChiara, Commissioner Collins and Education Director McDonald to a subcommittee to review all Paper/Pencil type courses; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Commissioner DiChiara made the motion to defer Courses J2, and J6-J10 to February 2013 Education Report; seconded by Commissioner McMullen; unanimous vote; motion carried.

Assistant Commissioner Giannini stopped by the Commission meeting to update the Commission on the progress of the new meeting room located in the Davy Crockett Tower. Assistant Commissioner Giannini said that the new meeting room was running a little behind schedule and that it would probably not be finished in time for the February 6-7, 2013 Commission meeting. Commissioner McMullen offered the City of Oak Hill Commission meeting room as a possible alternative meeting space. It was agreed that the space for the February meeting would be reviewed as it got closer to the time for the meeting. Assistant Commissioner Giannini then left the meeting and the education discussion continued.

Commissioner Griess requested some edits to the proposed TREC Instructor Manual. He asked that language be added so that it was clear that TREC could audit a course at any time as well as send surveys to licensees asking questions concerning their satisfaction of the completed pre-license and continuing education course.

Ms. Maxwell and Mr. McDonald were asked by the Commission to review the requirements set forth by other state regulatory agencies on non-resident education and report the results to the Commission.

Legal Report, Julie Cropp, Assistant General Counsel

Prior to the commencement of the Legal Report, Commissioner McMullen made a motion to accept, without being read out loud to the Commission and without further discussion, legal counsel's recommendations of dismissal which appeared following certain cases on the January 2013 Legal Report; Commissioner Collins seconded; the motion was discussed and Commissioner Alexander stated he thought that to maintain equality and consistency, the Commission should have each legal matter read into the record and each legal matter reviewed at the Commission meeting. Commissioner DiChiara stated she received the legal report prior to the meeting but did not review. Ms. Cropp stated that if the Commissioners had reviewed the legal report then they could vote to approve all recommendations of dismissal on the January, 2013 Legal Report as motioned by Commissioner McMullen. Roll call vote; Commissioner Alexander against the motion; Commissioner Collins for the motion; Commissioner DiChiara for the motion; Commissioner Haynes against the motion; Commissioner Stephenson against the motion; Commissioner Northern against the motion; Commissioner Flitcroft against the motion; Commissioner McMullen for the motion; Commissioner Griess against the motion; 6-3 vote; motion failed.

The January, 2013 Legal Report by Ms Cropp was presented.

At the beginning of the text of each case contained in the 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 January, 2013 Legal Report with all decisions reached by the Commission indicated.

1. **2012014061 &**
2. **2012014062- Commissioner Northern made a motion to accept counsel's recommendation of consent order for litigation monitoring as to both respondents; seconded by Commissioner McMullen; Commissioner Flitcroft and Commissioner Griess were against the motion; Commissioner Haynes recused herself; Commissioner Alexander abstained; Vote 5:2:2; motion carried.**
3. **2012018441- Commissioner DiChiara made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**
4. **2012019041- Commissioner DiChiara made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Flitcroft with a letter of**

instruction regarding escrow accounts and principal broker requirement; unanimous vote; motion carried.

5. **2012019211- Commissioner Alexander made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote, motion carried.**
6. **2012019231- Commissioner Northern made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
7. **2012019271- Commissioner Flitcroft made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**
8. **2012019311- Commissioner DiChiara made a motion to accept counsel's recommendation of Consent Order for voluntary revocation of Respondent's affiliate broker license based on Respondent's substantial and willful misrepresentations on Respondent's license application with the Commission in violation of T.C.A. § 62-13-312(b)(1) and conduct which constitutes improper, fraudulent, or dishonest dealing in violation of T.C.A. § 62-13-312(b)(20); seconded by Commissioner McMullen; unanimous vote; motion carried. Commissioner Alexander made a motion that the Principal Broker of record be put on notice of actions, decisions and dismissals of the Commission; seconded by Commissioner Collins; unanimous vote; motion carried.**
9. **2012019381 &**
10. **2012019382 &**
11. **2012019383 &**
12. **2012019384 &**
13. **2012019491- Chairman Stephenson made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
14. **2012019761 &**
15. **2012019762- Commissioner Northern made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.**
16. **2012019851 &**
17. **2012019852- Commissioner DiChiara made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.**
18. **2012019871 &**

19. **2012019881- Commissioner Collins made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
20. **2012019891- Commissioner Flitcroft made a motion to accept counsel's recommendation to dismiss; seconded by Chairman Stephenson; unanimous vote; motion carried.**
21. **2012019951- Commissioner Flitcroft made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.**
22. **2012021921 &**
23. **2012021931 &**
24. **2012021951- Commissioner Griess made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
25. **2012023671- Commissioner Flitcroft made a motion to accept counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Following the legal report, Ms Cropp updated the Commission on the rules which had been sent to the AG's office in the spring of 2012. Ms Cropp reported that the review of the Rules which did not address vacation lodging had been approved by the AG's office and had been sent to the Secretary of States office and should be effective 3/3/2013. The VLS rules are still at the AG's office and that there was a question of statutory authority for a few of the costs and fees added by rule.

Ms Cropp stated that the Deputy Counsel would like to explore the issues concerning the proposed rules further with the office of the AG. Commissioner McMullen made a motion to resubmit the rules without the fees in the event a decision is made that the Commission does not have the authority to make the fees. Commissioner Collins seconded the motion. The motion carried.

Commissioner DiChiara made a motion for the Commissioners to adopt Robert's Rules of Order; seconded by Commissioner Collins; unanimous vote; motion carried.

The Commissioners made brief comments after the business of the meeting was concluded.

Commissioner Griess asked Commissioner Flitcroft if there were any updates on the Dodd Frank Act and no further updates were available.

Assistant General Counsel Robyn Ryan asked the Commissioners to review a case she presented to Ms. Maxwell on the topic of home inspections.

(2) Attendees stated that the meeting was informative.

Chairman Stephenson adjourned the meeting at 4:18 p.m. The January 10, 2013 meeting day was not required.

EXHIBITS TO TENNESSEE REAL ESTATE COMMISSION MINUTES

January 9, 2013



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
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(615) 741-3072 fax 615-532-4750**

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: JANUARY LEGAL REPORT

DATE: January 9-10, 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. 2012014061**
Opened: 7/5/12
First License Obtained: 10/2/95
License Expiration: 2/16/13
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

- 2. 2012014062**
Opened: 7/5/12
First License Obtained: 7/21/86
License Expiration: 12/6/12
E&O Expiration: 1/1/13
Type of License: Broker
History: No Prior Disciplinary Action
****Respondent placed license into retirement on 12/8/11****

Complainant is the executor of Complainant's father's estate. Complainant alleges that Complainant's father entered into a trust agreement with Respondent 2 (retired broker – Respondent 1 is Respondent 2's spouse and is a principal broker) for the purchase of a piece of property. Pursuant to the agreement, Respondent 2 and Complainant's father were beneficiaries of this trust. The Trust Agreement, in part, empowered Respondent 2, as the trustee, "...to sell, lease, grant, option, mortgage, convey, encumber and contract to sell and convey the Property

and any parts thereof...” with the consent and at the direction of the beneficiaries. Specifically, these actions could be performed only “...upon written order and direction signed by the Beneficiaries...” In 2011, Complainant states that Respondent 2 entered into a deed of trust with a bank (creating a mortgage on the property) constructed a home there, and Respondent 1 listed the property for sale (at this time, it is unknown to counsel whether the property has been sold). Complainant states all was done without the consent or knowledge of Complainant or the estate.

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

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

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

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

3. **2012018441**
Opened: 9/17/12
First License Obtained: 8/30/05
License Expiration: 8/29/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant is the owner of a home which was listed for sale. Complainant was contacted by Respondent (affiliate broker) who stated that Respondent had an offer from potential buyers. Complainant states that Complainant was inaccessible for the next few days and asked Respondent to put the offer in writing and allow Complainant approximately six (6) days from the date of the phone call to formally respond. Complainant states that that, soon after, the written offer was submitted, dated the same day of the phone call, with an offer time limit of several days before the day that Complainant had originally requested. Complainant contacted Respondent by phone and requested the original discussed timeline in which to respond, which Respondent allowed. Complainant then submitted a written counter offer to Respondent's potential buyers, which also had a time limit specified. Complainant states that Respondent contacted Complainant by phone with a verbal counter offer from the potential buyers several hours before Complainant's counter offer's time limit. Complainant and Respondent then discussed getting the counter offer in writing, along with other issues regarding the commission percentage to Respondent, and Respondent sent Complainant a follow up e-mail referencing the verbal counter offer. Several days later, Complainant contacted Respondent and verbally accepted the potential buyers' verbal counter offer in a voicemail. Later that day, Complainant states that Respondent sent an e-mail stating that the potential buyers did not wish to go forward on the purchase. At that point, Complainant alleges that Complainant and Respondent spoke on the phone and Complainant alleges that Respondent was unprofessional during the call.

Respondent submitted a response through an attorney stating that Respondent represented the potential buyers and not Complainant. Respondent states that there was no purchase and sale agreement executed and agreed to by the parties. Respondent states that the potential buyers submitted their written offer, and agreed, through Respondent, that Complainant could be allowed additional time to submit Complainant's counter offer. Respondent states that Complainant's counter offer contained a deadline, as well, and during that period, Respondent was instructed by the potential buyers to convey a verbal counter offer. Respondent states that Complainant understood the requirement of a written agreement based on Complainant conveying to Respondent via e-mail three days after the deadline in Complainant's counter offer that Complainant had not received the potential buyers' verbal counter offer in writing. Respondent states that once Respondent received this e-mail from Complainant, Respondent conferred with the potential buyers, who decided not to go forward, which Respondent stated in a reply to Complainant. Respondent denied being unprofessional with Complainant on the telephone and Respondent denies any wrongdoing, stating that a purchase and sale agreement must be in writing and Respondent's responsibility was to represent Respondent's clients and those clients chose not to proceed on the transaction. Based on the documentation within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

4. 2012019041
Opened: 9/25/12
First License Obtained: 9/29/82

License Expiration: 6/15/13
E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

Complaint opened by TREC against Respondent (firm) based on Respondent's failure to satisfy an Agreed Citation sent to Respondent as a result of a TREC auditor's report from May 2012 regarding Respondent's accounts. The auditor's report indicated that Respondent does property management work but does not hold security deposits, and Respondent was depositing rent payments into Respondent's escrow account. A broker with Respondent noted on the auditor report that rent deposits were being put into the escrow account because the money belonged to others, but Respondent would open a management account for the funds since that was the correct procedure. After the complaint was opened, the TREC auditor returned to Respondent firm because it appeared that Respondent had no principal broker and the broker who addressed the issues in the first audit report had a license which expired after the first May audit in July 2012. The auditor obtained additional information that the broker who addressed the issues in the initial audit report was the only person in the firm and had been acting as principal broker. It appears that after the auditor's second visit, the broker reinstated the broker's license and paid to upgrade to principal broker for Respondent firm. On the second visit, the auditor also reviewed Respondent's accounts. It was noted that Respondent opened a management account and there was no earnest money or security deposits within that account because Respondent does property management and does not hold security deposits. Based on the documentation contained within the file, there does not appear to be any evidence of failure to account for funds of any clients.

Recommendation: Dismiss.

DECISION: The Commission voted to close the matter with a letter of instruction regarding escrow accounts and principal broker requirement.

5. **2012019211**
Opened: 9/28/12
First License Obtained: 3/25/85
License Expiration: 5/17/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: 2012019231 – Under review by legal

Complainants and several family members met with Respondent (affiliate broker) and asked Respondent to purchase a home which Respondent had purchased in a foreclosure (the property was previously owned by a family member of Complainants, who lost the property in the foreclosure). Complainants state that they negotiated with Respondent to purchase the home. The parties verbally agreed on a purchase price, but Complainants state that Respondent would not write up a contract. Approximately one (1) month later, the parties closed on the property, and a HUD 1 statement was signed by Complainants (as buyers) and Respondent (as seller). According to Complainants, Respondent received the check and left. On the following morning,

Complainants were contacted by the closing company and informed that Respondent had come back, picked up the deed, and left the check from Complainants, stating that Respondent no longer wanted to sell the home. The complaint indicates that the parties are now in litigation regarding the home and alleged rents owed to Respondent. It appears from the documentation that Complainants' family members who were the previous owners are occupying the home, but Complainants state they cannot get insurance on the home because Complainant holds the deed.

Respondent submitted a response stating that Respondent met with the Complainants and family and agreed to sell the house at "roughly half the market value" in a quick cash closing within a week to ten days because Respondent sympathized with their situation. Respondent states that, at that time, Respondent told them that if it went over that time period, there would be a nine hundred dollar (\$900.00) per month rental rate. Respondent states that Respondent closed with the understanding that the rental arrangement would be worked out between the parties. Respondent states that after the closing concluded, Respondent was told that the \$900 rent would not be paid since they had already closed. At that point, Respondent states that the closing company was closed for the day, so Respondent went back the next morning because all of the terms of the deal were not going to be met. Respondent states that Complainants purchased the home through a private lender who is also involved with the lawsuit.

Based on subsequent responses, it appears that the parties dispute a number of issues, including but not limited to whether there was an agreement to pay rent and whether there was an agreement to close within seven to ten days.

Based on the documentation contained within the file, it appears that Respondent was the seller of the home and did not act as a licensee nor does it appear that there was there any belief by any of the parties that Respondent represented the Complainants in the transaction. It appears that the parties are currently engaged in active litigation regarding the circumstances which are the subject of this complaint. Based on the documentation in the file, this matter appears to be a disputed issue between the parties which is best left for resolution through the civil litigation.

Recommendation: Dismiss.

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

6. 2012019231

Opened: 9/28/12

First License Obtained: 3/25/85

License Expiration: 5/17/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 2012019211 – Under review by legal

Complainant purchased a home where the seller was represented by Respondent (affiliate broker – same Respondent as previous complaint). After a home inspection and termite inspection, Complainant wanted several issues resolved, which were agreed to by the seller. One of the

issues involved a repair to the chimney area to shed water away from the chimney, which was not able to be completed prior to closing by the company who had previously replaced the roof. Because the seller lived out of town, Complainant states that Respondent verbally agreed that the chimney improvement would be paid for by the seller or Respondent, and Respondent signed the Buyer's Final Inspection stating that Respondent would be sure that the company which had previously replaced the roof would perform the chimney improvement. Complainant states that, in the weeks following closing, Complainant and Complainant's broker repeatedly contacted Respondent because the improvement had not been done, and Complainant's broker contacted Respondent's broker about the chimney improvement, and Complainant filed this complaint.

Respondent submitted a response stating that the work was completed prior to the filing of the complaint. Respondent states that the delay in getting the work done was due to backups with getting a contractor to do the work. Respondent states that, after contacting the company which had previously replaced the roof, Respondent was put into contact with the company's subcontractor because this was a small job, and the sub-contractor completed the work. Respondent also stated that, in the meantime, another roofing company re-flashed the chimney area. Respondent states that all work has been completed and paid for several months. Complainant submitted an additional response stating that Complainant was unaware that the work had been done because Respondent did not notify Complainant or Complainant's broker but confirming that the work was completed.

Recommendation: Dismiss.

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

7. 2012019271
Opened: 9/17/12
First License Obtained: 8/15/03
License Expiration: 5/16/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the prior owner of a residence. Respondent (affiliate broker) purchased the home after Complainant was foreclosed upon. Eviction proceedings began against Complainant, and then it appears that Complainant and Respondent entered into a Move-Out and Possession Agreement which provided that if Complainant moved out of the property by a specified date, Respondent would pay Complainant two thousand five hundred dollars (\$2,500.00). In order to receive the payment, the agreement specified that Complainant must move out and relinquish possession to Respondent by a date specified, that the property must not be damaged in any way and all items attached to the property must remain, and that no other tenants may be living in the property and must be completely vacated by the specified date (Complainant provided a copy of the agreement, signed by Respondent but not Complainant). Complainant states that Complainant moved out by the date specified, but Respondent has not paid Complainant pursuant to the agreement.

Respondent submitted a response stating that Respondent purchased the property from an individual who bought the property out of foreclosure. Respondent states that the individual had already attempted to ask Complainant to leave the property, and an eviction notice was filed. Therefore, Respondent states that an attorney was hired by the entity that sold the property to Respondent to draft the Move-Out and Possession Agreement. Respondent states that Complainant failed to comply with the agreement by failing to vacate the property by the specified date, by leaving the house damaged with items removed, and by having an estate sale which lasted beyond the specified date resulting in many individuals accessing the property after the specified date. Additional responses from Complainant and Respondent were submitted with Complainant insisting that the terms of the agreement were met and Respondent arguing that they were not. Based on the documentation contained within the file, this appears to be a contractual dispute between the parties, and 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.

- 8. 2012019311**
Opened: 9/17/12
First License Obtained: 11/23/09
License Expiration: 11/22/13
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Anonymous complainant was looking to purchase property in Tennessee and was put in touch with Respondent (affiliate broker). Anonymous complaint alleges that Respondent and Respondent's spouse (who is unlicensed) showed properties to the individual, and Respondent made the individual uncomfortable bragging about Respondent's connections and experience through licensure in an eastern state. The individual then researched Respondent online and could not find information that Respondent was licensed in the eastern state but discovered that Respondent had previously held a professional license in a southern state which had been revoked. Based on this information, it was discovered by the TREC office that Respondent, who applied for licensure with TREC in 2009, did not disclose the revocation of Respondent's professional license in the southern state. In fact, Respondent answered "no" to the question "Have you ever been refused a license or had a license revoked, suspended, reprimanded, or fined by any federal, state, or local government? (Do not include motor vehicle license.)"

Respondent submitted a response denying that Respondent's unlicensed spouse showed property. Respondent states that the anonymous complainant is a disgruntled former client. Respondent states that Respondent was licensed in the eastern state and included a copy of a card showing Respondent had held a professional license in the eastern state. As to the allegations regarding the revoked license in the southern state, Respondent admits that Respondent "...did not answer

the question properly...” Respondent indicates that “...it was so long ago...” and Respondent was confused by the question on the application. Further, Respondent states that Respondent did not answer the complaint in the southern state and the license there was automatically revoked.

A copy of the Final Order from the southern state was obtained which showed that Respondent’s professional license was revoked there in 2005 due to the revocation of Respondent’s professional license in the eastern state earlier in 2005. A copy of the order from the eastern state indicates that Respondent’s license in there was revoked due to Respondent’s improper performance of a job duty. Respondent did not disclose either of these license revocations on Respondent’s 2009 TREC application.

Recommendation: Consent Order for voluntary revocation of Respondent’s affiliate broker license based on Respondent’s substantial and willful misrepresentations on Respondent’s license application with the Commission in violation of T.C.A. § 62-13-312(b)(1) and conduct which constitutes improper, fraudulent, or dishonest dealing in violation of T.C.A. § 62-13-312(b)(20).

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

9. **2012019381**
Opened: 10/2/12
First License Obtained: 7/16/07
License Expiration: 7/15/13
E&O Expiration: 7/13/13
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

10. **2012019382**
Opened: 10/2/12
First License Obtained: 9/20/06
License Expiration: 9/19/12
E&O Expiration: 1/1/13
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
*****License Expired on 9/19/12*****

11. **2012019383**
Opened: 10/2/12
First License Obtained: 6/5/08
License Expiration: 6/4/14
E&O Expiration: 10/30/14
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

12. **2012019384**

Opened: 10/2/12
First License Obtained: 11/29/06
License Expiration: 11/28/14
E&O Expiration: 10/30/14
Type of License: Firm
History: No Prior Disciplinary Action

13. 2012019491

Opened: 10/2/12
First License Obtained: 3/9/95
License Expiration: 11/20/12
E&O Expiration: 10/30/14
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants attended a time share presentation in 2009 offered by Respondents (Respondent 1 is a time-share salesperson, Respondent 2 was a time-share salesperson whose license is currently expired, Respondent 3 is a time-share salesperson, Respondent 4 is a firm, and Respondent 5 is the firm's principal broker). Complainants allege misrepresentations at the presentation, including but not limited to the time share being a great financial investment, that the resort was new construction when it was really a remodel, that Complainants could rent their timeshare for profit, that the timeshare would qualify as a tax write-off, and that the resort would buy back the timeshare if Complainants ever decided to sell. Finally, Complainants state that they were rushed through the closing and were not given adequate opportunity to read the documents which they signed.

Respondent 1 responded and stated that Respondent 1 does not have documentation relating to the sale because Respondent 1 has transferred and now works for another resort, but denied making the alleged misrepresentations. Respondent 2, who had also transferred to another resort since the time of the sale to Complainants, had a license which is now expired and submitted no response. A response was submitted by Respondents 3, 4, and 5, which denies that any misrepresentations were made to Complainants in the timeshare purchase and in fact the documents signed by Complainants explained that Complainants were not purchasing as a financial investment or with the expectation of rent returns, tax advantages, or guaranteed buy back. Further, Respondents 3, 4, and 5 deny that Respondents were rushed through the closing process. 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.

14. 2012019761

Opened: 9/28/12
First License Obtained: 6/7/02
License Expiration: 9/19/14

E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

15. **2012019762**
Opened: 9/28/12
First License Obtained: 5/18/76
License Expiration: 2/15/13
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

Complainant hired Respondents (Respondent 1 is a firm; Respondent 2 is a broker) in 2011 to manage two (2) properties. Complainant alleges that Respondents mismanaged Complainant's properties, which resulted in Complainant terminating Respondents' management services in June 2012. Complainant alleges that Respondent has not returned spare keys to the properties, has not provided copies of vendor invoices as requested by Complainant at termination, and has not returned a non-refundable option payment which was made on one of the properties by the tenant pursuant to a lease-purchase agreement or a security deposit paid by a tenant on the second property, all as requested in Complainant's termination letter to Respondents which was sent through an attorney and to which Complainant states Respondents were non-responsive. Also, Complainant states that Complainant was wrongfully charged by Respondents for a repair to the air conditioning unit, which Complainant states was the responsibility of the tenants under the lease-purchase agreement, which stated that the lessee had the responsibility for repairs.

Respondents submitted a reply disputing Complainant's allegations. Respondents state that the spare keys were mailed to Respondent. Respondent also attached copies of repair invoices. With regard to the charge for the air conditioner repair which Complainant states was the responsibility of the tenants, Respondents state when the tenants signed the lease-purchase agreement, it was during cooler weather and therefore impossible to tell that the unit was not working at the time, and Respondent said that due to this, most owners prefer to make a repair than to lose a tenant over the issue. As to the return of the tenant security deposit, Respondent states that Complainant was credited the deposit on Complainant's owner statement. With regard to the non-refundable option payment paid pursuant to the lease-option agreement, Respondent states that Complainant owes Respondent an amount of money, and offered to return to Complainant the balance of the option payment but said Respondent could not return this amount while in dispute. The documentation provided does not appear to evidence a violation by Respondents, but instead this appears to be a dispute between the parties which is best left for resolution through civil litigation and/or mediation.

Recommendation: Dismiss.

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

- 16. 2012019851**
Opened: 9/28/12
First License Obtained: 10/30/92
License Expiration: 10/3/14
E&O Expiration: 1/15/13
Type of License: Principal Broker
History: No Prior Disciplinary Action
- 17. 2012019852**
Opened: 9/28/12
First License Obtained: 6/1/94
License Expiration: 12/7/13
E&O Expiration: 1/15/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was interested in purchasing or building a home and contacted Respondent 2 (affiliate broker – Respondent 1 is Respondent 2’s principal broker) to assist Complainant. Because Complainant had already ordered custom house plans previously, Complainant and Respondent 2 viewed several lots and looked at existing houses. Complainant and Respondent 2 signed a Buyer Representation Agreement. Respondent 2 set up a meeting with a builder and all viewed Complainant’s areas of interest and several of the builder’s homes. Then Respondent 2 submitted a drafted outline of Complainant’s wishes regarding the home to the builder and asked the builder to bid on building the home in Complainant’s area of interest. The builder met with Complainant and Respondent 2 and brought pricing information. Complainant then became interested in looking at other lots and existing homes and Respondent 2 provided available options, which Complainant states Complainant viewed. When Complainant became interested in another lot, Respondent 2 obtained information and assisted Complainant with preparing a purchase and sale contract for the lot, which Complainant purchased. Complainant states that Complainant then learned that the builder had signed a Compensation Agreement with Respondent 2 to pay Respondent 2 three percent (3%) of the builder’s draw, which made Complainant angry due to Complainant’s belief that this would increase the builder’s cost of building. Complainant states that Complainant was unaware that Respondent would be involved after the lot was purchased. When Respondent 2 then asked Complainant to meet with Respondent 2 and the builder to go over the contract, and Complainant refused to meet and has had no further contact with Respondent 2. Complainant also states that Complainant contacted Respondent 1 regarding the situation. Complainant states that Respondent 1 was rude and told Complainant to either sign the contract with the builder or walk away because Respondent 2 was working with the builder.

Respondent 2 submitted a response stating that Complainant and Respondent 2 looked at several existing homes that Complainant did not like, so when Complainant told Respondent 2 about the house plans, the two began looking at lots. When Complainant found a lot that interested Complainant, Respondent 2 states that Complainant asked Respondent 2 if Respondent 2 knew a good builder, and Respondent 2 states that, upon that request, Respondent 2 began looking for a builder and set up a meeting with the builder at Complainant’s request. Before the first meeting,

Respondent 2 states that Respondent 2 asked and was informed that if Respondent 2 brought the builder a build job, Respondent 2 would receive three percent (3%) from the builder. Respondent 2 states that the parties met with the builder and began quotes on the lot, and then Complainant changed the lot. Respondent states that once Complainant decided on the lot, Complainant stayed in frequent contact with Respondent 2 about details of building the house and financing the house as the builder worked on quotes. Respondent 2 states that Respondent 2 worked long hours on doing this work and preparing the pre-construction specifications. After Respondent signed the Compensation Agreement with the builder, and when the parties were set to meet with the builder to sign the contracts, Respondent 2 states that Complainant began to question the amount that Respondent 2 was being paid. When told that the builder, not Complainant, would be paying three percent (3%), Respondent 2 states that Complainant said Complainant did not want Respondent 2 paid and the commission cost could be subtracted from the price of the home. Respondent 1 submitted a response stating that before the construction contract was drawn up, Complainant was aware that Respondent 2 was receiving a commission from the builder and Complainant was free to go to any builder Complainant wanted. Based on the documentation within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

18. 2012019871

Opened: 9/28/12
First License Obtained: 4/30/04
License Expiration: 3/23/14
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

19. 2012019881

Opened: 9/28/12
First License Obtained: 10/29/87
License Expiration: 3/29/13
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complaints opened by TREC based on anonymous complaint received by home inspector licensing program which was referred to TREC. Anonymous complaint alleges wrongdoing on the part of a home inspector. Relevant portions of the anonymous complaint allege that the home inspector received work through referrals from Respondent 1 (affiliate broker) in exchange for a referral fee paid to Respondent 1, and Respondent 1 assisted the home inspector in underbidding a job. The home inspector licensing program closed the complaint and the complaint was referred to TREC where complaints were opened against Respondent 1 and Respondent 2 (Respondent 1's principal broker). The anonymous complaint does not appear to

include any documentation which evidences the acceptance of any referral fees or any other wrongdoing on the part of Respondent 1 or 2.

Respondent 1 submitted a response denying the allegations of the complaint, calling them false statements, and stating that the anonymous complaint was submitted out of retaliation. Further, Respondent 1 denied any involvement in the home inspector's business dealings and denied accepting any referral fees or gifts from the home inspector. Respondent 2 also submitted a response stating that Respondent 2 has no reason to believe that Respondent 1 has accepted any commissions or allowances from the home inspector, and Respondent 2 is not aware of Respondent 1 having a business relationship with the home inspector. Respondent 2 questioned the credibility of the anonymous complaint and stated Respondent 2's belief that the complaint was created by an individual out of retaliation due to an ongoing civil dispute involving Respondent 1 and other parties. Based on the documentation contained within the file, there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

20. 2012019891

Opened: 10/16/12

First License Obtained: 3/10/95

License Expiration: 12/7/14

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: 200101760 – \$500 Consent Order

Complainant was the owner of a property, and Respondent (principal broker) represented potential buyer of Complainant's property. Respondent submitted an offer on behalf of the potential buyer along with a prequalification letter from a mortgage company. Complainant alleges that the loan paperwork was not completed and the first closing was missed. After the first closing date, Complainant states that Respondent noted one small problem on the buyer's credit report regarding the amount of a student loan but Complainant was assured everything would be fine to close. Complainant states that Complainant spoke with Respondent, who Complainant states tried to negotiate an occupancy agreement by phone, which Complainant did not agree to. Complainant states that Respondent and the mortgage company assured Complainant that the financing would pose no problem for closing, so Complainant signed a Temporary Occupancy Agreement with the potential buyer, and the potential buyer moved into the property. Again, the closing is extended due to a holdup in the loan paperwork, and Complainant states that the buyer did not pay the rent on time. Then, Complainant states that the buyer dropped off a check at Respondent's direction for half of the month's rent since the closing was scheduled to take place mid-month, which Complainant states was in violation of the Temporary Occupancy Agreement. Complainant decided not to extend the closing again and the potential buyer was unable to close. Therefore, Complainant arrived at the home ten (10) days later to take back possession of the home pursuant to the Temporary Occupancy Agreement, and

the potential buyer refused to move out despite Complainant's possession of a signed Temporary Occupancy Agreement. Complainant states that Respondent knew of the potential buyer's inability to purchase the home. There was no documentation submitted with the complaint.

Respondent submitted a response denying the allegations of the complaint and stating that it was Complainant who asked if the potential buyer would be willing to rent the property until closing due to financial problems and Respondent never spoke with anyone verbally about an occupancy agreement. Respondent claims that Respondent and the lender advised Complainant's broker before the first closing that the potential buyer needed an extension and an amendment was later prepared with the Temporary Occupancy Agreement extending the closing date. Respondent states that then the closing was extended again due to problems with financing. At that time, Respondent states that the potential buyer paid half of the month's rent since the closing was scheduled mid-month. Respondent states that this was done by the potential buyer and not at the instruction of Respondent. It appears that the buyer vacated the home at some point after the complaint was filed, and there may have been civil litigation of some sort between Complainant and Respondent, but Respondent states that the case was dismissed. Respondent believes that this Complaint was not filed by the individual who was the owner/seller of the home due to the owner/seller's lack of involvement or attendance for the court proceeding and lack of communication. The documentation contained 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.

21. 2012019951

Opened: 10/29/12

History: 2012009481 – Closed \$1,000 CO (unlicensed activity)

Complainants state that Respondent (unlicensed vacation lodging service) handled the rentals on Complainant's property pursuant to a Rental Management Contract executed between the parties in September 2011 until Complainants cancelled the services in June 2012. Complainants allege that Respondent failed to remit owner statements and owes Complainant rental payments for nightly rentals (approximately 21 nights) from February 2012 through June 2012. It appears that Complainants obtained an attorney who sent a demand letter to Respondent in July 2012 for amounts owed, and Complainants received a check from another entity in September 2012 which was returned for insufficient funds. Complainants submitted additional information stating that Complainants received a cashier's check with payment for most of the nights.

Respondent did not submit a response to the complaint. This complaint, sent in September 2012 was returned "unclaimed." Respondent satisfied a previous Consent Order which was authorized by the Commission in August for unlicensed activity based on a prior complaint. Payment for the amount outlined in the Consent Order authorized in August was submitted by another entity in September 2012 with no signed Consent Order. After multiple attempts unsuccessful attempts to reach Respondent at the address provided, legal counsel contacted the entity which sent the

cashier's check, who had the individual who responded to Respondent's first complaint execute the Consent Order (thus closing the first complaint). The individual with the entity who sent the check and who spoke with legal counsel stated that Respondent had ceased doing business. A TREC auditor was sent to the location at which Respondent had been doing business, and the auditor reported that it appeared that Respondent was not doing business at that location. By all indications, it appears that Respondent is out of business.

Recommendation: Dismiss.

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

22. **2012021921**
Opened: 11/5/12
First License Obtained: 7/25/11
License Expiration: 7/24/13
E&O Expiration: Uninsured
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
Respondent retired license on 6/14/2012
23. **2012021931**
Opened: 11/5/12
First License Obtained: 6/9/97
License Expiration: 10/2/14
E&O Expiration: 7/13/13
Type of License: Principal Broker
History: No Prior Disciplinary Action
24. **2012021951**
Opened: 11/5/12
First License Obtained: 3/24/08
License Expiration: 3/23/13
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2012022851 – Under review by legal
2012023071 – Under review by legal
2012025111 – Under review by legal

Complainants were repeat time-share purchasers. Complainants outline each purchase (beginning in the 1980s) and state that there were misrepresentations by salespeople at each purchase. The majority of the time-share purchases were either made in other states or took place well outside of the two (2) year statute of limitations and are thus outside of TREC's jurisdiction. However, Complainants' most recent purchase took place in late 2011 in Tennessee, and Complainants allege that Respondent 1 (time-share salesperson; Respondent 2 was Respondent 1's principal broker and Respondent 3 was the time-share registration) made a

variety of verbal misrepresentations, including but not limited to that Complainants could save money on maintenance fees and interest by combining multiple time-share contracts and their points into one contract and that Complainants could get a credit card in several months and pay maintenance fees on the card and receive points. Complainants claim that they did not receive the card when they were told they would receive it, then had to fill out another application later and, when they received the card, the limit was not as high as Complainants were told it would be. There was no documentation submitted with the complaint.

Respondents submitted replies denying any misrepresentations relating to the 2011 purchase or any other wrongdoing. Respondents state that, by combining contracts, Complainants were able to level the interest rates on their existing active loans. Respondents further state that Complainants reviewed and signed the terms of the program which allowed no interest if paid in full within six (6) months. Respondents state that their records do not show that Complainants applied for the credit card at the time of purchase, which was why Complainants had to apply for the card later. Finally, Respondents state that Complainants did not have a history of complaints over the years of their purchase, and earlier in 2012, Complainants became delinquent in maintenance fees and their loan and after failing to make payments, Complainants went into default and their contract was cancelled. Respondents state that, while Respondents committed no wrongdoing, as a matter of goodwill, Respondents agreed to reinstate Complainants the contracts which complainants had combined into one in 2011, but Complainants, when contacted, elected to retain the status of their account and asked that Respondents only suppress credit reports pertaining to the transaction, to which Respondents agreed. Based on the documentation contained within the file, there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

25. 2012023671
Opened: 11/27/12
First License Obtained: 1/2/92
License Expiration: 10/14/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complaint opened by TREC against Respondent (principal broker) based on Respondent's failure to satisfy an Agreed Citation sent to Respondent. Respondent was sent an Agreed Citation, which included a civil penalty for the advertising violation and failure to supervise based on a photo of a yard sign on which the firm name was printed in a very small font on the bottom of the sign and which did not include the firm telephone number. Because Respondent had not signed and returned said Agreed Citation, the matter was opened in legal as a complaint.

Soon after this matter was opened in legal, Respondent submitted the executed Agreed Citation and paid the civil penalty included therein.

Recommendation: Dismiss.

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