

TENNESSEE REAL ESTATE COMMISSION MINUTES

May 9 – 10, 2013

The Tennessee Real Estate Commission convened on Thursday, May 9, 2013 at 9:05 a.m. in Meeting Room C of the Pickwick Landing State Park Inn and Conference Center. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman Michelle Haynes, Commissioner Wendell Alexander, Commissioner Isaac Northern, Commissioner David Flitcroft and Commissioner Janet DiChiara. Commissioner Grover Collins, Commissioner John Griess and Commissioner Austin McMullen were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting’s date, time and location have been noticed on the TN Real Estate Commission’s website, included as part of this year’s meeting calendar, since September 7, 2012. Additionally, the agenda for this month’s meeting has been posted on the TN Real Estate Commission’s website since May 1, 2013. Also, this meeting has been noticed on the tn.gov website since April 29, 2013.

The first order of business was the adoption of the agenda for the May 2013 Commission meeting. Commissioner Flitcroft asked that a discussion be added to the agenda regarding how to recognize the service of outgoing Deputy General Counsel Wayne Pugh. The Chairman added that discussion to right before the presentation of the Legal Report by Ms. Cropp.

Commissioner Alexander moved that the agenda item on advertising be deferred to the June 2013 meeting because Commissioner Griess was absent from the meeting and he has much information regarding the topic; seconded by Commissioner Flitcroft; Commissioner Alexander made a motion to approve the agenda as amended; seconded by Commissioner DiChiara; unanimous vote; motion carried.

The next order of business was the approval of the April 2013 minutes. **Commissioner DiChiara made a motion to approve the April 2013 minutes; seconded by Commissioner Alexander; unanimous vote; motion carried.**

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of April 30, 2013 TREC had a total of 100 open complaints. There were 28 new complaints in April 2013. There were 88 complaints in the legal department and 12 open complaints in the TREC office awaiting response. The total

number of closed complaints for the current Fiscal Year 2012-2013 is 232. The total civil penalties collected in April 2013 were \$27,870.00.

- **Licensing Statistics** - Ms. Maxwell presented licensing statistics. As of April 30, 2013, there were 23,201 active licensees, 1,288 inactive licensees and 8,739 retired licensees. There were 3,881 active firms and 243 retired firms. There were 328 new applications approved in May 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in April of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

ERRORS & OMISSIONS INSURANCE

Ms. Maxwell presented the Commission with a report comparing the number of uninsured licensees by date in each of the last three renewal cycles (2009, 2011 & now 2013). She gave them a breakdown of how many licensees are shown insured with Rice and/or several alternate carriers. On April 1, 2013, it was reported that 17,294 licensees had purchased Rice Insurance, 7,162 had Alternate Insurance and 661 were uninsured. Ms. Maxwell advised the Commission regarding the administrative plan to handle the uninsured. Ms. Cropp and Ms. Ryan discussed with the Commission how the new law for E&O delinquency will affect the current Policy on Lapsed Errors & Omissions insurance. They briefly discussed the content of the law. More information would be made available at the June meeting.

REINSTATEMENT WAIVER REQUESTS

Laura Shockley, expired licensee #232503, requested a waiver from the Commission regarding the reinstatement policy. She was first licensed on 4/6/1987 and retired her license on 9/15/2011. She failed to renew and expired on 10/2/2011. Ms. Maxwell advised that she is past the one year reinstatement period per the reinstatement policy. Ms. Shockley requested that the Commission allow her to pay any penalties to maintain the retirement status of her license. She stated in her letter that she was willing the renewal fees for 2011 & 2013 and any penalties if the Commission would agree to allow her to reinstate. **Commissioner DiChiara made a motion to deny her request for a waiver of the reinstatement penalties; no second; discussion;** Chairman Stephenson asked what the penalty would be; Ms. Maxwell stated the reinstatement penalty schedule per the reinstatement policy is \$50.00 for the first four months and then \$150.00 for the next months after that up to a year. Commissioner DiChiara asked if it

was not the normal policy of the board to say you have no option but to retest. Commissioner Northern stated that the Board has the ability to determine a penalty beyond the one year period. **There was no second to Commissioner DiChiara's motion so it failed for lack of a second. Commissioner Flitcroft made a motion that Ms. Shockley be allowed to pay the normal schedule for reinstatement of \$50.00 for the first four months, \$150.00 for the next eight months and beyond that (past the reinstatement policy period) that she be allowed to pay \$200.00 per month and it all has to be paid by June 1, 2013 seconded Alexander; vote: 5 yes, 1 no (Commissioner DiChiara voted no); motion carried.** Legal Counsel Cropp advised the Commission they should articulate a reason for their willingness to grant the waiver. Commissioner Flitcroft stated that his reason is that she is contrite; she admits she did wrong, she takes responsibility and he sees no damage to the public by granting the waiver.

Trista Baird, expired license #322148, requested a waiver of the reinstatement penalties. Ms. Baird was first licensed on 8/10/2010. She inactivated her license on 5/4/2011. Six months before expiration, she was sent a letter by the education department that her continuing education was due before her expiration date on 8/9/2012 and that letter was not returned as undeliverable. She failed to pay the renewal or complete the required CE and her license expired on 8/9/2012. **Commissioner Alexander made a motion to deny the request; seconded by Commissioner Flitcroft; vote: 4 yes, 2 no (Commissioner DiChiara and Commissioner Northern voted no); motion carried.** Chairman Stephenson offered the rationale for the denial stating that unlike the previous individual, Ms. Shockley, who was willing to pay the penalties due, Ms. Baird was not willing to pay the penalties due so she can either pay or retest and reapply.

Commissioner Northern stated that Staff was asking for clarification on whether Ms. Shockley needs to attend the Commission meeting as a condition of reinstatement. **Commissioner Alexander made a motion that Ms. Laura Shockley must also attend a full regularly scheduled meeting of the Tennessee Real Estate Commission or pay the \$750.00 to buy out of attendance at the meeting; seconded Commissioner Haynes; unanimous vote; motion carried.**

REQUEST FOR EXEMPTION/WAIVER OF 50 MILE RULE

Jeffrey Evans, principal broker #325829, made a written request to the Commission and Ms. Maxwell presented it in its entirety. Mr. Evans requested that the Commission consider exempting his brokerage, Whitetail Properties, Inc., firm #262247, from Rule 1260-2-.01 [the "50 mile rule"] so that he might continue his brokerage structure and hire licensees in Tennessee with his main office headquartered out of Illinois and conduct business in Tennessee. He proceeded to explain his business model in the letter and Ms. Maxwell answered any questions the Commissioners had regarding the request. **Commissioner Alexander made a motion to deny; seconded by Commissioner DiChiara; opened to discussion; Ms. Maxwell asked if Mr.**

Evans could identify the individuals that he wants licensed and then come in with those individuals that he had identified for whom he wishes to request a waiver of the 50 mile rule and it was the consensus of the Board that he could; vote on motion carried unanimously.

AUDITOR UPDATE

Ms. Maxwell advised the Commission that the four auditors who previously worked for TREC have all retired, been terminated or resigned. Ms. Maxwell gave an overview of some possibilities that could be put into place instead of using a traditional auditor team as has been done in the past. She talked about mail in compliance audits. She stated that someone could review the mail in audits, identify concerns and then if need be, go out and perform an investigation. Ms. Maxwell advised the Board that she is in the process of drafting a mail in audit form. Commissioner Northern stated that he is concerned that the mail in audit draft seems to be directed at mostly property management firms and that it should be broader. Ms. Maxwell stated that she believes the audit form does address issues that could develop at all firms. Commissioner Alexander suggested that any field audits/investigations should start by going back and re-auditing and concentrating on firms that have had previous audit violations. Ms. Maxwell stated that she believes they can make these changes happen quickly because Assistant Commissioner Giannini is also eager to get a new system in place.

The Commission briefly discussed renewal notices and it was the consensus that the renewal notices should still be sent to the licensee at the firm, the pb at the firm and the licensee's home address. It was discussed that email is not yet a reliable way to transmit notices.

Commissioner DiChiara, Director Maxwell and Education Director Steve McDonald all reported on things they found of interest at the ARELLO Mid-Year Meeting.

Ms. Maxwell updated the Board on the move of the TREC office and the other regulatory boards from the Andrew Johnson Tower to the Davy Crockett Building.

Ms. Maxwell explained to the Board that Staff has exhausted their resources in finding a venue with amplification and recording equipment for the meeting in Cookeville in July. **Commissioner DiChiara made a motion that the meeting be held in Nashville in July; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Chairman Stephenson recessed the meeting for lunch at 11:33 a.m. and reconvened the meeting at 1:03 p.m.

INFORMAL APPLICANT APPEARANCE

Karen Renee Parker, applicant, appeared with her potential Principal Broker Kim Hairrell of Crye-Leike Realtors of Memphis to request that she be approved to apply for an Affiliate Broker license. Ms. Parker disclosed to the Commission a conviction of Possession with Intent to Deliver Marijuana in 1994. **Commissioner Northern made a motion to approve Ms. Parker's request; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Gregory Williamson, applicant, appeared with his potential Principal Broker Malcolm Wilson of M.E. Wilson Realty, Inc. in Memphis to request that he be approved to apply for an Affiliate Broker license. Mr. Williamson disclosed to the Commission the following convictions: Criminal Attempt in January of 1992 and two counts of Possession of a Controlled Substance with Intent to Deliver/Sell & Aggravated Assault in December of 1997. **Commissioner Flitcroft made a motion to approve Mr. Williamson's request; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for May 2013. **Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation (M1-M27); seconded by Commissioner Northern; unanimous vote; motion carried.**

Mr. McDonald presented the following instructors for review/approval.

1. Jenn Schutt of McKissock, LP (1338) requested the approval of Mike Troyan and Steven Maher to teach the following courses; 6802- Current Issues in Fair Housing, 6837- 1031 Exchange, 6906- Code of Ethics, 6941- Basics of Green Building, 6962- Liens, Taxes, Foreclosures, 6963- Contract Law from the Top Down, 6964- Apartment Buildings, 6965- Misrepresentation Case Studies, 6966- Art of Short Sale, 7161- Code of Ethics.
2. Lynne Magnavite of IREM-Institute of Real Estate Management (1089) requested the approval of Paul White to teach their approved courses 6798-Investment RE: ASM 603:1, 6799- Investment RE:ASM 604:2, 6800- Investment RE: ASM 605:3, 6832- Investment RE: FIN402 and 6916-MNT 402- Property Maintenance Risk Management.
3. Sally Cummings of TAR (1110) requested the approval of Steve Champion to teach Transaction Desk Basic- 5747 and Transaction desk Advanced- 5748. Mr. Champion is a previously approved instructor for TAR.

Commissioner DiChiara made a motion to approve the two above instructors; seconded by Commissioner Northern; unanimous vote; motion carried.

Commissioner DiChiara spoke to the Commission about instructors not receiving continuing education hours for courses they themselves teach. She said that they teach the course but then they have to turn around and take the same course they teach which seems redundant. She said she is not opposed to taking other courses to get the required 16 hours but she does not think an instructor should have to take the CORE if they teach the CORE. The discussion broadened to whether this should be specific to the CORE course or if it would apply to all CE. Ms. Cropp advised that Rule 1260-5-.01 just says that the course has been satisfactorily completed and she advised that the Commission has the discretion to interpret their rules. After discussion, **Commissioner Alexander made a motion that any instructor be given credit for any course they teach within a two year license renewal period for a total of up to 16 hours and that this only apply to continuing education courses; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Commissioner Flitcroft made a motion that Staff write a letter recognizing all of Wayne Pugh's hard work, diligent service and guidance so that all of the board members may sign it and send it to Mr. Pugh; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Ms. Cropp stated that last month the Commission asked that the legal division meet and discuss which cases, where it might be beneficial, could be heard by an Administrative Law Judge (ALJ) instead of the full Commission at a Formal Hearing. She advised the Commission that she, Assistant General Counsel Ryan, Deputy Counsel Wayne Pugh and Chief Legal Counsel Laura Betty had met with Judge Stovall, the head ALJ, and Judge Collier and had discussed which cases might be appropriate for just an ALJ to hear on the Commission's behalf. At the previous month's meeting, a motion had been made and carried that all unlicensed activity cases be heard by an ALJ and the Commission decided several years ago that E&O cases could be heard by an ALJ. From the discussion at the meeting that Legal held, Ms. Cropp suggested that black and white cases, such as Agreed Citations that have come up as complaints for failing to take administrative measures and failure to respond be heard by an ALJ alone. She stated that these cases do not come down to a standard of care. Ms. Ryan stated that the Commission, of course, does not have to accept these recommendations but that if they did, then some more formal hearings will be heard in a timely manner and they, as a Board, would get fewer cases that lack substance and would be more of a danger to the public. Ms. Ryan stated that no matter what the ALJ does then that initial order is still presented to the full Commission for review and that if the Commission does not agree then they can disagree and contest the finding. Commissioner Alexander stated that he is not opposed to agreeing to have certain cases heard by an ALJ but he does not want the Commission excluded completely from any decisions. Ms. Maxwell asked what happens if the Commission does not agree with the initial order. Ms. Ryan stated that she would have to research that and address it the next day. **Commissioner Flitcroft made a motion to have an Administrative Law Judge hear the less egregious cases for Failure to**

Respond and Failure to Take Administrative Measures; seconded by Commissioner Alexander; opened to discussion; Commissioner Alexander did ask for a list of those that would be referred to the ALJ; Ms. Ryan clarified that the three kinds of cases to be assigned to an ALJ are Failure to Respond; Failure to Take Administrative Measures and Unlicensed Activity; Commissioner Alexander called for the question; unanimous vote; motion carried.

LEGISLATIVE UPDATE

Ms. Cropp updated the Commission on Public Act 84 that allows for automatic suspension of a license for failing to maintain E&O insurance which she advised was signed by Governor Haslam on April 12, 2013. The content of the bill follows and was presented to the Commission.

**State of Tennessee
PUBLIC CHAPTER NO. 84
SENATE BILL NO. 646
By Tracy, Ketron
Substituted for: House Bill No. 133
By Lundberg**

AN ACT to amend Tennessee Code Annotated, Title 62, relative to professions.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-13-112, is amended by adding the following language as new, appropriately designated subsections:

(j)(1) If a licensee fails to obtain, maintain or renew the licensee's errors and omissions insurance which meets or exceeds the minimum requirements established by the commission and provide proof of compliance to the commission if such proof is required by subsection (g), then the licensee's license shall be suspended.

(2) The commission shall send notification of the license suspension by regular mail:

(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) While a license is suspended pursuant to this section, the licensee shall not engage in activities which require a license under this chapter, nor will the license be renewed or a new license issued. Any license suspended pursuant to this section shall remain suspended until the licensee establishes, to the satisfaction of the commission, compliance with this section.

(4) The licensee may, upon written notice to the commission, request a formal hearing on any license suspended pursuant to this section.

(k)(1) A license suspended pursuant to this section shall be reinstated if, within thirty (30) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission without the payment of any fee.

(2) A license suspended pursuant to this section shall be reinstated if, on or after thirty-one (31) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission and the licensee pays:

(A) For a license suspended more than thirty (30) days but less than one hundred twenty (120) days, a penalty fee of not more than five hundred dollars (\$500); or

(B) For a license suspended for more than one hundred twenty (120) days but less than one (1) year, a penalty fee of five hundred dollars (\$500), plus an additional penalty fee of not more than one hundred dollars (\$100) per month for months six (6) through twelve (12).

(l)(1) A license suspended more than one (1) year pursuant to this section shall be automatically revoked without any further action by the commission.
SB646 mail:

(2) The commission shall send notification of the license revocation by regular
(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) The licensee may, upon written notice to the commission, request a formal hearing on any license revoked pursuant to this section.

(4) Upon revocation of license, any individual seeking reissuance of such license shall reapply for licensure and pay the penalty fees in subsection (k); provided, however, that the commission may, in its discretion:

(A) Waive reexamination or additional education requirements for such an applicant; or

(B) Reinstatement a license subject to the applicant's compliance with such

reasonable conditions as the commission may prescribe, including, but not limited to, payment of a penalty fee, in addition to the penalty fee provided in subdivision (k)(2)(B), of not more than one hundred dollars (\$1 00) per month, or any portion thereof, from the time of revocation. (m) Notwithstanding subsections (k) and (1), if the licensee proves to the commission that the license suspension or revocation pursuant to subsections (k) or (l) was in error and that the licensee obtained, maintained or renewed the licensee's errors and omissions insurance as required by this section, then the commission shall immediately reinstate the license to the date of suspension.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

SENATE BILL NO. 646
PASSED: March 28, 2013
SIGNED BY GOVERNOR ON APRIL 12, 2013

She also updated the Commission on SB 942 (Background check bill). She stated that she believes, from what she can determine from the tracking system online, that the bill went up with a second set of amendments that authorizes the use of electronic fingerprints and further states that fingerprinting will not be necessary upon renewal or when a licensee is upgrading from Affiliate Broker to Broker. She stated that if/when the bill is signed, it will be sent to all of the Commissioners. This bill requires fingerprinting at time of application.

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

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

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

- 1) **2012025711 &**
- 2) **2012025721 – Commissioner Northern made a motion to accept legal counsel's recommendation that the previously authorized Consent Order for Respondent 1 should also specify a date range within which Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license and legal counsel recommended that, in addition to the above referenced \$500 amount and meeting attendance requirement, that the Consent Order to Respondent 1 should require that Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license within ten (10) days of the date of Respondent 1's execution of the Consent Order; seconded by Commissioner Haynes; unanimous vote; motion carried.**

- 3) **2012022891** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to close the complaint; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 4) **2012025801** &
- 5) **2012025811** – Commissioner Alexander made a motion to accept legal counsel’s recommendation which follows: As to Respondent 1: issue a Consent Order to also include requirement of completion of six (6) hours of continuing education in contract writing and four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent 1’s execution of the Consent Order. As to Respondent 2: Consent Order to also include additional \$500.00 for failure to supervise Respondent 1 in violation of T.C.A. § 62-13-312(b)(15) (for a total civil penalty of one thousand dollars (\$1,000.00) and the additional requirement of completion of four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent 2’s execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.

The Chairman turned the meeting over to Vice-Chairman Haynes to run at this point in the meeting.

- 6) **2012025821** &
- 7) **2012025822** &
- 8) **2012025823** – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 9) **2012026551** &
- 10) **2012026552** &
- 11) **2012026553** – Commissioner Alexander made a motion to accept legal counsel’s recommendation to Close as to Respondents 2 and 3 and as to Respondent 1, letter of instruction regarding Rule 1260-02-.09, subsection (3) of which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, subsection (6) of which lists a number of conditions which allows a broker to properly disburse funds from an escrow account and subsection (7) of which states that funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request; seconded by Commissioner Northern; unanimous vote; motion carried.
- 12) **2012026581** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to send a Letter of warning regarding T.C.A. § 62-13-312(b)(9)’s prohibition against utilizing any listing agreement, sales contract, or offer to purchase form(s) that fail to specify a definite termination date; seconded by Commissioner Stephenson; Commissioner Northern made a friendly amendment that the letter also reference Rule 1260-02-.12(2)(e); friendly amendment accepted; motion carried unanimously as amended.
- 13) **2013000251** – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; After discussion,

- both Commissioner Stephenson and Flitcroft rescinded their motion; seconded by Commissioner DiChiara; unanimous vote; motion carried. Commissioner Alexander made a motion to defer a determination on the matter until the June meeting to allow for further research by legal counsel; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 14) 2013001151 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 15) 2013001161 &
 - 16) 2013001162 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.
 - 17) 2013001231 &
 - 18) 2013001232 &
 - 19) 2013001233 - Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
 - 20) 2013004331 &
 - 21) 2013004332 &
 - 22) 2013004371 - Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Assistant General Counsel Robyn Ryan presented the following matters:

- 1) 2011024481 &
- 2) 2011029611 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to Close both files and open new matters based on unlicensed activity as supported by investigation; seconded by Commissioner Northern; unanimous vote; motion carried.
- 3) 2013001291 – Commissioner Northern made a motion to accept legal counsel’s recommendation to issue a Consent Order for voluntary surrender for violation of 62-13-312(b)(12) [conviction of similar offense]; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Mr. Cropp reviewed the Consent Order Log with the Commission and the Commission had no questions or comments.

Commissioner DiChiara made a motion to recess the meeting for the day; seconded by Commissioner Stephenson; unanimous vote; motion carried.

Vice-Chairman Haynes recessed the meeting on Thursday, May 9, 2013 at 4:27 p.m.

May 10, 2013

The Tennessee Real Estate Commission reconvened on Thursday, May 10, 2013 at 9:06 a.m. in Meeting Room C of the Pickwick Landing State Park Inn and Conference Center. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Wendell Alexander, Commissioner Isaac Northern, Commissioner David Flitcroft and Commissioner Janet DiChiara. Commissioner Grover Collins, Commissioner John Griess and Commissioner Austin McMullen were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly Hestand.

The Formal Hearing of TREC v. Adrian A. Bond, unlicensed, Docket # 12.18-120574A, Complaint #2012008661 convened at 9:07 a.m.

Upon the decision of the Commission, it is was ordered, adjudged and decreed that Respondent shall pay a civil penalty of **One thousand Five Hundred Dollars (\$1,500.00)** for three (3) separate violations of T.C.A. §62-13-312(b)(1). It was further ordered, adjudged and decreed that Respondent pay a civil penalty of **One Thousand Dollars (\$1,000.00)** for violation of T.C.A. §62-12-312(b)(14) and §62-13-313(a)(2) and was further ordered to pay all hearing costs in this matter which includes, but is not limited to, the costs of the Administrative Law Judge and the court reporter. The costs in the matter totaled One Thousand Eight Hundred Forty Dollars (\$1,840.00), which total includes the court reporter costs of Three Hundred Dollars (\$300.00), and the Administrative Law Judge costs of One Thousand Five Hundred Forty Dollars (\$1,540.00). Respondent was therefore ordered to pay the **total court costs of \$1,840.00 and the total civil penalty amount of \$2,500.00 for a total owed of \$4,340.00 and shall pay this at the rate of \$100.00 per month beginning June 1, 2013 and continuing to be paid on the first of every month subsequent to June 1, 2013 until such time as the full amount of \$4,340.00 is paid in full. Should Respondent miss any payment due on the first of every month, Respondent's license shall be immediately revoked. Should Respondent again apply for a broker's license, he must appear before this Commission and must have all penalties paid in full. Respondent's present broker application shall be considered if Respondent pays all amounts due within twelve (12) months from May 10, 2013, the date of this hearing.** The Final Order took effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State.

The formal hearing adjourned at 2:07 p.m.

Ms. Ryan readdressed the Commission regarding their right to review initial orders on cases an ALJ hears alone. She referenced the following T.C.A., but read specifically from T.C.A. § 4-5-315 subsection (b) and (c) which are in bold:

Tenn. Code Ann. § 4-5-315

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*** Current through the 2012 Regular Session ***

Title 4 State Government
Chapter 5 Uniform Administrative Procedures Act
Part 3 Contested Cases

Tenn. Code Ann. § 4-5-315 (2013)

4-5-315. Review of initial order.

(a) The agency upon the agency's motion may, and where provided by federal law or upon appeal by any party shall, review an initial order, except to the extent that:

(1) A statute or rule of the agency precludes or limits agency review of the initial order; or

(2) The agency in the exercise of discretion conferred by statute or rule of the agency:

(A) Determines to review some but not all issues, or not to exercise any review;

(B) Delegates its authority to review the initial order to one (1) or more persons; or

(C) Authorizes one (1) or more persons to review the initial order, subject to further review by the agency.

(b) A petition for appeal from an initial order shall be filed with the agency, or with any person designated for such purpose by rule of the agency, within fifteen (15) days after entry of the initial order. If the agency on its own motion decides to review an initial order, the agency shall give written notice of its intention to review the initial order within fifteen (15) days after its entry. The fifteen-day period for a party to file a petition for appeal or for the agency to give notice of its intention to review an initial order on the agency's own motion shall be tolled by the submission of a timely

petition for reconsideration of the initial order pursuant to § 4-5-317, and a new fifteen-day period shall start to run upon disposition of the petition for reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency on its own motion, the petition for reconsideration shall be disposed of first, unless the agency determines that action on the petition for reconsideration has been unreasonably delayed.

(c) The petition for appeal shall state its basis. If the agency on its own motion gives notice of its intent to review an initial order, the agency shall identify the issues that it intends to review.

(d) The person reviewing an initial order shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties.

(e) The agency shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

(f) Before rendering a final order, the agency may cause a transcript to be prepared, at the agency's expense, of such portions of the proceeding under review as the agency considers necessary.

(g) The agency may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency may order such temporary relief as is authorized and appropriate.

(h) A final order or an order remanding the matter for further proceedings pursuant to this section shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.

(i) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between such order and the initial order, and shall include, or incorporate by express reference to the initial order, all the matters required by § 4-5-314(c).

(j) The agency shall cause copies of the final order or order remanding the matter for further proceedings to be delivered to each party and to the administrative judge or hearing officer who conducted the contested case.

Ms. Ryan advised the Commission that special meetings of the Commission to consider matters could be called and held via teleconference.

Commissioner Alexander made a motion to adjourn; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Chairman Stephenson adjourned the meeting on Friday, May 10, 2013 at 2:12 p.m.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

OFFICE OF LEGAL COUNSEL

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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: JULIE CROPP, Assistant General Counsel
SUBJECT: MAY LEGAL REPORT
DATE: May 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. **2012025711**
Opened: 12/13/12
First License Obtained: 6/30/08
License Expiration: 6/29/14
E&O Expiration: Uninsured

TREC Meeting
May 9-10, 2013
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Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Respondent was broker released on or about 12/10/12

2. **2012025721**

Opened: 12/14/12

First License Obtained: 6/20/94

License Expiration: 6/3/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

April 2013 Meeting:

Complainant is the owner of a vacation home which is located near a number of homes which are being rented by an LLC of which Complainant states Respondent 1 (affiliate broker) is a partner and contact for potential renters. Respondent 2 is Respondent 1's principal broker. Complainant states that Respondent 1 and Respondent 1's brother have rented, "...all of these homes listed on their web site for years, packing in as many young kids as possible, and hurting the property values." Complainant states that Respondent 1 is running a property management company without a broker because Complainant has contacted the firm at which Respondent 1 is affiliated and was told that the firm is not connected with Respondent 1's LLC. Complainant states that Respondent 1 is required to advertise the firm name and number where Respondent 1 is affiliated when Respondent 1 advertises vacation rentals for Respondent 1's LLC.

Respondent 1 submitted a response stating that Respondent 1 is licensed and in good standing with Respondent 1's association. Respondent 1 states that Respondent 1 and Respondent 1's brother are affiliated with several LLCs, one of which is the LLC referenced by Complainant (Respondent 1 and Respondent 1's brother are also the developers of the development where the properties are located). Respondent 1 states that Respondent 1 is associated with a broker, and the LLC was a licensed vacation lodging service firm for which the firm license had lapsed

without Respondent 1's awareness because the renewal information was mailed to an address other than the office address, and Respondent 1 was in the process of correcting this at the time that the complaint was submitted by reapplying for the vacation lodging firm license. With regard to the advertising complaint, Respondent 1 states that Respondent 1 was unaware that Respondent 1 needed to include Respondent 1's firm information for advertising for the vacation rentals. Respondent 2 submitted a response to the failure to supervise complaint stating that Respondent 2 knew that Respondent 1 owned some vacation properties with Respondent 1's brother that were leased on an overnight basis under a vacation lodging firm license and those did not go through the firm. Respondent 2 states that Respondent 1 wanted to maintain a license for properties that Respondent 1 might want to list or sell and in the past had some properties listed with Respondent 2's firm, which were displayed on the firm website at the time with the firm name and phone number. With regard to the advertising complaint, Respondent 2 states that Respondent 2 made the determination that the vacation lodging service LLC's website could be seen as confusing to the public without the firm information included along with Respondent 1's name and made the decision ultimately, after receiving this complaint, to ask Respondent 1 to transfer Respondent 1's license to another firm. Respondent 2 states that, upon receiving the complaint and verifying a possible problem, Respondent 2 took action and Respondent 1's license was amicably released to TREC.

Complainant submitted a number of additional letters stating that Respondent 1 and Respondent 1's brother continue to operate what Complainant calls "a large scale property management company" without any involvement from the firm where Respondent 1's affiliate broker license is held. Complainant also included photos of properties near Complainant's home for which Respondent 1's LLC handles the vacation rentals. Complainant states that the renters are out of control, that the renters trash the homes they are renting, and that renters park too many cars in the roadway which blocks access. Complainant states that Complainant is frustrated at having spent a large amount of money on a vacation home where there are out of control renters and an illegally managed property management company. Further, Complainant states that Respondent 1 advertises vacation rentals in the development on a national vacation rentals website in which Respondent 1 calls himself the owner of the home (the website has a link to "e-mail owner" which e-mails Respondent 1). These national websites for vacation rentals state that they are used both for owner vacation rentals as well as privately owned properties offered through rental managers (which is what Respondent 1 appears to be doing). The website profile for one of the properties states that Respondent 1 is a realtor in Tennessee, and, at this point, Respondent 1 was released by Respondent 1's broker.

Based on the materials provided by Complainant and accessed on Respondent 1's website, it appears that Respondent 1 is not operating a property management company as Complainant

calls it, but is operating a vacation lodging service firm. As Respondent 1 stated, the vacation lodging service firm license had lapsed, but currently, the LLC is actively licensed as a vacation lodging service firm, and Respondent 1 is its designated agent. Additionally, it would not appear that Respondent 1 would have to include a firm name and telephone number on advertisements for vacation rentals through the vacation lodging service firm. However, Respondent 1 was broker released on or about December 10, 2012 and, as of April 1, 2013, has not retired Respondent 1's affiliate broker license or affiliated with another firm.

Recommendation: *As to Respondent 1, Consent Order for \$500.00 based on failure to complete administrative measures as required by § 62-13-312(b)(14)(16) and Rule 1260-02-.02(2) plus attendance at one (1) entire meeting of the Commission within 180 days of Respondent 1's execution of Consent Order. As to Respondent 2, dismiss.*

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

New Recommendation: It was suggested to legal counsel that the above-referenced authorized Consent Order for Respondent 1 should also specify a date range within which Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license. It is recommended that, in addition to the above referenced \$500 amount and meeting attendance requirement, that the Consent Order to Respondent 1 should require that Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license within ten (10) days of the date of Respondent 1's execution of the Consent Order.

DECISION: The Commission voted to accept the recommended addition to the Consent Order for Respondent 1.

3. **2012022891**
 Opened: 11/9/12

 History: **No Prior Disciplinary Action – Unlicensed**

Complainant is a resort management company in another state which alleges that Respondent (unlicensed LLC) has performed a number of questionable time-share transfers for individuals who were owners within several owner associations which are managed by Complainant. Specifically, Complainant states that several of the transfers include notary misconduct in notarizing signatures of people who were not in the state at the time that the documents were signed/notarized, and several transfers include new owner information which is incorrect. Complainant indicates that Respondent cancelled some of these transfers, but Complainant states that this creates a cloud on the title.

Respondent submitted a response, along with recorded documents and explanations for each of the properties referenced by Complainant in the complaint. Respondent disputes the allegation that new owner information was incorrect and states that all information provided to Complainant is the same contact information which was provided to Respondent. Respondent states that Respondent has recorded deeds transferring ownership back to the original owner for any transfers that were cancelled before completion. Respondent also states that, with regard to the notaries, Respondent had obtained Limited Durable Power of Attorney forms authorizing Respondent's owner to sign as agent for those owners who were not present in the state.

The issue for TREC's determination concerns only the issue of whether Respondent is engaged in unlicensed activity. Based on the information contained within the file, it appears that Respondent's sole involvement in the time-share transfer process is to handle the title transfer paperwork, and, while Complainant may have a private action against Respondent for any mistakes which may be in the deeds, the information in the file at this time does not appear to contain evidence of unlicensed activity on the part of Respondent.

Recommendation: Close.

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

**4. 2012025801
Opened: 1/8/13**

First License Obtained: 6/5/08

License Expiration: 6/4/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 2003120291 – Closed \$3,000 CO

5. 2012025811

Opened: 1/15/13

First License Obtained: 11/1/99

License Expiration: 1/18/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2006032021 – Closed \$1,000 CO

Complainants were the owners of a home as well as attempted home purchasers who filed a complaint against Respondent 1 (affiliate broker) based on their dealings with Respondent 1, with whom Complainants entered into an Exclusive Right to Sell Listing Agreement to list their home and an Exclusive Buyer Representation Agreement regarding looking for a home to purchase. TREC opened a complaint against Respondent 2 (principal broker), who was Respondent 1's principal broker at the time of the subject incidents, for failure to supervise.

Complainants state that when they met with Respondent 1 about selling their home, they made it clear that they first needed to sell their present home. Complainants viewed a home in which they were interested which was bank owned ("Home A"), and Complainants state that Respondent 1 told them that they could put a contingency contract on the home and if Complainants' home did not sell within a certain time period, Complainants could get their earnest money back. Complainants went under contract on the home and submitted an earnest money check. The Contract specified a closing date, which Complainants state that Respondent 1 explained that the closing date meant that was when the contingency would expire. While under contract, despite Respondent 1's urging for Complainants to get an appraisal on Home A, Complainants state they resisted because they did not want to pay the money if their home did not sell. During the contract period, one of the Complainants noticed the home had been burglarized and called the listing agent after Respondent 1 could not be reached and the police were called. Approximately

six (6) days before the specified closing date, Complainants state that they told Respondent 1 they would not be able to purchase Home A since their home had not sold. At that point, Complainants viewed a short sale home ("Home B") with Respondent 1, and Complainants asked Respondent 1 to submit an offer on Home B since the contract on Home A was about to expire. When Complainants began asking for a return of their earnest money on Home A, Complainants state that Respondent 1 instructed Complainants to write a letter to the listing agent asking for the earnest money back due to the home being burglarized twice. A few days later, Complainants contacted the listing broker directly for Home A and state that they told the broker that they had no problems with the break in, but Complainants had merely ran out of time with selling their own home. At that time, Complainants state that the listing broker informed them that he had no knowledge of a contingency contract. At that point, Complainants state that they terminated Respondent 1 and learned from the listing broker on Home B that Respondent 1 had never submitted all of the required paperwork for the offer on that home and that broker also did not realize Complainants had another home for sale. The earnest money for Home A was disbursed to the seller at the agreement of Complainants since the contract stated that the earnest money would be nonrefundable thirty (30) days after the binding agreement date, which had already passed before Complainants began attempts to receive a return of the earnest money. Complainants attached documentation showing e-mail correspondence from Home A's listing broker to Respondent 1 attempting to get information as to why the appraisal was not done and expressing concern over the closing occurring, to which it does not appear Respondent 1 replied as well as e-mail correspondence from Home B's listing broker requesting short sale paperwork to submit the offer, to which it also does not appear that Respondent 1 replied.

Respondent 1 submitted a response stating that Complainants' home was only on the market for forty-five (45) days before Complainants withdrew it from the market. Respondent 1 seems to focus much of Respondent 1's response on Respondent 1's efforts to market and advertise selling Complainants' home. Respondent 1 states that Complainants wanted their home to sell before looking at homes, but then contacted Respondent 1 and asked to look at homes. Respondent 1 states that Complainants made an offer on Home A, during which they asked questions about the process, short sales, lease purchases, and foreclosure processes since Home A was a bank foreclosure. Respondent 1 states that it was explained to Complainants that if they placed a contingency on the offer for Home A, that the bank would not give priority consideration, and it was conveyed verbally to the listing broker that Complainants had a home to sell. Respondent 1 states that Respondent 1 advised Complainants, "...to consider the listing and sellers agents *[sic]* stipulation to allow [the Complainants] 30 days right of refusal on the contract which they accepted and reducing earnest money from \$1500 to \$1000. 30 days of contingent of resending *[sic]* the contract offer." Respondent 1 states that Complainants were advised by the lender to pay for the appraisal on the property, but Complainants wanted to wait until an acceptable offer was received on Complainants' home. Respondent 1 states that Complainants and a family member then conducted their own home inspection and Complainants kept a journal of the report,

which Respondent 1 states was never provided to Respondent 1. Respondent 1 states that Complainants placed an offer on Home B and Respondent 1 informed them of the contingency issue and asked them not to place it in the contract so the bank would show priority consideration to Complainants' offer. Respondent 1 states that Complainants refused to move forward on the sale of Home A due to the burglaries. Respondent 1 denies any wrongdoing.

It does not appear that the requested additional short sale paperwork was submitted to Home B's listing broker by Respondent 1, despite the listing broker's requests, and therefore the offer on Home B was never submitted. Based on contract copies for Home A and Home B which were submitted, it appears that Respondent 1 did not include on either offer a termination date for acceptance by the seller nor did Respondent 1 include a listing termination date on the Exclusive Right to Sell Listing Agreement with Complainants. Finally, when examining the offer to purchase Home B, it appears that the signature dates have been altered but the same signature of one of the Complainants which was on the offer on Home A was used. According to Complainants, Respondent 1 submitted the offer on Home B and sent a copy to Complainants via e-mail, which included one of Complainant's signatures, but that Complainant did not sign or give authorization to sign that Complainant's name or change the dates, and parts of the contract for Home A which included that Complainant's signature was used and dates were changed without Complainants' consent. Finally, although Respondent 1 and Complainants dispute the contingency clause issue, and it does not appear that there was a contingency clause in either of the signed offers from Complainants, it does not appear that Respondent 1 adequately explained and Complainants did not understand that this was not included, nor does it appear that Respondent 1 adequately explained so that Complainants understood the 30 day nonrefundable earnest money provision on Home A. The circumstances outlined in this paragraph indicate a violation by Respondent 1 for failure to include termination dates on multiple documents as well as a failure to be loyal to the interests of Respondent 1's clients and a failure to diligently exercise reasonable skill and care in providing services in the real estate transaction.

Respondent 2 did not initially submit a response to the complaint. When legal counsel began reviewing the files, Respondent 2 was contacted by legal counsel to obtain information and documentation regarding Respondent 1's involvement with Complainants. After an auditor visited Respondent 2's firm to obtain the relevant transaction files, Respondent 2 submitted a response approximately one (1) month after legal counsel's original request, providing information regarding Respondent 1. Respondent 2 indicated that there had been a few clients who had raised issues with Respondent 1 over Respondent 1's period of affiliation with Respondent 2, and each time Respondent 2 met with Respondent 1 to resolve any issues, and Respondent 2 closely monitored Respondent 1's actions. Respondent 2 states that Respondent 2 was contacted by Complainants and encouraged Complainants to file the TREC complaint against

Respondent 1. At that time, Respondent 2 returned Complainants' earnest money for Home A (which had been disbursed to the seller) and deducted the amount from commissions due to Respondent 1 and broker released Respondent 1 from Respondent 2's firm. It appears that when Respondent 2 learned of any problems with Complainants, Respondent 2 worked to resolve the problem and broker released Respondent 1. However, Respondent 2's response to the TREC complaint was submitted well outside of the ten (10) day statutory requirement in T.C.A. § 62-13-313(a)(2) and well past legal counsel's request for same.

Recommendation:

With regard to Respondent 1, Consent Order for \$3,000.00 for using or promoting the use of any real estate listing agreement form, real estate sales contract form or offer to purchase real estate form that fails to specify a definite termination date in violation of T.C.A. § 62-13-312(b)(9), and for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction and failing to be loyal to the interests of the client in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-403(1) and 62-13-404(2) plus attendance by Respondent 1 at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order.

With regard to Respondent 2, Consent Order for \$500.00 for failure to timely 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), plus attendance by Respondent 2 at one (1) entire 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 above recommendations of legal counsel with the following additions:

- **As to Respondent 1: Consent Order to also include requirement of completion of six (6) hours of continuing education in contract writing and four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent 1's execution of the Consent Order.**
- **As to Respondent 2: Consent Order to also include additional \$500.00 for failure to supervise Respondent 1 in violation of T.C.A. § 62-13-312(b)(15) (for a total civil penalty of one thousand dollars (\$1,000.00) and the additional requirement of completion of four (4) hours of continuing education in ethics within one hundred eighty (180) days of Respondent 2's execution of Consent Order.**

6. **2012025821**
Opened: 12/19/12
First License Obtained: 4/26/96
License Expiration: 9/21/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

7. **2012025822**
Opened: 12/19/12
First License Obtained: 12/13/02
License Expiration: 2/1/15
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

8. **2012025823**
Opened: 12/19/12
First License Obtained: 5/9/05
License Expiration: 5/26/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainants are lessees and Respondents are affiliated with firm which represented property owner from whom Complainants decided to lease. Respondent 3 (affiliate broker) initially met with Complainants to show Complainants the subject property and fill out Offer to Lease and

Lease Application, Respondent 1 is the principal broker, and Respondent 2 (broker) met with Complainants during the leasing process to sign the lease and perform the walkthrough prior to Complainants taking occupancy.

Complainants state that they contacted Respondent 3 concerning rental of several properties, and they thought that Respondent 3 would be representing them in the lease process. After looking at a property, Complainants were told that Complainants needed to fill out an offer to lease form and give a check a deposit and another \$50.00 check to Respondent 3 for a background/credit check. Later that day, Complainants state that they attempted to contact Respondent 3 to stop the process as they found another possible house, and Complainants state they could not reach Respondent 3 until the offer to lease had already been submitted. Complainants state that Respondent 3 informed Complainants that if they reneged on the offer, they would lose the deposit and that the owner had 72 hours to respond. A few days later, Complainants state that they got a text stating that there was an accepted offer to rent. Soon after, Complainants state that they contacted Respondent 3 to find out what came next and were told that everything from that point on would be handled by the listing agent and Respondent 3 would have listing agent contact Complainants regarding signing the lease. A few days later, Complainants state that they had still not been contacted and found out from Respondent 3 that the listing agent was out of town. Complainants asked for a copy of the lease to review, which was provided. On the following day, Complainants contacted the owner/broker, Respondent 1, about requests for changes in the lease and was told that Respondent 1, the listing agent, was out of town and had not planned on meeting with Complainants until about five days later but that Respondent 2 was available to meet with Complainants in the interim. Complainants were further told that the requests for changes to the lease were issues already covered under the TN Landlord/Tenant Act but that Respondent 1 had no problems with adding the terms if desired. Respondent 1 further explained that the agents in the rental department always represent the homeowner and that Respondent 3 was simply a showing agent who was helping Respondent 1 in Respondent 1's absence. In a reply email to Respondent 1, Complainants state that had they known that Respondent 3 represented the homeowner, not Complainants, Complainants would not have entered into an offer to lease. Respondent 1 then enlisted Respondent 2 to meet with Complainants, and Complainants again expressed concerns over lease language. Respondent 2 stated that the issues were covered by the Landlord/Tenant Act and assured Complainants the house would be cleaned, and Complainants were given an agency disclosure form. At the walkthrough, Complainants state that Respondent 2 stated the house had been cleaned. However, Complainants had issues with the cleanliness of the house, which Complainants state necessitated an extensive further cleaning, and Complainants expressed concern over what Complainants believed may have been soot in the home. Complainants found items and bags of trash which Complainants wanted removed and were told to leave them by the street and the items would be picked up as trash, which Complainants did not feel should be their responsibility. Complainants state they were lied

to, manipulated and cheated and are concerned that they may have future health problems from living in the house.

Respondent 1 sent a letter as a response from all Respondents and Respondent 3 also sent additional information. According to Respondents, the company has an inventory of available rental properties and an agent is sent out to show the property, but that agent does not represent the renter, as they represent the owners of the properties. Respondents state that when Complainants called about the subject property, Respondent 3 was the rental agent on duty and showed the property. Respondents state that the practice of the office is to not present any offers to lease to an owner until a deposit has been paid by a potential tenant. Respondents state that on the offer contains a statement alerting the potential tenant that it could take up to 72 hours for a lessor to respond, and once a deposit check is written and the offer made, the offer cannot be revoked by the potential tenant (but the deposit would be returned if the offer is rejected). With regard to the allegations that no one contacted Complainants, Respondents state that the firm rarely does walkthroughs and lease paperwork prior to the week before occupancy. Respondents state that Respondents were in regular contact with Complainants. Respondent 2 was with Complainants for the walk-through and, during that time, Respondent 2 called Respondent 1 concerning the items left by prior tenants, and Respondent 1 advised the items could be placed out for trash pick-up. After the walk-through, Respondents state that all tenants, including Complainants, sign a document accepting the house in its present condition, which they did, although they had the right not to sign if the house was not in an acceptable condition. Respondents deny any wrongdoing, stating that they have been honest and accurate in all communications.

The Offer to Lease document signed by Complainants states that the offer terminates if not countered, accepted, or rejected within 72 hours or a specified date on the document. The Application signed by Complainants states that, upon approval of the application by the owner, the applicant agrees to sign a lease and pay the first rent payment, and the applicant understands that the deposit would not be returned if the applicant (tenant) refuses to sign the lease. The lease does not contain the language requested by Complainants via e-mail, but all documents were signed by Complainants including the Property Condition Report from the walk-through. It does not appear that there was a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

9. **2012026551**
Opened: 1/9/13

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
10. **2012026552**
Opened: 1/9/13

First License Obtained: 2/13/06

License Expiration: 2/12/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action
11. **2012026553**
Opened: 1/9/13

First License Obtained: 8/27/10

License Expiration: 8/26/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainants were the sellers of a home. Respondent 2 (affiliate broker) was Complainant's broker for the sale of Complainants' home and also the facilitator for Complainants' home purchase. Respondent 1 is Respondent 2's principal broker, and Respondent 3 is a broker at the same firm as Respondents 1 and 2.

Complainant initially contacted Respondent 2 in response to a proposed sale of a home to be built. The contract for Complainants to purchase the home was signed on October 17, and Respondent 2 served as facilitator, and the final counter offer accepted and signed by all parties on October 25.

During the negotiations regarding Complainants' purchase of the first home, Complainant states that Respondent 2 said his partner or his partner's mother might be interested in the property and that they viewed the house for that purpose. Complainants state that, at that time, Complainants were in a "One Time Showing Agreement" with another agent and that Respondent 2 knew that the Agreement had an original term from August 31 to September 30 with a clause which stated that if the property was sold directly by the seller to the prospect within sixty (60) days after the specified August through September period, then the seller agreed to compensate the broker. Complainants state that an offer on their property was conveyed to them on October 1 and rejected and that multiple offers and counter offers followed. An additional offer by the other agent's clients was made on October 31 and rejected by Complainants. On November 1, Complainants signed an Exclusive Right to Sell Listing Agreement with Respondent 2. Complainants state that this was with the understanding that the One Time Showing Agreement was excluded from the listing agreement. Complainants state that a copy of the listing agreement was not given to them at the time of signing and that Complainants understood that the listing agreement would not supersede the One Time Showing Agreement. On November 4, Complainants countered the October 31 offer on Complainants' home and told the other agent that the house was now listed with Respondent 2. Complainants assured the other agent that the One Time Showing Agreement was exempt from the listing agreement. On November 9, a contract for the sale of Complainants' home from the original buyers was reached, and Complainant notified Respondent 2. Complainant states that Respondent 2 told Complainants that the listing agreement would override the One Time Showing Agreement. Complainants state that they did not wish Respondent 2 to benefit and that they were never given a copy of the listing agreement. On November 12, Complainants learned that Respondents' firm asked for a copy of the purchase contract and Complainant attempted to terminate the listing agreement. There was a settlement offered so that there would be 5% commission to be shared between the two, but Complainants state Respondent 2 is not entitled. Complainants state there were also issues with the purchase of the house to be built and complain that in the Counter Offer (approved by Complainant) there was a paragraph stating "buyers will be listing their current property with Respondent 2 (and company) as soon as renovations to back patio are completed. Buyers have agreed to accept any offer at or above \$1,700,000.00."

Respondents submitted a time line and copies of documentation. Respondent 2 states that Respondent 2 could have listed Complainants' home prior to November 1 date the house was listed, if exclusions were to be a part of the listing contract. Respondent 2 states the property was not listed until Complainant notified Respondent 2 that Complainant had rejected the last and best offer. Respondent 2 states that there was no personal interest from his partner or partner's mother but he did think one of the two might be interested. However, after reviewing photos and seeing the house once, neither was interested and that is why there was no personal interest disclosure. Respondents submit that the contract to build signed by Complainants had a provision that Respondent 2 was to list their current property and that this was signed on October 22. On October 25, Respondent 2 states he met with Complainants, who told Respondent 2 that they were going to give the proposed buyers (from the One Time Showing) until October 31 at noon. On October 27, Respondent 2 inquired about the showing and Complainants stated again that this buyer had till October 31. The parties again were in communication on October 29 and on October 31, a text from Complainants states Complainants refused offer again and that it was a "...worse than their final offer before...". Respondent 2 states that arrangements were then made to execute a listing agreement. On November 1, Complainants signed an Exclusive Right to Sell Listing Agreement, and Respondent 2 states that the Complainants made copies. Respondent 2 listed Complainants' property on the MLS on November 5. Then, on November 9, Respondent 2 states that Complainants called about the purchase of the home to be built and in that conversation stated they had accepted an offer on the other home. Respondent 2 states that Respondent 2 reminded Complainants of the listing contract stating that all offers were to go through Respondent 2's company, at which point Respondent 2 states that Complainants requested an e-mailed copy of the listing agreement. When Respondents then began contacting the other firm regarding the commission on the sale of Complainants' home, Complainants instructed Respondent 2 via e-mail to terminate the listing agreement and remove the property from the MLS, to which Respondent 2 responded that Respondents were seeking legal advice.

Complainants' property was sold, and a lawsuit was filed by Respondents' firm and Respondent 2 against Complainants for the commission under the contract, and that lawsuit is now pending.

With regard to the house which Complainants were purchasing, additional information was obtained which indicated that Complainants had the house appraised (the house was still under construction) and the appraiser found the property to appraise at an amount below the agreed-upon sale price. Based on this appraisal, Complainants' attorney wrote a letter to Respondents' firm notifying it of the appraisal and requesting a return of Complainants' earnest money, to which Complainants state that Respondents have refused to return the earnest money. Complainants and Respondents disagree as to whether the seller of the new construction home will agree to release of the earnest money, but no earnest money disbursement form has been signed by the parties based on the information provided. Respondent 2 states that the appraisal was based on a hypothetical condition that improvements will be completed according to the

information furnished to the appraiser. At that point, Respondent 2 states that the parties engaged in discussion because Complainants wanted Respondents' firm out of the transaction. According to Respondent 2, the parties attempted to work out a settlement regarding possibly dropping the lawsuit and the firm removing itself from the new construction sale if the firm's attorney fees could be paid. Respondent 2 states that, as of April 24, Respondents' firm has given Complainants' earnest money to its attorney to enter into the court to hold until a decision is made regarding who is entitled to the earnest money.

There are a variety of allegations raised in this complaint, and it appears that many issues are disputed between Complainants and Respondents, including the understanding regarding the Listing Agreement and its relationship to the Agreement to Show Property, and this commission issue is one which is being determined by a court. With regard to the earnest money for the new construction property, there is likewise disagreement as to the situation; however, it appears that it was determined that the earnest money should be interplead on or about April 24, 2013, and the money was given to Respondents' attorney at that time for that purpose.

Recommendation: Close as to Respondents 2 and 3. As to Respondent 1, letter of instruction regarding Rule 1260-02-.09, subsection (3) of which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, subsection (6) of which lists a number of conditions which allows a broker to properly disburse funds from an escrow account and subsection (7) of which states that funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request.

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

12. 2012026581

Opened: 1/8/13

First License Obtained: 9/18/86

License Expiration: 2/19/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant purchased a property which was listed by Respondent (principal broker) in 2011. Complainant states that Complainant decided to purchase the property based on the extra-large size of the lot and an adjoining wooded lot. Complainant states that the advertising of the home (including the MLS) advertised the property as being sold with the vacant lot. Further, Complainant states that items on the HUD statement for Complainant's purchase indicate that Complainant purchased both the property and the adjoining vacant lot. Approximately one (1) year after Complainant purchased the property, Complainant claims that Respondent listed the adjoining wooded lot for sale. Complainant states that Complainant submitted an offer which was never responded to by Respondent or the owner of the lot. Soon after, Complainant states the adjoining wooded lot, which Complainant states was a part of Complainant's property, sold to another individual. Complainant states that neither Respondent nor the title company which closed Complainant's sale have corrected the issue.

Respondent submitted a reply stating that the Purchase and Sale Agreement submitted by Complainant's agent on behalf of Complainant did not include the purchase of the adjoining vacant lot but instead only included the property address which contained the residential home and made no mention of purchasing the adjoining lot. Respondent states that the adjoining lot has a different parcel number, tax card, and separate deed from Complainant's property, which Respondent states that Complainant and Complainant's broker knew or should have known and should have been specified in the Purchase and Sale Agreement if both lots were intended to be purchased. When Complainant purchased, Respondent states that the MLS listing only included size and tax information on the lot with the home, and did not include the size, tax or deed information for the additional lot, but was only mentioned in the remarks box as having an extra adjoining lot. Respondent states that Complainant is aware that Complainant purchased only the lot with the house because the Warranty Deed references only that address and parcel number, and not the separate number for the adjoining lot. Copies of the Purchase and Sale Contract and Warranty Deed appear to confirm Respondent's statements. Later, Respondent states that Respondent was engaged to sell the adjoining wooded lot as well. At that time, Respondent states that Complainant submitted a low offer through Complainant's broker, and the seller did not wish to respond to the low offer. Respondent states that this offer shows that Complainant knew that Complainant had not previously purchased the adjoining wooded lot. Respondent states that another buyer submitted a higher offer closer to the list price, and the lot was sold and transferred to that buyer.

Based on documentation submitted by the parties, a civil action was also instituted involving numerous parties including Complainant and Respondent regarding which Complainant originally submitted information to TREC stating that the issue had been settled and Complainant no longer wished to pursue the TREC complaint. Later Complainant submitted a letter insisting that, despite the settlement, Complainant still asserted that Respondent illegally sold Complainant's property to another party. This letter was followed shortly by a statement from Respondent redacting the comments and stating that all matters between the parties have been resolved. Respondent submitted additional information through an attorney stating that the properties are two separate properties with two separate deeds and legal descriptions, and the contract submitted by Complainant's broker on behalf of Complainant to purchase property only specified the address of one of the lots that included the residential home and made no reference to the additional wooded lot, and the warranty deed and settlement statement from closing only reference the lot with the residence and not the adjoining wooded lot.

Based on the information submitted and obtained, although there may have been a misunderstanding on the part of Complainant and/or Complainant's broker as to what property Complainant originally intended to purchase and ultimately purchased, it does not appear that there was any violation by Respondent with regard to the sale of the property. However, it appears that a listing agreement with the owner of the property and Respondent did not include a termination date, which Respondent's attorney states was a one-time oversight, as Respondent typically designates a six month expiration date. Though there does not appear to have been any harm created by this, Respondent would benefit from a letter of warning regarding including termination dates in all contracts.

Recommendation: Letter of warning regarding T.C.A. § 62-13-312(b)(9)'s prohibition against utilizing any listing agreement, sales contract, or offer to purchase form(s) that fail to specify a definite termination date.

DECISION: The Commission voted to accept the recommendation of legal counsel with the addition that the letter of warning also address Rule 1260-02-.12(2)(e).

13. 2013000251
Opened: 1/24/13

First License Obtained: 9/13/02

License Expiration: 10/16/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint opened at the direction of the Commission based on information which was included as part of another complaint file against another licensee. The information in the complaint file against the other licensee suggested that Respondent (principal broker) paid a commission to an affiliate who was not affiliated with Respondent's firm. This complaint was opened against Respondent to obtain additional information regarding the potential issue regarding Respondent's payment of the commission to that affiliate.

Respondent submitted a response vigorously denying any wrongdoing. Respondent states that, in 2011, the partners of Respondent's firm began exploring a franchise situation with a licensee who wanted to open a firm and borrow from Respondent's branding and support while being the principal broker of her own firm. Respondent states that the partners of Respondent's firm agreed to work with that licensee while she opened her firm if she met a number of conditions, which included but were not limited to that licensee being the principal broker and that licensee working with the firm's accounting department to develop proper accounts and follow certain policies and procedures. Respondent states that, soon after, it was discovered that the licensee had already opened her firm and hired another licensee as principal broker (that principal broker was the licensee from whose complaint file this information came). Because the licensee had agreed to meet certain conditions in order to have a franchising agreement with Respondent's firm, and because those conditions were not met, the relationship with that firm was severed. Respondent states that Respondent learned most of this after the fact, and, at the time, only understood there might be a possible franchise opening. Around that time, the subject affiliate broker (who was at that time affiliated with the firm who was working toward a franchising agreement, but has been affiliated with Respondent's firm since shortly after the subject closing where the commission was disbursed – the other firm ultimately closed), arrived at Respondent's office for a closing, which Respondent states was not unusual because Respondent's firm office allows all six (6) affiliated firms to use its office space. When this is done, Respondent states that Respondent transmits the check (which, in this case, was made out by the title company to Respondent's firm and not the firm at which the affiliate was at that time affiliated) by remote deposit machine which goes to accounting and notifies the affiliate's principal broker. Respondent states that Respondent does not handle the money and the centralized accounting department does it all and

notifies the principal broker that the deposit was made. Respondent further states that the affiliate turned in all post-closing paperwork to his principal broker. Respondent states that the affiliate gets one hundred percent (100%) of the commission so none goes to the principal broker or the firm. Respondent denies any wrongdoing and states that Respondent's firm prides itself on its compliance record. Based on the information supplied by Respondent, it does not appear that Respondent violated TREC's statutes and/or rules.

Recommendation: Dismiss.

DECISION: The Commission voted to defer a determination on this matter until next month's meeting.

- 14. 2013001151**
Opened: 1/24/13
- First License Obtained: 3/24/08**
- License Expiration: 3/23/14**
- E&O Expiration: N/A**
- Type of License: Time-Share Registration**
- History: 2013001161 – Under review by legal**
2013004331 – Under review by legal

Complainants were existing time-share owners who traded in their existing time-share in 2008 for a new contract with Respondent (time-share registration). In 2012, Complainants attempted to contact Respondent requesting that Respondent buy back Complainants' time-share, and Complainants were told that Respondent did not purchase time-shares back from owners and did not offer refinancing at a reduced interest rate. Complainants state that, at the time of their purchase, Complainants were told that Respondent had a first right to purchase and thought that Respondent would buy back the time-share.

Respondent submitted a response stating that Complainants have been long time owners with multiple purchases over the years. In 2008, Respondent states that Complainants traded one of their existing contracts to purchase a new contract. Respondent attached a copy of the contract signed by Complainants in 2008 which stated that Respondent has a right of first refusal if the owner wishes to sell, but the owner acknowledges that Respondent has no obligation to exercise the right to buy an ownership. Additionally Respondent provided a signed Statement of Understanding signed by Complainants which addresses a number of issues, including but not limited to Respondent's right of first refusal and the fact that Respondent has no buyback program and does not provide resale assistance. Respondent states that there is no information substantiating the allegations of the complaint; however, due to the long ownership relationship with Complainants, Respondent agreed to cancel Complainants' existing contracts with no further obligations. Based on the documentation in 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.

15. **2013001161**
Opened: 1/24/13
- First License Obtained: 3/24/08**
- License Expiration: 3/23/14**
- E&O Expiration: N/A**
- Type of License: Time-Share Registration**
- History: 2013001151 – Under review by legal**
2013004331 – Under review by legal
16. **2013001162**
Opened: 1/24/13

First License Obtained: 2/12/08

License Expiration: 2/11/14

E&O Expiration: 7/13/13

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

Complainant states that Complainant met with Respondent 2 (time-share salesperson; Respondent 1 is a time-share registration). Complainant states that Respondent 2 offered Complainant an upgrade to Complainant's credit card that would earn Complainant more points per dollar spent (which would offset maintenance fees) if Complainant bought additional points from Respondents. Complainant states that Complainant had just purchased more points in another state a few months before and got an additional credit card at that time and did not think Complainant could get more. Complainant states that Complainant told Respondent 2 that if Complainant could get the credit card upgrade and offset maintenance fees then Complainant would do it. Complainant states that Complainant made the purchase and later received notice from the credit card company that the credit card upgrade was denied.

Respondents submitted a response stating that Complainant has been an owner for several years with multiple purchases, including the most recent purchase discussed in the complaint. Respondents state that an individual also has the option to apply for a credit card at the time of the sale or by visiting a website which allows them to earn more points, and the credit card is issued by a credit card company in another state which is responsible for determining the terms and conditions. Respondents deny that Complainant's decision to upgrade was because of the credit card but to upgrade to a platinum level membership, and Respondents state that Complainant was never told that a purchase was required to obtain a credit card. Respondents state that they believe Complainant was confused with regard to the credit card issue because Complainant was approved for a Bill Me Later option for the down payment, and Respondents state that Complainant was told she was declined for the credit card upgrade at the site and continued with the purchase (Complainant denies that Complainant was told this). Further, Respondents deny the allegations of the complaint, but state that since Complainant has been a long-time customer, Respondents have agreed to cancel the subject contract purchase and give Complainant a refund. 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.

- 17. 2013001231**
Opened: 2/12/13
- First License Obtained: 4/20/99**
- License Expiration: 12/31/13**
- E&O Expiration: N/A**
- Type of License: Time-Share Registration**
- History: No Prior Disciplinary Action**
-
- 18. 2013001232**
Opened: 2/12/13
- First License Obtained: 3/20/08**
- License Expiration: 3/19/14**
- E&O Expiration: 1/1/15**
- Type of License: Time-Share Salesperson**
- History: No Prior Disciplinary Action**
-
- 19. 2013001233**
Opened: 2/12/13
- First License Obtained: 9/20/01**
- License Expiration: 6/8/13**
- E&O Expiration: 1/1/15**

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

Complainants attended a time-share owners update which Complainants state turned out to be a time-share sales presentation given by Respondents in April 2011 (Respondent 1 is a time-share registration; Respondent 2 is a time-share salesperson; and Respondent 3 is a time-share salesperson). Complainants state that they were at the sales presentation for hours and were pressured to purchase that day although Complainants state that they attempted to leave. Complainants state that there is a difference in the transfer equity amount in some of the documents of \$155.00, that the copy of the HUD statement received did not contain the seller's side, and some of the information was cut off of the Good Faith Estimate. Complainants also state that they were charged and given a title insurance policy even though they did not ask for or agree to it. Complainants state that they were told the time-share would increase in value, which was not true, and Complainants state that they were told that Complainants could rent out their time-share and make money. Complainants state that they were not fully advised as to the costs of maintenance fees and did not have time to review the documents fully before signing.

Respondents submitted a response through an attorney denying Complainants' allegations. Respondents state that the sales presentation was voluntary, which Complainants knew, as previous purchasers. Secondly, Respondents state that Complainants received all required purchase documents at the time of sale, and the numerical discrepancy of \$155.00 is due to the cost of the quitclaim deed which is deducted against the amount shown on the deed, which was disclosed to Complainants in a proposal signed by Complainants. Third, Respondents state that the title policy is required as part of closing and is charged as part of the closing costs. Fourth, Respondents deny misrepresentations with regard to investment potential or rental income and state that Complainants signed an acknowledgment form, which discloses, in relevant part, that Complainants understood that there were no representations regarding investment or resale potential and the developer has no form of resale or rental program. Finally, Respondents denied that there were misrepresentations or concealments regarding maintenance fees or rescission period, as the contract signed by Complainants states the maintenance fees and includes the cancellation provision in all capital letters. The documentation contained 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.

- 20. 2013004331**
Opened: 3/4/13
- First License Obtained: 3/24/08**
- License Expiration: 3/23/14**
- E&O Expiration: N/A**
- Type of License: Time-Share Registration**
- History: 2013001151 – Under review by legal**
2013001161 – Under review by legal
- 21. 2013004332**
Opened: 3/4/13
- First License Obtained: 9/5/12**
- License Expiration: 9/4/14**
- E&O Expiration: 7/13/13**
- Type of License: Time-Share Salesperson**
- History: No Prior Disciplinary Action**
- 22. 2013004371**
Opened: 3/21/13
- 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

Complainants state that they were misled by Respondent 2 (time-share salesperson; Respondent 1 is time-share registration and Respondent 3 is principal broker) in the purchase of a time-share. Complainants state that they were told that they were buying a vacation ownership club when in fact Complainants purchased a time-share interval. Complainants wrote to Respondent 1 requesting a cancellation, and were told that it was postmarked one (1) day late, but Complainants state that there were two (2) intervening holidays and, although Tennessee law makes no exception for this, other states do. Complainants also raise a number of issues regarding the placement and wording of the rescission statement and that Complainants were not shown the public offering statement during the contract signing, and it was only sent with them in the materials they took home.

Respondents submitted a response stating that Complainants purchased a vacation ownership interest with a floating use right that assigned Complainants a number of points as part of a points based system instead of a fixed-week program at a specific resort, as is used in a traditional time-share. Respondents state that when Respondent 2 confirmed that when Respondent 2 told Complainants it was not a traditional type time-share, it was meant to refer to part of the presentation where traditional fixed time-shares were compared with Respondents' flexible points based system. Respondents state that Complainants received and signed a number of documents explaining the product they were purchasing and given a rescission period, and Complainants signed a Public Offering Statement Receipt acknowledging receipt of the public offering statement. Respondent 3 states that the language in the public offering statement are drafted to comply with the laws of each state, that Complainants received a copy of the Public Offering Statement, and that no one associated with Respondents is trying to hide anything. Respondents state that Complainants' cancellation request was postmarked outside the rescission period, which was the reason the request was denied. While Respondents deny the complaint allegations, but as a gesture of goodwill, Respondents agreed to cancel Complainants' contract with a refund. The documentation contained 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.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

OFFICE OF LEGAL COUNSEL

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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: ROBYN RYAN, Assistant General Counsel
SUBJECT: MAY LEGAL REPORT
DATE: May 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**

December 2011 legal report

1. 2011024481

Opened: 10/18/11

First License Obtained: 11/4/04

License Expiration: 2/9/12

E&O Expiration: 1/1/11

Type of License: Affiliate

History: 2007062902 – Closed by Agreed Order (\$1,000) Failure to Respond to complaint regarding earnest money and misconduct

TREC Meeting
May 9-10, 2013
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Complaint filed by out of state purchaser who contacted Respondent, a licensed agent who operates an unlicensed real estate investment company, about the purchase of a home owned by a third party seller. The Complainant alleges the information received by the Respondent was misleading as to the condition of the property, no disclosures were given, failure to disclose agency status and various issues of deception and fraud. The Respondent held himself out to be the true owner of the property.

The Respondent states he was “investing” the property for the third party seller and doing a simultaneous closing on both deals the purchase and sale of subject property. He bought the property for \$12,500 and then sold it the Complainant for \$20,000. In his response, Respondent states he is an investor not a real estate agent and that he owned the property by way of a contingent contract with the seller therefore he is not under the jurisdiction of the Broker’s Act.

On September 23, 2011, Respondent’s Broker sent a letter and form releasing Respondent from the brokerage. Respondent has not completed the necessary administrative measures beyond that.

Recommendation: Consent order with a proposed civil penalty of \$1000.00 each for the above violations totaling \$5,000.00 plus mandatory four (4) hours of Continuing Education in Ethics and attendance of a regularly scheduled two (2) day meeting of the Commission all within six (6) months for violation of an unlicensed firm conducting business as a broker under 62-12-102, Definitions and 62-13-301, License Requirement as well as 62-13-312(1), Misrepresentation, (3) Continued Flagrant course of misrepresentation. Additionally, there is a violation of TREC Rule 1260-2-.02(1) Administrative measures, 1260-2.11 Failure to disclose true position.

March 2012 legal report

2. 2011029611

Opened: 12/13/11

First License Obtained: 11/04/04

License Expiration: 02/09/12

E&O Expiration: 1/1/13

Type of License: Affiliate

History: 2007062902 – Closed 4/25/11 \$1,000 Civil Penalty Failure to Respond

2011024481 – Outstanding CO (Dec.)- \$5,000 (MR, MC, Disc.)

** Respondent attempted to place license into retired status and was entered inactive due to education requirements on 1/11/12, as of 3/2/12 license had not been renewed.*

Anonymous complaint against Respondent (Affiliate Broker) stating that Respondent, through operation of Respondent's business, was holding himself out to be a licensed realtor when, in fact, Complainant states that Respondent is not a licensed real estate agent. Additionally, the complaint states that Respondent is utilizing the designation of Certified Distressed Property Expert on social network profiles.

Respondent states that Respondent has been a licensed agent for twelve (12) years, but Respondent has not acted in the capacity of a realtor in approximately four (4) years and is not acting as a realtor through operating Respondent's investment business; however, Respondent states that Respondent decided to keep the license active anyway. Approximately one month after Respondent's response was submitted, Respondent's license was placed into inactive status. The firm that Respondent is operating is an unlicensed firm and it appears that Respondent is "flipping" houses and claiming to own them or classifying them as "investment properties."

Recommendation: Consent order for operating an unlicensed firm in violation of § 62-13-312(14)(20) with a civil penalty of \$1,000.00 in addition to attendance at a two-day meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Respondent did not sign either of these consent orders and the matter proceeded to litigation. An investigation showed that despite the license expiration in February 2012, it would appear that Respondent and Respondent's business may now be operating without any license for either Respondent or the business. However, both consent orders were for violations of the broker's act pertaining to licensees and litigation cannot proceed with the facts as presented.

New recommendation: Close both files and open new matter based on unlicensed activity as supported by investigation.

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

3. 2013001291

Opened: 2/15/13

First License Obtained:

License Expiration: 3/13/15

E&O Expiration: Retired no E&O required

Type of License: Broker

History: No history of disciplinary action.

TREC opened complaint based on newspaper article regarding suspension of Respondent's license in another state and an article indicating Respondent had pled guilty to bank fraud. Attorney for Respondent replied and provided copies of the plea agreement and states that Respondent did not directly inform TREC of the guilty plea as Respondent had expected the other state to so notify TREC of the suspension of that other state license. Respondent's attorney states the sentencing for the criminal matter will be July 18 and that the hope is for no jail time.

Recommendation: Consent Order for voluntary surrender for violation of 62-13-312(b)(12) conviction of similar offense.

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