



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

**December 3, 2014**

The Tennessee Real Estate Commission convened on Wednesday, December 3, 2014 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Wendell Alexander, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Diane Hills, and Commissioner Marcia Franks. Absent from meeting was Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, and Assistant General Counsel Keeling Baird, Paralegal Jennaca Smith, and Admin Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Wednesday November 26, 2014. Also, this meeting has been notice on the tn.gov website since Wednesday, November 26, 2014.

**Commissioner DiChiara made a motion to approve the December 2014 agenda; seconded by Commissioner Collins. Commissioner Franks made an amendment to add Robyn Ryan after the informal appearances to the agenda; motion carried.**

**Commissioner DiChiara made a motion to approve the November 2014 minutes; seconded by Commissioner Franks; motion carried.**

**INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Jamie Marie Baker # 331207; PRINCIPAL BROKER: Lynda Jordan Pennington #275123**  
Principal Broker: Ms. Pennington #275123 is the Principal Broker of Dream Team Green Hills; LLC d/b/a Keller Williams Realty #258331 located in Nashville, TN. Jamie Marie Baker is an applicant seeking licensure as an affiliate broker, who wants to affiliate with Dream Team Green Hills, LLC. if the Commission approves her to move forward in the licensure process. Ms. Baker submitted an Application for Decision Regarding Prior Criminal Convictions in which she disclosed seven misdemeanors from 1999 – 2012, two of which involved the theft of money, services, or property.

**After questions, answers, and discussion, Commissioner Blume made a motion to not allow Ms. Baker to proceed with the licensure process at this time; seconded by Commissioner**

**Alexander; roll call vote 4 yes and 3 no; motion carried. (Commissioners Blume, Alexander, Franks, and Hills voted in favor of the motion and Chairman Griess, Commissioners DiChiara and Collins voted against the motion.)**

#### **INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Robert Edward Hudson #331170; PRINCIPAL BROKER: Kurt Steckel #217634**

Principal Broker: Mr. Steckel #217634 is the Principal Broker of Dream Team Franklin; LLC d/b/a Keller Williams Realty #257695 located in Franklin, TN., Robert Edward Hudson is an affiliate broker applicant who wishes to affiliate with Dream Team Franklin, LLC, if the Commission approves him to move forward in the licensure process. Mr. Hudson submitted an Application for Decision Regarding Prior Criminal Convictions, in which he disclosed one Class B Felony in 1990 and two Misdemeanors from 1989 - 1991.

**After discussion, Commissioner Franks made a motion to allow Robert Edward Hudson to move forward in the licensure process; seconded by Commissioner Collins; motion passes unanimously.**

#### **INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Major Clarence Smith; PRINCIPAL BROKER: William M. Mitchell #55990**

Principal Broker: Mr. Mitchell #55990 is the Principal Broker of Crye Leike, Inc. #212825 located in Memphis, TN. Major Clarence Smith is an affiliate broker applicant who wishes to affiliate with Crye Leike Inc., if the Commission approves him to move forward in the licensure process. Mr. Smith submitted an Application for Decision Regarding Prior Criminal Convictions, in which he disclosed one Felony in 1986.

**After discussion, Commissioner DiChiara made a motion to allow Major Clarence Smith to move forward in the licensure process; seconded by Commissioner Collins; motion carried.**

**Chairman Griess asked Ms. Maxwell to explain to the audience why some people have to appear before the board before they can continue with the licensure process. Ms. Maxwell stated "if an applicant has ANY felony or a misdemeanor involving the theft of money, property or services, they MUST appear before the Board of the Tennessee Real Estate Commission in accordance to Tennessee Code Annotated, Section 62-13-303 and Rule 1260-01-.01 which provide in part that the Commission may deny a license to an applicant who has a prior criminal conviction(s) and/or a disciplinary sanction(s) imposed by an occupational licensing body."**

Robyn Ryan, Assistant General Counsel, addressed the Commission regarding a request made by the attorney for a Respondent involved in the Formal Hearing scheduled for December 4, 2014.

Respondent Thomas Williams # 12.18-124814A made a request through his attorney to appear at his Formal Hearing on December 4, 2014 by telephone instead of appearing in person. Neither the Respondent nor his attorney offered any reason in support of the request.

**Commissioner Alexander made motion to deny the Respondent request to testify via telephone, and to confirm that he must appear in person; motion seconded by Commissioner Hills; roll call vote 7 yes, none opposed. Motion passes unanimously.**

#### **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL**

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

## **EDUCATION COURSES FOR DISCUSSION**

During the November, 2014 Commission meeting, Commissioner DiChiara and Commissioner Franks requested that a discussion of the following educational topics be added to the agenda for the December 3, 2014 Commission meeting: the education process, the content and delivery of courses, the number of credit hours given to courses and the vetting of the instructors, the instructor application, the monitoring of instructors and ways to ensure that licensees were receiving a consistent high level of instruction. Commissioner Franks also requested that the discussion include what steps the Commission could take to withdraw approval from a course or an instructor. Ms. Maxwell wrote and sent to the Commission prior to the December 3, 2014 meeting, a memo addressing the topics which the Commissioners requested be discussed and included the language of the applicable statutes and rules. The Commission engaged in a discussion of the course and instructor approval processes and discussed the ongoing issues of providing consistently high quality educational courses which keep the interest of the attendees and the challenges of auditing courses in all formats, noting the particular challenges presented by correspondence courses which require minimal instructor contact. The Commission decided that the educational discussion was one that would be ongoing and proceeded to vote on the courses and instructors presented for approval.

**Commissioner Alexander voted to approve courses on the December, 2014 Education Report labeled D1-D17, seconded by Commissioner Blume; the motion carries.**

Ms. Maxwell expressed concern about several of the paper and pencil 6 hour 2015-2016 TREC CORE courses, because the courses did not seem to actually discuss the topics designated by the Commission. Ms. Maxwell noted that several courses submitted for approval contained only the actual text of TAR documents, the statutes and rules, the Attorney General opinion and the Mandatory Mail In Audit Form. Some contained outdated information and references. Ms. Maxwell stated that her concern was based primarily upon the fact that the information submitted would be the only information to which the correspondent licensee would be assured of having access. Ms. Maxwell pointed out that TCA 62-13-325 does not require any instructor interaction for any course other than the prelicense course—the TREC CORE is not a prelicense course. The statute only requires that the correspondence material include at least 6 written exercises which are to be submitted periodically to the instructor, graded and returned to the student. Ms. Maxwell asked if one or more of the Commissioners would like to review one or more of the six correspondence courses submitted for approval. Commissioners Collins, DiChiara, Hills, Franks and Blume agreed to review a TREC Core course and discuss it at the January, 2015 meeting.

A Renewal List containing the sponsor name, the course name and the name of the instructor(s) had been sent to each Commissioner for review prior to the meeting.

**Commissioner Alexander made a motion to approve the courses and instructors appearing on the Renewal List; seconded by Commissioner Hills; motion passes with Commissioners DiChiara and Blume abstaining because each is an instructor for one or more of the courses on the Renewal List.**

## **UPDATE ON COURSE RENEWALS**

Ms. Maxwell updated course renewals reported as of 11-30-14 approximately 965 courses have been renewed for the 1-1-2015 - 12-31-2016 renewal period. The breakdown of the courses by delivery method which have been renewed is as follows: Classroom 470, Internet 350, and Paper

& Pen 145. There are 36 prelicense Real Estate Fundamentals courses offered (the 60 hour course) and the delivery options are broken down as follows: Classroom 12, Internet 15, and Paper & Pen 9.

## **COMPLAINT REPORT**

### **COMPLAINT STATISTICS REPORT**

Ms. Maxwell presented complaint statistics to the Commission. As of November 30, 2014, TREC had a total of 248 open complaints. There have been 122 closed this fiscal year starting 7-1-14 to present and 72 closed with no action, 5 were closed with a letter of warning, 44 with a Consent Order and 1 revocation.

### **Monies Collected 11/1/14 – 11/30/14**

Consent Orders Fees 1,000.00, Reinstatement Fees \$21,420.00, Agreed Citations \$150.00, Total \$22,570.00.

### **COMPLAINTS PRESENTED INVOLVING PROPERTY MANAGEMENT ISSUES**

July, 2014 – November, 2014 total complaints presented to Commission 156.

July, 2014 November, 2014 complaints presented to Commission involving Property Management 21 which is equal to 13.5% of complaints during this time involved Property Management.

### **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of November 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of November 30, 2014, there were 25,346 active licensees, 798 inactive licensees, retired licensees 7,336, broker release 460, and 46 suspended. There were 341 exams administered in month of November 2014. The total of exams taken year to date is 4,999. There were 173 approved applications in November 2014. Year to date total of approved applications 3,387. The number of licensees in retired or inactive status was 8,134. TREC total number of individual licensees in active, inactive, retired, and broker release is 33,986. There were 3,863 active firms and 186 retired firms. Grand total of firms and retired firms 4,049. Applications approved in November 2014 were 173.

### **BUDGET**

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. Kimberly Whaley and/or Bill Huddleston will come to either the January, 2015 or February, 2015 TREC board meeting to go over last fiscal year end budget and answer any questions.

### **E&O UPDATE/QUARTERLY CLAIMS REPORT**

Ms. Maxwell reminded attendees to renew their E&O no later than 12-31-14, TREC is required by statute to suspend license if there is no proof of E&O insurance received. If suspended there is

a statutory penalty fee assessed. In order to be placed back into active status proof of E&O insurance must be shown and all penalties paid. Currently, 3,058 from RICE and from Williams 213 have renewed their E&O Insurance.

### **FINGERPRINT UPDATE**

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(l); since 1-1-2014 there have been 3,431 individuals fingerprinted, 705 had an indication, 2,886 had no indication, and 84 were retaken. In the month of November, 2014, 222 fingerprints were taken, 182 had no indications and 33 showed an indication.

### **LEGAL REPORT, KEELING BAIRD, ASSISTANT GENERAL COUNSEL**

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

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

#### MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: KEELING BAIRD, Assistant General Counsel

SUBJECT: DECEMBER LEGAL REPORT

DATE: December 3, 2014

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\*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. 2014007761

Opened: 5/23/14

First License Obtained: 8/1/03

License Expiration: 5/14/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainant alleges that Respondent (affiliate broker) stole escrow monies in the amount of \$299,648. Complainant states that Respondent assisted in two (2) condominium purchases for Complainant's children, and their business relationship expanded from there. Complainant itemized escrow money stolen from approximately thirty-four (34) transactions including new construction loans, apartment complexes and subdivisions. Complainant included in the complaint copies of checks cashed and copies of purchase and sale agreements as well as an email from Respondent with a promise to repay the money. An incident report for charges of fraud, false pretenses and swindling was filed 1/22/14.

Respondent submitted an answer to the complaint through an attorney denying theft of escrow monies for the thirty-four (34) transactions listed, denying that copies of cashed checks are evidence of theft, denying the email attached shows that Respondent apologized for stealing Complainant's money, denying that an incident report constitutes proof of accusations. Respondent states Respondent met with the detective to explain the situation and notes that there are conflicting amounts claimed to be stolen between the incident report and the TREC complaint. Respondent states that complainant and Respondent had business dealings for approximately five (5) years beginning in 2009, that over that period of time there were approximately seventy (70) transactions discussed. Respondent states that they engaged in transactions including personal loans, joint enterprise to flip real estate, financing construction, and Respondent acted as affiliate broker in the closing for two (2) transactions. Respondent states that a majority of the transactions were conducted as a business partnership rather than as an affiliate broker. Respondent states that Complainant is aware that earnest money checks must be made out to real estate companies, and the checks included in the complaint are made out to Respondent for payments of services as a member of their joint enterprise and included some capital for their projects. Respondent submitted an IRS 1099-MISC form where this income was claimed by Respondent as non-employee compensation. Respondent further states that these monies constitute business losses, and no business venture is guaranteed. Respondent further admits that personal loans were received by Complainant, and those checks clearly stated "loan" and are reflected by Promissory notes. Further, Respondent states that Complainant received financial benefit of at least \$500,000 pursuant to their joint enterprise.

Respondent provided documentation for two real estate transactions that were closed. In both transactions, Complainant is buyer and Respondent's firm is listed as selling company and Respondent as independent licensee, proper confirmation of agency status executed. Respondent was not the holder of the escrow money in this transaction.

Legal counsel requested an investigation and the investigator made contact with Respondent's attorney but Respondent's attorney did not provide copies of the requested documentation. The investigator also acquired a copy of the police report filed by Complainant against Respondent and stated that investigation has been turned over to the District Attorney General for presentation to a Grand Jury.

Recommendation: Litigation Monitoring Consent Order.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner Franks made a motion to accept legal recommendation for Litigation Monitoring Consent Order; seconded by Commissioner Collins; motion passes unanimously.**

2. 2014007821

Opened: 5/13/14

First License Obtained: 4/7/1993

License Expiration: 4/30/2015

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint against Respondent (principal broker) for failure to supervise Respondent in case no. 2014007761 (hereinafter "affiliate broker"). Respondent was affiliate broker's principal broker from 7/17/03 through 7/5/13. Respondent states that when affiliate broker began with the firm, affiliate broker did well, but beginning in 2012 affiliate broker was slow to bring in files but eventually brought in all paperwork. Respondent states that affiliate broker continued to sell a lot of property and sold 72 properties in 2012 without any problems with earnest money or any other problems with those properties that were closed with affiliate broker and the firm. Respondent states that affiliate broker mishandled earnest money regarding one closing in early 2013, and although affiliate broker ultimately returned the earnest money before the closing affiliate broker was reprimanded by Respondent and told not to do it again. Respondent states that Respondent received a call from a title company in June 2013 and found that affiliate broker once again mishandled earnest money. Although the earnest money was replaced at closing, Respondent immediately released affiliate broker. Respondent states that affiliate broker's dealings with complainant in case no. 2014007761 (hereinafter "previous complainant) were hidden from Respondent, and previous complainant never contacted Respondent to investigate any problems. Respondent states that affiliate broker told Respondent of a partnership with previous complainant to buy foreclosures and fix them up, but affiliate broker never notified Respondent of any homes purchased or sold, and Respondent assumed the partnership fell through. Respondent states that affiliate broker hid

these business dealings from the new principal broker as well. Respondent states that had Respondent known of affiliate broker's dealings with previous complainant, it would have been addressed immediately like the June 2013 earnest money issue. Respondent states that Respondent has been a broker since 1995 and a principal broker for the same firm since 1998 with an average of 45 agents over the last 10 years without complaints. Respondent holds regular office meetings discussing TREC rules and ethical business dealings. Respondent states affiliate broker was trained properly and hid the business dealing with previous complainant. Respondent further submitted a TREC Form 1 showing release of affiliate broker on 7/5/13.

Respondent met with the investigator and Respondent denied having knowledge of any transactions between affiliate broker and previous complainant and reiterated Respondent's response previously submitted to TREC.

Recommendation: Litigation Monitoring Consent Order.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner DiChiara made a motion to accept legal recommendation for Litigation Monitoring Consent Order; seconded by Commissioner Hills; motion passes unanimously.**

3. 2014007841

Opened: 5/09/14

First License Obtained: 3/9/1987

License Expiration: 12/10/2014

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201401611 (under review), 201401651 (under review), 201402127 (under review)

TREC opened a complaint against Respondent, principal broker, for failure to supervise Respondent in case no. 2014007761 (hereinafter "affiliate broker"). Respondent was affiliate broker's principal broker from 10/23/13 to 6/3/2014. Respondent submitted a response stating that the allegations occurred prior to affiliate broker joining Respondent's firm. Respondent further states that Complainant in case no. 2014007761 (hereinafter "previous complainant") contacted Respondent on 4/24/2014 prior to receiving the complaints from TREC. Respondent states that Respondent had no knowledge of the transactions that occurred between affiliate broker and previous complainant prior to 4/24/14, and Respondent's office does not have contracts or copies of paperwork or any other documentation since affiliate broker was not

under Respondent's supervision at that time. Having reviewed the supporting documentation supplied by previous complainant, it appears to the office of the legal counsel that these matters occurred between December 2011 and August 2013.

Respondent met with the investigator and acknowledged Respondent's response re-submitted to TREC. Respondent re-stated that no transactions involving affiliate broker and previous complainant were done under Respondent's supervision or through the firm.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

4. 2014012931

Opened: 6/23/14

First License Obtained: 7/28/99

License Expiration: 3/15/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No history of disciplinary action.

5. 2014012932

Opened: 6/23/14

First License Obtained: 8/4/98

License Expiration: 1/22/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

6. 2014012933

Opened: 6/23/14

First License Obtained: 1/17/86

License Expiration: 12/14/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

November 2014 meeting:

Complainant was a potential buyer, and Respondent 1 (broker) was Complainant's agent. Complainant states that an extension was filed without Complainant's authorization or signature. Complainant states that Respondent 1 alleges Complainant signed the contract, but Complainant states that Respondent 1 was advised over the phone that Complainant would not sign another extension. Complainant states that, upon receiving the paperwork, a copy of the extension with a settlement date of 8/15/13 was included, but it was the first time Complainant had seen that extension. Complainant states that the settlement date on the form signed by Complainant had been whited out. Complainant states that, in order to receive the earnest money, Complainant had to sign a contract releasing Respondent 1's firm from all liability, so Complainant did not sign the form and has not received the earnest money. It appears that the contract was a cash transaction with the seller being the Secretary of Veterans Affairs with a \$500 earnest money deposit to a title company in Tennessee. There are also two (2) extensions in the file that are signed by Complainant on 7/16/13 for a settlement date of 7/29/13 with a written in date of 7/30/13 (initialed by Complainant by the changed date) and a second extension that is signed by Complainant on 7/16/13 for a settlement date of 8/15/13 (which does not contain initials next to the changed date). There is also e-mail correspondence provided between Complainant and Respondent 1. An Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement was prepared for the earnest money to be returned to buyer (Complainant) with the explanation "Unable to close house in buyer's specified time frame," but it was not executed.

Respondent 2 submitted a response stating that Respondent 2 is Respondent 1's principal broker for Tennessee, and Respondent 3 is Respondent 1's principal broker for the neighboring state. Respondents' offices are located in Tennessee. Respondent 3 submitted information stating that Respondent 3 is responsible for licensees of the neighboring state and was responsible for supervision of this transaction. Respondent 3 states that, when the issue was brought to Respondent 3's attention, Respondent 3 recommended returning the money to Complainant, that the proper paperwork was prepared, that Complainant would not sign the release paperwork, and that the earnest money is still with the title company. Respondent 1 states that, during a telephone conversation with Complainant, Complainant agreed to a final extension of August 15, 2013. Respondent 1 states that a co-worker who handles offers and extensions (who is also listed on the contract as the listing agent) made the change to the extension date, and Respondent 1 sent the form to Complainant to initial by the date change. When Complainant

did not want to close, Respondent 1 states that Respondent 1 checked with the company that handles VA foreclosures regarding the earnest money, which initially refused to return the earnest money due to the second extension. Respondent 1 forwarded copies of the extension paperwork to Complainant at Complainant's request, and Complainant contacted Respondent 3 stating the second extension was not properly executed. Respondent 1 states that it was determined that a mistake was made and the extension form uploaded was not initialed by Complainant regarding the changed date. Respondent 1 states that release forms were sent to Complainant from the co-worker and the company that handles VA foreclosures which provided for the earnest money to be returned to Complainant upon signing the document. Respondent 1 states that Complainant refused to sign. Respondent 1 states that the earnest money is being held at a title company in Tennessee, and it will be released upon Complainant's execution of the earnest money release. Although the earnest money is still being held, it appears that the contract authorized a title company to hold the earnest money funds, and the title company is holding those funds, and the broker is relieved of responsibility per rule 1260-02-.09(5).

Recommendation: Dismiss.

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

Recommendation: Commissioner Hills to discuss.

DECISION: For Respondent #4, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-404(2), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

For Respondent #2, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

For Respondent #3, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

**Commissioner Blume made a motion for Respondent #4, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-404(2), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order. Motion seconded by Commissioner DiChiara; Commissioner Hills and Commissioner Collins abstains; motion passes.**

**Commissioner Alexander made a motion for Respondent #2, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of**

**the Consent Order. Commissioner Blume seconded motion; Commissioner Hills abstains; motion passes.**

**Commissioner Alexander for Respondent #3, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order. Motion seconded by Commissioner DiChiara; Commissioner Hills abstains; motion passes.**

7. 2014013991

Opened: 9/4/14

First License Obtained: 4/26/06

License Expiration: 4/25/16

E&O Expiration: Uninsured

Type of License: Firm

History: 201401466 (under review)

8. 2014013992

Opened: 9/4/14

First License Obtained: 7/7/06

License Expiration: 3/4/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No history of disciplinary action.

Complainants allege that Respondent (broker) willfully neglected duties as an agent, attempted to profit from the neglect, and lied under oath to cover it up. Complainants state that Respondent drafted an offer to purchase a home and attached an Exclusive Buyer's Representation Agreement, to the e-sign package without notifying Complainants of the agreement. Complainants state they previously declined signing a buyer's representation agreement, and Complainants state that two judges ruled against Respondent and awarded damages to Complainants under the Consumer Protection Act. Complainants state that after the buyer's representation agreement was signed, Respondent made no attempt to contact Complainants but monitored their house hunting process on social media accounts. Complainants state that they closed on a home four months later with another agent, and Respondent's firm filed a lawsuit to recover a commission and legal fees contending Complainants violated their exclusive buyers representation agreement. Complainants allege that Respondent never discussed the buyer's representation agreement

with Complainants, never confirmed the buyer's representation agreement in writing, and included the document electronically into a package of previously reviewed documents for electronic signature without informing Complainants in violation of Rule 1260-02-.36.

Respondent submitted a response by and through an attorney stating that Respondent corresponded with Complainants about homes they were interested in and before showing the homes, Respondent discussed the office policy stating that a buyer's representation agreement must be signed before Respondent could present or negotiate offers on their behalf. Respondent states Complainants refused to sign an agreement stating that Complainants wanted to work with Respondent in one county and another agent in a neighboring county. Respondent agreed to show Complainants properties that day but advised that Respondent would not continue to work with Complainants after that without a buyer's representation agreement. Respondent states that after that, Complainants requested to see two (2) additional properties in the neighboring county and advised Respondent that Complainants fired the other agent and Respondent was under the impression that Complainants were only working with Respondent and understood the requirement of signing an exclusive buyer's representation agreement. After working with Complainants over the next few weeks discussing many properties, Respondent prepared an offer that Complainants reviewed and approved, so Respondent sent them "a plethora of paperwork to sign electronically." Respondent states that all documents were viewable, including the buyer's representation agreement, and the documents could have been downloaded after signing. Respondent states that the sellers of the property counter-offered, Complainant's rejected the offer, and Complainants told Respondent that they would contact Respondent to resume their search once they were settled in their rental. Respondent states that Complainants inquired about two more homes a couple of weeks later, but a mutual friend advised Respondent that Complainants bought a home in their neighborhood, though Respondent knew nothing of the contract. Respondent states that Complainants closed on the home a few months later, and the firm sent a demand letter for payment of commission and later filed a civil lawsuit for breach of contract. Respondent states Complainant filed a counterclaim for breach of fiduciary duty, negligent misrepresentation, and negligence per se for violation of TCA § 62-13-404. Respondent states the trial court dismissed the claims without a hearing, and the matter was appealed, with counterclaims filed by Complainants with an additional claim that Respondent violated the Tennessee Consumer Protection Act. Respondent states that the judge initially dismissed the firm's claims and found that Respondent had not violated the Tennessee Consumer Protection Act, but later the Judge sent an order requesting further argument on those claims. Respondent states that following the hearing, the Judge found that Respondent "created confusion and misunderstanding with respect to [Respondent's] authority as the [Complainant's] agent, as well as the authority of other agents or sellers with whom the [Complainant's] dealt while negotiating the final terms of a consumer transaction." Respondent states that the firm filed a motion to alter or amend the judgment, which has not been heard. Respondent states that the judge found that Complainants did not read the documents they electronically signed and held that there was no meeting of the minds with regard to the buyer's representation agreement and did not enforce it upon Complainants. Further, with regard to Respondent engaging in fraudulent or deceptive practice, the judge stated, "to do that I would have to in fact credit [Respondent] with guile that I do not find myself willing to credit [Respondent] with," but there has been further court action, including a motion that has not yet been heard. Respondent further requests that TREC give an interpretation of their Rule 1260-2-.36 regarding whether or not Respondent advised and/or confirmed the required disclosures, which could be pertinent to the pending civil litigation. With regard to Complainant's allegations that Respondent failed to obey Complainant's instructions in violation of TCA § 62-13-404 (1), Respondent

states that the firm believes they had a valid contract, but alleges that Complainants cannot simultaneously claim that the buyer's representation agreement is unenforceable and that Respondent breached fiduciary duties under the broker's act.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the Recommendation of Counsel.

**Commissioner Alexander made motion to move into Litigation Monitoring; motion dies due to lack of second. Commissioner Collins made motion to dismiss; motion dies due to lack of second. Commissioner Franks made a motion to dismiss; seconded by Commissioner Collins; roll call vote 4 yes and 2 no by Commissioners Alexander and Commissioner DiChiara, Commissioner Hills abstains; motion passes.**

9. 2014014531

Opened: 7/22/14

First License Obtained: 5/9/05

License Expiration: 5/26/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

10. 2014014532

Opened: 7/22/14

First License Obtained: 4/26/96

License Expiration: 9/21/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

November 2014 Meeting:

Complainant hired Respondents' firm (Respondent 1 is affiliate broker; Respondent 2 is principal broker) to rent Complainant's home. Complainant states that, per the lease agreement with tenants, the tenants were to maintain the yard and gardens, but the tenants did not, and Respondent 1 discouraged Complainant from taking action stating that the yard could be repaired with security deposit funds. Complainant states that the first tenants moved out sometime in June 2013. Complainant states that Respondent 1 hired a handyman rather than professional landscaper to repair the garden, but the work was never done. Complainant states that a professional landscaper was hired by Complainant, and Respondent 1 initially agreed to pay an amount toward that but now refuses to pay. Further, Complainant states that the first tenants were supposed to pay for removal of a satellite dish they installed, but tenants have not paid, and Complainant was charged. Complainant further states that the second tenants moved in July 2013, and Respondent 1 submitted a move in/check in report, but Complainant learned from the second tenants that Respondent 1 had not been to the house for inspection and check in. Complainant states that, upon visiting the home, damage to the hardwood floor was discovered from the first tenants and pulls in the carpet, but Respondent 1 refused to charge the tenants. Complainant further states that the first tenants damaged two (2) window sills and the first tenants did not finish the repairs so the second tenants finished the repairs but did not receive reimbursement. Complainant states that Respondent 1 assisted the first tenants with a home purchase, for which Respondent 1 and the firm took a commission, and Complainant states Complainant was not notified of this conflict of interest. Complainant further states that the check-out form for the first tenants was not completed until after the second tenants' check-in form was completed, and Complainant states that Complainant was not reimbursed for the satellite removal. Complainant states that, when contacted, Respondent 2 refused to speak with Complainant but emailed to notify they were terminating the management contract with Complainant. Complainant states that Complainant received a hold harmless agreement from Respondents which Complainant has to sign in order to receive the second tenants' security deposit and other amounts which Complainant states were promised, but Complainant has been advised by an attorney not to sign it.

Respondent 2 states that Respondent 2 acts as broker, having certain agents who work as property managers, and Respondent 2 advises agents and assists with issues and questions. Respondent 1 states that the first tenants were excellent tenants who paid rent timely and took excellent care of the home. Respondent 1 noted scratches on the window sill made by the dog during an annual inspection, and Respondent 1 states they repaired this before move out. Respondent 1 states that there is no part of a rental agreement that hinders Respondent 1 from assisting tenants with a purchase after their lease has been satisfied. Respondent 1 states that, while initially marketing the property for rent, Respondent 1 noticed scratches in the hardwood floors and some tears or pulls in the 15 year old carpet, and, upon move-out of the first tenants, one additional pull in the carpet was noticed, which was attributed to normal wear and tear. Respondent 1 further states that the second tenants were angry because the homeowners intruded by performing repairs for 2 weeks, and Respondent 1 ended up assisting the second tenants with a lot purchase. Respondent 1 states that Complainant required a pet deposit from the second tenants for a cat that stayed crated in the home during a visit. Respondent 1 states that Complainant is hard to please. Respondent 1 states that they have offered return of the security deposit for the second tenants, the additional cat pet fee, a gardening fee, and money for the satellite dish removal in exchange for Complainant signing a hold harmless agreement, but Complainant contacted an attorney and asked for much more, including requests for repairs to the hardwood and carpet. Office of legal counsel followed-up with Respondents and received documentation relating to the property. It appears that the cost of satellite removal and an administrative fee for the repair were deducted from Complainant's rent

payment. Also, there is a fax memo regarding the repairs which states that the money should be taken from the \$250 held from the first tenants. From accounting documents, it appears that the full security deposit was returned to the first tenants, but a \$250 pet deposit was paid upon move in, which appears to have been deposited to Complainant at that time. It does not appear that Complainant would sign the hold harmless agreement offered by Respondents in order to release the second tenants' security deposit to Complainant. However, it does not appear that there was a violation of the Broker Act by Respondents.

Recommendation: Dismiss.

DECISION: For each Respondent, the Commission authorized a civil penalty in the amount of \$1,000 for violations of T.C.A. 62-13-312(b)(14), 62-13-403(1), 62-13-404(1) & (2), plus each Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

Approximately one day after the complaint was submitted to the Commission at its November meeting, office of legal counsel received written correspondence from Complainant stating that he has made a financial agreement to settle his dispute with Respondents. As a requirement of this agreement, Complainant is asking that the Commission dismiss his complaint. In addition to Complainant's written correspondence, the office of legal counsel also received written correspondence from Respondent's attorney requesting that the complaint be withdrawn, in that the parties have reached an amicable settlement. Respondent's attorney stated that she understands that this information was not available at the time this matter was presented to the Commission, and that she is requesting a re-consideration of this matter.

Recommendation: Discuss.

DECISION: Previous action by the Commission stands. For each Respondent, the Commission authorized a civil penalty in the amount of \$1,000 for violations of T.C.A. 62-13-312(b)(14), 62-13-403(1), 62-13-404(1) & (2), plus each Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

**Commissioner Franks mad a motion to accept legal counsel to dismiss; seconded by Commissioner DiChiara; motion fails. Previous action by the Commission stands. For each Respondent, the Commission authorized a civil penalty in the amount of \$1,000 for violations of T.C.A. 62-13-312(b)(14), 62-13-403(1), 62-13-404(1) & (2), plus each Respondent must attend one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order. Commissioner Collins left meeting for funeral.**

11. 2014014701 (Unlicensed)

Opened: 7/22/14

History: No history of disciplinary action.

12. 2014014702 (Unlicensed)

Opened: 7/22/14

History: No history of disciplinary action.

Complainant is a principal broker, Respondent 1 is a loan officer, and Respondent 2 is the manager of the lending company. Complainant represented a buyer who was purchasing a property from buyer's father through a bankruptcy order. Complainant states that neither Respondents returned any of Complainant's calls after the loan was assigned, and eventually Respondent 1 sent the buyer a TAR Amendment to Agreement form without first speaking with Complainant to request changes to the terms of the agreement. Complainant advised the buyer not to sign the TAR form and attempted to speak with Respondent 1, but ended up meeting with Respondent 2. Complainant states that Respondent 2 initially stated the loan had been denied, though an appraisal on the home had already been done, but then stated the loan should close next week. When Complainant inquired about who wrote the TAR form, Complainant states that Respondent 2 would not address the situation but told Complainant to learn how to write a contract. Complainant advised Respondent 2 that they would be transferring to another lender.

Respondent 1 states Respondent 1 has been a mortgage broker for over ten (10) years and has never deprived an agent of their commission. Respondent 1 denies representing oneself as an agent. Respondent 1 states that Respondent 1 was not aware that an agent was involved, stating the contract was received from the buyer's former loan originator and did not include confirmation of agency status, compensation agreement, buyer's representation agreement, etc. Respondent 1 states that the buyer mentioned Complainant was a family friend who assisted with the contract, and Respondent 1 denies that Complainant ever called the office regarding the loan. Respondent 1 states that Respondent 1 spoke to Complainant on one occasion regarding a different loan file. Respondent 1 further states that the buyer told Respondent 1 to work directly with the buyer and not Complainant. Respondent 1 states that the buyer requested the sales price to be lowered, and Respondent 1 found a sales addendum online. Respondent 1 states that upon learning Complainant was the agent involved, the buyer contacted Respondent 1 who apologized and said that the bankruptcy court required an agent to be involved, and the buyer did not realize Complainant was representing the buyer too. Respondent 1 states that the firm transferred the information to another lender at the buyer's request.

Respondent 2 states that Respondent 2 is the branch manager and has been a mortgage lending professional for over twenty (20) years. Respondent 2 disagrees with Complainant's allegations and denies representing oneself as an agent. Respondent 2 states that when the title company was contacted for exact numbers on payoffs, fees, etc., the information came back without any real estate agent commission included in closing costs, and Respondent 2 was under the impression that no agent was involved. Respondent 2 advised Respondent 1 that a sales addendum form could be found on the internet, and Respondent 1 provided it to the buyer to be executed by seller and buyer. Respondent 2 states there

was some confusion when greeting Complainant, and Respondent 2 thought it was a client until Complainant began asking questions about the buyer's file. Respondent 2 denied speaking with Complainant since there was no third party authorization form on file. Respondent 2 requested agency confirmation forms be provided to Respondents and the title company to ensure Complainant received compensation, and Respondent 2 states that Complainant became angry. Respondent 2 states that the buyer requested the loan be transferred, and Respondents complied.

Recommendation: Letter of Warning, referencing T.C.A. 62-13-301, regarding unlicensed activity. In addition, the Letter of Warning should reference T.C.A. 62-13-102(4), which states the definition of "Broker". This matter does not rise to the level of unlicensed activity, in that Respondent was not acting for a fee or commission.

DECISION: For each Respondent, the Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. §§ 62-13-102(4), 62-13-301 regarding "valuable consideration," said order to also include order to cease and desist all unlicensed activity.

**Commissioner DiChiara made a motion to accept legal counsel Letter of Warning, referencing T.C.A. 62-13-301, regarding unlicensed activity. In addition, the Letter of Warning should reference T.C.A. 62-13-102(4), which state the definition of "Broker". This matter does not rise to the level of unlicensed activity, in that Respondent was not acting for a fee or commission. Seconded by Commissioner Franks. Commissioner Blume made a substitute motion of a \$1,000 Civil Penalty to go with counsel recommendation; seconded by Commissioner Hills; motion passes unanimously.**

13. 2014014711

Opened: 7/10/14

First License Obtained: 5/28/09

License Expiration: 5/27/15

E&O Expiration: 2/4/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

14. 2014014712

Opened: 7/10/14

First License Obtained: 1/28/08

License Expiration: 1/27/16

E&O Expiration: 2/4/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

15. 2014014713

Opened: 7/10/14

First License Obtained: 9/17/96

License Expiration: 1/23/16

E&O Expiration: 2/4/15

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant (principal broker) discovered that a property previously viewed with Complainant's client (buyer) was listed back on the market as active. Complainant emailed the offer to Respondent 2 (affiliate broker) and called to ensure it was received. Complainant states that Respondent 2 advised that the offer was accepted and submitted through software specializing in short sales and foreclosure, and Complainant requested copies. Complainant states that Complainant had not heard back from Respondent 2 in a couple of days, so Complainant contacted the other listing agent, Respondent 1 (affiliate broker), who stated that Respondent 1 was unaware of any offers that had been submitted. Complainant states that Respondent 1 advised it went to either an auction or foreclosure. Complainant states that Respondent 1 told Respondent 2 to notify Complainant of the foreclosure, and Respondent 1 told Complainant that the offer was too low. Complainant requested that Respondent 2 call to speak with Complainant regarding re-presenting the offer to the bank, but states that neither Respondent called back. Complainant states that Respondents failed to furnish a copy of the contract documents that Respondent 2 advised was accepted and uploaded. Complainant also alleges that Respondents failed to advise that the property was foreclosed.

Respondent 1 submitted a response denying the allegations stating that Complainant called the office notifying Respondent 1 that an offer would be submitted soon. Respondent 1 submitted the offer to sellers within an hour of receiving it stating Respondent 1 was not sure if this was a good deal because of the pending foreclosure auction. Respondent 1 states that the seller was routinely late in returning signed documents, and Respondent 1 never received a counter-signed contract from seller. Respondent 1 states Respondent 1 called the bank, and the bank stated that the purchase price was too low and the timeframe is too short, and Respondent 1 states Respondent 1 relayed the information to Complainant who would speak with the buyer. Respondent 1 states the listing was removed after the foreclosure sale. Respondent 1 states that Complainant called after the foreclosure auction took place, and Respondent 1 acknowledged the offer but stated it had not been uploaded into the software program. Respondent 1 states that the sale of this property was tough, and there was a lot of communication with the bank. Respondent 1 states that Respondent 1 tries to address business in a compliant and timely manner, and Respondent 1 believes

Complainant is stretching the truth in order to make a complaint. Respondent 1 further states that Complainant screamed at Respondent 1 and called Respondent 1 incompetent, which does not reflect the business ethics of a realtor.

Respondent 2 acknowledged receipt of the offer and states that it was immediately forwarded to Respondent 1. Respondent 2 states that Respondent 2 does not work in the software program and remembers Complainant stating that Complainant was familiar with the program. Respondent 2 states that Complainant was rude when Respondent 2 advised that Respondent 1 was handling the listings and the offer would be forwarded to Respondent 1. Respondent 2 denies stating the offer was accepted or uploaded to the software program. Respondent 2 also denies receiving phone calls or voicemails regarding this listing. Respondent 2 further states that the listing was removed from MLS as soon as information was received from the bank that the property was to be auctioned. Respondent 2 further states that Complainant currently has the home under contract per MLS.

Respondent 3 (principal broker) stated that Respondent 3 investigated the transaction upon receipt of the complaint and stated Complainant never contacted Respondent 3 to assist Complainant. Respondent 3 states that Respondent 1 contacted the bank upon receipt of the offer and stated that they would not accept it at that price and it was too late to stop the foreclosure auction. Respondent 3 states that there may have been a failure to communicate and states that Complainant may have been hard to talk with on the phone.

Recommendation: Dismiss.

DECISION: The Commission voted to defer this matter to the January Commission meeting for review by Commission Alexander.

**Commissioner DiChiara made a motion to accept legal counsel to dismiss; seconded by Commissioner Franks. Commissioner Alexander stated he would like to review case and report back at the January 7, 2015 meeting. Commissioner DiChiara and Commissioner Franks withdraw their motion.**

16. 2014014881

Opened: 9/2/14

First License Obtained: 3/28/14

License Expiration: 3/27/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainant was selling a home and states that Respondent (affiliate broker) was the buyer/agent and placed an offer of \$235,000. Complainant alleges that Respondent failed to respond to Complainant's agent until after the inspection report was complete and after the deadline had lapsed. Complainant alleges that Respondent then submitted an offer of \$190,000 and believes that Respondent had no intention of following through with the \$235,000 offer.

Respondent stated that Respondent presented an offer to seller's agent for \$235,000 cash with contingencies on inspection and title. Respondent states this was initially looked into for Respondent's residence and states that the inspection report stated there was a high risk of fire due to the HVAC, electrical, and plumbing being crammed underneath the property. Respondent states that the inspector told Respondent the property was a tear down, and Respondent began thinking of the property as a renovation. Respondent states that the inspection deadline lapsed, and instead of retracting the offer, Respondent submitted an offer of \$190,000 as-is. Respondent states that this was Respondent's second contract as a realtor, and there were mistakes made, but Respondent has learned from them and is continuing to expand Respondent's education. Respondent apologized for not submitting a timely response.

The office of legal counsel followed-up and obtained the transaction file. It appears that the Purchase and Sale Agreement was accepted on 5/14/14, and the inspection was held on 5/29/14. The Personal Interest Disclosure and Consent was executed on 6/4/14. An amendment to the purchase and sale agreement with an offer of \$190,000 was executed on 6/3/14, and the inspection notification was executed on 6/4/14. Further, an earnest money release was executed on 6/4/14.

Recommendation: Letter of Instruction regarding T.C.A. § 62-13-403(7)(A), which states that a licensee shall not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner DiChiara made a motion to accept recommendation of legal counsel Letter of Instruction regarding T.C.A. § 62-13-403(7)(A), which states that a licensee shall not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction. Seconded by Commissioner Franks; motion passes.**

17. 2014026421

Opened: 11/4/14

First License Obtained: 4/7/00

License Expiration: 3/14/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201402241 (under review)

TREC filed a complaint against Respondent (principal broker) for failure to supervise Respondent (affiliate broker) in complaint 2014014881 (hereinafter "affiliate broker"). Respondent has spoken with affiliate broker regarding affiliate's actions. Respondent states that affiliate broker placed an offer in a multiple offer situation and was put in back-up status. Respondent states that the first contract fell through due to an inspection. Respondent states that affiliate broker's offer had an inspection period of seven (7) days with a resolution period of twenty-one (21) days, and it appears that the offer price was altered due to the result of the inspection. Respondent states that affiliate broker had no intention of trying to wear the seller down in price but was only being cautious. Respondent is working with affiliate broker regarding negotiation and processing paperwork.

Recommendation: Letter of Instruction regarding T.C.A. § 62-13-403(7)(A), which states that a licensee shall not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction.

DECISION: The Commission authorized a civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

**Commissioner DiChiara made a motion to accept recommendation of legal counsel Letter of Instruction regarding T.C.A. § 62-13-403(7)(A), which states that a licensee shall not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction. Seconded by Commissioner Blume; substitute motion made by Commissioner Alexander to add civil penalty in the amount of \$1,000 for violation of T.C.A. 62-13-312(b)(15), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.; seconded by Commissioner Hills; motion passes unanimously.**

18. 2014014891

Opened: 7/22/14

First License Obtained: 4/9/87

License Expiration: 1/17/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

19. 2014014892

Opened: 7/22/14

First License Obtained: 2/15/77

License Expiration: 11/5/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant states that Respondent 1 (affiliate broker) showed Complainant's property and did not lock all outside doors. Complainant further states that Respondent 1 performed a final walk through on Complainant's property and notified Complainant that Complainant failed to fix a ceiling settlement crack per the contract. Complainant states that this was never included in the paperwork, and further alleges that Respondent 1 should have called Complainant's agent instead of Complainant directly. Complainant alleges that Respondent 1 was rude and threatening on the phone.

Respondents submitted a reply stating that Complainant's agent never notified Respondent 1 that Respondent 1 had left the door unlocked and further states that Complainant's agent advised that Complainant's home was showed by three different agents that day, and Respondent 1 was not the last one to show the home. Respondent 1 states that Complainant's agent was out of the country during the final walk through, and buyers called the Complainant and handed the phone to Respondent 1 to speak with Complainant because the buyers did not want to close on the house until the repairs were performed. Respondent 1 states that upon inquiring about settlement cracks being repaired, Complainant yelled at Respondent 1. Respondent 1 states that the home closed 6/6/14 and buyers are happy with the home.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

20. 2014014901

Opened: 7/8/14

First License Obtained: 12/9/93

License Expiration: 12/24/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainant states that Respondent (affiliate broker) represented Complainant in the purchase of a business and later represented Complainant in the sale of the business. Complainant further states that Respondent ended up purchasing Complainant's business. Complainant alleges That Respondent engaged in self-dealing [T.C.A. § 62-13-403(7)(A)], was not loyal to Complainant's interests and failed to disclose dual agency [T.C.A. §§ 62-13-312(b)(7), 62-13-404], acted for more than one party in a transaction [T.C.A. §§ 62-13-312(b)(7)], failed to provide copies of documentation at the time of execution [T.C.A. § 62-13-312(b)(8)], and made willful misrepresentations and committed fraud [T.C.A. § 62-13-312(b)(1), (20)].

Respondent submitted a response denying all allegations. Respondent states that Respondent represented Complainant in a lease purchase for a commercial property, and Complainant later approached Respondent regarding the sale of a business. Respondent denies representing Complainant in the sale of a business, as Respondent does not have past experience doing so. Respondent states that Complainant and Respondent had a friendly discussion regarding the sales price, and Respondent thought the business was worth more than Complainant was contemplating selling for. Respondent states that Respondent ended up purchasing the business at a re-negotiated the purchase price because Complainant began letting employees and clients go, which violated their purchase agreement. Respondent states that Complainant continued to sabotage the business and Respondent filed a lawsuit for breach of contract against Complainant, which settled in May, 2014. Respondent states that the settlement agreement specifically states "the parties otherwise fully release one another from any obligations, claims, responsibilities, etc. that one has or may have to one another."

Office of legal counsel followed-up with attorney for Respondent for additional documentation. A lawsuit was filed by Respondent against Complainant for breach of contract for an Asset Purchase Agreement stating Complainant violated certain warranties regarding the viability of the business. A counter-complaint was filed against Respondent for breach of contract, breach of duty of good faith and fair dealing, intentional misrepresentation and negligent misrepresentations stating that Respondent was agent for Complainant in the lease purchase of the building, and that later Respondent agreed to act as

business broker to sell the business. Subsequently, a settlement agreement was reached on May 2, 2014, and the lawsuit was dismissed. A second lawsuit was filed by Complainant against Respondent in June 2014 for breach of settlement agreement for failure to timely perform all requirements of the agreement, specifically for return of certain property items and certain business records. This TREC complaint was filed June 10. The subject matter of the lawsuit and this complaint is regarding an Asset Purchase Agreement, which is not regulated by the Broker's Act.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

21. 2014014921

Opened: 7/14/14

First License Obtained: 7/10/95

License Expiration: 12/25/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No history of disciplinary action.

Complainants purchased a home, and Respondent was seller's agent. Complainants state that an inspector noted that the crawlspace supports needed repair or replacement, and seller was to provide repairs. Complainants allege that Complainants' agent stated that a contractor was going to do the repair, but when the inspector re-inspected the home several months later, it was noted that repairs had not been made. Complainants allege that seller stated Respondent took care of the repairs. Complainants allege that Respondent and one of the contractors came to Complainants' house to discuss the repairs that had been made, and the inspector re-inspected the crawlspace but affirmed no repairs had been done. Complainants inquired about licensure of the contractor and state that the Contractor's licensing Board stated the contractor is not licensed. Complainants allege that Respondent reassured Complainants that the contractor is licensed and works frequently for Respondent.

Respondent confirms that Respondent represented seller in this transaction, and seller hired a contractor who completed all repairs requested except one where an air and heat vent was partially blocked by the bath tub. Respondent confirms that Respondent met one of the contractors at Complainants' property,

and the contractor showed Complainants the repairs made to the pillar support, and the contractor stated the house was safe, and Respondent thought everything was okay. Complainant sent additional information stating Respondent contacted the inspector and told the inspector that Respondent would find somebody to fix the problem, but Respondent never did so.

Office of legal counsel followed-up with Respondent and received the transaction file. It appears that Respondent was the listing agent, and Complainant's (buyer's) agent was an agent with Respondent's firm. The binding agreement date was 10/13/13 and included a 12 day inspection period. The Buyer Inspection Contingency Removal/Notification was accepted on 10/24/13. Respondent also included a work proposal dated 11/2/13 from a contracting company stating "home inspection repairs at residence," and the proposal has an acceptance date of 11/8/13 with Respondent's signature. It also appears that the buyers did their final inspection and executed a document regarding same on or about 11/8/13, and the closing occurred on 11/8/13.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

22. 2014015001

Opened: 7/17/14

First License Obtained: 10/6/11

License Expiration: 10/5/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

23. 2014015002

Opened: 7/17/14

First License Obtained: 1/2/92

License Expiration: 10/14/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 942903 (Letter of Warning), 201202655 (Letter of Instruction)

Complainant hired Respondent 1 (affiliate broker) to sell Complainant's condo. Complainant states that Complainant requested to make at least \$142,000 on the sale and that the listing agreement last for three (3) months. Complainant states that Complainant cannot see well, so Complainant requested that Respondent 1 read the listing agreement to Complainant before Complainant signed the contract. Complainant states that the listing agreement should have expired 7/6/14 but discovered later that the listing agreement was through 7/31/14. Complainant also states that the listing agreement was for a sale price of \$150,000 with a 5% commission to the agent. Complainant states that one offer came in for \$140,000 and negotiations were made, but the deal did not go through, stating that Respondent 1 was trying to convince Complainant to accept an offer lower than what Complainant wanted. Complainant further alleges that Respondent forged Complainant's signature to accept a second offer of \$145,500 but alleges Respondent 1 told Complainant over the phone that the buyer accepted Complainant's counter of \$146,500. Complainant states that Complainant will honor the contract with the buyers but Respondent 1 offered to give Complainant Respondent 1's commission.

Respondent 1 submitted a response stating that Respondent 1 worked with Complainant at a previous employer, and Complainant contacted Respondent 1 to list a vacant condo, which needed work done. Respondent 1 states that Respondent 1 agreed to a lower commission (5%) and that the listing agreement would go through July 30, 2014. Respondent 1 states that Complainant asked Respondent 1's opinion regarding maintenance and repairs that needed to be done, but Complainant never followed-through with repairs. Respondent 1 states that an offer came in, and eventually Complainant accepted an offer of \$145,500 with 5% commission for both agents, and Respondent 1 would give \$500 of Respondent 1's commission back to Complainant at closing. Respondent 1 states that an inspection was done on the home, but Complainant refused to replace the water heater. Respondent 1 states that Respondent 1 and the buyer's agent agreed to share the cost of the installation of the water heater in order to salvage the deal. Respondent 1 states that Complainant and Complainant's ex-spouse visited the premises with the agents, and the ex-spouse stated that Complainant would fix the water heater and sell to the buyers. Respondent 1 states that this is when Complainant began accusing Respondent 1 of forgery, and Respondent 1 denies these allegations. Respondent 1 states that Respondent 2 and the firm's broker/owner discussed the situation, and they all attended the closing in which Complainant was present and accepted the sales price of \$145,500 with an additional \$500 from Respondent 1's commission and an extra \$200 from Respondent 1 to replace the water heater with a used one. Respondent 1 states that Complainant made \$146,200 from the sale. Respondent 1 states that Complainant continues to slander Respondent 1's name and attorneys have been hired because Complainant is requesting an additional \$1,000 from Respondent 1.

Respondent 2 (principal broker) submitted a response stating Respondent 2 has no reason to doubt Respondent 1's response and Respondent 1 has been an agent with the firm for two (2) years and has had no issues or complaints.

The office of the legal counsel followed-up with Respondents for additional documentation, and it appears that the HUD corroborates Respondent 1's statements regarding the sale with a settlement date of 6/18/14. It appears that the listing agreement was executed on 4/3/14 for a listing price of \$150,000 with 5% commission and an expiration of 7/30/14. The purchase contract appears to have multiple counter-offers regarding purchase price but was bound on 5/16/14 with a purchase price of \$145,500.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

24. 2014015051

Opened: 7/15/14

First License Obtained: 8/19/05

License Expiration: 8/18/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

25. 2014015052

Opened: 7/15/14

First License Obtained: 1/11/06

License Expiration: 8/27/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201402619 (under review)

Complainant states that Respondent 1 (affiliate broker) showed Complainant a cabin, and Complainant put in an offer and had a home inspection done. Complainant alleges that it was later determined that the homeowner's association was a party in an ongoing lawsuit, so Complainant requested a refund of the inspection fee but was told by Respondent 1 that the disclosure of the lawsuit is in writing and the lawsuit would not affect the cabin purchase. Complainant states that Complainant does not have said documentation, and the HOA lawsuit was not disclosed.

Respondents responded to the complaint stating that Complainant requested that Respondent 1 communicate with the HOA to determine the amount of money in reserves, and Respondents communicated with Complainant that \$4,000 was earmarked for a lot-line dispute with a landowner and the HOA, which in no way affected the property Complainant was purchasing. Respondents state that Complainant entered into a binding Purchase and Sale Agreement which included the proper disclosures stating that licensees are not legal or tax experts, and it was Complainant's responsibility to seek legal advice with any concerns.

Complainant responded stating that Complainant requested information regarding the reserves prior to the inspection and found out about the lawsuit after the inspection, which affects every HOA member.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

26. 2014015431 (unlicensed)

Opened: 7/21/14

History: No history of disciplinary action.

A complaint was filed against Respondent who is the owner of a real estate firm who had a principal broker who released himself on 6/24/14. Complainant states that Respondent misrepresented a property that Complainant rented from Respondent and inflated the rental price. Complainant states that Respondent filed a detainer warrant against Complainant.

Respondent submitted a response stating that Complainant filed a civil lawsuit and the judge ruled in Respondent's firm's favor to evict Complainant and ordered Complainant to pay \$1,690 in back rent from May and June 2014. Respondent further states that all Complainant's claims arose prior to the firm's ownership and management of the property. Respondent further states that Respondent did not falsely advertise the property because the firm never advertised the property, and Complainant responded to a Craigslist advertisement posted by the property's previous owner. Respondent further states that Complainant had a realtor who had a fiduciary duty to provide an accurate description of the property before Complainant signed a rental agreement. Respondent states that Respondent has advised Complainant to file a complaint against the previous owner to remedy Complainant's claims.

Based on the information received, it appears that Complainant rented the property prior to the principal broker releasing himself on 6/24/14, and there is no evidence of unlicensed activity by Respondent.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner Hills made a motion to accept recommendation of legal counsel to dismiss; seconded by Commissioner Blume; motion unanimously passes.**

27. 2014015771

Opened: 7/21/14

First License Obtained: 5/2/91

License Expiration: 5/7/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

28. 2014015772

Opened: 7/21/14

First License Obtained: 4/28/10

License Expiration: 3/2/15

E&O Expiration: 1/1/15

Type of License: Broker

History: 949383 (\$1,000 Consent Order)

A complaint was filed against Respondent 2 (broker) and Respondent 1 (principal broker). Complainants allege that while staying at their timeshare for 2 nights, Respondent 2 brought them a gift basket and began to discuss their timeshare. Complainants allege that Respondent 2 advised that they could exchange their week for 25,100 points which could be exchanged for 3 weeks in Hawaii. On 4/11/14, Complainants executed a Purchase Worksheet/Agreement for 25,100 conversion points for a purchase price and processing fee in the total amount of \$5,894. Complainants state that they found that most weeks rented in Hawaii for more than 25,100 points, so on April 21, 2014, they called the bank to cancel the transaction for the card and were given a confirmation number. Complainants further state that they spoke with a representative at Respondent's firm on April 21, 2014 and requested cancellation of the transaction. Complainants further state that later they received a dispute letter from the bank.

Respondent 1 submitted a response stating that the contract Complainants signed to exchange their timeshare for points states "All sales are final and there are no refunds." Respondent 1 states that in spite of this statement, Complainants have received a full refund for their purchase. Respondent 2 submitted a response stating that Respondent 2 did not provide Complainants with incorrect information. Respondent 2 states that Complainants chose to take advantage of a new exchange program but later decided to cancel their purchase, and their money has been refunded.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

29. 2014016051

Opened: 7/21/14

First License Obtained: 11/7/07

License Expiration: 3/30/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant listed a condo with Respondent (principal broker) and another agent. Complainant states that the agreement was that the agents would split their commission 50/50. Complainant states that the buyer was somebody that Respondent was working with, so a confirmation of agency status was executed designating Respondent as buyer's agent and the other agent as Complainant's agent. Complainant states that the HUD showed that Respondent received 75% commission, and the other agent received 25%. Complainant believes this was unfair to the other agent and handled improperly.

Respondent submitted a response stating that Respondent managed Complainant's condo for rent for seven (7) years and agreed to co-list the property for sale with Complainant's close friend. Respondent states that the discussions regarding splitting the commission did not include splitting the buyer's side of the commission. Respondent states the listing agreement was for a total of 6% commission with 3% split between the listing agents and the other 3% for the buyer's agent. Respondent states that the buyer approached Respondent; and the other agent requested that Respondent revert to agency for the buyer, which only affected the agency representation and not the co-listing agreement. Respondent states that the other agent sent an email prior to closing to confirm that Respondent was received 3% buyer's agent commission and 1.5% of the listing commission and mentioned that other agents would have split the entire commission 50/50. Respondent states that there was no more mention about problems with the commission until after closing when Complainant emailed Respondent asking to pay over part of Respondent's commission to the other agent. Respondent states that Respondent contacted the ethics hotline for advice and regrets ending their business relationship on a misunderstanding.

This matter does not appear to fall under the Broker's Act and the Commission's authority.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner Alexander made a motion to accept recommendation of legal counsel to dismiss; seconded by Commissioner DiChiara; motion unanimously passes.**

30. 2014016111

Opened: 7/16/14

First License Obtained: 3/9/87

License Expiration: 12/10/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201400784 (under review), 201401651 (under review), 201402127 (under review)

31. 2014016112

Opened: 7/16/14

First License Obtained: 7/17/12

License Expiration: 7/16/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainant states that a Facebook advertisement for a real estate team did not mention the firm name on any page or advertisement.

Respondent 1 (principal broker) states that pursuant to Rule 1260-02-.12, the firm name and phone number appears on the website. Respondent 2 (affiliate broker) states that to Respondent 2's knowledge, the website has always been in compliance with the guidelines set forth by TREC.

Office of legal counsel viewed the website in question on 11/17/14. The home page title includes the firm name after the team name. However, the multiple tabs (sell, finance, your agent, blog, resources, etc.) do not include the firm name.

Recommendation: For each Respondent, authorize a Consent Order with a civil penalty in the amount of \$500 in violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number and (4)(a) the listing firm name and telephone number must conspicuously appear on each page of a website, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: For each Respondent, authorize a Consent Order with a civil penalty in the amount of \$1,000 in violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number and (4)(a) the listing firm name and telephone number must conspicuously appear on each page of a website., plus

attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.

**Commissioner Hills made a motion for each Respondent, authorize a Consent Order with a civil penalty in the amount of \$500 in violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number and (4)(a) the listing firm name and telephone number must conspicuously appear on each page of a website, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order. Such terms are to be settled by Consent Order or Formal Hearing. Motion seconded by Commissioner DiChiara; an amendment to motion made by Commissioner Franks for each Respondent, authorize a Consent Order with a civil penalty in the amount of \$1,000 in violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number and (4)(a) the listing firm name and telephone number must conspicuously appear on each page of a website., plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order. Such terms are to be settled by Consent Order or Formal Hearing. Motion seconded by Commissioner DiChiara; motion unanimously passes.**

32. 2014016141

Opened: 9/12/14

Type of License: Acquisition Representative Registration

History: No history of disciplinary action.

33. 2014016142 (unlicensed firm)

Opened: 9/12/14

History: 201402002 (under review), 201402057 (under review)

Complainant states that Respondents have solicited and received information on Complainant's timeshare, and Complainant discovered that the firm does not have a timeshare registration and Respondent 1 does not have a broker's license. A copy of the complaint was sent to Respondent 1 to the address on file with TREC, but the letter was returned as unclaimed. A copy of the complaint was sent to Respondent 2 to the address provided in the Complaint, but the letter was returned as undeliverable. Office of legal counsel researched both Respondents and was unable to receive any more information regarding their whereabouts. The BBB website states that they visited Respondent 2's address and was informed there is no such business at that address.

Recommendation: Dismiss due to insufficient evidence of a violation.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

34. 2014016151

Opened: 7/23/14

First License Obtained: 9/6/07

License Expiration: 4/18/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

Respondent (principal broker) was Complainant's property manager. Complainant alleges that Respondent charged Complainant for repairs to a thermostat that tenant fixed. Complainant further alleges that Respondent requested that Complainant replace a toilet that did not have any visible cracks; and when Complainant refused and requested that a repairman inspect the leak, Respondent terminated services because Complainant was being uncooperative. Respondent submitted an email from the tenant stating that tenant fixed the thermostat because it caused a \$500 electric bill, and the leaking toilet caused a \$600 water bill. Tenant further states that Respondent sent out Respondent's spouse to look at the toilet who stated the water meter was broken. Tenants further state that a plumber did not look at the toilet to determine if it needed to be replaced.

Respondent replied to the response and submitted the monthly statements and repair invoices regarding the property stating that there is no charge for a repaired thermostat. Respondent states that Respondent repeatedly requested permission to send a technician to the property to evaluate the thermostat and repair, but Complainant refused stating Complainant would not pay for anything that tenants broke. Respondent states that instead of submitting a work order, tenants fixed the loose wire in the thermostat. Respondent further denies requesting Complainant to replace the toilet and states that a work order was submitted for approval stating that the toilet was leaking. Respondent states the toilet had just been repaired, so Respondent sent the firm's maintenance coordinator to avoid a service call from the plumber since the work order was not approved. Respondent further states that services were terminated because Complainant was difficult to work with and abusive. Respondent further states that the tenants have no knowledge of documentation on file and were not present during discussions with Complainant.

Legal counsel examined the documents provided. There is an HVAC invoice dated 1/3/14 that states the heat relay was replaced and refrigerant was checked, but it does not appear that any work orders or invoices were submitted for thermostat repair. It appears that work orders for the leaking toilet were submitted 3/8/14 and 6/4/14. It also appears that the toilet was serviced on 3/8/14, which also includes a note “screw in thermostat tightened.”

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

35. 2014016161 (unlicensed)

Opened: 7/29/14

History: No history of disciplinary action.

36. 2014016162 (unlicensed)

Opened: 7/29/14

History: No history of disciplinary action.

TREC opened a complaint as a result of anonymous information received that Respondents were marketing a hotel in Tennessee without being licensed in the state on their website.

Respondents and their principal broker sent in responses stating the real estate firm and the principal broker are licensed in Tennessee. Principal broker states that Respondents are licensed in a neighboring state, and Respondents were working on a property in question through a co-brokerage agreement with principal broker. Principal broker states that they believed that this was the proper course of action when handling an asset in Tennessee and they seek clarification.

It appears that a copy of the Tennessee listing was printed from the website on 7/9/14, and Respondents were listed under the “brokers” section of the webpage.

Recommendation: For each Respondent, Consent Order with a civil penalty in the amount of \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner DiChiara made a motion to accept recommendation of legal counsel for each Respondent, Consent Order with a civil penalty in the amount of \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity. Such terms are to be settled by Consent Order or Formal Hearing.; motion seconded by Commissioner Franks; motion unanimously passes.**

37. 2014016171 (unlicensed)

Opened: 8/22/14

History: 201400437 (formal charges pending-unlicensed activity)

A complaint was filed against Respondent stating that Respondent was hired to obtain a tenant and received one half of the first month's rent as commission. Complainant further states that Respondent collected a \$1,000 deposit from tenant which was \$462.50 too much. Complainant states that they agreed that Respondent would send Complainant the overage, but Respondent has not done so. Complainant included text messages from Respondent which states that Respondent would mail Complainant the balance of funds. Complainant also submitted a receipt for a \$1,000 money order. Complainant also submitted the first page of a lease agreement which is between Complainant and tenant, and has a provision that tenant would deposit \$1,000, which appears to be initialed by Respondent and tenant.

Respondent did not respond to the complaint.

Recommendation: Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: The Commission authorized a civil penalty in the amount of \$2,000 for each violation of unlicensed activity in violation of T.C.A. 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

**Commissioner DiChiara made a motion to accept legal counsel recommendation of Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to**

**also include order to cease and desist all unlicensed activity. Such terms are to be settled by Consent Order or Formal Hearing; motion seconded by Commissioner Hills; motion amended by Commissioner Franks to a civil penalty in the amount of \$2,000 for each violation of unlicensed activity in violation of T.C.A. 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner Hills; motion passes unanimously.**

38. 2014016181 (unlicensed)

Opened: 8/26/14

History: No history of disciplinary action.

Complainant was a tenant of a property and states that Respondent forcibly entered the property by removing the deadbolt and broke the front door to gain entrance to the premises. Complainant states that Complainant came home to discover Respondent changing the locks and alleges that Respondent never requested permission to enter the premises. Complainant states that Respondent threatened Complainant and stated Respondent has a right to enter the premises to show it to prospective tenants. Complainant states that the owner of the property was out of the country at the time and left Respondent in charge, identifying Respondent as property manager. Complainant further states that Respondent has made similar threats to other tenants.

Respondent submitted a response stating that the owner of a firm hired Respondent as supervising manager, and Respondent assists with collecting rents and showing vacancies to prospective tenants. Respondent states that Complainant rents a room from a property and owed a total of four (4) months' rent. Respondent denies forcibly entering the premises and states that Respondent went to collect rent and show a vacant room to a prospective tenant, but Complainant would not open the door. Respondent further states that Complainant changed the locks, so Respondent called the police who said that since this is Respondent's property, Respondent had the right to enter.

Complainant submitted additional information stating that if Respondent had called the police, they would have escorted Respondent to ensure there would be no altercation. Complainant further denies being behind on rent and states that, if true, the Uniform Residential Landlord and Tenant Act does not allow for breaking and entering. Complainant further states that these issues do not excuse the unlicensed activity.

The office of legal counsel performed additional research. It appears that the firm (unlicensed) is owned by two individuals, presumably husband and wife. It appears that the wife voluntarily surrendered her license on or about 4/30/14. Further, it appears that the firm owners co-own the subject property. Therefore, it appears to legal counsel that the lease and management of this property falls under the exemptions in T.C.A 62-13-104(a)(1) "This chapter does not apply to: (A) an owner of real estate with

respect to property owned by such person” and “(E) a resident manager for...an owner...who manages...[a] residential complex where the person’s duties are limited to supervision, exhibition of residential units, leasing or collection of security deposits and rentals from the property...”

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

39. 2014016191 Opened: 8/4/14

First License Obtained: 10/30/89

License Expiration: 10/5/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201200601 (\$1,500 Consent Order-escrow violation)

A complaint was filed against Respondent alleging mismanagement of rental property, lost electronic records, and unpaid rents. Complainant alleged that Respondent has managed his property (two duplexes) for over ten years. During that time his office has experienced a high degree of employee turnover, electronic records have been lost, numerous tenants have gone into collections, tenants have been allowed to continue to occupy property when they are six months in arrears, and deposits have been withheld when they were not returned to the tenant who had been evicted. Complainant alleges he has asked Respondent for an accounting to address questions as to where the rental proceeds have gone, to no avail. Complainant indicated that an accounting going back as far as two to three years may reflect an accurate picture as to how the rental proceeds were applied to expenses and net proceeds disbursed to owner. The complaint file includes numerous emails from Complainant to Respondent requesting such information from Respondent, but there do not appear to be responses to those emails.

Respondent sent a response to the complaint stating that he has only been managing Complainant’s property for approximately 5 years and that his implication that Respondent was not cooperative in providing him with information is false. The delay in processing his request was due to a computer problem/crash, so that the records had to be hand-pulled. The information requested has been forwarded to Complainant. Respondent stated that no tenant has been allowed to stay in a property six (6) months without payment. Respondent further stated that Complainant has picked up all the information requested and is going to review it and get back with Respondent. Further documentation was requested by legal

staff, regarding the accounting documents requested by Complainant. The information requested was not received, so we are unable to determine if the accounting was sent in a timely fashion.

Recommendation: Letter of Warning, regarding T.C.A. 62-13-312(b)(5).

DECISION: The Commission voted to accept the recommendation of Counsel.

**Commissioner DiChiara made a motion to accept legal counsel recommendation of Letter of Warning, regarding T.C.A. 62-13-312(b)(5); seconded by Commissioner Hills; motion passes unanimously.**

40. 2014016251

Opened: 7/23/14

First License Obtained: 4/16/12

License Expiration: 4/15/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

41. 2014016252

Opened: 7/23/14

First License Obtained: 1/6/99

License Expiration: 10/24/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201402371 (under review), 201402376 (under review), 201402379 (under review), 201402384 (under review), 201402386 (under review), 2014012389 (under review)

Complainant hired a builder to build her home. Complainant alleges that when she closed on June 7, 2013, repairs still needed to be done in addition to items under the one year builder's warranty. Complainant alleges that she contacted Respondent 1 (agent who sold her the house) and the builder to get all of her walk-through items taken care of, to no avail. Complainant alleges that Respondent 1 was

rude to her and claimed that there was nothing she could do. Complainant alleges she was informed by the realty company that those items would be added to Complainant's file and Complainant would be updated with appointment times. Complainant alleges that she contacted the realty company numerous times to see when the repairs would be scheduled, and they were never scheduled. After being unsuccessful in getting through to the office manager, Complainant alleges she contacted Respondent 1 (the agent that sold her the house), and was informed by Respondent 1 that there was nothing she could do. Complainant is still not satisfied, in that she alleges the builder has not fulfilled his contractual agreement for the one year builder's warranty that he signed at the close of the house.

Respondent 1 sent a response to the complaint stating that asked Complainant if she had a written record of contact with the builder's office via email, to which Complainant did not reply. Respondent 1 stated that she provided a completed copy of Complainant's contract at Complainant's request.

Respondent 2 (principal broker) stated he has responded to Complainant's concerns in a timely fashion at every point of contact within the scope of Respondent 2's abilities. Respondent 2's company was not the listing brokerage for the home at the time Complainant purchased it. The buyers' agent was not affiliated with Respondent 2's firm until well after the transaction was complete. The complaint is against the builder, and Respondent 2 has no ownership interest in the builder's company. Respondent 2 stated that it is his belief that there is a dispute between Complainant and her husband as the homeowners, and the builder as to what terms are covered in the builder's one year warranty. Respondent 2 stated he is not a lawyer and is not qualified to offer legal advice to Complainant. Respondent 2 suggested that Complainant contact an attorney to resolve the issue with the builder.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

42. 2014016311

Opened: 7/30/14

First License Obtained: 12/5/03

License Expiration: 10/3/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

43. 2014016312

Opened: 7/30/14

First License Obtained: 3/28/02

License Expiration: 5/31/11

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No history of disciplinary action.

44. 2014016313

Opened: 7/30/14

First License Obtained: 3/30/07

License Expiration: 3/29/15

Type of License: Firm

History: No history of disciplinary action.

A complaint was filed by a licensed principal broker whose firm represented seller (a bank). Respondent 1 (principal broker) represented buyer, and Respondent 1 employs Respondent 2 as an assistant. Respondent 3 is the real estate firm. Complainant states that on 5/21/14 Respondents decided to close on the transaction immediately, despite having executed an extension until 5/30/14. Complainant alleges that seller's agent attempted to contact seller's title company to offer assistance and speed closing up, but Complainant alleges that Respondent 2 contacted Complainant's seller directly, violating the Code of Ethics. Complainant alleges that this is failure to supervise on Respondent 1's part. Complainant further states that seller is very upset over Respondent's contact, and it has hindered Complainant's relationship with the seller who provides 10-20 listings per year.

Respondents submitted a joint response stating Respondent 1 is sad that Complainant felt a need to file a complaint. Respondent 1 states that the transaction was set to close 4/17/14 and buyer was expecting a baby and had to take off work 3 times and pay extra every time the transaction did not close. Respondent 1 states that the new closing date was set for 5/22/14; but there was an error on the HUD, and seller had to sign off before buyers could proceed. Respondent 1 states that Complainant was unreachable by phone, so Respondent 2 contacted seller. Respondent 1 states that seller did not know they were closing on

5/22/14; and after the phone call, the transaction began to move forward. Respondents deny doing anything unethical and state they were trying to represent buyer the best they could.

Recommendation: Dismiss. The Commission lacks jurisdiction over this matter.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

45. 2014016511

Opened: 7/17/14

First License Obtained: 3/9/87

License Expiration: 12/10/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2014007841 (under review), 201401611 (under review), 2014021271 (under review)

46. 2014016512

Opened: 7/17/14

First License Obtained: 11/15/07

License Expiration: 11/14/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainants were sellers of a property, and Respondent 2 (affiliate broker) represented potential buyers. An offer was received on 2/28 contingent on financing and inspection, and buyers scheduled to view the home on 2/29. Complainants allege they accepted the offer and forwarded it to Respondent 2 on 2/29, but on 3/1 Respondent 2 advised that buyers backed out after viewing and inspecting the home. Complainants state that their agent requested a list of objections but state that it was not provided within the ten (10) day resolution period. Complainants state that their agent then requested the earnest money,

but Respondent 2 stated there was no binding contract, and the earnest money was not owed to Complainants.

Respondent 1 submitted a response stating Respondent 1 has never seen the contract nor the earnest money as it was not submitted to the office. Respondent 2 told Respondent 1 that there was never a binding agreement date, so Respondent 2 never received the earnest money deposit and at the time canceled the contract.

Respondent 2 submitted a response stating that potential buyers felt safe making an offer before seeing the property because it was listed as above-average condition, so an offer was submitted 2/28. Respondent 2 states that Complainants' agent neglected to point out many flaws in the property and misrepresented the property. Respondent 2 states that when Complainants' agent requested a list of objections, Respondent 2 felt that it was not appropriate to use the contract amendment TAR form because the contract did not include a binding agreement date. Respondent 2 states that earnest money was not collected because there was no binding agreement date.

Limited documentation was received. It appears that the offer was received by Complainants late on 2/28, and their electronic signatures were made the afternoon of 3/1/14. The Binding Agreement date was not filled in. The contract is a TAR form and states that earnest money will be collected one (1) day after the Binding Agreement Date. An Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement was submitted to Respondents on 3/25 requesting that potential buyers forfeit the earnest money.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

47. 2014016521

Opened: 8/5/14

First License Obtained: 3/1/04

License Expiration: 1/21/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201401693 (under review)

48. 2014016931

Opened: 8/5/14

First License Obtained: 3/1/04

License Expiration: 1/21/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201401652 (under review)

Two (2) complaints were filed against Respondent by a husband and wife (sellers) who are divorcing. Complainant 1 states that their home was viewed, and the potential buyers gave excellent feedback. Complainant 1 requested that Respondent follow-up, and Respondent told them that the potential buyers did not want vinyl siding, but Complainant 1 states that their home does not have vinyl siding and allege that Respondent showed negligence and misrepresentation, costing Complainants the sale of their home. Complainant 1 requested to drop the price of the home and allege that Respondent failed to get permission from Complainant 2. Complainant 1 further states there was a violation in the listing of familial status. Complainant 1 alleges that Respondent did not show reasonable skill and care, misrepresented the property, and lacked overall communication between the parties. Complainant 1 provided text messages regarding the miscommunication of vinyl siding where Respondent states that buyers' agent called it vinyl, and Respondent called back and left a message explaining that the siding is hardiboard. Respondent also states in the text that Respondent checked the MLS, and it states that the siding is fiber cement because hardiboard is not an option. It appears that the MLS says fiber cement/vinyl.

Complainant 2 states that Respondent failed to notify Complainant 2 or get consent when lowering the price on their home. Complainant 2 further states that Respondent ignored repeated requests of being notified of any showings taken place and feedback. Complainant 2 further states that Respondent lost a deal regarding the vinyl siding. Complainant 2 states by listing the home as a "family home," it discourages non-family buyers from even looking at the home.

Respondent submitted a response stating that the buyers' agent requested information on the siding, and Respondent admits that Respondent was not sure how to answer the pros of fiber cement siding. Respondent states that the buyers' agent gave feedback that the buyers did not want an all vinyl home, and Respondent regrets not immediately correcting the agent. Respondent believes that this

misunderstanding did not cost Complainants the sale, but that their property is on a big slope with a complicated driveway. Respondent states that the Complainants were married when the property was listed but began divorce proceedings causing complications in communication. Respondent states that when Complainant 1 requested a price reduction, Respondent reduced the price and later spoke with the Complainant 2 who okayed the price reduction. As far as the familial status, Respondent states that an assistant listed that it was a “family home in a good neighborhood.” The buyers’ agent sent in a letter stating that buyers did not want a house with all siding, but brick. Buyers’ agent states that Respondent did not misrepresent siding as vinyl, and MLS was listed that siding was fiber cement and trim is accurately listed as vinyl. Buyer’s agent states that buyers found a home they liked better with a bigger yard.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

49. 2014016871

Opened: 7/29/14

First License Obtained: 3/8/88

License Expiration: 8/4/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

50. 2014016872

Opened: 7/29/14

First License Obtained: 12/11/02

License Expiration: 5/16/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

51. 2014016873

Opened: 7/29/14

First License Obtained: 4/13/07

License Expiration: 5/2/15

E&O Expiration: 1/1/15

Type of License: Broker

History: 201401739 (under review)

52. 2014016874

Opened: 7/29/14

First License Obtained: 11/7/07

License Expiration: 11/6/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No history of disciplinary action.

A complaint was filed by a seller against buyer's agents and seller's agents. Respondent 1 is principal broker for Respondent 2 (affiliate broker) who were seller's agents. Respondent 4 is principal broker for Respondent 3 (broker) who were buyer's agents. Complainant entered into a binding contract with potential seller who required multiple items to be repaired as a result of a home inspection. Complainant expressed concern with Respondent 2 who assured that if buyer walks away after repairs were complete, the buyer would be in breach of contract. Complainant wanted to use Complainant's father (a contractor) to complete masonry repairs, and Complainant alleges that Respondent 2 said that a third party vendor needed to perform the work. Complainant wanted to walk away from the contract at that point but alleges that Respondent 2 told Complainant that would be breach of contract. Complainant states that after repairs were made, the buyer walked away and states that Respondent 2 should have collected more than \$500 in earnest money to protect Complainant's interests; Complainant also alleges that Complainant has not received the earnest money and states that Respondent 1 said that the matter was turned over to an attorney.

With regard to buyer's agents, Complainant states that there was a shed on the property that was not included in the sale, and Complainant did not have enough time to disassemble it by closing date, so Complainant sold it. Complainant states that a few days before closing, Respondent 4 told Complainant

that the shed was part of the contract stating that it was bolted to the concrete foundation. Complainant states that Respondent 4 requested that Complainant return the money to the buyers of the shed, but Complainant was not willing to do so since a bill of sale had already been signed. Complainant states that Respondent 2 contacted Complainant expressing concern that the deal may not go through because of the shed and told Complainant that Respondent 4 made a mistake by not including it in the contract. Complainant states that Respondent 4 contacted the buyers of the shed and stated Respondent 4 would buy back the shed out of Respondent 4's commission, but Complainant alleges that Respondent 4 has not paid the buyers of the shed. Complainant also states that the homebuyer had 24 hours prior to closing to do a walk through and states that buyer did so without permission or without agents present stating they found a small amount of water under the crawlspace after record-setting rain and Respondent 4 failed to secure a clear flood certificate prior to closing which delayed the closing that never occurred.

Respondent 2 (Complainant's/seller's agent) responded stating that Respondent 2 advised Complainant that the seller ran the risk of buyer walking away from the contract if repairs weren't done to the buyer's specifications that were listed in the Buyers Inspection Contingency Removal Notification. Respondent 2 also states that the contingency form stated the repairs were to be made by a licensed and bonded contractor, and Complainant's father was not licensed at the time of the transaction. Respondent 2 denies assuring Complainant that buyer would not walk away and stated that anything can happen in a transaction, but Respondent 2 worked hard to ensure everything went smoothly so it would close. Respondent states that after the transaction fell through, Respondent 2 advised Complainant to speak with Respondent 1 about the earnest money. Respondent 2 confirms that Respondent 2 told Complainant not to sell the shed to anybody else until the homebuyer had an opportunity to purchase it. Respondent 2 states that Respondent 2 worked hard to sell Complainant's home and did so ethically.

Respondent 1 responded stating that the firm hates to see a transaction fail to reach the closing table. Respondent 1 understands Complainant's frustrations and need for assurances but states they are promises that Respondents 1 and 2 could not give. Respondent 1 states that Respondents 1 and 2 gave Complainant options, but the transaction was Complainant's decision. Respondent 1 states that Respondent 1 spoke with Complainant several times and may not have always given Complainant the answer Complainant wanted to hear but gave the best answer with Respondent 1's knowledge and experience. Respondent 1 states that buyer chose not to proceed after the final inspection although Respondents were in the process of answering buyer's questions, and buyers requested the return of their earnest money. Respondent 1 states that Complainant did not agree to the request, and he wanted the option to sue buyer for breach of contract. Respondent 1 states that the earnest money was submitted to Respondent 1's attorney for an interpleader within twenty-one (21) days as required by the Rule.

Respondent 4 submitted a response stating that the contract was bound on October 8, 2013 stating there were five (5) executed amendments to the agreement including a sixth (6th) that the buyers did not execute. Respondent 4 states that all amendments were to extend the Buyer's Inspection and Resolution due to non-performance of Complainant. Respondent 4 states that Respondent 2 called on November 29 stating that Complainant wanted to sell the shed and buyer was given first right of refusal. Respondent 4 states that buyer was out of town and would be back the following Monday, but Complainant sold it

before then. Respondent 4 states that Respondent 4 went to the property to inspect the shed and learned that it was not permanently anchored to the concrete pad, and Complainant offered the contact information for the buyers of the shed. Respondent 4 contacted the buyers of the shed and stated that the homebuyer is interested in purchasing the shed but wanted to wait to see if the deal went through and states that the buyers of the shed were contacted once the deal fell through. Respondent 4 observed that the shed has been removed from the property. Respondent 4 states that during the final week of the closing, the lender notified the buyer that the home was determined to be in a flood plain, and the lender needed to obtain new flood certificates, but surveyor could not survey the property until after the closing was to occur. Respondent 4 and buyer performed the final walk through and discovered that running water and standing water were prevalent in the crawl space with a constant light rain. Respondent 4 states that the Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement form was immediately executed and forwarded to Respondent 2, and the earnest money was forwarded to an attorney for interpleader. Respondent 4 states that the survey was performed and another inspection was completed to inspect the water problem, and the buyer was not happy with the result.

Respondent 3 submitted a response stating that Respondent 3 was not the broker and another licensee was the broker at all times relevant to the transaction. Respondent 3 reviewed the transaction and states that Respondent 4 acted in good faith throughout the transaction, diligently representing the interest of the buyer, while keeping all parties' interests in mind to ensure the spirit of the agreement was carried out.

It appears to legal counsel that all contracts and documentation are in order, and that the transaction fell through due to standing water. There seems to be a question of whether or not this is a cosmetic problem, hence the earnest money interpleader. The office of the legal counsel followed-up regarding the interpleader action, and it appears that it was filed on March 19, 2014 and a Judgment was reached on April 28, 2014 awarding the earnest money to Complainant.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of Counsel.

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

53. **2013013011**  
**Opened: 7/24/13**

**First License Obtained: 2/6/04**

**License Expiration: 3/29/14**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No history of disciplinary action.**

***October 2013 Meeting:***

*Complainant attended an auction for farm land property that was advertised by Respondent (broker) as an absolute auction. Complainant states that, before the auction began, Respondent told attendees that it was a confirmation sale and the advertisement had included a mistake. Complainant states that only one bid was made during the auction over the phone, but the bid was not accepted by the owner because it did not reach the reserve. Complainant states that, after the auction was over, Respondent approached Complainant about buying a tract of the property. Complainant alleges that this was a sale agreement and not auction proceedings. Complainant alleges that Complainant and Respondent came to an agreement about price and the back of the contract described where the property line was to be located. Complainant alleges a contract was signed and was contingent on when the land was surveyed if property line would be as Complainant had requested. Complainant states that Complainant gave Respondent a deposit check with the agreement that once the property was surveyed and the property line could not be worked out as Complainant wanted it, then deal would be off and the deposit money would be returned. Complainant states that Complainant did sign a contract but was not given a copy immediately. Complainant went back to property a few days later and was told by a neighbor that fencing around the property was not included in the sale because the fence was actually put on the neighbor's property and did not belong to the owner. Complainant alleges that Complainant was told that the fencing was part of the owner's property by Respondent. Complainant alleges that the surveying pins on the property did not match what Complainant was told by Respondent. Complainant states that Complainant confronted Respondent with inconsistencies concerning the property. Complainant states that Respondent admitted the inconsistencies and states that Respondent claimed to have forgotten about these details. Complainant states, at that time, Complainant asked Respondent for Complainant's deposit money to be returned. Complainant states that Complainant was told by Respondent that Respondent could not return the deposit check because the owner of the property told Respondent not to do so. Complainant alleges that Respondent and the property owner misrepresented details of the auction in advertisements and misrepresented details of the property that was to be auctioned. Complainant also attached a copy of a civil complaint which Complainant filed against the property owner, Respondent, and Respondent's auction firm.*

*Respondent submitted a response through an attorney stating that the Complainant previously filed an identical complaint with the Tennessee Auctioneer Commission. Respondent states that, although Respondent is both a licensed real estate broker and auctioneer, the transaction at issue was an auction sale, and Respondent was acting at all relevant times as an auctioneer and states that this complaint filed with TREC was improper. Respondent attached a copy of the Real Estate Auction Contract between Respondent and the property owner as well as the Real Estate Auction Purchase and Sale Agreement. Respondent states that the auction started with one bid and after several minutes of requesting bids, Respondent received no higher bids, therefore the reserve had not been met. With the owner's consent, Respondent then offered to parcel the property for the purpose of trying to auction off at least part of the property, but there were no bids made and the auction was adjourned with Respondent offering for*

attendees to meet with Respondent personally later if they were interested in making a bid. Respondent states that during the auction, it was made clear that any sale was subject to owner confirmation. Respondent states that, with regard to the advertisement referenced by Complainant listing the auction as absolute, said advertisement was never approved by Respondent, and the newspaper wrote a letter indicating that the running of the ad was due to the newspaper's inadvertence. Respondent states that after the initial open bidding session was adjourned, Complainant approached Respondent about purchasing a smaller tract of land. Respondent states that, after discussions between Complainant, the property owner, and Respondent, that Complainant and the property owner entered into a Real Estate Auction Purchase and Sale Agreement, and Complainant gave a "non-refundable deposit." Respondent states that Complainant has participated in multiple auctions and is aware that virtually every auction sale includes a non-refundable deposit and in fact has purchased property from Respondent at auctions in the past. Respondent states that the property was surveyed twice to come to the agreement of what Complainant wanted as far as the property line. Respondent states Respondent and the property owner met all terms of the contract, but Complainant was not satisfied with the surveys and refused to finalize the purchase. The response states that Respondent never told Complainant that the deposit money would be returned to Complainant if the agreement was not finalized. The response states that Respondent and the property owner complied with all obligations in relation to the sale, and Complainant refused to abide by the sale agreement.

Currently, there is active litigation between Complainant, the property owner, Respondent, and Respondent's auction firm regarding the subject matter of this complaint. Although this appears to be more closely tied to an auction situation, the civil complaint alleges violations of the Broker Act on the part of Respondent. It is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

**Recommendation: Consent Order for litigation monitoring.**

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

**\*Chairman Stephenson abstained from the vote on this matter\***

Respondent's attorney provided additional information that an Agreed Order of Compromise and Dismissal was filed in Chancery Court on October 28, 2014. The settlement agreement between the parties is confidential and was not provided to legal counsel.

**Recommendation: Dismiss.**

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

**54. 2014015951**  
**Opened: 8/27/14**  
**First License Obtained: 4/20/99**  
**License Expiration: 12/31/15**  
**Type of License: Time Share Registration**  
**History: No history of disciplinary action.**

Complainants state that Respondent will not release Complainants from their timeshare contract and that the salespeople misrepresented Complainants' purchase of a four-bedroom upgrade unit by stating: the unit would have \$100,000 worth of equity in it, Complainants could rent the space for considerable income, that the unit can be used as a tax deduction, and the unit could be exchanged to stay at other resorts at any time. Complainants allege that they were told that the new unit had a value of \$154,000 and Complainants could purchase the unit for \$54,000, with \$16,000 of equity from the old timeshare being paid toward their purchase price. Complainants state they were fleeced into financing \$39,000 over 10 years at 10% interest while taking on a maintenance payment that continues to increase. Complainants allege that the salespeople stated they would assist in renting and exchanging their unit, but Complainants have been on their own. Complainant's further state that they discovered timeshares are not real estate and have discovered it will be nearly impossible to sell.

Respondent sent in a response by and through an attorney. Respondent states that the purchase contract is clear that a cancellation must be made in writing within ten (10) days of the date of contract, and Complainants sought to cancel past the binding date. Respondent denies the allegations that misrepresentations were made and states that these allegations are refuted by the acknowledgement of representations signed by Complainants at the time of their transaction. This acknowledgment states that no representations have been made as to investment or resale potential and that the purchase is primarily for personal use, Respondent has no form of resale or rental program, and all trading time is subject to availability. Respondent states that all interest paid on timeshare mortgages is tax deductible and Respondent mails the appropriate tax forms to their owners each year, but Respondent states they do not provide tax advice

**Recommendation: Dismiss.**

**Commissioner DiChiara made a motion to accept recommendation of legal counsel to dismiss; seconded by Commissioner Franks; Chairman Griess abstains, motion passes.**

**55. 2014016011**  
**Opened: 7/28/14**  
**First License Obtained: 3/24/08**

**License Expiration: 3/23/15**

**Type of License: Time Share Registration**

**History: No history of disciplinary action.**

Complainant states that Complainant interviewed with Respondent and was offered a position; but due to scheduling conflicts, Complainant's start date was put off for approximately one (1) year. Complainant states that Complainant began the onboarding process which included a test, a fingerprint, a background check, and acquiring a timeshare license—all at Complainant's expense. Complainant states that Complainant would have to alter the normal work schedule by approximately 1 hour per week for medical reasons, and upon discovering this Respondent's Human Resources manager contacted Complainant to state there were no openings for a salesperson but Complainant could apply for a different job.

Respondent denies allegations that Complainant was not hired because of a disability and was denied a reasonable accommodation. Respondent states that Respondent is an equal opportunity employer and is expressly committed to providing a workplace for its employees that is free from discrimination and harassment. Respondent states that a large part of a salesperson's job is to tour guests and make sales in the morning, so Respondent recommended that Complainant schedule treatment for later in the evening in order to have an opportunity to make sales. Respondent states that Complainant's medical treatment arrangements fell through and could not report to the first day of work, which was a previously scheduled training class. Respondent states that Complainant chose not to pursue the opportunity.

**Recommendation: Dismiss.**

**Commissioner DiChiara made a motion to accept recommendation of legal counsel to dismiss; seconded by Commissioner Franks; Chairman Griess abstains; motion passes.**

### **CONSENT ORDER TRACKING**

Ms. Baird asked if the Commissioners had any questions about the consent order log.

**Chairman Griess adjourned the meeting on Wednesday, 3<sup>th</sup> 2014 at 4:47 p.m.**

**DECEMBER 6, 2014**

The Tennessee Real Estate Commission convened on Thursday, November 6, 2014 at 9:15 a.m.

in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Marcia Franks, Commissioner Wendell Alexander, and Commissioner Diane Hills. Absent from the meeting were Commissioner Austin McMullen, Commissioner Gary Blume, and Commissioner Grover Collins. Others present: Executive Director Eve Maxwell, Honorable Rob Wilson, Assistant General Counsel Robyn Ryan, Assistant General Counsel Keeling Baird, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

The formal hearing of TREC v. Thomas Williams 12.18-124814A convened at 9:15 a.m. TREC Meeting December 4, 2014 before Judge Wilson. The case involved the failure to timely account for monies of third parties in the possession of the licensee. The licensee/Respondent was the principal broker of T. Williams Realty, Company. The Respondent did not appear, and the Commission voted for the Hearing to proceed as a default Hearing. At the end of the State's presentation of evidence, the Commission voted for respondent, Mr. Williams to pay Civil Penalty of \$1000 for violation of TENN. CODE ANN. 62-13-312 (b)(5) and civil penalty of 2000 for two days of violations of TENN. CODE ANN. 62-13-312(14). Mr. Williams's license will be suspended pending full payment of Civil Penalties and hearing cost.

**Chairman Griess adjourned the meeting on Thursday, 4<sup>th</sup> 2014 at 11:00 a.m.**