



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

November 5, 2014

The Tennessee Real Estate Commission convened on Wednesday, November 5, 2014 at 8:00 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 Austin McMullen Commissioner Diane Hills, and Commissioner Marcia Franks. Absent from meeting was Commissioner David Flitcroft. 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 Thursday October 30, 2014. Also, this meeting has been notice on the tn.gov website since Friday, October 31, 2014.

Commissioner DiChiara made a motion to approve the November 2014 agenda; seconded by Commissioner McMullen; motion carried.

Commissioner DiChiara made a motion to approve the October 2014 minutes; seconded by Commissioner Alexander; Commissioner McMullen abstains; vote 7 yes and 1 abstain; motion carried.

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: JULIE CROPP, Assistant General Counsel

SUBJECT: OCTOBER LEGAL REPORT

DATE: October 9, 2014

***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. **2014001241**
Opened: 2/11/14
First License Obtained: 4/22/87
License Expiration: 10/9/16
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

June 2014 Meeting:

In 2010, Complainant responded to a real estate ad and purchased a property from Respondent (broker) who was owner/agent of the property. Complainant states that Respondent carried the mortgage, and Complainant alleges that this violated laws regarding the licensing of mortgage lenders, loan brokers and loan servicers. Further, Complainant states that Respondent failed to disclose hidden damage to the septic system of the subject property which Complainant states was caused by a neighbor connecting his front and rear gutters to a flex pipe and running the pipe onto the subject property and emptying into the leech field on the subject property, causing gutter water over time to damage the leech field. Complainant alleges that Respondent knew of this and did not disclose it to Complainant. Complainant attached a civil complaint against Respondent which alleged that Complainant did not discover the problem until June 2013 when a contractor dug up the field lines and the problem was discovered. Complainant also provided a copy of documentation relating to the sale, including a Real Estate Sales Contract between the parties, which disclosed that Respondent was a licensee.

Respondent submitted a response stating that Respondent had owned the subject property for three (3) years (during which time the property was rented) before selling to Complainant. Respondent states that a home inspection was done, and Respondent was asked to correct water seepage coming under a door leading to the garage, which Respondent states was done (Complainant disputes that this was done to Complainant's satisfaction). Respondent denies awareness of any french drains connected to the neighbor's home but states that Respondent knew and told Complainant about drains on the home that

Complainant purchased. Respondent states that Respondent never had septic problems prior to selling to Complainant. Respondent also denies that it is illegal to do owner financing. Respondent attached an MLS listing of the property from 2010, which also disclosed that Respondent was owner/agent.

Complainant submitted an additional response again stating that the french drain issue was not disclosed. Complainant also states that the MLS listing states that the home is "modular" and Complainant states it is really a "manufactured home," and the MLS listing also references the walls as "drywall" when Complainant states that the walls are "vinyl." Complainant states that no mortgage lending company will mortgage a used double wide manufactured home with a conventional or FHA mortgage, which Complainant states Respondent knew and Complainant states was confirmed by several banks in March 2014. Complainant states that when Complainant's balloon payment comes due on 2015, Respondent knew Respondent would get the property back because Complainant would not be able to get a mortgage. It appears that the matter is currently in litigation, and 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.

**It was verbally reported to the Commission that the Complainant contacted legal counsel just before the meeting and stated that Complainant was sending two (2) deposition transcripts and asked that legal counsel wait until the evidence was received before the Commission makes a determination.*

Recommendation: Consent Order for litigation monitoring.

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

Complainant provided additional information after this matter was placed into litigation monitoring status, and the matter was heard in chancery court. The Judgment states: that Respondent was not precluded from owner financing the subject property; that neither of the parties were aware of any septic system defects at the time of the purchase and sale agreement or closing; that the septic problems were not caused by the French drain system and Complainant incurred no damages from the French drain system; that no drainage easement was created by the French drain and the property is not encumbered; that Complainants knew that the home purchased was a mobile/doublewide/manufactured home; that Respondent did not deceive, misrepresent or fail to disclose the subject property was a mobile/doublewide/manufactured home; that Respondent did not misrepresent financing options. The Court dismissed the case.

Recommendation: Dismiss.

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

Action: Commissioner McMullen made amotion to accept the recommendation of legal counsel to dismiss, motion seconded by Commissioner Franks; motion passes unanimously.

2. 2014014501

Opened: 7/14/14

First License Obtained: 7/21/10

License Expiration: 7/20/16

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2014000951 – Closed \$500 CO

3. 2014014502

Opened: 7/14/14

First License Obtained: 8/21/97

License Expiration: 3/21/16

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 2012009771/2012009781 – Closed \$1,500 CO

October 2014 Meeting:

Complainant entered into an Exclusive Buyer's Representation Agreement with Respondents' firm (Respondent 1 is principal broker; Respondent 2 is affiliate broker) with Respondent 2 listed as the designated agent. Complainant states that Complainant requested that Respondent 2 offer \$10,000 over the listing price of a home since it already had two (2) offers on it. Complainant states that Respondent 2 advised that Complainant should only offer \$5,000 over the list price and alleges that Respondent 2 stated Respondent 2 had made an under the table offer to rent the house back to the seller to give seller time to find a new home, which was done to ensure that Complainant's offer would be selected and was not previously discussed with Complainant. Complainant's offer was not selected by the seller. Complainant states that Respondent 2 breached the buyer's representation agreement since Respondent 2 did not obey the lawful instructions of the client, and Complainant states that the buyer's representation agreement should be terminated.

Respondent 1 submitted a response stating that the buyer's representation agreement was set to expire in September 2014, and Complainant was also represented by Respondent 2 for the sale of Complainant's home which closed in April 2014. Respondent 1 states that Complainant requested to terminate the buyer's representation agreement and agreed to pay a termination fee to the firm but did not disclose any of the issues alleged in the complaint. Respondent 1 states that, several weeks later, a letter was received by an attorney on behalf of Complainant first alleging the matters included in the complaint. With regard to the property Complainant was hoping to purchase which was referenced in the complaint, Respondent 1 stated that Complainant and Respondent 2 discussed increasing the offer on the property, but Complainant chose not to do so and signed the purchase agreement with the terms included therein and chose not to increase the offer, and the seller accepted another offer. Respondent 1 denies having knowledge of any under the table offer. Respondent 1 acknowledges Complainant's frustration with not getting the home but states that unhappiness does not automatically terminate a binding agreement. Respondent 2 also submitted a response, which included the information in Respondent 1's response but added that Complainant viewed multiple homes with Respondent 2 and multiple offers were submitted but either withdrawn or terminated. Respondent 2 further states that there was no under the table deal to rent the house back to the seller and states that the only way to have a lease back agreement is for the

buyer and seller to agree to the terms in the contract or by separate agreement. Respondent 2 contends that Respondent 2 followed all of Complainant's instructions.

Recommendation: Dismiss.

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

New Recommendation: Commissioner DiChiara to discuss.

DECISION: As to Respondent 1, the Commission authorized a Consent Order 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 Consent Order.

Action: Commissioner Alexander made motion as to Respondent 1, that the Commission authorize a Consent Order with a \$1,000 Civil Penalty 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 Consent Order; motion seconded by Commissioner Blume, Commissioner DiChiara abstains; motion passes.

As to Respondent 2, the Commission authorized a Consent Order for \$3,000 in violation of T.C.A. 62-13-312(b)(14), 62-13-403(1), 62-13-404(1), and 62-13(404)(2), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

Action: Commissioner McMullen made motion as to Respondent 2, that the Commission authorize a Consent Order with a \$3,000 Civil Penalty for violation of T.C.A. 62-13-312(b)(14), 62-13-403(1), 62-13-404(1), and 62-13(404)(2), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order; motion seconded by Commissioner Alexander; motion passes; 7 yes and 1 pass by Commissioner DiChiara.

4. 2014011211

Opened: 6/27/14

First License Obtained: 10/10/12

License Expiration: 10/9/16

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainants are out of state residents who purchased two (2) properties with Respondent (broker) acting as their agent for purposes of repair and rental. With regard to property 1, Complainants purchased the property in October 2012 without seeing it for \$113,000 and spent \$5,000 in improvements stating no appraisals were provided and that Respondent explained that it was not necessary and tenants should not be disturbed. Complainants state they visited the property in April 2014 and received an appraisal lower than the purchase price. Complainants state that they discovered faulty repairs which they had to pay to

repair again. Complainants state that this reflects Respondents' incompetency or lack of integrity and departure from Realtors' code of ethics. With regard to property 2, Complainants state they purchased the property in March 2013 without seeing it for \$92,500, and an additional \$27,500 was paid for repairs. Complainants state that Respondent told them that the home would sell for \$175,000 to \$199,000. Complainants state that they were unaware that Respondent was the owner of property 2 until they visited in March 2014. Complainants state that Respondent gave them a 90 day expectation for remodels, but it was not completed for 5 months and was \$15,000 over budget without any unexpected repairs. Complainant states that the house was put on the market for \$169,900, and Complainants learned that a more appropriate listing would have been \$150,000. Complainants state that, in January 2014, a severe winter storm caused the plumbing to burst but insurance would not cover it because the home was vacant. Complainant state that they have paid an additional \$17,000 out of pocket and their contractor stated another \$60,000 in repairs would be needed to prepare the property for sale or for rent. Complainants further state that Respondent left town and left their property unlocked, resulting in theft of their microwave and oven. Complainants further discovered, after not receiving a tax bill, that property 2 was still titled to Respondent despite their Quit Claim.

Respondent states that Complainants were invited to come to Tennessee and view the area and neighborhoods they would be investing in but declined. Respondent states that an inspection was ordered on property 1, and Respondent denies stating that it was not necessary to order an appraisal. Respondent states that Complainants were advised of comparable sales and that Complainants did not have a lender requiring an appraisal but that one could be ordered to verify value. Respondent further states that, after tenants moved out of property 1, Respondent inspected the property, made recommendations for repairs, and hired a crew that Respondent uses to rehabilitate homes. Respondent states that the new tenant was difficult, and Respondent sent a licensed HVAC person to repair the air conditioning and also purchased and installed a window air conditioning unit and has not been reimbursed for the repairs. Respondent states that Respondent gave Complainants a recommendation for a non-affiliated management company after their business relationship ended. With regard to property 2, Respondent states that Respondent verbally discussed with one of the Complainants that Respondent's name was on the deed of property 2. Respondent states that property 2 was bought by different investors that requested the properties be held in Respondent's name and requests complete privacy of their investments. Respondent states the home was sold for cost, Respondent did not make a commission, and the home was quit claimed directly to Complainants, which took longer than expected, and Respondent could not locate a copy of the actual tax bill but was able to advise Complainants the cost of taxes and the address. Respondent states that, once they began rehabilitating the property, additional complications were found which took longer to repair. Respondent states that Complainants did not pay any of the repairs that were over budget. Respondent states that the sales in the area had a range of \$157,000 to \$210,000 and the home was listed at \$169,900 because it was completely upgraded. Respondent states that Respondent visited the property during the cold snap to turn on faucets to drip and check the thermostat. Respondent states that when Respondent was notified that the pipes burst, Respondent immediately went to the house and had a crew come to work on water remediation. Respondent states that one of the contractors doing a quote agreed to lock up before leaving and evidently did not, resulting in the stolen range and microwave. Respondent states that this terminated their business relationship, and Complainants refused to reimburse Respondent.

Complainants state that a more competent agent would not have allowed property 2 to sit on the market for 5 months. Complainants also state that the comparable sales provided for property 2 were from a nicer neighborhood close by. Complainants further state that Respondent did not submit invoices or

request reimbursement out of pocket costs, and the contracts they had state that Respondent will stay within a specific budget.

It appears that property 1's contract states the agreement is contingent upon the appraised value. Special stipulations include tenant to remain and lease to transfer. The contract for property 2 lists Respondent as seller. Respondent signed as seller with the e signature including a realtor notation. A Confirmation of Agency Status form for the property lists Respondent as seller and Respondent as transaction broker or facilitator for buyers (Complainants).

Recommendation: Dismiss.

DECISION: The Commission authorized a Consent Order for \$500 for violation of 62-13-312(b)(14) and 62-13-403(1), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order.

Action: Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioners Franks; Commissioner DiChiara made a substitute motion to authorize a Consent Order with a \$500.00 Civil Penalty for violation of 62-13-312(b)(14) and 62-13-403(1), plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the Consent Order, motion seconded by Commissioner McMullen; vote 7 yes, 1 no; motion passes.

5. **2014011441**
 Opened: 6/27/14
- First License Obtained: 7/19/13**
- License Expiration: 7/18/15**
- E&O Expiration: Uninsured**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**

Respondent's license is retired.

Complainant was a renter. Complainant states that written notice was given to Respondent (affiliate broker – retired license) after living there for over a year, and Respondent stated that Complainant must pay the full month's rent for January 2014 but would be reimbursed the prorated amount as well as the security deposit. Complainant states that Respondent did a walk-through of the house and told Complainant's spouse that they would receive the full security deposit and the prorated rent as soon as possible. Complainant states that Respondent was contacted multiple times, and Respondent stated that the check would be put in the mail, but Complainant never received the money owed. It appears from the lease that Complainant began renting the property in April 2012 (which was prior to Respondent's licensure). It appears that Respondent is the owner of the property.

Respondent submitted a response stating that Complainant gave written notice to terminate the lease and notified Respondent that Complainant would move out on January 15. Respondent states that Complainant was told to call after the home was cleaned to do a final walk through inspection. Respondent states that, when Complainant called requesting the deposit and prorated rent, Complainant

was advised repeatedly that the repairs were not yet complete and the remaining monies would be mailed back. Respondent states that Respondent was contacted by an attorney for Complainant, and Respondent provided Respondent's attorney's contact information. Respondent confirmed that the deposit was disbursed to Complainant after damages were assessed and repairs were made. It appears that Respondent is the owner of the property who was not performing acts which fell within the definition of "broker." Further, though this might be a landlord tenant issue which would be heard in a court of law, it does not appear that there is a violation of the Broker Act.

Recommendation: Dismiss.

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

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

6. **2014011521**

Opened: 7/1/14

First License Obtained: 6/18/90

License Expiration: 4/9/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant and spouse were sellers of a property and Respondent (principal broker) was the principal broker of the listing firm. Complainant states that a prospective buyer put down \$1,000 in earnest money in 2012 but did not purchase the home. Complainant states that the status of the earnest money is unknown, and Respondent told Complainant that the money was in escrow or in limbo and that both parties must agree on disbursement of earnest money before it is released.

Respondent submitted a response stating that this matter has been turned over to the court for an interpleader action and attached copies of the documentation. Respondent states that Respondent explained to Complainant that the buyers could not meet Complainant's request to put additional earnest money on the home, nor would they agree to early occupancy. Respondent states that the buyers signed the earnest money release form but Complainant would not.

Office of legal counsel reviewed the documents and the earnest money disbursement and release form is dated September 13, 2012 and marked "contract contingent upon the closing of August 17, 2012 was not satisfied," and the form is signed by the buyer only. An interpleader action appears to have been filed on or about June 14, 2014 after Respondent received a copy of the complaint on June 7, 2014.

Recommendation: Consent Order for \$500.00 for violation of Rule 1260-02-.09, highlighting subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be

disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: Consent Order for \$1,000.00 for violation of Rule 1260-02-.09, highlighting subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Action: Commissioner DiChiara made a motion to accept the recommendation of legal counsel to authorize a Consent Order with a \$500.00 Civil Penalty for violation of Rule 1260-02-.09, highlighting subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order, motion seconded by Commissioner Alexander; Commissioner Blume makes friendly amendment to motion to raise Civil Penalty to \$1,000; motion seconded by Commissioner Alexander; motion passes unanimously.

7. **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 Prior Disciplinary Action

8. **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 Prior Disciplinary Action

- 9. 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 Prior Disciplinary Action**

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.

Action: Commissioner Franks made a motion to accept legal counsel to dismiss, motion dies due to lack of second; Commissioner Alexander makes motion to defer matter so Commissioner Hills can review and report back to the Commission at the December, 2014 meeting; motion seconded by Commissioner DiChiara; motion passes unanimously.

10. **2014013101**
Opened: 6/24/14
First License Obtained: 1/14/86
License Expiration: 9/6/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

11. **2014013102**
Opened: 6/24/14
First License Obtained: 12/23/87
License Expiration: 5/31/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants state that they met Respondent 1 (affiliate broker; Respondent 2 was Respondent 1's principal broker at the time) at an open house, and Respondent 1 offered to write up the contract for Complainants. Complainants state that they waived a home inspection because Respondent 1 stated that

one was done two (2) weeks prior, and everything was fine, but Complainants state that they were unaware of needing a termite inspection. Complainants state that Respondent 1 told them that a termite inspection would be taken care of just before closing, although Complainants state that they later found that the contract allowed two (2) days for inspections. Complainants further state that, when contacting an insurance agent, they were made aware that there may be problems with the roof. Complainants state that they were advised to allow the contract to expire and bring in their own representation. Complainants state that they reached out to Respondent 2 for help in resolving issues with the contract so they could move forward with closing, but Respondent 2 offered no assistance. Complainants state that their new contract with their new agent was rejected, and Complainants contacted Respondent 2 for an earnest money release and allege Respondent 2 stated there would be no problem and Respondent 1 would take care of the paperwork, but Complainants state that Respondent 1 ignored the topic. Documents submitted with the complaint include the purchase and sale agreement, which indicates that the earnest money was held at Respondents' firm. The Get a Home Inspection document was signed by Complainants stating that Complainants chose not to have a home inspection performed. Respondent 1 was listed as transaction broker for both parties on the signed confirmation of agency status form. An email dated May 21, 2014 from one of the Complainants to Respondent 1 requests release of earnest money.

Respondent 2 submitted a response stating that Respondent 1 is no longer affiliated with the firm. Respondent 1 submitted a response denying any wrongdoing. Respondent 1 states that Respondent 1 asked if Complainants wanted a home inspection, and one of the Complainants asked if there had been one done, and Respondent 1 replied that one had been done for a previously failed contract. Respondent 1 states that they were told of some items that could be expected in a fifty (50) year old home, but Complainants decided they did not want to have a home inspection, and they completed and executed the form indicating so. Respondent 1 states that Complainants were concerned about making the monthly mortgage payment, and, in an effort to save the contract, the seller agreed to lower the price, and the closing date was extended. Respondent 1 states that Respondent 1 received a phone call from the insurance company inquiring how old the roof was, and the seller stated that it was no more than five (5) years old, but the insurance company was sending someone to inspect the roof. Respondent 1 states that another agent, a friend of the insurance adjuster, contacted Respondent 1 and questioned Respondent 1 about the contract. Respondent 1 states that Respondent 1 sent a second extension to extend closing, but Complainants did not communicate with Respondent 1 until several days later when another offer was received for Complainants written by the other agent. Respondent 1 states that the seller was not agreeable to this, and the deal fell through, and the earnest money was returned to Complainants on May 30, 2014. Respondent 1 submitted a letter from the seller stating that Complainants live down the street from the subject property and frequently visit the property and tell buyers that the home is not livable, and Respondent 1 has done everything Respondent 1 can to sell the property, but Complainants are interfering. It appears from this information that the earnest money was disbursed within the time specified in Rule 1260-02-.09. It does not appear that there is a violation by Respondents.

Recommendation: Dismiss.

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

Action: Commissioner Hills made a motion to accept the recommendation of legal counsel to dismiss, motion seconded by Commissioner Franks; Commissioner Collins recused himself from the vote; motion passes unanimously.

12. 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 Prior Disciplinary Action

13. 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 Prior Disciplinary Action

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), 62-13-404(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.

Action: Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss, motion seconded by Commissioner Collins; Commissioner McMullen made a motion to put this case at the heel of legal report; motion seconded by Commissioner Franks; Commissioner McMullen makes a substitute motion for each Respondent that the Commission authorize a Civil Penalty in the amount of \$1,000 for violations of T.C.A. 62-13-312(b)(14), 62-13-404(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; motion seconded by Commissioner DiChiara motion passes unanimously.

14. 2014014731
Opened: 6/30/14

First License Obtained: 9/13/00

License Expiration: 1/23/16

E&O Expiration: 1/1/14

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property, and Respondent (principal broker) was Complainant's agent. Complainant states that Respondent failed to furnish a copy of any listing, sale, or contract relevant to the transaction to all signatories at time of execution, stating Complainant had to obtain a copy of the contract from the title company seventeen (17) days after signing the contract. Complainant states that Respondent was hiding something by not providing the contract, and they only had verbal statements regarding commissions because paperwork was not given. Complainant further states Respondent failed to account or remit money and showed the home without prequalifying people. Complainant further states that, two (2) days after signing the contract, Complainant learned that Complainant's mother is on the note and has refused to sell or allow Complainant to sell Complainant's part, and Respondent did not immediately notify the buyer of this fact.

Respondent denies all accusations, stating that Respondent sent copies of the contract via certified mail to the two (2) addresses where Respondent knew Complainant was staying, but both letters were refused three (3) times and returned. Respondent states that Complainant signed the contract in the driveway of the property where Complainant was staying at the time, and Respondent notified Complainant that Complainant could pick up the paperwork from Respondent's office at any time, but Complainant did not do so, and Complainant would not provide Complainant's mailing address. Respondent states that Complainant signed a listing agreement to sell the property with a 6% commission, that Respondent found a ready, willing, and able buyer, and that Complainant accepted the offer. Respondent further states that Complainant contacted Respondent stating that Complainant's girlfriend thought the purchase amount was too low and did not want to sell and later told Respondent that Complainant's mom was on the deed. Respondent states that the deed only has Complainant's name on it, and Complainant stated Complainant was not selling. Respondent explained that there was already a binding contract and it was too late to change Complainant's mind. Respondent further states that Complainant denied entry to buyer for an appraisal. Respondent provided documentation, including a copy of the executed listing agreement and executed sales contract along with the returned certified mail envelopes showing delivery attempts. Also provided was a warranty deed that conveys property from a family member to Complainant. Also provided was a Quitclaim Deed, dated after the complaint was initially filed, wherein Complainant appears to have quitclaimed the property to Complainant and Complainant's girlfriend.

Based on the information contained within the file, although a copy of the contract was not provided immediately, very soon after the contract was executed there were already issues indicating that Complainant did not want to go through with the sale, and Respondent provided proof that there was an attempt to mail the copies by certified mail to Complainant at two (2) different addresses, and the letter was not claimed after multiple attempts at delivery.

Recommendation: Letter of warning regarding T.C.A. § 62-13-312(b)(8) regarding the Commission's ability to discipline a licensee for failing to furnish a copy of any listing, sale, lease or other contract to all signatories at the time of execution.

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

Action: Commissioner DiChiara made a motion to accept the recommendation of legal counsel to issue a letter of warning referencing T.C.A. § 62-13-312(b)(8) which establishes the Commission's authority to discipline a licensee for failing to furnish a copy of any listing, sale, lease or other contract to all signatories at the time of execution, motion seconded by Commissioner Hills; motion passes unanimously.

CONSENT ORDER TRACKING

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

Commissioner Blume requested information regarding two cases shown in litigation that had been in litigation status since early 2014. Commissioner Alexander made a motion to accept consent order tracking log, motion seconded by Commissioner Franks; motion passes.

Chairmen Griess addressed the audience stating the rule making hearing was scheduled to begin at 9:30am, and that those wishing to address the Commission sign up on the list is located at the back of the room. Chairman Griess emphasized that the list will be taken up once the hearing starts and no one will be allowed to speak unless they are signed up on the list.

Public Rule Making Hearing

At 9:31 a.m. the Rulemaking Hearing on Rule 1260-01-.18, 1260-01-.19, 1260-01-.20, 1260-01-.21, 1260-02-.02, 1260-02-.09, 1260-02-.12, 1260-02-.39, 1260-02-.40, and Rule 1260-02-.41 was convened. Chairman Griess outlined the guidelines adopted by the Commission at the October, 2014 Commission Meeting held in Chattanooga. At that time, the Commission determined that the following guidelines would apply to the November 5, 2014 Rulemaking Hearing:

- The Commission will accept written comments received by the Tennessee Real Estate Commission staff prior to, or during, the November 5, 2014 Rulemaking Hearing as well as oral comments presented at the November 5, 2014 Rulemaking Hearing.
- The comment period for both written and oral comments will end when the oral comment portion of the November 5, 2014 Rulemaking Hearing concludes. No comments will be accepted following the conclusion of the comment portion of the November 5, 2014 Rulemaking Hearing.
- There will be a sign in sheet for anyone who wishes to address the Commission at the November 5, 2014 Rulemaking Hearing. Anyone who wishes to address the Commission must sign in on that sheet. Once the sign in sheet is taken up after the

hearing begins, additional individuals will not be permitted to add their names to address the Commission.

- During the November 5, 2014 Rulemaking Hearing, Commissioners may ask a commenter to clarify the commenter's position; however, the intent of the Rulemaking Hearing is for the Commission to receive comments and not to engage in a dialogue with commenters.
- There will be a five (5) minute limit to oral presentations at the November 5, 2014 Rulemaking Hearing. Each person who wishes to make oral comments will have a single opportunity to make comments for a maximum time of five (5) minutes. No commenter will be permitted to reserve time to comment later or to assign remaining unused time to another individual.
- The Commission asks that each commenter begin by clearly stating the rule(s) to which he or she is speaking and then expressing his or her thoughts on that proposed rule. In the event commenter has more than one proposed rule to address, Commission requests that the commenter reference each rule separately during the commenter's remarks.
- As the November 5, 2014 Rulemaking Hearing is dedicated to specific, proposed rules, comments related to other topics will not be entertained by the Commission.
- The Commission will respond to written and oral comments during its January 7, 2015 meeting prior to adopting the rules (with any amendments offered by Commissioners following review of oral and/or written comments).

The Rulemaking Hearing had been timely and properly noticed. There is a transcript of the Rulemaking Hearing which contains all discussions regarding the rules and the comments of the one member of the public who appeared and the body of the four written comments submitted. The Commission considered all comments and the Economic Impact Statement was thoroughly considered. Rule 1260-01-.18, 1260-01-.19, 1260-01-.20, 1260-01-.21, 1260-02-.02, 1260-02-.09, 1260-02-.12, 1260-02-.39, 1260-02-.40, and Rule 1260-02-.41 were adopted. The context of the Rules as adopted can be heard in the **November 5, 2014** audio recording of the Rulemaking Hearing. The Rulemaking Hearing concluded at 11:04 a.m. Assistant General Counsel Keeling Baird outlined the reasons that any clarification regarding advertising needed to be effectuated by rules, not guidelines or policies. A brief discussion of the timeline for rule making followed.

The Commission recessed for lunch at 11:05 a.m. and reconvened at 12:45 a.m.

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

Ms. Maxwell presented the educational courses and instructors set forth on the November, 2014 Education Report for Commission Approval and Discussion. Ms. Maxwell presented two courses for Commission discussions from the NAIFA, “Today’s FHA & VA” and “Defensible Appraisal Practices” noting that the content of both courses focus on the appraisal process. Ms. Maxwell wanted the Commission to be aware of that before voting on them. The two classes meet the requirements for class approval.

Commissioner DiChiara made a motion to approve N-1 –N-7 courses; motion seconded by Commissioner Franks; Commissioner McMullen abstains on N1; motion carries.

UPDATE ON COURSE RENEWALS

Ms. Maxwell updated course renewals as of 10-03-14. Renewals were mailed out to 176 providers, As of 10/31/14, it appears that TREC has received renewal information from all the courses which sponsors intend to renew and all the instructors who intend to renew. Prior to the December 3, 2014 meeting, TREC will send the Commissioners a list of the requested renewals for their review and approval at the December 3, 2014 meeting. **Commissioner Franks requested discussion in December meeting on how the teaching is delivered in class room settings and on line classes for 60 hour pre-licensing courses, as well as on the Course for New Affiliates. Commissioner DiChiara requested discussion on content of material being taught.**

COMPLAINT REPORT

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of October 31, 2014, TREC had a total of 290 open complaints. There have been 110 closed this fiscal year starting 7-1-14 to present and 68 closed with no action, 4 were closed with a letter of warning, 38 with a Consent Order and no revocations. The total civil penalties that have been collected in fiscal year 2014 are \$190,610.00.

Monies Collected 10/1/14 – 10/31/14

Consent Orders Fees \$9,950.00, Reinstatement Fees \$35,980.00, Agreed Citations \$2,800.00, Total \$48,730.00.

COMPLAINTS PRESENTED INVOLVING PROPERTY MANAGEMENT ISSUES

July, 2014 – October, 2014 total complaints presented to Commission 142.

July, 2014 October, 2014 complaints presented to Commission involving Property Management 18 which is equal to 13% of complaints during this time involved Property Management.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of October 2014. The statistics presented included tables which compared several years’ number of licensees, firms, exams taken, applications approved and renewal percentages. As of October 30, 2014, there were 25,345 active licensees. There were 488 exams administered in month of October 2014. The total

of exams taken year to date is 4,658. There were 319 approved applications in October 2014. Year to date total of approved applications 3,214. The number of licensees in retired or inactive status was 8,174. TREC total number of individual; licensees in active, inactive, retired, and broker release is 33,969. There were 3,897 active firms and 193 retired firms. Grand total of firms and retired firms 4,090. Applications approved in October 2014 were 319.

FINGERPRINT UPDATE

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2014 there have been 3,209 individuals fingerprinted, 672 had an indication, 2,704 had no indication, and 77 were retaken. In the month of October, 2014 302 fingerprints were taken, 231 had no indications and 67 showed an indication.

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. Kimberly Whaley 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 as much. In order to be placed back into active status proof of E&O insurance must be shown and all penalties paid. Currently about 160 have renewed their E&O Insurance. TREC is working with Cindy Rice Grissom trying to reach licensee about renewing their E&O Insurance.

Chairman Griess adjourned the meeting on Wednesday, 5th 2014 at 12:48 a.m.

NOVEMBER 6, 2014

The Tennessee Real Estate Commission convened on Thursday, November 6, 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, and Commissioner Austin McMullen. Commissioner Grover Collins, Commissioner Gary Blume, and Commissioner David Flitcroft were absent from the meeting. Others present: Executive Director Eve Maxwell, Assistant General Counsel Robyn Ryan, Assistant General Counsel Keeling Baird, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

The formal hearing of TREC v. Valencia B. Batson 12.18-127460A convened at 9:16 a.m. TREC Meeting November 6, 2014 before Judge Williams. The case involved the failure to timely account for monies of third parties in the possession of the licensee. The licensee/Respondent was a former principal broker whose license was retired in 2014. The Respondent did not appear, and the Commission voted for the Hearing to proceed as a default Hearing. The complainant testified by telephone from Connecticut. At the end of the State's presentation of evidence, the Commission voted to revoke the license and to assess all costs of the hearing and investigation to the respondent.

Chairman Griess adjourned the meeting on Thursday, 6th 2014 at 1:18p.m.

