



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

**October 9, 2014**

The Tennessee Real Estate Commission convened on Wednesday, October 9, 2014 at 9:00 a.m. in Meeting Room 402 of the Hamilton County Court House, 625 Georgia Avenue, Chattanooga, TN. 37402. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Diane Hills, and Commissioner Marcia Franks. Absent from meeting was Commissioner Austin McMullen and Commissioner David Flitcroft. Others present: Executive Director Eve Maxwell, and Assistant General Counsel Julie Cropp, 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 2, 2014. Also, this meeting has been notice on the tn.gov website since Friday, October 3, 2014.

Welcome message from Vicki Trap President of Chattanooga Association of Realtors, Robert Nodes Governmental & Public Affairs Director, and from the Mayor of Hamilton County, TN. Chattanooga Jim Coppinger to the Tennessee Real Estate Commission.

**Commissioner DiChiara made a motion to approve the October 2014 agenda; seconded by Commissioner Franks. The motion carried.**

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

**INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Donna K. Miles #75037; PRINCIPAL BROKER: Donald L. Miles #328017** Mr. Miles #328017 is the Principal Broker of Miles Real Estate Service, LLC. #262519 located in Gatlinburg, TN. and appeared to request a waiver of Rule 1260-2-.01 (2)(the 50 mile rule) in order to allow Donna K. Miles to affiliate with Miles Real Estate Service, LLC. Mr. and Ms. Miles own a house in TN located less than one mile from the offices of Miles Real Estate Services, LLC, but currently, their main residence is located in Shepherdsville, KY, approximately 199 miles ("as the crow flies") from the Gatlinburg office. After questions and discussion, **Commissioner Blume made a motion to approve Mr. Miles request for a waiver of Rule 1260 -2-.01 (2) in order to permit Ms. Miles to affiliate with Miles Real Estate**

**Service, LLC.; seconded by Commissioner DiChiara; motion carried by a roll call vote of 5 yes and 2 no, Commissioner Hills and Commissioner Alexander voted against the motion.**

**Attorney for the Tennessee Real Estate Commission, Julie Cropp presented some facts about the November 5, 2014 Rule Making Hearing:**

Ms. Cropp stated that the hearing will take place at 500 James Robertson Parkway, Nashville, TN. 37243 on November 5, 2014 at 9:30am in room 1A, a court reporter will be present. The hearing is open to the general public to comment on the proposed rules at the beginning of the rule making hearing. Ms. Cropp will read the proposed rules upon which public comments may be made during the hearing. The Commission is required by statute to consider all comments either written or oral. Once the comment period is concluded the economic impact statement will be discussed. If the new rules are adopted Ms. Cropp will prepare a new filing with the Secretary of State then another form will be sent to the Attorney General office for the final approval. If the Attorney General approves the rules will be filed with the Secretary of State, for 90 days after which they become effective. TREC will issue a notice about the new rules through the notify.gov app on our website. The rules as amended will be in effect 90 days from the date of filing the rules unless otherwise noted.

Discussion from the Commissioners on how to proceed with addressing the comments made during the Rule Making Hearing either answer the day the comments are made or have the comments of speakers transcribed by the court reporter to review after the hearing to be addressed at the either the December or January monthly TREC meeting.

**Motion made by Commissioner Franks that the time for both written and oral comments will end at the conclusion of the oral comments made at November 5, 2014 public hearing. Motion seconded by Commissioner Hills; motion passes unanimously.**

**Motion made by Commissioner Alexander to respond to comments made during the Rule Making Hearing on the January 2015 meeting. Motion seconded by Commissioner Franks; motion passes unanimously.**

Ms. Cropp states there will be a sign in sheet at the beginning of the Rule Making Hearing. A statement can be made at the start of the meeting that whoever wants to be heard during the Rule Making Hearing must sign up because once the sign in sheet is taken up no one else will be added to the list and there will be no repeat speakers. Ms. Cropp stated that the Commission can ask the speaker which rule they are referring to and to speak as clearly and concisely as possible.

**Motion made by Commissioner Blume for the speaker to have 5 minutes to express their concerns; motion seconded by Commissioner Franks. A substitute motion was made by Commissioner Collins to change from 5 minutes to 3 minutes; motion dies due to lack of second. Original motion passes unanimously.**

**Commissioner Alexander would like staff to review and provide the Commission a synopsis of all written and oral comments, prior to the January, 2015 meeting.**

**Commissioner Franks requested to have box lunches and a reduced lunch time to save time for the November 5, 2014 Rule Making Hearing.**

**Commissioner Collins requested to start the meeting at 8:00am for the November 5, 2014 meeting.**

**Chairman Griess requested a summary posted on the web informing the public of what is going to be expected during the Rule Making Hearing.**

### **INFORMAL APPLICANT APPEARANCE**

**APPLICANT: Lance Raymond Davis; PRINCIPAL BROKER: Anita “Nina” Brandon #250490**

Ms. Brandon #250490 is the Principal Broker of Key Concepts Real Estate #261196 located in Murfreesboro, TN. Mr. Davis has completed an Application for Decision Regarding Prior Criminal Sanctions in order to seek the Commission’s approval to proceed with the licensure process to obtain an affiliate broker license. In that Application, he revealed he had a felony conviction in 2003, for which he was sentenced to 2 years in jail and 8 years of probation, in addition to cost and fines. Mr. Davis applied for early discharge from probation and the court issued an Order of Discharge dated 9-9-2008.

**Commissioner Blume made motion to approve Lance Raymond Davis to proceed with the licensure process for an affiliate license. Commissioner DiChiara seconded the motion; the motion passes 6 yes and one pass by Commissioner Alexander.**

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

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

#### **EDUCATION UPDATE FROM PRIOR TREC MEETING**

Ms. Maxwell received a call from Russ Farrar representing TAR saying that they are going to pursue the 1 hour education credit through the legislative process, which will be more expedient than if TREC goes through the Rule Making Hearing process.

#### **UPDATE ON COURSE RENEWALS**

Ms. Maxwell updated course renewals as of 10-03-14. Renewals were mailed out to 173 providers, 113 have renewed, which represents 65% of the providers. There are 1398 courses which are eligible for renewal, 1026 of these courses have been renewed, which is about 73%. 336 instructors have renewed, and a total of \$40,575 in renewal fees have been paid.

#### **COURSE REVIEW**

Ms. Maxwell presented the educational courses and instructors set forth on the October, 2014 Education Report for Commission Approval and Discussion.

#### **EDUCATION COURSES FOR DISCUSSION**

Ms. Maxwell presented four courses for Commission Discussions. She had previously sent a synopsis of these four courses to the Commission for their review prior to the meeting.

### **Developing a Business Plan for Success**

Commissioner Franks made a motion to approve the course as submitted to the Commission; seconded by Commissioner DiChiara; motion carries.

### **The Transportation Industry and Commercial Real Estate**

Commissioner Alexander made a motion to approve the course as submitted to the Commission; seconded by Commissioner DiChiara; motion carries.

### **Why Realtors Should Understand Mold**

Commissioner Franks made a motion to deny approval for this course because of the advertising contained within the course; seconded by Commissioner Hills; motion carries, only Commissioner Alexander voted No.

### **How to Engage and Educate Today's Buyer**

Commissioner DiChiara made a motion to approve the course for 2 hours of continuing education rather than for 3 hours of continuing education as submitted for Commission approval; seconded by Commissioner Franks. A substitute motion made by Commissioner Blume to deny approval for course for continuing education, motion seconded by Commissioner Collins; motion to deny approval carries.

### **EDUCATION COURSES FOR REVIEW WITH NO DISCUSSION**

Commissioner DiChiara made a motion to approve the remainder of courses attached to the education agenda excluding the 4 courses upon which Commission had previously voted; motion seconded by Commissioner Franks; motion carries.

### **Discussion of Approving Instructors**

The following instructors were presented for approval to teach the approved courses as noted:

L. Maria Krey, New School - "New Development in Financing"

Kenneth Lewis, MAAR- "Paragon 5 Essentials"

Richard Williams, William Underwriting Group - "Risk Management for Individual Licensees"

Holly Hanson, Cumberland Business Incubator- "Developing a Business Plan for Success"

Daniel Pallme, MAAR - "The Transportation Industry and Commercial Real Estate"

**Commissioner Franks made motion to approve itemized list of instructors; motion seconded by Commissioner Blume; motion passes unanimously.**

### **50 Mile Rule Discussion**

Commissioner Franks requested a discussion of the 50 mile rules from the September 2014 Commission meeting. After lengthy discussion Commissioners decided to take no action on the rule at this time.

### **TRAINING PROGRAM**

Ms. Maxwell presented the Commission with the training program in response to TCA 62-76-202.

**Commissioner Alexander made motion to accept training program submitted by Ms. Maxwell and Ms. Cropp; motion seconded by Commissioner Franks; motion passes unanimously.**

### **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 well. In order to be placed back into active status proof of E&O insurance must be shown and all penalties paid. RICE has provided drafts of letters they plan to send out for the renewals in the next week to ten days.

### **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 2,907 individuals fingerprinted, 605 had an indication, 2,473 had no indication, and 73 were retaken. In the month of September, 2014 342 fingerprints were taken, 273 had no indications and 56 showed an indication.

### **BROKER QUESTION**

Ms. Maxwell and Ms. Cropp stated that a principle Broker had contacted them and asked if the Commission could clarify what are the responsibilities of a Principal Broker?

**Chairman Griess asked if the Commission wanted to try to clarify or offer guidance outlining the responsibilities of a Principal Broker. Commissioner Collins stated he knows definition of supervision he asked Ms. Cropp, the TREC attorney, the word supervises, what does it mean to you? "Would be over seeing their work and actions and being responsible for them." After brief discussion Chairman Griess asked the Commission if there was a motion to respond hearing none, no further action will be taken at this time.**

**Chairman Griess asked if there is a motion to respond hearing none, no further action will be taken at this time Commission moves to next topic.**

### **ARELLO DISCUSSION BY CONFERENCE ATTENDEES**

The three Arello September, 2014 Conference attendees were Commissioner Janet DiChiara, Executive Director Eve Maxwell, and Attorney Julie Cropp. Each attendee gave a report on the topics they found most insightful.

### **COMPLAINT STATISTICS REPORT**

Ms. Maxwell presented complaint statistics to the Commission. As of September 30, 2014, TREC had a total of 281 open complaints. There have been 42 closed this fiscal year starting 7-1-14 with no action, 3 were closed with a letter of warning, 34 with a Consent Order and no revocations. The total civil penalties that have been collected in fiscal year 2014 are \$141,880.00.

## **COMPLAINT REPORT**

### **Monies Collected 9/1/14 – 9/30/14**

Consent Orders Fees \$12,900.00, Reinstatement Fees \$44,240.00, Agreed Citations \$1,900.00, Total \$59,040.00.

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

July, 2014 – September, 2014 total complaints presented to Commission 111.

July, 2014 September, 2014 complaints presented to Commission involving Property Management 12 which is equal to 12% of complaints during this time involved Property Management.

### **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of September 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of September 30, 2014, there were 25,222 active licensees, 771 inactive licensees and 7,474 retired licensees, 411 broker release (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,901 active firms and 199 retired firms. Grand total of firms and licensees 41,000. Applications approved in September 2014 were 355.

### **BUDGET**

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. Commissioners Griess asked Ms. Maxwell what is the purpose of the budget? Ms. Maxwell explained briefly that the money that comes in through TREC equals the money going out through TREC. A spending plan is developed from the budget, since the Regulatory Boards do not receive operating money from the state; TREC can only spend money that it generates.

### **Update on: PRINCIPAL BROKER: FRAN HOOTEN #230310**

Fran Hooten # 230310 the Principal Broker of Keller Williams Realty # 258732 located in, Mt. Juliet, TN. Ms. Hooten appeared with an applicant at the August, 2014 Commission meeting. During that Informal Appearance the Commission requested that a formal firm audit be conducted on Keller Williams #258732 in order to determine the method used by the firm to pay its affiliate licensees. Management reported TREC mailed a mandatory firm audit. Mrs. Maxwell stated Ms. Hooten received the audit form on 8/18/14, and she has 30 days from the 8/15/14 date of the letter to respond. TREC auditor, Mr. Lewis, has received Ms. Hooten's firm audit materials and is in the process of reviewing the information. Once his review has been completed Mr. Lewis plans to conduct an onsite audit.

**Chairman Griess requested that Mr. Lewis, TREC Auditor, watch the video of the TREC Commission meeting regarding Ms. Hooten.**

### **LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL**

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

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

## MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION  
FROM: JULIE CROPP, Assistant General Counsel  
SUBJECT: OCTOBER LEGAL REPORT  
DATE: October 9, 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. 2014010201

**Opened: 6/25/14**

**First License Obtained: 7/9/96**

**License Expiration: 11/2/14**

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

**Type of License: Principal Broker**

**History: 2013025471 – Closed \$500 CO**

Complainant owns a property managed by Respondent (principal broker)’s firm. Complainant states that, per the lease agreement, Respondent is responsible for maintenance and repairs and that a plumbing issue occurred on a 12/27/13 but could not be fixed until 12/30/13, requiring the tenant to stay in a hotel. Complainant states that the invoice for labor and receipts for materials was dated 12/27/13 and there was also a proposal/invoice from a company which indicated the work was redone on 12/30/13. Complainant states that Complainant was charged for the 12/27/13 labor and materials as well as the 12/30/13 work. Complainant states that, when Complainant followed up via email, Respondent stated that Complainant was not charged for the services performed on 12/27/13, but, when Complainant pointed out that the amount had been deducted, Respondent agreed to correct the accounting error. Complainant called the company and states that Complainant found out that Respondent sent an unqualified person initially on 12/27/13 to do the repairs, and the plumbing company had to go back on 12/30/13 to correct what had been done. Complainant states that Respondent later stated in an e-mail to Complainant that Respondent would no longer be responsible for repairs on the subject property, which Complainant asserts is a violation of the contract. Complainant attached documentation, which includes copies of e-mail correspondence.

Respondent states that, from time-to-time, the firm uses licensed subcontractors to perform repairs, and it is against the firm’s policy to call random, unknown contractors to perform repairs because the firm has no knowledge of competency, proof of license, and/or insurance coverage. Respondent states that, on 12/27/13, the tenant notified Respondent regarding a plumbing issue, and the project manager immediately called their maintenance person to look at the issue and fix the issue if possible. Respondent states that the repair needed time to dry, and the tenant was advised to stay in a hotel and send the invoice to the firm for reimbursement, and Complainant was not charged for the

hotel stay. Respondent states that the repair was done incorrectly, and Respondent called the firm's general contractor on 12/30/13 to repair the plumbing. Respondent states that Respondent instructed the accounting department to credit Complainant's account the cost of the original labor and parts since the repair was not done correctly. Respondent states that the accountant did not adjust this and this error was not made known to Respondent until April, and Complainant's account was credited immediately. Respondent states that Complainant was only charged for the repair that was done correctly.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

## **2. 2014010351**

**Opened: 6/27/14**

**First License Obtained: 6/9/97**

**License Expiration: 3/15/16**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

## **3. 2014010352**

**Opened: 6/27/14**

**First License Obtained: 11/20/92**

**License Expiration: 5/11/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant is president of a company that listed commercial real estate with Respondents' firm (Respondent 1 is affiliate broker and was listing agent; Respondent 2 is principal broker).

Complainant states that an offer was received from an out of state buyer who had not visited the property, and Complainant was hesitant to accept the offer. However, Complainant states that the offer was accepted with a \$50,000 earnest money deposit being held by an escrow company.

Complainant states that the escrow money was held out of state, but Respondent 1 led Complainant to believe it was in state. Complainant states that the buyer did not complete the contract, and the escrow money is due to seller. Complainant states that Respondent 1 failed to diligently exercise reasonable skill and care in providing services, failed to provide services with honesty and good faith, and made willful misrepresentations. Multiple documents were attached, including letters between all parties and their attorneys as well as paperwork related to a lawsuit filed in the other state as well as Tennessee regarding issues relating to the earnest money. Respondents are not parties to the litigation. Specifically, it appears that a lawsuit was filed in the other state relating to a representative for the buyer borrowing the escrow money from a family trust, and the family trust filed lawsuit against buyer's representative, the out of state holder of the earnest money, and Complainant's company for the funds. Complainant also filed a lawsuit against buyer and the out of state escrow company for the earnest money funds.

Respondents deny violating any provisions of the Broker Act. Respondents agree that Complainant accepted an offer with an earnest money deposit for \$50,000 and state that the Commercial Purchase and Sale Agreement states that the earnest money was deposited with an escrow service in the other state/the title company. Respondents deny that the money was deposited within the State of

Tennessee, and Respondents deny that Complainant was led to believe that the earnest money was deposited into a financial institution within the State of Tennessee. Respondents state that the buyer refused to complete the contract at no fault of Respondents and state that any damage caused to Complainant was not precipitated by Respondents or the firm. Respondents state that Respondents did everything in Respondents' power to retrieve the earnest money and could not have guaranteed the money in any way, except that all parties were bound by the terms of the contract. Respondents also state that another buyer bought the property, and Respondent 1 assisted Complainant with that purchase. Further, Respondents state that Complainant did not support the statements of how Respondent 1 failed to exercise reasonable skill and care, failed to provide services with honesty and good faith, and made willful misrepresentations.

Upon review of the contract, the earnest money section states that the \$50,000 earnest money would be deposited at an escrow service in another state/the title company located in Tennessee. It appears that the earnest money was deposited at an escrow service which is located in the same city and state as referenced in the line on the earnest money section of the contract.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Hills; unanimous vote; motion carries.**

#### **4. 2014010521**

**Opened: 8/19/14**

**First License Obtained: 9/22/72**

**License Expiration: 9/5/14**

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

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Respondent (broker) was also involved in the following transaction, which involves the same facts as complaint number 2014000141 (presented at the June 2014 Commission meeting as follows). This Respondent is referenced in the summary as the other licensee who was involved in the transaction: *Complainant was a buyer/lessee of a property, and Respondent (principal broker) was President of the company which constructed the home and was the seller/lessor. In 2011, Complainant signed a New Homes Sales Contract to purchase a home from Respondent/Respondent's company. The sales contract incorporated a lease agreement providing for a deposit and was for a one (1) year period with the sales contract specifying a closing date at the end of the lease. In 2013, Complainant states that the house did not appraise for the contract price, and Complainant attempted to negotiate a lower price. Complainant provided correspondence, including a letter to Respondent stating that, because the property did not appraise for the original purchase price, and the parties could not reach an agreement regarding a new purchase price, Complainant did not wish to continue discussions and would vacate as well as a letter from Respondent stating Respondent intended to evict tenants and seek damages due to Complainant not consummating the contract in a timely manner. Complainant states that, on several occasions, Respondent harassed Complainant and used racial terms regarding Complainant's race and made comments regarding where Complainant should be purchasing a home. Complainant states that the house did sell months later to another party at a price lower than what Complainant had tried to negotiate as the new sale price. Complainant also states that another licensee, who was at the time affiliated with Respondent's real estate firm, represented both parties when the contracts were executed and did not adequately represent both parties, wrote the contracts in favor of Respondent, and failed to represent*

*Complainant's interests regarding purchase price, comps, and the appraisal issue. The New Home Sales Contract indicates that the licensee signed as the selling agent and the listing agent. Respondent submitted a response through an attorney with a copy of a lawsuit filed by Respondent's company for breach of contract against Complainant. Respondent states in the lawsuit that Complainant failed to purchase the property as provided, but Respondent allowed Complainant to continue to lease for an additional twelve (12) months. Respondent states that Complainant did not purchase at the end of this period, claiming that a new appraisal showed a significant decrease in value. Respondent states that, approximately six (6) months prior to execution of the sales contract and lease, there was an appraisal showing the property had a value higher than the contract price, and any decline in value did not affect the sales contract. Respondent further states that the contract provided for an appraisal at the time of loan application, but the contract did not provide for an appraisal contingency. Respondent states that the property later sold for a lower price, and, even giving Complainant credit for the security deposit paid, Respondent suffered a significant loss. There are a number of disputes between the parties, including, but not limited to, the appraisal issue and whether the deposit paid by Complainant was refundable. This matter is currently in active litigation with a counterclaim and third party complaints filed by Complainant against Respondent individually and the other licensee who was involved in the transaction, and other information could be uncovered in the process which may 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.**

Respondent denies any wrongdoing and denies writing a fraudulent contract. Respondent states that the contract was reviewed by a real estate attorney and was used on all sales of new homes built by Respondent principal broker in complaint number 2014000141. Respondent further states that Complainant only deposited a portion of the amount required to move into the property and promised to add to Complainant's monthly lease for the rest of the deposit. Respondent states that it was made clear to Complainant that there was no loan contingency, and, if Complainant did not close, Complainant would forfeit the deposit. Respondent states that Respondent has never had an appraisal available to Respondent to use in marketing a home.

As stated above in the summary of complaint number 2014000141, it was determined that this Respondent is a party to a third party complaint which was filed in court. As of checking the status of the litigation monitoring consent order for Respondent principal broker of complaint number 2014000141, it appears that litigation is ongoing and depositions are being scheduled.

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

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

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation of new consent order for litigation monitoring; seconded by Commissioner Franks; unanimous vote; motion carries.**

## **5. 2014011001**

**Opened: 6/6/14**

**First License Obtained: 11/3/95**

**License Expiration: 12/20/14**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that some timeshare developments were foreclosed upon and states that there is no broker on site at the timeshare and the Respondent (principal broker) has not been on site in years

and practices real estate in another city. Complainant also states that the people on site are not licensed. Complainant states that two (2) foreclosed units are being listed as active, time share owners were not notified of the foreclosures, and the bank has authorized the units to be rented out by a different company without compensation to the deeded owners. Further Complainant states that the remaining four (4) units are not being maintained or properly managed, property taxes are three (3) years delinquent, and master association dues have not been paid for four (4) years.

Respondent submitted a response stating that the escrow agent/attorney hired Respondent and listed Respondent as principal broker in 2004, but the attorney took care of the timeshare registrations and was responsible for reporting a list of sales agents that were employed for timeshare sales that would eventually occur there. Respondent states that Respondent left the time share in January 2007 and has been practicing as principal broker of Respondent's own firm in another city since that time.

Respondent states that Respondent has not been the broker at the time share resort since 2007 and has no knowledge of sales since then, no knowledge of re-sales, and no knowledge of off-site sales.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Hills made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

## **6. 2014011551**

**Opened: 6/24/14**

**First License Obtained: 8/17/81**

**License Expiration: 9/4/16**

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

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainant is the principal broker of an affiliate broker whose former principal broker is Respondent (broker). Complainant states that the affiliate broker has represented a particular builder for fourteen (14) years. Complainant states that the affiliate broker and six (6) other agents joined Complainant's firm after Respondent's office closed its doors. Complainant states that Respondent is soliciting business from the affiliate broker's builder client and a second builder client that is represented by other agents of Complainant's firm. Complainant states that solicitations occurred while the affiliate broker had active properties for sale in MLS. Complainants attached copies of the letters referenced.

Respondent states that Complainant's affiliate broker worked at Respondent's former firm for a time when the builder client contacted the firm due to Respondent's reputation, but Respondent did not take listings at the time. Respondent states that Respondent was told Complainant's affiliate broker left one firm, changed companies at the builder client's request, then went to a third firm (Complainant's firm). Respondent was told that Complainant's affiliate broker did not have the builder client's homes listed, and, after doing a residential search on MLS, Respondent stated the builder client did not have any homes listed. Respondent states that Complainant's MLS printouts are for land or lots, and Respondent did not search those but had no intention to solicit any current listings, and the letter states same. Respondent further states the other agents referred to in the complaint were friends, and Respondent met the builder client years ago. Respondent states that Respondent worked with the other agents and their builder client's listings for the past 15 years by preparing marketing proposals, designing brochures, and writing ads. Respondent submitted a letter from the builder client stating that agents, including Respondent, worked together marketing homes for him, and he considers all of them personal friends. Respondent denies attempting to solicit anybody's business.

Complainant submitted additional information stating that Complainant conveyed the information received from Complainant's agents to the best of Complainant's ability, and Complainant will address issues via a phone call if the situation arises again. Based on the information within the file, it does not appear that there was a violation by Respondent.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

## **7. 2014011731**

**Opened: 6/24/14**

**First License Obtained: 7/3/85**

**License Expiration: 8/11/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014011551 ("broker").

Respondent requests that the complaint be dismissed, stating that broker has not violated any law, rule, or regulation of TREC. Respondent states that, at the broker's former firm, the broker obtained a builder's commitment to list properties, assigned agents to assist the builder, and maintained hands-on participating in marketing the properties, negotiating agreements, problem-solving, etc.

Respondent states that the letters were to notify friends and former clients about the broker's new position at the company, and the broker included language that, if properties are currently listed, the letter was not a solicitation. Respondent also states that a search was done on MLS, and the builder client did not show any homes as active listings, but the MLS listings that were shown active are for vacant lots and land which did not show in the residential search performed. Respondent further states that, in correspondence with the second builder client, it is communication between long-time friends, and the broker commends the other agents assigned to handle listings rather than soliciting listings. Respondent further states that, if Complainant is experiencing difficulty with the broker, Complainant has not called Respondent to discuss the problems, and the first indication of a problem was the receipt of the complaint.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

## **8. 2014012451**

**Opened: 6/23/14**

**First License Obtained: 5/27/92**

**License Expiration: 8/17/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant submitted a cash offer to Respondent (principal broker), who was the listing agent for a property. Complainant states that Respondent confirmed receipt of the offer, but Complainant did not hear back from Respondent after several attempts to contact Respondent. Complainant states that a couple of weeks later, the property was pending on the MLS with a lower price than what was included in Complainant's offer.

Respondent acknowledges that Complainant submitted an offer, and Respondent acknowledged receipt by e-mail. Respondent states that Complainant's offer was one (1) of three (3) offers received at that time, and this was a bank owned foreclosure. Respondent states that the asset manager wanted to work with an individual, and Complainant's offer was for purchase by an LLC. Respondent states that both rejected offers were higher than the accepted offer. Respondent states that Respondent notified Complainant's agent by text message and received a response stating thank you. Respondent further states that Respondent was not the selling agent on any of the three (3) offers, and none of the three (3) offers came from Respondent's firm

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**9. 2014012491**

**Opened: 6/27/14**

**First License Obtained: 4/5/05**

**License Expiration: 7/13/15**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**10. 2014012492**

**Opened: 6/27/14**

**First License Obtained: 7/22/10**

**License Expiration: 7/21/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**11. 2014012493**

**Opened: 6/27/14**

**First License Obtained: 4/15/10**

**License Expiration: 4/14/16**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**12. 2014012494**

**Opened: 6/27/14**

**First License Obtained: 10/28/03**

**License Expiration: 3/14/15**

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

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants make allegations against Respondents (Respondent 1 is affiliate broker; Respondent 2 is principal broker; Respondent 3 is affiliate broker; Respondent 4 is broker), who are all affiliated with the same firm. Complainants were trying to find a home in a neighboring state. Complainants stated that Respondent 1 showed Complainants several homes in poor condition in the neighboring state. Complainants state that they discovered they were victims of a re-finance mortgage scam and had to start looking for homes for sale by owner, owner financed, or rental homes. Complainants state that, when discussing other areas, including Tennessee, Respondent 1 discouraged Complainants due to discriminatory reasons. Complainants state that Respondent 1's spouse made discriminatory remarks and asked one of the Complainants to join the Ku Klux Klan. Complainants state that Respondent 1 offered for Complainants store their belongings at a vacant home, but Complainants refused. Complainants state they found another home in the neighboring state, and Respondent 1 suggested that Complainants get a home inspection and talked Complainants out of the house and instead recommended another house in the neighboring state which was owned by a family member of Respondent 1's friend. Complainants state that Complainants added clauses allowing them to withdraw without penalty, but Respondent 1 spoke with Respondent 2 and informed Complainants that since Respondent 1 was the listing broker Respondent 1 could not represent both and Complainants were to sign an agreement agreeing to being customers instead of clients. Complainants state that the paperwork was re-worked and Complainants were completely removed from the decision-making process. Complainants state that Respondent 1 told them that, unless Complainants agreed to a non-refundable security deposit, specified rent, and an additional earnest money deposit for the purchase agreement, the deal would fall through. Complainants state that Respondent 1 read the contract to them, and it appeared that portions of the contract were unfavorable to Complainants. Complainants state that they were never given a final copy of the fully executed contracts. Complainants further state that after they had moved in the home and gave Respondent 1 extra money and a gift. Complainants state that they later learned that nearby homes were selling for less than Complainants' property. Complainants state that they decided to move back to their home-state to be with family and met with the homeowners and requested to terminate the lease early and requested their deposits back, and the homeowners were agreeable. Complainants state that the homeowner contacted their agent, Respondent 3. Complainants state they met with Respondent 2 and Respondent 3 and were shown a copy of their contract and told that, since Complainants were in breach of contract, they were liable, but Complainants state they had never seen the documents. Complainants further state that they compared the copy of the contract they were given that day with the one they originally signed and stated there were two sets of signatures on each of the documents that should have been identical. Complainants state that Respondent 4 contacted Complainants and asked if Respondent 4 could show the house and set up an appointment with Respondent 2 to discuss when Complainants were vacating. Complainants state that a demand letter was sent to the parties involved alleging fraud, unethical conduct, and requesting their earnest money and security deposit. Complainants state they moved back to their home state and received a letter requesting that Complainants accept full responsibility for breach of contract and accept liability for all liquidated damages owed to the Broker for commission that would have been received on the purchase contract. Complainants were advised legally not to sign the letter, but Complainants could not afford to pursue this matter with legal counsel.

Respondent 1 submitted a response denying Complainants' statements and denying violations. Respondent 1 relays the timeline of events in detail, stating that Complainants were looking to relocate to the neighboring state and met Respondent 1 with a pickup full of belongings to view listings, and Respondent 1 offered to ask permission from the homeowner to leave the truck in a

garage overnight instead of a parking lot. Respondent 1 states that, while viewing homes, Complainants were advised by the lender of a foreclosure on their credit report, and the home Complainants initially liked was already under contract. Respondent 1 denies that spouse is a member of the Ku Klux Klan. Respondent 1 further states that a lease purchase agreement was almost fully negotiated on a home, so the Complainants ordered a home inspection, and Complainants decided to terminate the agreement due to a structural crack discovered. Respondent 1 states that, although there was no binding agreement, a mutual termination and release of earnest money was signed and forwarded to the sellers. Respondent 1 states that Complainants liked another home, and Respondent 1 explained that Respondent 1 was the listing agent and could not represent Complainants also because the firm did not permit dual agency. Respondent 1 states that Complainants continued without representation. Respondent 1 states that the non-refundable security deposit and earnest money were explained, and all of the paperwork was explained, and copies of the fully executed agreement were given. Respondent 1 further states that Complainants gave Respondent 1 a gift that included money, but Respondent 1 could not accept it and donated it to charity in Complainants' names. Respondent 1 states that Complainants submitted a letter stating they no longer wanted to purchase. Respondent 1 stated that Respondent 2 met with Complainants while Respondent 1 was out of town, and Respondent 1 let homeowners out of the listing. Respondent 1 further denies that Respondent 1 cut and pasted any documentation. Respondent 1 states that the underlying complaint is that Complainants believe they should be refunded their nonrefundable amounts paid.

Respondent 2 submitted a response stating that the subject property is in a neighboring state and all documentation used in the transaction are approved from that state's association. Respondent 2 states that Respondent 2 oversaw the forms drafted by Respondent 1 relating to the transaction. Respondent 2 states that Complainants were given an opportunity to select an agent or have one designated to represent them but willingly signed the customer agreement. Respondent 2 states that the contracts clearly state that earnest money and security deposits were non-refundable in the event Complainants did not fulfill their contractual obligations, which was clearly explained to them. Respondent 2 further states that copies of every document used were given to them, and Complainants' claims of Respondent 1 cutting and pasting their signatures and not receiving copies are untruthful. Respondent 2 further states there is no merit in any personal comments made about any of the Respondents, and there was no discrimination of any sort, there was no professional misconduct, no entrapment, and no fraud committed by any licensee involved in the transaction. Respondent 2 denies any wrongdoing by any of the licensees.

Respondents 3 and 4 submitted responses stating that Respondents 3 and 4 were not parties to the contract and denying wrongdoing. Respondents 3 and 4 state that Respondent 3 was contacted by the homeowner after the lease purchase agreement was terminated, and the property was re-listed by Respondent 3. Respondent 3 states that, when Complainants came to the office to discuss termination, Respondent 3 was the only other agent in the office and sat in the meeting as a witness. Respondent 4 states Respondent 4 was given permission by Complainants to show the home one time, and that was the limit of involvement.

It appears that all of the actions alleged took place in the neighboring state, and the information in the file does not appear to substantiate a violation by Respondents.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

**13. 2014012591**

**Opened: 7/22/14**

**First License Obtained: 4/16/85**

**License Expiration: 4/10/16**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent (affiliate broker) did not give consent as to the terms and conditions of the sale of Complainant's property, and the closing attorney paid funds to Complainant's estranged spouse's account on a jointly owned property. Complainant states that Complainant was an absentee seller and was incarcerated at the time of the sale. Complainant further states that Complainant requested documentation regarding the sale from Respondent's firm, but the firm refuses to provide Complainant with the documents.

Respondent submitted a reply stating that Respondent did work with and sell the home co-owned by Complainant and Complainant's spouse, during which time Complainant was incarcerated. Respondent states that Complainant's spouse received copies of everything throughout the process, and Complainant had given power of attorney to Complainant's closing attorney, and the closing attorney received copies of all documentation. Respondent further states that Respondent is currently involved in civil litigation with Complainant. Respondent enclosed copies of the HUD 1 Closing Statement (which appears to indicate that half of the proceeds due to the sellers were submitted to the court clerk) and other documents relating to the sale of the property as well as an executed Power of Attorney, wherein Complainant appointed an attorney as Complainant's attorney in fact to acquire, sell, or exchange the subject property. Respondent later provided documentation that the firm's motion to dismiss the lawsuit filed by Complainant against the firm was granted by the court.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

**14. 2014012711**

**Opened: 6/27/14**

**First License Obtained: 11/15/12**

**License Expiration: 11/14/14**

**E&O Expiration: Uninsured**

**Type of License: Firm**

**History: No Prior Disciplinary Action**

**15. 2014012712**

**Opened: 6/27/14**

**First License Obtained: 8/12/04**

**License Expiration: 11/14/14**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**16. 2014012713**

**Opened: 6/27/14**

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

Complainant, a licensee, states that Respondent 2 (principal broker) left Complainant's firm in October 2012. Respondent 1 is the licensed firm where Respondent 2 is currently principal broker. Respondent 3 appears to have been a duplicate complaint mistakenly opened by staff against the same name as Respondent 2. Complainant attached an undated photo of a sign which Complainant states contains Complainant's firm office number. Complainant states that the logo has been covered. From the photo, it appears to state "For Lease" and includes the name of Respondent 1 firm, the name of Respondent 2, and two (2) telephone numbers, one of which appears to be the telephone number which is on file for Complainant's firm. Complainant also attached undated photos of the building which Complainant states that Respondents 1 and 2 are listing as the address on its website, and Complainant states that there is no signage and no representative of the firm at the location. Respondent 2 submitted a response stating that Respondent 2 received the complaint copies and Respondent 2's license is no longer with the same entity or address as referenced in the complaint. Respondent 2 further states that, as of the date of response, the sign referenced in the complaint had been removed from the property. It appears that Respondent 2, while affiliated with Complainant's firm, may have been a part of a group which utilized the same name as Respondent 1, and, when Respondent 2 left Complainant's firm, it appears that Respondent 2 licensed the name as a firm, creating Respondent 1. As stated above, the photograph of the sign utilizing Complainant's firm telephone number was not dated. Further, as to the address on the website, it appears that this was the former mailing address on file for Respondent 1 firm until March 2014. It appears to legal counsel that Respondent 2 would benefit from a letter of warning regarding the advertising rule, emphasizing the provision regarding all advertising listing the firm name and telephone number.

**Recommendation: As to Respondent 1, dismiss. As to Respondent 3, dismiss as duplicative complaint. As to Respondent 2, letter of warning regarding Rule 1260-02-.12.**

**DECISION: The Commission voted to dismiss the complaints against these Respondents.**

**ACTION: Commissioner Franks made a motion to dismiss all 3; seconded by Commissioner Collins; voted 6 yes and 1 pass by Commissioner Blume; motion carries.**

**17. 2014013421**

**Opened: 7/11/14  
First License Obtained: 7/17/01  
License Expiration: 12/17/14  
E&O Expiration: Uninsured  
Type of License: Firm  
History: No Prior Disciplinary Action**

**18. 2014013422**

**Opened: 7/11/14  
First License Obtained: 5/19/14  
License Expiration: 5/18/16  
E&O Expiration: Uninsured  
Type of License: Firm  
History: No Prior Disciplinary Action**

**19. 2014013423**

**Opened: 7/11/14**

**First License Obtained: 12/15/93**

**License Expiration: 5/17/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant, a licensee, is a former employee of a property management firm who states that the property management firm is operating on an expired license. Complainant further states that two (2) people who do not hold real estate licenses are employed in the office, and Respondent 3 (principal broker) is rarely on site and does not supervise dealings. Complaints were also opened against Respondent 1 (firm), which appears to be a separate firm at the same location where Respondent 3 is also principal broker and Respondent 2 (firm) where Respondent 3 is principal broker, which has a very similar name to the expired firm referenced by the Complainant, and Respondent 2 was licensed approximately a month before the complaint was sent for response. There was no documentation submitted with the complaint.

Respondents submitted a response stating that Complainant was employed as the office manager for a little less than a year and was responsible for ensuring that all license renewals were sent to the corporate office to be processed for payment. Respondents state that Complainant was informed by Respondent 3 in October 2013 that the property management firm license was due for renewal, but Complainant did not notify Respondents' corporate office until months later. Respondents state that TREC advised to file for a new firm license, which was issued on May 19, 2014 to Respondent 2. Respondents state that Complainant resigned in March 2014 as numerous performance issues were surfacing, and Complainant signed a non-compete clause prohibiting solicitation of Respondents' clients, but Complainant has breached the contract and listed two (2) of Respondents' clients who were contractually obligated to sell their property with Respondents. Respondents state that Complainant's principal broker was contacted and the issue was resolved in lieu of filing a formal complaint with TREC and then this complaint was filed.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carries.**

**20. 2014014401**

**Opened: 7/21/14**

**History: 2014001131 – Closed \$1,000 CO - Unlicensed**

Complainant states that Complainant purchased three (3) properties from Respondent (unlicensed individual) who was to refurbish the properties. Complainant states that Respondent's firm was seller on the three (3) properties, and Complainant states that these properties did not meet the purchase criteria. Complainant states that Respondent alleges that Respondent's bankruptcy was the reason for non-performance, but Respondent's bankruptcy ended before Complainant's business dealings with Respondent. Complainant alleges that Respondent is in breach of contract by not completing the refurbishments. Complainant further states that the subject properties' values are less than what was promised. Complainant further states that rental income has been lost due to work delays.

Complainant further states that Respondent continues to trade and offer properties for sale on Respondent's website. Complaint provided a legal opinion that Respondent has a contractual duty to rehabilitate the properties.

Respondent submitted a response through an attorney stating that Respondent and Respondent's company do not own or operate the acquisition or property investment company, and Respondent

cannot respond to allegations of promises, representations, or interactions which may have occurred between the acquisition or property investment company and Complainant. Respondent's attorney states that the records indicate that the acquisition company entered into a contract for purchase of sale of package real estate properties with Complainant's company, and the acquisition company approached Respondent's company about selling the three (3) subject properties. Respondent does not recall having any communication with Complainant prior to the transactions, and records indicate that Respondent's company sold the properties to Complainant's company in January 2013. Respondent denies claiming bankruptcy as alleged and provides an email regarding the circumstances surrounding the rehabilitation of subject properties. Further, Respondent denies entering into a contract with Complainant and therefore denies being in breach of contract. Respondent states that there is no sufficient knowledge to admit or deny Complainant's costs concerning rehabilitation of the subject properties and states there is not sufficient knowledge to respond to the value of the properties.

Office of legal counsel performed a search on the property assessor's website for properties owned by Complainant's firm. It appears that each the three (3) subject properties were acquired by Respondent's company and sold to Complainant's company, for a profit, on the same day. Warranty Deeds were obtained, as well as sales information from the property assessor's website. Information included with the complaint appears to be printed from Respondent's company's websites, and those websites appear to advertise that the company buys and sells properties and also advertises several properties for sale. In response to requests for additional information in a prior complaint of a similar nature which was filed against Respondent earlier this year, Respondent's attorney stated that Respondent is President of the corporation and is the primary shareholder acting on the corporation's behalf. Further, Respondent's attorney states that Respondent runs the corporation and is not salaried. It does not appear that Respondent qualifies for the license exemption found at T.C.A. § 62-13-104(a)(1)(F).

**Recommendation: Consent Order for \$1,500 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.**

**DECISION: The Commission voted to authorize a Consent Order for \$6,000 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.**

**ACTION: Commissioner Blume made a motion to amend legal counsel's recommendation of \$1,500 replaced with \$6,000; seconded by Commissioner Franks; unanimous vote; motion carries.**

#### **21. 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**

#### **22. 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**

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.**

**ACTION: Commissioner Alexander made a motion to for Commissioner DiChiara to read the files and to report back to the Commission next month, noting that Commissioner DiChiara will be unable to vote next month; seconded by Commissioner Blume; unanimous vote; motion carries.**

**23. 2014014641**

**Opened: 7/7/14**

**First License Obtained: 8/30/96**

**License Expiration: 6/21/15**

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

**Type of License: Principal Broker**

**History: 2012004361 – Closed \$500 CO**

**24. 2014014642**

**Opened: 7/7/14**

**First License Obtained: 3/16/05**

**License Expiration: 9/23/16**

**E&O Expiration: Uninsured**

**Type of License: Firm**

**History: No Prior Disciplinary Action**

Complainant states that Complainant spoke with an agent in Respondent 1 (principal broker)'s office who stated that the firm (Respondent 2) specialized in assisting people who are about to lose their home, and Complainant spoke to Respondent 1 in great detail about a bankruptcy that was filed and discharged and about Complainant being in the process of losing the home. Complainant states that Respondent 1 used Complainant's social security number to look up Complainant's information, stating that Respondent 1 was a licensed private investigator. Complainant met with Respondent 1 and signed a listing agreement but states that, a few hours after signing the listing agreement, Respondent 1 contacted Complainant and stated that Respondent 1 could not help Complainant. Complainant is concerned that Respondent 1 has personal information on Complainant and is concerned because multiple agents have contacted Complainant since, inconveniencing Complainant and causing distress.

Respondent 1 states that, upon signing the listing agreement and working on Complainant's file, there were several areas of concern including the need for a specific power of attorney for Complainant's elderly parent and the home's condition. Respondent 1 further states that Complainant stated the home was full of items making it difficult to walk, and multiple cats were in the home. Regarding the obtaining of the social security number, Respondent 1 states that Complainant's name on the tax record did not match Complainant's provided name, and the firm needed to verify Complainant was the same person and ran a quick check to verify this, which Respondent 1 states Respondent 1 is licensed to do. Respondent 1 further states that Complainant's statements with regard to whether Complainant was in foreclosure and whether Complainant wanted to do a short sale were inconsistent. Respondent 1 states that the only way to make the home safe to sell would have been to have it totally vacated and cleaned, and they immediately withdrew the listing and informed Complainant of the decision and put it in writing. Respondent 1 further states that the listing agreement has a clause that allows the firm to terminate for any reason with a day's notice. Respondent 1 states that the firm has a duty to the public to offer homes for sale that are safe, and advertising the home as anything but a biohazard would be false advertisement. Respondent 1 included the MLS listing which has a "withdrawn" status, a listing agreement, and a letter stating that the firm examined several factors and does not feel that they can meet Complainant's needs.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

**25. 2014015221**

**Opened: 7/22/14**

**First License Obtained: 8/19/09**

**License Expiration: 8/18/15**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: 2014016061 – Under review by legal**

Complainant states that Respondent (time-share registration) is guilty of misrepresentations and deceit. Complainant requested cancellation and a refund, but Complainant states that Respondent took several months to reply and requested additional money to take the timeshare back. Complainant states that, upon purchasing the timeshare (which took place in another state), salesmen took advantage of Complainant and lied about the terms of the time-share. Complainant states that Complainant's credit card was charged for more than what the contract reflected, and the amount which was offered to Complainant for Complainant's old time share was not reflected in the sales contract. Complainant alleges that the annual dues are more than what Complainant was told. Further, Complainant alleges that the agents misrepresented the locations in which Complainant's bonus points could be used and the expiration date of the bonus points. Complainant further alleges that attempts to receive clarification on the contract were referred to Respondent's quality assurance department, which insisted Complainant initialed the contract and should have known the terms. Respondent states that Complainant purchased a timeshare in another state, and an identical complaint was filed with that state's Attorney General. Respondent disagreed with Complainant's allegations but states that Respondent has agreed to cancel Complainant's purchase, and Complainant executed a mutual release to terminate the sales contract. It appears that the events giving rise to this complaint took place in another state.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**26. 2014015331**

**Opened: 7/28/14**

**First License Obtained: 9/5/06**

**License Expiration: 3/31/14**

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

**Type of License: Broker**

**History: No Prior Disciplinary Action**

**27. 2014015332**

**Opened: 7/28/14**

**First License Obtained: 3/1/12**

**License Expiration: 2/28/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondents' firm (Respondent 1 is affiliate broker; Respondent 2 is principal broker) managed Complainants' duplex from 2010 to 2013. Complainants state that, in August 2013, Complainants changed real estate companies and gave notice of cancellation of the services. Complainants state that the firm remitted an amount to the new management company which consisted of collected security deposits and pet deposits; however, Complainants state that Respondent 2 has held the last month's rent paid by the tenant in one of the units at the time of move in. Complainants state that Respondent 2 claims that the money was paid to Complainants in August 2010 when the tenant moved in, but Complainants state that their records do not indicate this. Complainants submitted a statement from Respondents' firm dated August 12, 2010 for August 2010 proceeds which shows rental income for the subject property of \$1,100, a deducted management fee

of \$550, a deducted property repair fee of \$252.23, and total net income was \$297.77 for the subject property. Complainants submitted a copy of a bank statement showing a deposit dated August 25, 2010 in the amount reflected on the August 12, 2010 statement. Complainants submitted a statement dated September 4, 2013 for August 2010 proceeds which shows rental income of \$1,100, a deducted management fee of \$250, a deducted property repair fee of \$252.23, and a total net income of \$597.77. The rental agreement indicates that the monthly rent amount for the subject property was \$550 per month.

Respondents submitted a response stating that the firm paid everything due to Complainants and attached a copy of canceled checks showing when the checks cleared. Respondents state that the first check (dated August 13, 2010) was short \$300 due to a mistake, and a second check (dated August 30, 2010 for \$300) was immediately sent to Complainants when Complainants brought the error to Respondent 2's attention. Respondents state that the management fee was \$250 for the new lease, and there was \$252.23 in repairs on the subject property. Also included was a copy of the revised property statement dated September 4, 2013 for August 2010, an invoice for \$252.23 in repairs, and copies of both checks referenced. It does not appear that there is a failure to account by Respondents.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carries.**

#### **28. 2014015381**

**Opened: 7/11/14**

**First License Obtained: 3/26/07**

**License Expiration: 3/25/15**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

#### **29. 2014019001**

**Opened: 8/27/14**

**First License Obtained: 10/29/92**

**License Expiration: 2/12/15**

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

**Type of License: Principal Broker**

**History: 201202342 – Closed Agreed Citation**

Complainant states that an earnest money check was sent to Respondents' firm (Respondent 1 is affiliate broker; Respondent 2 is principal broker) on 2/13/14, but, after inspection, Complainant no longer wanted to purchase the home and requested a return of the earnest money. Complainant states that Complainant received a return on the earnest money shortly after and thought that Complainant's original check had already gone through. Complainant states that Complainant later discovered that the firm did not deposit Complainant's earnest money check until April 30, 2014, and the firm did not notify Complainant that it was going to be deposited later than expected, which caused an overdraft.

Respondents submitted a response stating that, for reasons unknown, Complainant's earnest money check was lost in the mail and did not arrive at Respondent's firm until April 30, 2014. Meanwhile, Respondents state that, after the contract was terminated, the firm immediately cut a reimbursement check, which Complainant deposited on 2/28/14. Respondent states that Complainant's earnest

money check was received on 4/30/14 with no memo or address referenced on the check and the check was deposited that day as all checks are in order to meet deadlines. Respondents apologize for the confusion and state that earnest money deposits are always deposited in ample time and has never had this incident occur before.

**Recommendation: Dismiss.**

**DECISION:** As to Respondent 1, the Commission voted to dismiss. As to Respondent 2, the Commission voted to authorize a Consent Order for \$1,000 for violation of Rule 1260-02-.09 highlighting paragraph (3), plus attendance by Respondent 2 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 Franks made a motion to accept legal counsel's recommendation to dismiss Affiliate Broker; seconded by Commissioner DiChiara; unanimous vote; motion carries. Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.

Commissioner Alexander made motion for Principal Broker to be issued a civil penalty of \$500 failure to supervise; motion dies due to lack of second. Commissioner Blume made a motion for the Principal Broker to be issued a civil penalty of \$1000 failure to supervise and attend 1 Commission meeting in its entirety with within 180 days of citation; seconded by Commissioner Hills; motion passes 6 yes and 1 no by Commissioner Collins. Commissioner Collins made a substitute motion of a fine of \$250; motion dies due to lack of second.

**30. 2014015521**

**Opened: 7/17/14**

**First License Obtained: 5/3/99**

**License Expiration: 5/11/15**

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

**Type of License: Principal Broker**

**History: 2013017501 – Closed \$250 CO**

Complainant, a licensee, states that Complainant received a call from Complainant's listing clients on March 27, 2014, asking what needed to be done to have the sign and lock box removed from their home since their listing agreement expired on January 29, 2014. Complainant states that Complainant noticed that the MLS is posted as cancelled, when in fact, it had expired.

Respondent attached a copy of the listing agreement and several signed documents relating to listing changes. Respondent states that the listing agreement was extended until March 29, 2014. It appears that the original listing agreement was entered with sellers and Respondent's firm for a term of 1/29/13 through 7/29/13 with another agent from the firm; a listing changes form was executed on 7/26/13 to extend the listing until 1/29/14, and another listing changes form was executed on 1/29/14 to extend the listing through 3/29/14. Respondent states that the sellers called on March 27, 2014 to cancel the listing, which was done per their request. Respondent states that Complainant was a former affiliate at Respondent's firm who was released. It does not appear that there is a violation by Respondent.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Hills; unanimous vote; motion carries.**

**31. 2014016061**

**Opened: 7/28/14**

**First License Obtained: 8/19/09**

**License Expiration: 8/18/15**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: 2014015221 – Under review by legal**

Complainant states that a timeshare was purchased in 2006 from another company who is now owned by Respondent (time-share registration). Complainant states that the sales representative did not disclose that maintenance fees would have to be paid forever or that the fees would increase. Complainant further states that they were told they could rent the timeshare but have had no luck, and Complainant has not received reduction in fees for referrals that were provided to Respondent. Complainant further states that Complainant was to receive a membership with a company that exchanges timeshares, but there is an additional fee with the membership that was not disclosed. Complainant further states that Complainant sent a request for cancellation to Respondent, but Respondent stated they could not be held responsible for a purchase made with the previous timeshare company.

Respondent states that, in 2006, Complainant purchased the timeshare from a developer which later declared bankruptcy in 2011, and Respondent acquired assets including unsold inventory and the vacation ownership plan held by the developer. Respondent states that the sale did not occur in Tennessee, and the sale occurred prior to Respondent's acquisition of the developer's assets. Respondent further states that the Vacation Ownership Plan Installment Contract and Security Agreement discloses that maintenance fees must be paid each year, and Complainant signed an acknowledgment stating the annual assessments are invoiced quarterly. Respondent further states that Complainant signed an Acknowledgement that no representations had been made as to investment or rental income. Further, Respondent states that Complainant signed an authorization for automatic annual renewal stating that annual dues for the exchange program would be charged. Respondent regrets that Complainant believes there were misrepresentations during the purchase but states that Respondent is unable to address these claims. It appears that the events giving rise to this complaint took place in another state.

**Recommendation: Dismiss.**

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

**ACTION: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carries.**

**CONSENT ORDER TRACKING**

Ms. Cropp presents her tracking system of consent orders. No questions from the Commissioners.

**Chairman Griess adjourned the meeting on Thursday, 9<sup>th</sup> 2014 at 4:00p.m.**