



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

July 1-2, 2015

The Tennessee Real Estate Commission convened on Wednesday, July 1, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Diane Hills, Commissioner Austin McMullen and Commissioner Marcia Franks. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, Assistant General Counsel Mallorie Kerby, Paralegal Jennaca Smith and Administrative 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 12, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Friday, June 26, 2015. Also, this meeting has been notice on the tn.gov website since Friday, June 26, 2015.

Commissioner McMullen made a motion to adopt the agenda; motion seconded by Commissioner DiChiara; motion passes unanimously.

Commissioner Franks made a motion to approve the June minutes; motion seconded by Commissioner McMullen; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: Esther Eunhye Kim #332915

PRINCIPAL BROKER: Sue Carol Acee #282767

FIRM: WYNDHAM SMOKY MOUNTAINS #256346

Principal Broker: Sue Acee #282767 is the PB of Wyndham Smoky Mountains located in Sevierville, TN. Ms. Acee was first licensed as a timeshare salesperson on 4/16/2002 and was licensed as an affiliate broker in TN in 2011 and held a Tennessee affiliate broker license until she tested and got her broker license in Tennessee on 4/30/2014. Prior to being licensed as an affiliate broker in Tennessee, Ms. Acee was licensed as a salesperson/ affiliate in another state. Ms. Acee became the PB of Wyndham Smoky Mountains as of 7/1/2014. The TREC records reflect that the firm currently has 100 timeshare salespersons, 4 affiliate brokers, 2 brokers and 1PB. Ms. Acee has had no disciplinary action taken against her by the Commission

Applicant: Esther Eunhye Kim has submitted an Application for licensure as a timeshare salesperson and has passed the required exam. If approved by the Commission to move forward in the licensure process, Ms. Kim plans to complete the licensure process.

Ms. Kim has revealed the following in her Application:

She was convicted of a misdemeanor; terms of conviction have been met.

Commissioner DiChiara made a motion for Applicant, Esther Eunhye Kim, to move forward with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: O'BRYANT CANNON

PRINCIPAL BROKER: DARREN WILMOTH #262183

FIRM: ADVANTAGE HOLDINGS, LLC d/b/a EXIT REALTY #260895 and EXIT REALTY DIVERSIFIED PROPERTY MANAGEMENT #262721

Principal Broker: Darren Wilmoth #262183 is the PB of two firms: Advantage Holdings d/b/a Exit Realty #260895 and Exit Realty Diversified Property Management #262721. Both firms are located at the same physical address in Nashville, TN. Mr. Wilmoth was first licensed as an affiliate broker on 9/16/1996 and was first licensed as a broker on 1/24/06. The records indicate that he became PB of Advantage Holdings d/b/a Exit Realty on 5/4/2009 and PB of Exit Realty Diversified Property Management 5/22/2014. The TREC records reflect that Advantage Holdings d/b/a Exit Realty currently has 52 affiliate brokers, 4 brokers and 1PB. Diversified Property Management has no affiliated licensees, only the PB. Mr. Wilmoth has had no disciplinary action taken against him by the Commission.

Applicant: O'Bryant Cannon submitted an Application for Decision Regarding Criminal Convictions and revealed the following:

He was convicted of a Misdemeanor and a Felony; terms of his convictions have been met.

Commissioner Franks made a motion for Applicant, O'Bryant Cannon, to move forward with the licensure process; motion seconded by Commissioner Hills; motion passes unanimously.

Reinstatement Appearance:

Ruth B. Randolph #4152 real estate broker license expired on 11/3/2012 for failure to pay the \$80.00 renewal fee and failure to provide proof of E&O. Ms. Randolph was PB of Randolph Company Realtors #4148, until the firm reinstated its expired firm license on 6/18/2015. At that time, since Ms. Randolph's license was expired, Marbut G. Gaston, Jr. took over as PB of the firm which is located in Nashville. Ms. Randolph had been PB of this firm intermittently since it was initially licensed in 1957 as Sales Realty Company and through the name change to Randolph Company Realtors.

Ms. Randolph is requesting that the Commission grant her an exemption from the Reinstatement Policy, 2013-CPS-002, Reinstatement of an Expired License and waive the requirement in the Reinstatement Policy which requires licensees expired over 12 months to retest and reapply and meet all current licensure and educational requirements. Ms. Randolph requests that the Commission allow her to reinstate her license without retesting and reapplying and without meeting all current licensure requirements, but instead, to pay the renewal amount and have her broker license #4152 reinstated.

Commissioner Blume made a motion to honor Ruth B. Randolph's reinstatement request; motion seconded by Commissioner Franks; Chairman Griess amended motion by including current renewal fee, for a total of \$160; Commissioner McMullen recuses; motion passes.

INFORMAL APPLICANT APPEARANCE

APPLICANT: WILLIAM SHERIDAN WILSON #332460 PRINCIPAL .BROKER:
RICHARD A. SMITH #210913 FIRM: DEAN-SMITH, INC. #1744
Principal Broker Richard A. Smith #210913 is the PB of Dean-Smith, Inc. #210913 located in Knoxville, TN. Mr. Smith was first licensed as an affiliate broker in 1974 and was first licensed as a broker in 1983. The records indicate that he became PB of Dean-Smith, Inc. in 1983. The TREC records reflect that the firm currently has 23 affiliate brokers and 8 brokers and 1PB. Mr. Smith has had no disciplinary action taken against him by the Commission.

Applicant: William Sheridan Wilson has taken and passed the affiliate broker exam, submitted his application for affiliate broker and completed the Course for New Affiliates. If the Commission approves him to move forward in the licensure process, Mr. Wilson intends to complete any outstanding requirements for affiliate broker licensure. Mr. Wilson has revealed the following during the application for licensure process: He has been convicted of misdemeanor; terms of his conviction have been met.

Commissioner DiChiara made a motion for Applicant, William Sheridan Wilson, to move forward with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: DAWN CLARISSA LUNDBERG #332900 PRINCIPAL BROKER:
STEVEN M. CHAMPION #253598
FIRM: GREATER DOWNTOWN REALTY, LLC d/b/a KELLER WILLIAMS
REALTY #259794

Principal Broker: Steven M. Champion #253598 is the PB of Greater Downtown Realty, LLC d/b/a Keller Williams Realty #259794, located in Chattanooga, TN. Mr. Champion was first licensed as an affiliate broker on 2/16/1994 and was first licensed as a broker on 4/24/1997. The records indicate that he became PB of Greater Downtown Realty, LLC d/b/a Keller Williams Realty #259794 most recently on 10/24/2014. He has been the PB at this firm previously and several other firms since becoming a broker. The TREC records reflect that Greater Downtown Realty, LLC d/b/a Keller Williams Realty currently has 167 affiliate brokers, 15 brokers and 1PB. Mr. Champion has had no disciplinary action taken against him by the Commission.

Applicant: Dawn Clarissa Lundberg #332900 has taken and passed the affiliate broker exam, submitted her application for affiliate broker and completed the Course for New

Affiliates. If the Commission approves her to move forward in the licensure process, Ms. Lundberg intends to complete any outstanding requirements for affiliate broker licensure. Ms. Lundberg has revealed the following during the application for licensure process: She has been convicted of misdemeanor; terms of her conviction have been met.

Commissioner Franks made a motion for Applicant, Dawn Clarissa Lundberg, to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.

Reinstatement Appearance:

Jake Lipsey #215448 real estate broker license expired on 2/25/2011 for failure to pay the \$80.00 renewal fee. Mr. Lipsey was formerly PB of Advance Realty, Inc. #230690 located in Memphis. This firm expired on 10/18/2010. Mr. Lipsey became PB of this firm on 1/1/1989. Since the expiration of his real estate license, Mr. Lipsey states that he has been working for Makowsky, Ringel and Greenberg in the construction and maintenance department. Mr. Lipsey has indicated that he has an opportunity to work with Jerome Frager, owner and current PB of Jerry Frager Realtors. Mr. Lipsey is requesting that the Commission grant him an exemption from the Reinstatement Policy, 2013-CPS- 002, Reinstatement of an Expired License and waive the requirement in the Reinstatement Policy which requires licensees expired over 12 months to retest and reapply and meet all current licensure and educational requirements. Mr. Lipsey is requesting that the Commission grant him an exemption from the Reinstatement Policy, 2013-CPS-002, Reinstatement of an Expired License and waive the requirement in the Reinstatement Policy which requires licensees expired over 12 months to retest and reapply and meet all current licensure and educational requirements. Mr. Lipsey requests that the Commission allow him to reinstate his license without retesting and reapplying and without meeting all current licensure requirements, but instead, to pay the renewal amount and have his broker license #215448 reinstated.

Commissioner Franks made a motion to deny Jake Lipsey request for reinstatement; motion seconded by Commissioner Hills; Commissioner Blume and Chairman Griess both recuses; motion passes.

**APPEARANCE REQUEST FOR WAIVER OF THE 50 MILE RULE
DISTANCE: 103 MILES**

Principal Broker: Anthony Lopes #237608
Firm: Sperry Van Ness/Investec Realty Services, LLC #262009
Anthony Lopes Realty #247150
1616 Westgate Circle, Nashville, TN. 37027
Affiliate Broker: Michelle Anne McCammon #326884
2731 Indian Pipe Lane Signal Mountain, TN 37377

Anthony Lopes #237608 is the PB of Sperry Van Ness/Investec Realty Services, LLC which holds TN firm license #262009 and Anthony Lopes Realty #247150 which holds TN firm license #247150. Both firms are physically located at 1616 Westgate Circle, Nashville, TN 37027. Ms. McCammon wishes to transfer to Sperry Van Ness/Investec Realty Services, LLC in Brentwood, TN. Ms. McCammon has held her affiliate broker license in TN since 5/17/2013. According to the TREC records, Ms. McCammon has been affiliated with The Raines Group in Chattanooga since 1/29/2014 and prior to that, she was affiliated with Greater Downtown Realty d/b/a Keller Williams. On 6/24/2015, Ms. McCammon submitted a completed TREC 1 form to transfer to Sperry Van Ness/Investec Realty Services, LLC in Brentwood, TN. TREC could not effectuate this transfer, because her residence in Signal Mountain, TN is more than 50 miles from the firm office of Sperry Van Ness/Investec Realty Services, LLC in Brentwood, TN. Ms. McCammon indicates that she has over 15 years of commercial real estate experience, primarily in California. She was a senior advisor to Sperry Van Ness Commercial Real Estate in California and Georgia. Mr. Lopes indicated that Ms. McCammon was licensed in California from 2000-2013. The Georgia real estate licensee look up records indicates that she has held an active Georgia salesperson license since 4/15/2015. Prior to that time, she held a Georgia salesperson license from 1128/2010-1/29/2011. That license lapsed due to a failure to complete the required education and was in a lapsed status until 4/21/2015.

Ms. McCammon would like to transfer to Mr. Lopes' firm, Sperry Van Ness/Investec Realty Services, LLC located in Brentwood, TN. Ms. McCammon's TREC 1 form lists her residence address at a location, which is approximately 100 miles ("as the crow flies") from the Brentwood office. Mr. Lopes, as principal broker of Sperry Van Ness/Investec Realty Services, LLC located in Brentwood, TN, is requesting a waiver of Rule 1260-2-.01(2) so that Ms. McCammon can transfer to, and affiliate with, Sperry Van Ness/Investec Realty Services, LLC upon approval. Anthony Lopes was first licensed as an affiliate broker in Tennessee on 6/30/1984 and was licensed as a broker on 2/25/1988. Since becoming a broker, Mr. Lopes has served primarily in the capacity of a PB. The current expiration date for Mr. Lopes' broker license is 9/12/2016. Mr. Lopes became the principal broker of Sperry Van Ness/Investec Realty Services, LLC on 3/7/2012 and became the principal broker of Anthony Lopes Realty when it was first licensed on 2/25/1988. Sperry Van Ness/Investec Realty Services, LLC currently has 4 affiliates and 2 brokers. Anthony Lopes Realty currently has no affiliates and no brokers. The affiliated licensees of the firm live within 50 miles of the firm office location. According to the TREC records, Mr. Lopes has had no formal disciplinary action taken against him. Mr. Lopes has stated that Ms. McCammon will work on commercial listings in Chattanooga and throughout the U.S. in conjunction with other Sperry Van Ness licensees. Mr. Lopes believes that Ms. McCammon's 15 years of experience make her an excellent candidate for a waiver of the 50 mile rule. Sperry Van Ness/Investec Realty Services, LLC utilizes technology to teach, coach, mentor and supervise agents throughout the office locations. The firm has training online through a national portal. Additionally, the firm has on their national website, an instruction section which sets forth the items which are needed for listings, brochures and marketing materials. The firm has a centralized drop box from which Mr. Lopes can review documents submitted

by Ms. McCallon. The PB of each licensed firm is charged with the ongoing responsibility of teaching, mentoring and supervising any affiliated licensees in their firm. Mr. Lopes has stated that he is currently, and will remain, actively involved in the daily operations of the firm and will be actively involved in mentoring and training Ms. McCammon.

Commissioner DiChiara made a motion to approve 50 Mile Rule Request for Principle Broker Anthony Lopes for Michelle Anne McCammon to affiliate with Sperry Van Ness/Investec Realty Services; motion seconded by Commissioner McMullen; passes unanimously.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

Discusses Education Testing Scenarios

Commission made no changes to current procedures, different scenarios were discussed.

Proposed Calendar Dates for 2016

Commissioners discussed dates decided to keep the two out of town meetings in West and East TN on Thursday and Friday. Commissioners decided to wait till after lunch for final approval after dates are provided by staff for TAR and GNAR to make sure there are no conflicts on date selection.

Update on TREC's Educational 3 hr. Seminars

Executive Director Maxwell reported Tuesday June 16th, Columbia TN, Southern Middle Tennessee Association of Realtors, met from 9:00AM to 12:00PM and on Tuesday June 23rd, Clarksville TN, Clarksville Association of Realtors, met from 9:00AM to 12:00PM. The Educational 3hr. Seminars were a success; they had high attendance and many different types of questions from attendees

Executive Director Maxwell reported in August TREC will be giving the seminars in Memphis, TN. and in Jackson, TN. in July 2015 and TREC will go to East, TN. in August 2015. However, the dates and locations have not been determined.

A reminder was given that after 7-1-15, 1 hour continuing education credits can be offered. The best way to stay up today on new rules is to sign up for the free service of alerts through www.notify.gov.

E&O Update/Quarterly Claims Report

Ms. Maxwell stated on **1/13/2015**, a total of **2,822** licensees were suspended for failure to provide proof of E&O coverage. Of that total, **25 were already in suspension** for another matter, **312 were in a Broker Release** status (broker released at time E&O renewals were due), **7 were in a problem status** and **2,474 were in an active status**. Pursuant to TCA 62-13-112, letters were sent to the licensee at their last known business address and home address as registered with the Commission and to the licensee's principal broker at the principal broker's address as registered with the Commission.

As of **6/30/2015**, there were **448 licensees who remain suspended for E&O**. **246 are Affiliate Brokers, 27 are Brokers, 46 are Principle Brokers, and 129 are Timeshare Representatives** that are in a suspended status. The table below shows the breakdown of those remaining in suspension. Licensees who show proof of E&O coverage within 30 days of suspension shall be reinstated without the payment of any fee. Starting with 31st day of suspension, the licensee must pay a penalty fee and show proof of E&O in order to be reinstated.

Rule 1260-01-16

Lapsed Errors and Omissions Insurance (Effective 5/8/2014)

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days: (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.

2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;

3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$1 00.00) per month, or portion thereof, for months six (6) through twelve (12).
(b) Conditions for

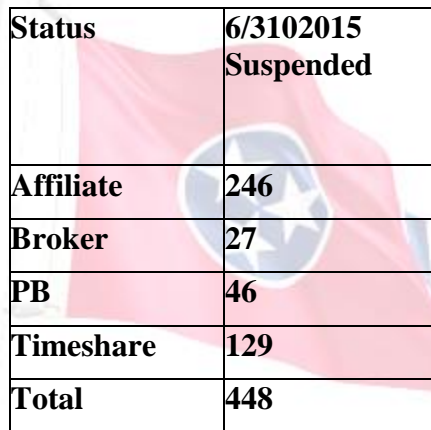
Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such

June 30, 2015

E&O Suspended/Insured Breakdown by Licensee Status

(6/30/2015)



Status	6/3102015 Suspended
Affiliate	246
Broker	27
PB	46
Timeshare	129
Total	448

Fingerprints Updates

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 1,785 individuals fingerprinted, 334 had an indication, 1,416 had no indication, and 35 were retaken. In the month of June 2015 there were 73 indications, 290 no indication, 8 pending, 0 no reads
Total 371

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of June 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of June 30, 2015, there were 25,547 active licensees, 1,118 inactive licensees, retired licensees 6,500, broker

release 379, and 504 suspended. There were 577 exams administered in month of June 2015. The total of exams taken year to date is 2,485. There were 378 approved applications in June 2015. Year to date total of approved applications 1,702. TREC total number of individual licensees in active, inactive, retired, suspended, and broker release is 34,048. There were 3,715 active firms and 150 retired firms. Grand total of firms and retired firms 3,865.

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review.

Monies Collected 6/1/15 – 6/30/15

Consent Orders Fees \$19,670.00; Reinstatement Fees \$30,920.00, E&O Penalty \$3,100.00 for a Total of \$53,690.00.

Introduction of Assistant General Counsel Mallorie Kerby

Assistant General Counsel Julie Cropp introduced TREC new Assistant General Counsel Mallorie Kerby.

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: JULY LEGAL REPORT

DATE: July 1, 2015

***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. **2014007601**
Opened: 5/9/14
First License Obtained: 7/17/89
License Expiration: 7/2/15
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

2. **2014007602**
Opened: 5/9/14
First License Obtained: 5/3/89
License Expiration: 8/30/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

August 2014 Meeting:

Complainants purchased a property and state that Respondent 1 (affiliate broker) fraudulently concealed known adverse material facts and building code violations. Respondent 2 is Respondent 1's principal broker. Complainants state that Respondent 1 was listed as owner, selling agent, and builder on the sales contract. Complainants state that the primary septic tank system failed within six (6) months of purchasing the new home, and investigations revealed violations of state and building codes that deemed the property uninhabitable with no use of water facilities and required purchase of another home. Copies of expert statements and testimony, third-party witness statements, and pictures were attached with the complaint.

Respondent 1 states that Respondent 1 does not contest that the septic system failed but states that it was completed properly and passed inspection. Respondent 1 states that the house is not a total loss, that the problem can be fixed, and that an expert's deposition corroborates same. Respondent 1 states that Respondent 1 has offered to make repairs according to the contract, but Respondent 1 has received numerous letters from Complainants and their attorneys instructing Respondent 1 not to attempt anything. Respondent attached documentation, including the Purchase and Sale Agreement, where Respondent 1 signed as owner/agent, and special stipulations include that seller is to provide a one (1) year written builder warranty.

Respondent 2 responded through an attorney stating that the complaint stems from a lawsuit filed in civil court. Respondent 2 states that Complainants retained another licensee with Respondent 2's firm to help them find a home, and Complainants decided to purchase a new construction property owned by Respondent 1. Respondent 2 states that, shortly after Complainants moved in, there were problems with the septic tank but that expert testimony verifies that the problem should be fixable. Respondent 2 states that, after the expert deposition, parties agreed that Respondent 1 could make repairs, but Complainants changed their minds, hired a new attorney, and Respondent 1 was advised not to make repairs. Respondent 2 states that there is a builder warranty, that Respondent 2 and firm did not build the house or create the problem, and no allegations of misrepresentation have been made against Respondent 2 or the firm. Respondent 2 states that Respondent 2 had no knowledge of septic system problems prior to Complainants purchasing the home, and there were no defects/problems known that could have been disclosed.

Complainants state additionally that Respondent 1 did not disclose adverse material facts, and Complainants contend that a deposition from an expert reveals that Respondent 1 chose to ignore

state regulations. Complainants state that they requested Respondent 1 to fix the problems in February 2013 and April 2013. Respondent 1 states additionally that Respondent 1 did nothing wrong, that it is not possible to know if a septic tank is working properly without someone living in the home, and that the septic tank was installed correctly to state specifications. Respondent 1 states that it is unclear if the problems arose from defects in installation or misuse by Complainants because Complainants refuse to allow Respondent 1 to inspect the tank.

Office of legal counsel confirmed that litigation in this matter is ongoing and Respondent 1 and Respondent 2's firm are parties to the lawsuit regarding the subject property. It is likely that further information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination regarding this matter.

Recommendation: For each Respondent, Consent Order for litigation monitoring.

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

Respondent 1 and Complainants mediated the civil case and reached a settlement agreement. Complainants received two hundred ten thousand dollars (\$210,000), and Respondent 1 was awarded the subject property. Respondent 2 (principal broker) signed a mutual release on behalf of the firm, and a Final Order was entered based on a mutual agreement of the parties. Additional information was also submitted from Complainants stating that they have reached agreements with both Respondents and wish to withdraw the complaints. The information in the file does not evidence a violation on the part of either Respondent.

New Recommendation: Dismiss both Respondents.

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

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

3. **2014020001**
Opened: 8/18/14
First License Obtained: 3/14/85
License Expiration: 9/4/15
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

February 2015 Meeting:

Respondent was arrested and detained for violation of the Tennessee Peeping Tom statute and destruction of property. Respondent attended a hearing of summary suspension with the Tennessee Auctioneer Commission, and an informal conference was held. The companion complaints with the Tennessee Auctioneer Commission and Tennessee Motor Vehicle Commission are currently in litigation monitoring pending the outcome of criminal proceedings.

Recommendation: Litigation Monitoring.

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

Respondent entered an *Alford* plea (or a best interest plea, which did not make any admission that Respondent had committed the actual conduct that was alleged) for two (2) counts of unlawful photographing in violation of privacy (both misdemeanors). The matter is, therefore, concluded in criminal court.

New Recommendation: Consent Order for \$1,000 for violation of 62-13-312(b)(20) (improper, fraudulent or dishonest dealing), 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: The Commission voted to authorize a Consent Order for a civil penalty in the amount of \$2,000 and revocation of Respondent's license for violations of T.C.A. § 62-13-312(b)(14), (20) (improper, fraudulent or dishonest dealing) and T.C.A. § 62-12-303(a)(1).

Commissioner Blume made a motion for a Consent Order for \$2,000 for violation of 62-13-312(b)(20) (improper, fraudulent or dishonest dealing); motion seconded by Commissioner Franks; motion passes unanimously. Commissioner McMullen made a substitute motion of the revocation of Respondent's license for violations of T.C.A. § 62-13-312(b)(14), (20) (improper, fraudulent or dishonest dealing) and T.C.A. § 62-12-303(a)(1); motion seconded by Commissioner Blume; motion passes 5 Yes, 0 No, and Commissioner DiChiara recues.

- 4. 2015002711**
Opened: 2/13/15
First License Obtained: 7/6/01
License Expiration: 12/7/15
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the buyer, and Respondent (affiliate broker) represented seller. Complainant states that Complainant's agent made it clear to Respondent that Complainant wanted the property because the land gave the ability to build four (4) other homes on the property for children. Complainant alleges that Respondent advised Complainant's agent's assistant that there were four (4) sites on the property already perked and ready for construction. Complainant states that, during the showing, the seller took Complainant to see the whole property and pointed out land that could be used to build more houses. Complainant states that the seller also pointed out where the water meter was clearly marked by a yellow brick. Complainant further states that the seller told Complainant that the barn water was not working because seller just had not turned it on. Complainant further states that later, while the inspections were being completed, seller pointed out the location of a septic tank and where the water line ran. Complainant also states that the seller said that the water to the barn could be turned on by the water company. Complainant further states that Respondent stated at closing that the gate had been repaired. Complainant states that it had not. Complainant states that, since purchasing the property, it was discovered that there is no way to build additional homes due to lack of road frontage, no septic at the barn site, no water line to the barn, the water line crosses three other properties with no written easement, and the actual water meter is over 1½ miles away. Complainant alleges that Respondent and seller misrepresented the property and participated in fraudulent dealings.

Respondent states that Respondent would never knowingly mislead anyone regarding a property. Respondent states that, upon showing, Respondent notified Complainant's agent that the gate was not working properly because it was struck by lightning, and Respondent was told by seller that seller was waiting on repairs. Respondent states that, when asked at closing if it was fixed, Respondent referred the answer to the seller. Respondent states that these are the only two instances that Respondent recalls hearing about the gate. Respondent denies being contacted by Complainant requesting that the gate be fixed. Respondent states that Complainant and seller participated in the home inspection, builder inspection, land excavator inspection, and central unit inspection together, and Respondent was not privy to all the questions and conversations between them. Respondent was confident that seller knew the home well and states that seller built it and lived there with family. Respondent states that Complainant found \$18,000 worth of repairs, and the parties agreed to exchange the repairs for a number of items to be conveyed to the buyers. Respondent states that Respondent followed-up with Complainant's agent after closing and asked if Complainant was happy and was told that they were. Respondent states that Respondent did not hear anything further. Respondent states that nothing about four (4) septic or home sites was ever asked, written down, or verified, and Respondent never heard anyone ask about the septic tank at the barn, water line, meter, etc. Respondent recalls being asked the question whether or not other homes could be built on the property, and Respondent replied that it depends on the county, and Respondent did not know. Respondent further states that Respondent stayed at the barn when Complainant rode the property with the seller. Respondent denies having knowledge of any of the alleged problems with the home and denies misrepresentation and fraud. Respondent attached the transaction file, which included all appropriate disclaimers and disclosures.

Recommendation: Dismiss.

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

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

- 5. 2015002721**
Opened: 2/26/15
First License Obtained: 2/14/90
License Expiration: 10/17/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2015005481 – Under review by legal

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 201500271 above (hereinafter "affiliate broker").

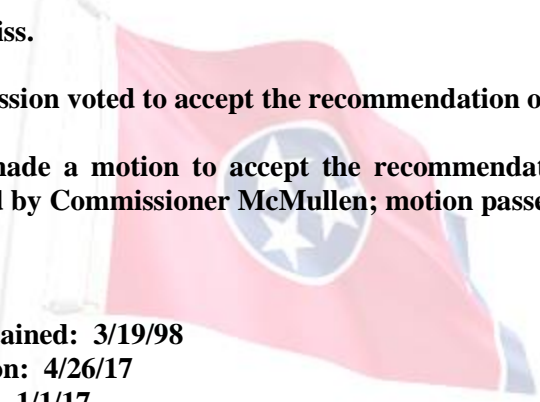
Respondent states that Respondent was aware of the listing, offer to purchase, and closing of the property. Respondent reviewed the complaint and states that the alleged statements regarding the four (4) building sites was conveyed to Complainant by the buyer's agent's assistant, and there was nothing in the listing information referencing such sites. Respondent states that septic permit information provided that the property is permitted for four (4) bedrooms. Respondent further states that the information given to Complainant during the tour of the property was provided by the seller, not the affiliate broker. Respondent states that the affiliate broker had no reason to believe that any statements made by the seller in the affiliate broker's presence were false or an

attempt to defraud. Respondent states that the affiliate broker was not present at the inspections. Respondent further states that seller answered Complainant's question regarding gate repair at closing. Respondent states that Complainant's agent should have verified the repair prior to closing if it was important to Complainant. Respondent states that the affiliate broker states that no information was given regarding a separate water meter for the barn, nor was this information indicated on the listing information. Respondent further states that it appears from Complainant's statements that Complainant met with the seller on occasion without the affiliate broker being present. Respondent states that Respondent cannot comment or defend an agent's actions regarding information which was obtained from someone other than the affiliate broker. Respondent states that a copy of the septic application, permit for installation and completion certificate were sent to Complainant's agent prior to closing. Respondent states that the availability of additional building permits and/or perk sites should have been addressed prior to closing. Respondent states that there is no evidence that the affiliate broker committed fraud or failed to provide accurate information. Respondent states that the affiliate broker cannot be held responsible for information allegedly given directly to Complainant by seller in the affiliate broker's absence. Respondent states that the Complainant and Complainant's agent should bear the responsibility of addressing specific concerns and determining the availability and/or compliance with state/local requirements as a part of the buyer's due diligence prior to acceptance of the property at closing. Respondent states that none of the allegations made by the Complainant were addressed in the Purchase Agreement or specified as contingencies.

Recommendation: Dismiss.

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

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

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6. **2015002921**
 - Opened: 2/13/15**
 - First License Obtained: 3/19/98**
 - License Expiration: 4/26/17**
 - E&O Expiration: 1/1/17**
 - Type of License: Principal Broker**
 - History: 200705224 - \$175 Agreed Citation**

Complainant was the potential buyer of a home with Respondent representing the bank/seller. Complainant submitted an offer on December 10, 2014, and the binding agreement date was January 2, 2015, with a fifteen (15) day inspection period. Complainant states that the home was winterized with all water and pipes drained, and the bank refused to have the home de-winterized for the inspection. Complainant states that the inspector requested a notice in writing stating that the inspector would not be held liable should something happen to the home. Complainant further states that on January 13, when the electricity was cut on, Complainant was advised that the electricity had been turned off for five (5) years, and, as a result, an electrician was required to inspect the property for a safety and codes inspection. Complainant alleges that at the showing, Respondent advised that the home had only been vacant a short amount of time. Complainant states that on January 14, Complainant sent a proposed amendment to extend the inspection period and closing date and alleges that the bank's response was received on January 23 stating they would not agree to the extension. Complainant states that a notice was received on January 23 that the electrical inspections were complete and approved. Complainant states that the contract states it is bank's responsibility to turn on all utilities at the time of inspection and

Complainant requested a letter from seller releasing Complainant and Complainant's agents from liability, but Complainant states that the bank declined to provide this letter. Complainant states that Complainant attempted to have a home inspection on January 27, 2015, and states that the water was not on, and it was discovered that the home has gas heat and water, which was not disclosed. Complainant alleges gross negligence and misrepresentation of Respondent. Complainant alleges that Respondent intentionally held up the process so Complainant would not be able to purchase the property and that Respondent was showing the home to other potential cash buyers while under contract.

Respondent (principal broker) states that Respondent did everything to help the buyer's agent through the deal. Respondent states that the bank (seller) would not write a letter stating they would be responsible for the water pipes. Respondent states that Complainant signed addendums stating the property was being sold "as is." Respondent further states that the bank signed an exemption stating they never occupied the property and, therefore its information concerning the property is limited. Respondent further states that Respondent paid out of pocket to have the light meter repaired so the Complainant would be able to turn on electricity for the inspection. Respondent further states that because this was a foreclosure, the county codes department was required to inspect the property, which delayed things. Respondent further states that the home inspector was skeptical about doing an inspection on a foreclosed property that had been winterized. Respondent also states that the bank signed two (2) closing extensions, and Respondent and the bank did all they could to get the property to close for Complainant. Respondent further states that the property was not shown after Complainant entered into a contract, and all back up offers came in prior to the binding contract.

Documentation provided showed that Respondent did have the electricity turned on so that Complainant could conduct an inspection. Documentation also showed that Complainant entered into an "as-is" contract and that no other offers on the property were accepted while the property was under contract with the Complainant.

Recommendation: Dismiss.

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

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

7. 2015003001

Opened: 3/2/15

First License Obtained: 4/4/94

License Expiration: 7/4/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2011011941 - \$1,000 Consent Order

2011020211 - \$500 Consent Order

2014001051 – Formal Charges Authorized

A complaint was filed alleging that Complainant wired \$25,000 earnest money to Respondent's escrow account on or about December 1, 2014 in accordance with a Commercial Purchase and Sale Agreement. Complainant states that Respondent notified Complainant on or about January 9, 2015 stating that the seller did not approve the contract. Complainant has contacted Respondent several times and has not refunded Complainant's earnest money. Complainant

attached email correspondence with Respondent. It appears that the first written request for earnest money refund was on Tuesday, January 13, 2015. Respondent replies that he is out of town and will send the money that Friday when he is back in town. A second request is documented on January 21 to which Respondent replies and states there was a family emergency and Respondent would refund the money soon. A third request was made on January 29th via email and certified mail with no response. As of June 18th, Complainant's money was still not returned, however, complainant has retained counsel and negotiated with Respondent to pay \$10,000 back by June 30 and the remaining \$15,000 plus costs, etc. by July 31. Complainant states that Respondent has never given a reason why the money has not been returned. Respondent did not respond to the complaint.

Recommendation: Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b) (5) (failing to account for money coming into the licensee's possession that belongs to others), (14), (20) (improper, fraudulent, or dishonest dealing), 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission), and Rule 1260-02-.09 (Deposits and Earnest Money).

DECISION: The Commission voted to authorize a Consent Order for a civil penalty in the amount of \$4,000 and revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b) (5) (failing to account for money coming into the licensee's possession that belongs to others), (14), (20) (improper, fraudulent, or dishonest dealing), 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission), and Rule 1260-02-.09 (Deposits and Earnest Money).

Commissioner Franks made a motion for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b) (5) (failing to account for money coming into the licensee's possession that belongs to others), (14), (20) (improper, fraudulent, or dishonest dealing), 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission), and Rule 1260-02-.09 (Deposits and Earnest Money); motion seconded by Commissioner DiChiara; Commissioner Blume made an amendment motion of a Consent Order for a civil penalty in the amount of \$4,000 and revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b) (5) (failing to account for money coming into the licensee's possession that belongs to others), (14), (20) (improper, fraudulent, or dishonest dealing), 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission), and Rule 1260-02-.09 (Deposits and Earnest Money); motion seconded by Commissioner Franks; motion passes unanimously.

8. 2015005141
Opened: 5/28/15
First License Obtained: 9/23/89
License Expiration: 11/14/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action
9. 2015005142
Opened: 5/28/15
First License Obtained: 1/30/04
License Expiration: 1/7/16
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant hired Respondents' firm for property management and alleges that Complainant was not refunded the balance of the rental income when service was discontinued. Complainant alleges that Respondents' firm did not conduct background checks on the tenant as required by the agreement. Complainant states that Respondents' firm leased Complainant's property to a tenant who had previously been evicted and filed for bankruptcy. Complainant states that Respondent 1 (principal broker/owner) verbally agreed to pay the legal fees incurred for eviction of the tenant. Complainant states that the tenant was evicted December 18, 2014, and Complainant should have received some of the \$750.00 security deposit back. Complainant received a final statement in January stating that Complainant owed \$267.50, in which they deducted \$334.50 legal fees and a management fee of \$75.00.

Respondents filed a joint response stating that their office did agree to cover the legal fees and states that the tenant committed fraud and utilized a deceased person's information and identification to lease the house. Respondents states that notes were made on Complainant's account to reimburse the legal and management fees, but Respondents state there was an accounting oversight. Respondents state they were made aware of the error on February 20, 2015 and took immediate action. Respondents state that Complainant was credited the legal fees and the management fees and reimbursed through a direct payment to Complainant's account. Respondents state they last communicated with Complainant on February 25, and Complainant was satisfied. Respondents also attached a closed BBB complaint, in which the Complainant indicated satisfaction. Respondents submitted the transaction file which included owner statements that show reimbursement of the referenced fees that were originally charged on January 13, 2015 and reimbursed on February 20, 2015.

While it may be true that the tenant committed fraud and used someone else's information and identification to lease the house, one of Respondents' staff members (via an email sent to Complainant) states that the tenant should have never been approved, even based on the information provided to Respondents. Respondents' staff member states that Respondent 2 went forward with the lease even though the tenant's record showed a prior eviction which is against the company policy (no exceptions) and insufficient income along with outstanding collections and multiple bankruptcies. At the time of the approval, this was the information Respondents believed to be true regarding this tenant. Yet, Respondents still leased the property.

Recommendation: For each Respondent: Consent Order for \$500 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-403(1) (failure to exercise reasonable skill and care), and 62-13-404(2) (failure to be loyal to interests of the client) 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: The Commission voted to authorize for each Respondent, a Consent Order for \$1,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-403(1) (failure to exercise reasonable skill and care), and 62-13-404(2) (failure to be loyal to interests of the client) 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.

Commissioner DiChiara made a motion for each Respondent, a Consent Order for \$500 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-403(1) (failure to exercise reasonable skill and care), and 62-13-404(2) (failure to be loyal to interests of the client) 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 Franks; motion passes unanimously. Commissioner Blume made an amendment to motion for each Respondent, a Consent Order for \$1,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-403(1) (failure to exercise reasonable skill and care), and 62-13-404(2) (failure to be loyal to interests of the client) 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 McMullen motion passes unanimously.

10. 2015005151

Opened: 5/14/15

First License Obtained: 9/20/01

License Expiration: 3/13/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants were the potential buyers of a property that was listed by Respondent's (principal broker's) firm. Complainants allege that they were not treated fairly. Complainants state that they submitted an offer to the bank (seller) and received a counter-offer. Complainants state that they responded with a counter-offer then were told that the bank accepted another offer and would not accept their counter-offer. Complainants state that their agent was told that the property came back on the market several days later because the first offer fell through. Complainants state that they submitted a second, higher offer but were informed that the first buyers decided to proceed with closing. Complainants allege that they were misled, and they feel that their first counter-offer and second offer should have been returned with a written rejection from the bank. Complainants state that their agent requested a written rejection on the bank's letterhead from Respondent's firm but received an email instead. Complainants allege that the bank never received the second offer since neither a written rejection nor counter offer was returned.

Respondent submitted a response stating that Complainants' conventional offer was received on 1/23/15 for \$100,000 and the seller countered at \$170,000, which was the full listing price. Respondent states that a second offer (which was a higher offer and cash) was received on 1/22/15 from an agent not affiliated with the firm and from buyers that are unknown by anyone at Respondent's firm. Respondent states that, after the counter offer, seller rejected Complainants' offer and negotiated with the other buyer. Respondent states that the affiliate/listing agent agreed to notify Complainants' agent if the other buyer fell through. Respondent states that, during the inspection, there was a plumbing issue, the basement flooded, and the buyers opted to cancel their purchase agreement. Complainants' agent checked back and was told that it looked like the contract with the other buyer was falling through. Respondent states that Complainants' agent emailed the second offer on 2/7/15 and was informed that the offer could not be submitted in the system until the current accepted offer cancelled but could be held for backup until it opens in the system for submissions. Respondent further states that Complainants' agent was also informed about the plumbing issues. Respondent further states that, on 2/9/15, the buyer with the accepted offer withdrew their cancellation, which had not yet been executed by the bank. Respondent states that the asset manager for the bank was notified that the Complainants submitted a second offer which could be considered, but the bank was concerned that it was a conventional offer,

which required utility activation for appraisal and they anticipated would not go to closing because of the high cost of the plumbing repairs. The original buyers were now accepting the house "as is." Respondent states that Complainants' agent was notified on 2/10/15 that the buyer withdrew the cancellation, and they are moving forward with the contract. Respondent states that a formal demand was requested, but the bank would not reply, stating that the original rejection of the original offer should suffice because it was the only offer formally reviewed. Respondent states that Complainants' agent encouraged Complainants to file this complaint. Respondent denies all allegations, stating that the firm assisted in obtaining a back-up offer for the bank, and all documentation was submitted to the bank for consideration. Respondent states the firm had no reason to believe that the buyers would rescind their cancellation and that Respondent and Respondent's firm had no personal or professional relationship with the buyer's agent as alleged.

Recommendation: Dismiss.

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

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

11. 2015005201

Opened: 6/5/15

First License Obtained: 2/10/93

License Expiration: 4/1/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

12. 2015005202

Opened: 6/5/15

First License Obtained: 12/14/12

License Expiration: 12/13/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant entered into exclusive representation agreement with Respondent 2 (affiliate broker; Respondent 1 is principal broker) and placed an offer on a condo. Complainant alleges that Respondent 2 told Complainant that the property was approved for FHA financing, but the bank later told Complainant otherwise. Complainant states that the sellers accepted the offer, but Complainant requested that Respondent 2 re-do the paperwork to show the new terms with a conventional loan. Complainant alleges that Respondent 2 refused to write a new purchase agreement and stated that Respondent 2 would just mark through the changed terms. Complainant further states that the sellers did not accept the offer within the time allotted and, therefore, the contract should be void. Complainant states that the bank sent the denial letter and the contract was voided. Complainant states that Respondent 1 initially agreed to return the earnest money and cancel the exclusive representation agreement until Respondent 1 found out that Complainant put an offer in on another condo. Then, Complainant states that Respondent 1 stated that Respondent 1 was not going to refund the money without the seller's signature.

Respondent 2 states that Complainant initially wanted to do a lease purchase, and Respondent 2 called 40-50 properties for sale asking if they would consider a lease purchase. Respondent 2 states that Complainant was showed numerous properties and decided to make an offer on one of two condos that were in the same complex. Respondent states that Respondent advised Complainant that Respondent was not sure if the complex was FHA approved but that at least two of the properties in the complex had FHA loans. Respondent 2 states that Respondent 2 prepared the offer January 9, and the offer was placed on January 10 after Complainant viewed the property again. Respondent 2 further states that sellers were out of town but signed the offer January 12 and emailed to contract on January 13. Respondent 2 attached correspondence with Complainant between January 8 and January 14. Respondent 2 states that Complainant asked Respondent 2 to send the paperwork to her lender on January 14th, after the sellers had signed. Respondent 2 states that, while Respondent 2 was working with the lender, Complainant attempted to cancel the buyer's agency agreement and also placed an offer on the other condo in that complex with the listing agent of that unit. Respondent 2 regrets that this happened and states that another agent sold a property that Respondent 2 had showed to Complainant, who was still under a buyer's agency agreement. Respondent 2 states that the sellers were also disappointed that the deal fell through.

Respondent 1 submitted a response stating that Respondent 1 received a call from Complainant's mother on January 14 stating that Complainant wanted to cancel the contract. Respondent 1 states that Respondent 1 asked several questions regarding the contract and stated that Respondent 1 would need a copy of the lender denial letter. Respondent 1 states that Respondent 1 received a call from another broker asking about Complainant's earnest money that Complainant wanted to use for the offer Complainant put in with the other agent's firm. Respondent 1 told the agent that Respondent 1 could not release it until a mutual release was signed under the circumstances, and Respondent 1 had asked Complainant for a denial letter, which Respondent 1 would send (when it was received) along with a request for a mutual release to the agent on the other side of the transaction. Respondent 1 states that Respondent 2 did nothing wrong other than not changing the response date on the original contract. Respondent 1 states that Respondent 2 was asked to prepare the contract ahead of time, but the signing was delayed because Complainant wanted to show the unit to a family member. Respondent 1 states that it was a binding contract.

It appears that Complainant signed the offer on January 10 at 4:19 p.m., but the time limit of offer states that it terminates by 5:00 p.m. on January 10 if not accepted. The sellers accepted and signed electronically on January 12 at 3:00 p.m. Text messages between Complainant and Respondent 2 on January 12 show Complainant requesting that Respondent 2 send Complainant a copy of the signed contract to forward to the lender. Text messages from January 13 indicate that Complainant knew at that point that the property was not FHA approved but wanted to proceed with sending the paperwork to the lender in an attempt to get a conventional loan. An email from Complainant to Respondent 2 on January 14 states that Complainant no longer wants to continue the purchase process because Complainant was denied the FHA loan and requested return of the earnest money. The exclusive buyers' representation agreement was accepted on January 10 with a termination date of January 2016. Respondents also provided a statement of credit denial, termination, or change which stated the denial of the loan was made for inadequate collateral, unacceptable property. Office of legal counsel followed-up with Respondent 1, who provided a copy of the earnest money and mutual release, which was executed by Complainant on January 20 and sellers on February 6. Earnest money was returned to Complainant on February 9, 2015.

Recommendation: Dismiss as to both Respondents.

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

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

13. 2015005211

Opened: 5/14/15

History: No Prior Disciplinary Action - Unlicensed

An anonymous complaint was filed, which included a post card advertisement for a vacation lodging service which currently has an expired license. It states, "Are you overpaying your management company?" The back of the flyer states among other things, "Written guarantees for rental revenue! Owners are NEVER charged: start-up fees, credit card fees, hot tub fees, linen fees, marketing fees, garbage removal fees." The post card further states, "Up to 6 months commission-free management! *Some stipulations may apply, including contract length." It appears that the vacation lodging firm was previously licensed on August 6, 2008 but expired on August 5, 2010. There was an application for the vacation lodging firm with Respondent (unlicensed individual) as designated agent, but Respondent never took the eight (8) hour course and never received a license so the issue is unlicensed activity as a vacation lodging service.

A response was submitted which was signed by Respondent and the individual who is principal broker of a real estate firm by the same name as the expired vacation lodging service (the firm license is also expired). The response states that Respondent is the Chief Marketing Officer, and the "we operate under the brokerage license of [name of broker who signed response]." Respondent states that Respondent does not participate in any activities related to the selling of real estate, and Respondent's duties "...revolve around marketing for the property management company..." and aiding the principal broker in the acquisition of new cabin owners. Respondent states that Respondent has not directly participated in any unlawful activity as it relates to TREC.

There does not appear to be evidence of unlicensed vacation lodging service activity by this Respondent based on the information in the file. In fact, it appears that the principal broker signing the response admits that he is responsible for the vacation lodging activities of the expired vacation lodging service. However, the principal broker appears to be under the mistaken impression that a licensed firm can conduct vacation lodging service activities when, in reality, a separate license is required. It is recommended that the complaint be dismissed against this Respondent and a complaint opened against the principal broker who assisted with the response for operating a vacation lodging service without the proper licensure.

Recommendation: Dismiss as to this Respondent. Open a complaint against the licensed principal broker referenced in the response for unlicensed activity (vacation lodging service).

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss as to this Respondent. Open a complaint against the licensed principal broker referenced in the response for unlicensed activity (vacation lodging service); motion seconded by Commissioner Franks; motion passes 5 Yes, 0 No, and Chairman Griess recues.

14. 2015005221

Opened: 6/15/15

First License Obtained: 11/18/13

License Expiration: 11/17/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: 2014020011 – Consent Order for License Revocation

**Note: Respondent's license was revoked by Consent Order executed on 3/13/15.*

Complainant states that Respondent (affiliate broker) is a convicted felon and should not have a license. A previous complaint was already opened against Respondent by TREC based on the same issue. A Consent Order for revocation of Respondent's license was authorized by the Commission in February 2015, and, on March 13, 2015, Respondent signed the Consent Order, revoking Respondent's license.

Recommendation: Close due to duplicate complaint which already resulted in license revocation.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel to close due to duplicate complaint which already resulted in license revocation; motion seconded by Commissioner Hills; motion passes unanimously.

15. 2015005231

Opened: 3/30/15

First License Obtained: 1/24/03

License Expiration: 1/29/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

16. 2015005232

Opened: 3/30/15

First License Obtained: 2/3/09

License Expiration: 2/2/17

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complaint opened by TREC based on Respondents' advertising. Respondents (both affiliate brokers) have a website which includes a statement that says "Your Home Sold Guaranteed" "Or We'll Buy It!" There is a link that can be clicked to "Learn More" which leads to a page which states that Respondents will sell your house or they will buy it. Further, the page states, "To find out if this program is right for you, please provide us with the following information and we will be in touch with you shortly. *Restrictions Apply! Call us at [telephone number] for a full disclosure of program details."

Respondents submitted a response stating that they disclose the details of their program with all clients who sell their homes with Respondents. Respondents state that they discuss the program details, and a client has the option to opt in or opt out at the time of signing the listing agreement. Respondents provided a copy of their program disclosure and details regarding a listing recently purchased. Further, Respondents attached a proof of funds letter confirming that Respondents have the financial resources to purchase a listing, if necessary. Respondents state that this is a legitimate program and not an unsubstantiated claim or guaranty.

While Respondents may be correct in their assertion that the program is legitimate, it appears to legal counsel that this is an "...offer guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract..." which is "...made in writing..." but does not "...disclose all pertinent details on the face of such offer or advertisement" in violation of Rule 1260-02-.12(5)(b).

Recommendation: For each Respondent, a Consent Order with the terms of each Consent Order as follows – \$500 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(5)(b), 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: The Commission voted to authorize, for each Respondent, a Consent Order with the terms of each Consent Order as follows – \$3,000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(5)(b), 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, and submission of a certifying statement confirming the advertisement has been removed or come into compliance with the Rule by disclosing all pertinent details and terms on the face of the advertisement and that the website conforms to TREC’s Rules by the time of execution of the Consent Order.

Chairman Griess stated motion on floor to accept counsel recommendation with amendment by Commissioner Blume for each Respondent to be charged \$1000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(5)(b), 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; Commissioner McMullen made a substitute motion for each Respondent, a Consent Order with the terms of each Consent Order as follows – \$3,000 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(5)(b), 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, and submission of a certifying statement confirming the advertisement has been removed or come into compliance with the Rule by disclosing all pertinent details and terms on the face of the advertisement and that the website conforms to TREC’s Rules by the time of execution of the Consent Order; motion seconded by Commissioner Blume; motion passes unanimously.

17. 2015005241

Opened: 3/30/15

First License Obtained: 10/27/99

License Expiration: 11/20/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2015005781 – Under review by legal

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate brokers in complaints 2015005231 and 2015005232 above (hereinafter “affiliate brokers”).

Respondent submitted a response stating that Respondent was furnished with photos which did not have explanations. Without explanations, Respondent was unable to find the violations. Respondent states that Respondent has always made every effort to insure agents are in complete compliance with TREC’s rules and regulations and holds frequent training classes on advertising rules and regulations.

Recommendation: Consent Order for \$1,000 for violation of T.C.A. § 62-13-312(b)(15), 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: The Commission voted to authorize a Consent Order for \$12,000 for violations of T.C.A. 62-13-312(b)(14), (15) and Rule 1260-02-.12, 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.

Commissioner McMullen made a motion of a Consent Order for \$12,000 for violations of T.C.A. 62-13-312(b)(14), (15) and Rule 1260-02-.12, 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 Franks; motion passes unanimously.

18. 2015005261

Opened: 4/2/15

First License Obtained: 3/12/93

License Expiration: 11/16/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Complainant states that she was sold a house (manufactured home) that was in terrible condition when she moved in. Complainant states that the Respondent (broker; seller’s agent in the transaction) knew of the horrible conditions of the house and sold Complainant the house under false pretenses. Complainant states that Complainant was denied at her first attempt to get a loan because Respondent did not know where to locate the HUD plate on the home and did not know if the home was manufactured or not and, therefore, did not provide this information to the loan officer. Complainant states that her agent found another lender that would provide the loan and that Complainant’s agent got the name of this lender from the Respondent. Complainant states

that Respondent uses this lender often and that Respondent provided the HUD approval plate number to this lender even though Respondent did not know where to find it for the first lender. Complainant states that the structural engineering report is out of date and should not have been relied upon by the loan company to approve the loan. Complainant states that, about a month after she moved in, shingles were flying off of the house when a slight storm rolled in. Respondent told Complainant he knew of no existing problems with the roof. Respondent also told Complainant that he had done some minor repairs on the roof for the owner/seller. Complainant cannot see how Respondent would not know about the roof problems if he had done repairs on the roof. Complainant states that, about 6 months after she moved in, Complainant returned from a trip to find that the water heater had finished rotting out on the bottom. Complainant states that when a tech from the home warranty provider came to look at it, Complainant was told her house was not up to code and that a bunch of upgrades were needed in order to put in a new water heater. Complainant found another water leak in the laundry room and then a major pipe leak in the crawl space followed by another leak that complainant assumes is between the house and roadside. Complainant turned off the water and was without water for 2 months. Complainant states that the wood at the bottom of the French doors was rotted as well a gap at the top from the ground settling, the ceiling trim was coming down from the moisture due to the roof condition, and the formica was coming up on the countertops and island. Complainant holds that if the structural engineering inspection had been done up to date like it was supposed to, these things would have been discovered. Complainant states that the mortgage lender would not let her use her own appraiser and that the house was appraised at \$80,000 as opposed to the \$41,000 market value. Complainant states that the seller ripped the drapery rods out of the walls which left marble-sized holes and that the contract required the seller to leave anything affixed or anchored to the walls. Complainant states that the seller indicated by contract that she did not know of any existing problems, but Complainant believes it impossible that the seller did not know. Complainant's home then went into foreclosure by the lender.

Respondent states that he does not recall being asked by the first lender to provide the HUD plate number. Respondent states that if Complainant's agent had asked for the HUD plate, Respondent would have certainly provided it since he has known about the location of HUD plates for 5 years, when he began selling mobile homes. Respondent states that he certainly knew the home was manufactured and it was also listed as such on the MLS. Respondent states that Complainant's agents, being seasoned realtors, certainly knew it was a manufactured home as well. Respondent states that there were old structural engineering reports that they thought might work for the lender and save Complainant some money but the lender required a new report. Complainant had this inspection done just before closing as indicated by an email from the inspector to Complainant's agent including the report dated 5/9/15. Respondent states that he did handyman work during the recession to make ends meet and did replace some of the shingles that had blown off of the roof while the house was under contract with the Complainant. Respondent explained to Complainant's agent that the roof was nearing the end of its life but that Respondent thought it would last another year or so but that Respondent was not a professional roofer so could not say for sure. Respondent checked every shingle on the roof to make sure they were stuck down properly. Respondent points out that Complainant signed a disclaimer stating she was not relying on Respondent for the condition of the roof/house. Complainant never requested for the roof to be repaired or replaced and Complainant proceeded to close on the house, according to Respondent. Respondent states Respondent knew nothing about the hot water heater being rusted, the seller never said anything about it, and, even after the home inspection, Complainant never mentioned anything about it. Respondent knows nothing about the house not being up to code and does not see how this could possibly be the case given its good to great condition at the time of sale and the year that it was built (2000). Respondent states Respondent knew nothing of any of the other water leaks Complainant mentions and, again, there were no requested repairs after the

home inspection. Respondent states that neither Respondent nor the seller knew anything of the French doors rotting, the formica lifting from the countertops, or the severe settling of the house. Respondent states, again, that Complainant had a home inspection and structural engineer report done and never requested any repairs/replacement be done on any of these things. Respondent states that the issue with the drapery rods being removed is legitimate and that Respondent told the sellers that they could not take them, but the seller did not understand and took them anyway and did not return them to the house. Respondent states that seller took good care of the house, that it was in good condition when the property was transferred to Complainant and that, if any of the problems mentioned existed at the time of purchase, Respondent and seller knew nothing about them. Respondent states that, although he did tell Complainant's realtor that he thought the second lender could do the loan, to the best of his knowledge, this was the first time he had ever used this lender. Respondent stated that Complainant transaction was also the last time he used this lender because he was not pleased with their service and, therefore, there is no way Respondent and the mortgage company are "rubbing shoulders" as alleged.

Complainant signed the disclaimer notice, as well as the property condition disclosure form which includes the age of the house and roof. The only item listed on the repair/replace request after Complainant's inspection was a repair to the 220 electrical disconnect that is improperly mounted to the house, including repair of the damaged case. This repair was completed prior to closing. Complainant signed the final inspection form and closed on the house. Complainant has provided nothing to show that Respondent knew about any of the problems Complainant claims were pre-existing or even that these problems existed at the time of Complainant's purchase. Regardless, Complainant had inspections done on the property and none of the issues mentioned were brought up to the seller and Respondent before closing. Respondent has no control of impact on what goes on between Complainant and the lender and is not responsible for Complainant's house going into foreclosure.

Recommendation: Dismiss.

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

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

19. 2015005481

Opened: 6/4/15

First License Obtained: 12/14/90

License Expiration: 10/17/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2015002721 – Under review by legal

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2015005261 above (hereinafter "broker").

Respondent states that Respondent has worked with the broker for 4 years and known the broker for 20 and thinks the broker is an honest and sincere agent. Respondent states that the previous Complainant had reviewed the property disclosure from the seller and was aware of the age of the roof. Respondent states that the previous Complainant also had a home inspection which indicated that the roof needed repair but the previous Complainant did not include this on the

repair/replacement request. There was no mention of the plumbing or water heater as a result of the home inspection report. Respondent states that there is no way that the broker could have known these problems would occur 7 months later. Respondent states that it is possible the pipes froze while the previous Complainant was out of the state during the holidays. Respondent states that the inspection also did not reveal anything about the structure settlement or French doors leaking. Respondent also states that the broker has sold enough manufactured homes to know where to find the HUD plate and that this is certainly not the reason why the previous Complainant was denied the loan as Respondent and the broker were told it was because of the previous Complainant's lack of credit/credit score. Respondent states that the previous Complainant's agent was trying to find another lender and, since some of the other agents in Respondent's firm had used the second lender, they provided the name of the lender to the previous Complainant's agent. Respondent states that the broker had nothing to do with the previous Complainant being foreclosed upon and points out that the repair for the roof only cost the previous Complainant \$150 so it must not have been a major issue after all.

Recommendation: Dismiss.

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

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

20. 2015005651

Opened: 5/27/15

First License Obtained: 7/25/05

License Expiration: 4/6/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant states that Respondent (principal broker) executed a purchase agreement as seller and as broker for \$650,000. Complainant was the buyer in the transaction. Complainant alleges that the property (resort) was actually worth \$8,000,000. Complainant alleges that Respondent acted fraudulently to collect a down payment of \$25,000 and obtain a clear title to the property. Complainant alleges that Respondent and the title company delayed the closing by more than thirty (30) days to claim that the contract was invalid and that Complainant had to come up with \$1,300,000 to purchase the property.

Respondent answered through an attorney stating that the allegations are currently being addressed in civil litigation. Respondent states that a friend (the friend apparently had an operating agreement and relationship with a law firm) was purchasing the property from Respondent's firm and never from Respondent personally, and Respondent only represented the seller. Respondent states that Respondent's friend (buyer) was to own 75% of the property and a law firm would have a minority share of 25%. Respondent states that Complainant is a representative of the law firm. Respondent states that the law firm represented the buyer as an escrow agent, and the firm was to raise the capital for the purchase of the property. Respondent states that the firm was unable to raise the money for the purchase of the property and missed their first and second closing date. Respondent states that the buyer passed away and the law firm, specifically Complainant, are trying to assume ownership of the property. Respondent states that since the firm could not raise the capital, they never were partners with the buyer or minority owners of the property. As stated, this matter is currently the subject of active civil litigation. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

Recommendation: Consent Order for Litigation Monitoring.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel for a Consent Order for Litigation Monitoring; motion seconded by Commissioner Franks; motion passes unanimously.

21. 2015005671

Opened: 5/22/15

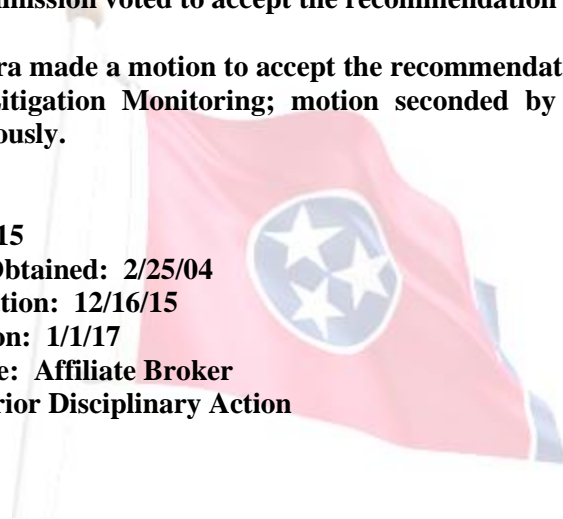
First License Obtained: 2/25/04

License Expiration: 12/16/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action



22. 2015005672

Opened: 5/22/15

First License Obtained: 3/30/83

License Expiration: 7/13/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint entered in to a contract with a real estate/auction company (Respondent 1 is an affiliate broker; Respondent 2 is the principal broker) to provide auction services for the sale of Complainants' residential property. Complainants state that Respondents changed the date of the auction without notifying Complainants, causing cancellation of an estate sale which Complainants had scheduled based upon the auction date told to them by Respondents. Complainants also state that the property was listed on the MLS without the Complainants' knowledge at a price under the reserve price. Complainants then terminated their agreement with Respondents and received a full refund of their deposit. Complainants state that, during a discussion of the reasons for terminating the agreement, Respondent 1 became verbally abusive towards one of the Complainants. Complainants also hold that Respondent 2 has possession of a DVD of pictures of the property which Respondent 2 will not return. Complainants state that Respondents displayed unethical and unprofessional behavior across this series of events.

Respondent 2 submitted a response on behalf of Respondents stating that the contract between Complainants and the firm provided that the auction date was "to be determined." Respondents state that they informed Complainants that the target date was in September but that it would depend on the timing of the other properties being committed. Respondents state that Respondents informed Complainants at the end of August that the auction date would need to be moved from the tentative September 11th date to September 25th because of some late entries to the auction. At this time, Respondents state that Complainants were displeased and became hostile. Respondents deny that Respondent 1 verbally abused one of the Complainants. Respondents state that Complainants never made them aware of any estate sale planned around the tentative auction dates. Respondents state that it is company policy not to force any customer to the letter of the auction contract who does not wish to continue to be a customer so Respondents terminated the contract and refunded the marketing fee in full. Respondents also state that the Auction Proposal with Complainants specifically says the property will be listed on the MLS and this is done to pursue all avenues of advertising. Respondents state that the property was listed at \$715,000 which was \$115,000 over the minimum (reserve) price and that the listing included a disclaimer that the price was not a listing price but that the price would be determined by the highest bidder at auction. Respondents also state that the MLS requires a listing to have a price. Respondents state that Respondent 2 has not seen the DVD of photos since the day of the meeting with Complainants and has no knowledge of its whereabouts. Respondents state that Respondents take their own photos due to copyright issues. Respondents state that Respondent 2 agreed to meet with Complainants to discuss the matter, but the meeting never occurred. Respondents provided a copy of the contract which shows the date of the auction as "to be determined" followed by a provision stating the date could also be whatever the firm deems to be in the best interest of the seller. The contract agreement states a reserve price of \$600,000. It also states that the firm is authorized to advertise and promote the sale of the property including placing information about the property in any advertising service or publication as well as a provision stating that the firm shall prepare and place advertisements for the property "...in brochures, newspapers, posters, and other such media as Auctioneer reasonably considers beneficial for the sale of the Property..." Respondents also provided a copy of the MLS listing,

which lists the price at \$715,000 with a disclaimer stating that the price is for information purposes only and that the house will be up for auction in September.

Recommendation: Dismiss.

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

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

23. 2015005681

Opened: 6/12/15

History: No Prior Disciplinary Action - Unlicensed

Complainants filed this complaint through an attorney against Respondent (unlicensed individual). Complainants state that Respondent is buying properties from one party and selling them to another for a substantial profit without a license. Complainants filed a civil lawsuit against Respondent alleging contract issues, misrepresentation, fraud, and other wrongdoing. It appears that one of the Complainants was the owner of record on a property, and Respondent entered into a Residential Lease with Option to Purchase with Respondent's LLC, and Respondent represented that he was a real estate agent who would sell the house and pay that Complainant a monthly fee until the house was sold. The other Complainants then entered into a Residential Lease Agreement and an Option to Purchase Agreement with Respondent, believing that Respondent was the owner of the property. Complainants provided leases and option contracts. Complainants state that it appears Respondent is buying and selling many properties, quite frequently.

Respondent did not submit a response. Office of legal counsel performed additional internet research and identified two (2) additional homes listed on Facebook that stated Respondent purchased as foreclosures from the bank and flipped. The property assessor shows that one of the homes was purchased in May, 2013 and sold for a substantially greater amount in January 2014. The second home was purchased in July 2012, quit claimed in February 2013, and sold for a substantially greater amount in April 2013.

Recommendation: 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.

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel for 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; motion seconded by Commissioner McMullen; motion passes unanimously.

24. 2015005691

Opened: 5/22/15

First License Obtained: 11/7/07

License Expiration: 11/6/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

25. 2015005692

Opened: 5/22/15

First License Obtained: 10/17/02

License Expiration: 6/17/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was filed by a broker stating that, in August 2014, Respondent 1 (affiliate broker) sent an offer to Complainant's exclusive client (seller) and filled out the documents as if Respondent 1 was the listing agent. Complainant states that, several months earlier, Complainant also found one of Complainant's listings on Trulia with Respondent 1 as the listing agent. Complainant states that, when confronted regarding the August 2014 listing, Respondent 1 stated it was a mistake and that Respondent 1 had not told the buyer that Respondent 1 was the listing agent but would assist the buyer's agent in presenting the offer to the seller. Complainant states that buyer's agent and client found the property listed on Trulia with Respondent 1's contact information, and the buyer's agent arranged the showing and received the lockbox code from Respondent 1. Complainant states that Respondent 2 (principal broker) assured Complainant that this was a mistake and that Respondent 1's Trulia account would be deleted. Complainant further states that, in January 2015, Complainant listed some properties for the same client (seller) as the August 2014 incident. Complainant googled the addresses and the search returned a Trulia page with the Respondent 1 listed as the agent for one of these properties. Complainant contacted Respondent 2 to inquire why this had happened again. Complainant further states that Complainant's client (seller) contacted Complainant again to inquire about another offer that was received for a third unlisted property that was written by the buyer's agent but listed Respondent 1 as the listing agent. Complainant states this property was not her listing but that the seller contacted Complainant to see what the rules were if Complainant could check and see if Respondent 1 was advertising the property on her Trulia page. Complainant called the buyer's agent who stated that Respondent 1 told buyer's agent that Respondent 1 was the listing agent. Respondent further states that buyer's agent stated that their firm and another firm had similar problems with Respondent 1. Complainant states that these are more than isolated incidents and Respondent 1 has repeatedly ignored the code of ethics. Complainant submitted additional information stating that in, June 2015, the client (seller) contacted Complainant to take over a listing on a fourth property stating that the listing with Respondent 1 expired on May 4, 2015. Complainant looked up the MLS on or about June 3, 2015 and discovered that Respondent 1 still had the property listed.

Complainant attached copies of a confirmation of agency status, exclusive right to sell listing agreement, and other transaction documents with Respondent 1's signature as the listing licensee for the first property. However, the seller did not countersign these documents. Office of legal counsel followed-up with Complainant and also received listing agreements with Complainant listed as the agent for the first two properties. As to the fourth property, Complainant submitted Trulia listings from May 28th and June 3rd showing Respondent 1 listed as the agent. Email correspondence between Complainant and seller states that the seller wanted Complainant to list property and that the prior listing agreement on this property expired May 5th.

Respondent 1 states that a large part of Respondent 1's listings come from the same client/seller referenced by Complainant. Respondent 1 states that there are several asset managers that work with the client (seller). Respondent 1 states that Respondent 1 spoke to the asset manager regarding the first property in the August 2014 incident who did not mention that there was another broker working on that property. Respondent 1 states that the client's website showed the house as active, but Respondent 1 could not find where it was listed by a broker. Respondent 1 states that Respondent 1 was contacted by a buyer's agent who wanted to show the property, and Respondent 1 gave the code to get in, stating that all the client's properties have the same code. Respondent 1 states that Respondent 1 told the buyer's agent that Respondent 1 was not the listing agent but that Respondent 1 could assist in presenting the offer to the seller. Respondent 1 emailed the asset manager to ask what to do but did not hear from the asset manager, so Respondent 1 emailed the contract to the client. Respondent 1 states that the asset manager confirmed receipt of the offer and stated that the property was listed with Complainant. Respondent 1 states that Respondent 1 tried to explain the confusion to Complainant but it was impossible. Regarding the second property, Respondent 1 states that Respondent 1 works with this asset manager on a regular basis and states that Respondent 1 would usually write up listing agreements and send them to the asset manager when the listings show up on the client's website. Respondent 1 states that this asset manager had agreed to use Respondent 1 as listing agent on all of the properties he manages. Respondent 1 states that a new asset manager was taking over, and it was not until later in the week that Respondent 1 realized the second property's listing agreement was not signed by the new asset manager (or any of them). Respondent 1 states that she did put a sign up in the on the property but took it down as soon as she found out from the seller that Complainant was the listing agent. Respondent 1 states that Respondent 1 immediately pulled the advertisement from Trulia. Respondent 1 apologized for the mistake. Regarding the third property, Respondent 1 further states that Respondent 1 worked with the asset manager on this sale. Respondent 1 states that all three asset managers have stated that Respondent 1 is in good standing with the client, and Respondent 1 continues to list and sell properties for the client. Respondent 1 apologizes for the mistakes. Respondent 1 states that Complainant is calling other brokers and making false statements to the client. Respondent 1 attached emails with the asset managers.

Respondent 2 states that all three properties involve mobile homes that were repossessed by the client. Respondent 2 states that Respondent 2 immediately reviewed the Trulia site and matched Respondent 1's MLS active listings with the ones on the site. Respondent 2 spoke with Respondent 1 regarding the seriousness of Complainant's allegations, and Respondent 1 assured that Respondent 1 was in compliance with TREC's rules and ethics guidelines. Respondent 2 did not find any violation on Trulia. Respondent 2 states that Complainant harassed Respondent 1 on the phone previously. Respondent 2 assured Complainant that Respondent 2 takes the accusations seriously and asked Complainant to contact Respondent 2 should this happen again. Respondent 2 states that Complainant later called to state that Respondent 1 had signs at one of the properties Complainant had listed. Respondent 2 checked Trulia again and confirmed that all properties matched Respondent 1's listings on the MLS. Regarding the second property, Respondent 2 states that the departing asset manager said Respondent 1 could list the property but the incoming asset manager assigned it to Complainant. Respondent 2 states that the sign was removed as soon as the error was discovered.

As to the first property, Respondent 1 listed Respondent 1 as the listing licensee on the Confirmation of Agency Status form which was not signed by seller. Respondent 1 did not produce a written bilateral agreement for this property between Respondent 1 and seller. In fact, the Exclusive Right to Sell Listing Agreement signed by Respondent 1 was not signed by the seller. While Respondent 1 holds out that Respondent 1 told the buyer and buyer's agent that Respondent 1 was not the listing agent, the confirmation of agency status indicates otherwise. In addition, Complainant states that the buyer told Complainant that the buyer contacted Respondent 1 regarding the property because buyer found Respondent 1 listed as the agent for this property on Trulia. Respondent 1 did not deny this but simply states that Respondent 1 looked the listing up online and did not see an agent listed.

Regarding the second property, Respondent 1 admits that she did not have a signed bilateral listing agreement for this specific property and that she did advertise it on her Trulia account and by placing a sign on the property but took it down immediately upon discovering the listing did not belong to Respondent 1. Respondent 1 states that she had an exclusive agreement with the asset manager to list all of the asset manager's properties, yet Respondent 1 did not produce any evidence of such agreement.

As to the third property, Respondent 1 states that Respondent 1 was working with the seller on the sale of this property. Respondent 1 did produce email correspondence between Respondent 1 and the seller in regards to the sale of this property. It seems to indicate that Respondent 1 came to the seller with potential buyer and, subsequently, a listing agreement was executed for these buyers only.

As to the fourth property, email correspondence between Complainant and seller indicates that Respondent 1's listing agreement expired on May 4, 2015 but was still listed as of June 3, 2015. The Trulia listing printed on June 3rd, 2015 also supports this. While the seller involved in all four properties might not be using best practices in some instances when it comes to transacting and communicating with the various agents it uses, it is the licensee's responsibility to ensure that the licensee is adhering to the TREC rules and regulations.

Recommendation: As to Respondent 1, Consent Order with a total civil penalty of \$600 - \$200 (\$100 each for properties 1 and 2) for listing another licensee's property without written permission from the owner in violation of Rule 1260-02-.12(2)(d) and T.C.A. § 62-13-312(b)(14), \$200 (\$100 each for properties 1 and 2) for assuming an agency relationship without a written bilateral agreement in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-401, \$100 (for property 2) for posting a sign without written authority from the owner in violation of Rule 1260-02-.12(2)(c) and T.C.A. § 62-13-312(b)(14) , and \$100 (for property 4) for not keeping listing information updated and accurate in violation of Rule 1260-02-.12(4)(c) and T.C.A. § 62-13-312(b)(14) plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$600 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel as to Respondent 1, Consent Order with a total civil penalty of \$600 - \$200 (\$100 each for properties 1 and 2) for listing another licensee's property without written permission from the owner in violation of Rule 1260-02-.12(2)(d) and T.C.A. § 62-13-312(b)(14), \$200 (\$100 each for properties 1 and 2) for assuming an agency relationship without a written bilateral agreement in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-401, \$100 (for property 2) for posting a sign without written authority from the owner in violation of Rule 1260-02-.12(2)(c) and T.C.A. § 62-13-312(b)(14) , and \$100 (for property 4) for not keeping listing information updated and accurate in violation of Rule 1260-02-.12(4)(c) and T.C.A. § 62-13-312(b)(14) plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$600 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order; motion seconded by Commissioner Hills ; motion passes; 5 yes and 1 pass by Commissioner Blume.

26. 2015005711

Opened: 5/20/15

First License Obtained: 5/19/14

License Expiration: 5/18/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant (potential buyer) alleges that Respondent (affiliate broker who was Complainant's representative) withheld the termite inspection report information from Complainant and is keeping the earnest money placed on the house after Complainant decided not to follow through with the purchase of the house. Complainant entered into a Purchase and Sale Agreement with sellers on 1/10/15 contingent upon inspection. Complainant states that the termite inspection and home inspection were both conducted, but only the results of the home inspection were disclosed to them by Respondent. Complainant thought that the termite treatment provision in the repair/replacement proposal was only for termite prevention since they had not seen any report that indicated there were termites or termite damage. Complainant states that they only found out about the termites in the crawl space and garage, damage to door trim, and limited visibility of the inspection upon receiving a pest treatment report on 1/27/15 after the treatment had been completed. Complainant states that, upon receiving this information, Complainant no longer wanted the house because of uncertainty of its structural soundness. Complainant holds that Respondent withheld this information to get Complainant to sign the repair/replacement agreement and is keeping the earnest money placed on the house.

Respondent states that, upon receiving the inspection reports, Respondent presented them to the Complainant and discussed the items with Complainant that were subsequently placed on the Repair/Replacement Proposal. Respondent states that the only structural damage noted in the termite report is "door frame," and this wood rot is also noted in the home inspection report. Respondent also states that the Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement was signed by sellers on 2/5/15, and Complainant signed the document and received the earnest money check the next day.

The Wood Destroying Insect Inspection Report dated 1/13/15 notes that visible damage was found in the front door frame. However, it also indicates that there were subterranean termites found and also that there was limited visibility in multiple parts of the house. There was a second Wood Destroying Insect Inspection Report dated 1/26/15 which indicates visible evidence of live wood destroying insects in the crawlspace and garage. Neither report is signed by the seller or the buyer acknowledging that the reports were received by the buyer. Further, it is correct that the home inspection report notes wood rot by the door frame and includes a photo, but there was no reference to wood destroying insects in that report. Complainant's assertion that the termite report was withheld combined with the fact that Complainant's signature was not found on the termite report in the designated area reserved for a signature acknowledging receipt of the report would indicate to legal counsel that Complainant was not given a copy of the report, and that appears to be a failure by Respondent to be loyal to the interests of the client.

Recommendation: Consent Order for \$500 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), 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: The Commission voted to authorize a Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), 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.

Commissioner Blume made a motion to authorize a Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), 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 McMullen; motion passes unanimously.

27. 2015005721

Opened: 6/3/15

First License Obtained: 12/28/87

License Expiration: 1/28/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015005711 above (hereinafter "affiliate broker").

Respondent states that the earnest money was disbursed to Complainant six (6) days after Complainant requested return of the earnest money after the proper form was executed by all parties and provided documentation to evidence same. Respondent pointed out an email from the home inspector to the affiliate broker and copying the buyers with the home inspection report attached. Respondent points out the termite inspection and termite treatment letter as well as the repair/replacement proposal which requests that a licensed pest contractor treat for termites and licensed contractor to review and note that there is no damage associated with termites. Respondent states that all information was relayed to Complainant, that Complainant signed off on all information, and that no information was withheld. Respondent states that the home inspection report notes wood rot but does not state that it is caused by termites. Respondent submits that Respondent is a full time broker who does not list and sell properties and is available to agents at all times.

While Respondent points out the email from the home inspector to the affiliate broker copying the buyers with the home inspection report attached, Respondent does not point out any such email which includes the termite inspection report. Respondent states that buyers signed off on all information; however, there is no buyer (or seller) signatures on the termite inspection report.

Recommendation: Consent Order for \$500 for violation of T.C.A. § 62-13-312(b)(15), 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: The Commission voted to authorize Consent Order for \$2,000 for violation of T.C.A. § 62-13-312(b) (14) (15) and § 62-13-404(2), 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.

Commissioner Blume made a motion to authorize Consent Order for \$2,000 for violation of T.C.A. § 62-13-312(b) (14) (15) and § 62-13-404(2), 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 McMullen; motion passes unanimously.

28. 2015005731

**Opened: 3/26/15
First License Obtained: 1/3/13
License Expiration: 1/2/17
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action**

29. 2015005732

**Opened: 3/26/15
First License Obtained: 2/14/96
License Expiration: 5/4/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No Prior Disciplinary Action**

A complaint was filed stating that Respondent 1 (affiliate broker; Respondent 2 is principal broker) misrepresented Complainant's (seller's) specific instructions regarding the sale of Complainant's deceased parent's property. Complainant entered into a representation agreement with the firm (with Respondent 1 acting as the listing agent) on August 11, 2014 for a six (6) month period. Complainant accepted an offer from a buyer with a VA loan on or about 12/22/14, and later received a backup offer that Complainant states would have yielded \$10,000 more than the pending contract. Complainant states that Complainant was abundantly clear that Complainant would like for the current offer to expire on 1/28/15 and to immediately move on to the backup offer. Complainant alleges that Respondent 1 was to request an extension in the event that the buyer was ready to close on 1/28/15 because Complainant would be out of the country. Complainant states that an extension was executed for 2/2/15 just in case, then, after further thought, extended to 2/10/15 so that Complainant would only have to make one trip from out of state. Complainant states that Complainant instructed Respondent 1 to tear up the extension for 2/2/15 and only use the 2/10/15 extension in the event that the buyers were able to close by 1/28/15. Complainant states that the title company sent an email advising that the buyers would not be able to close in January. Complainant alleges that Respondent 1 sent the 2/2/15 extension. Complainant alleges that Respondent 1 blatantly ignored Complainant's instruction to not submit the extension, unless buyers were prepared to close on 1/28/15. Complainant alleges that Respondent 1 was rude and disrespectful.

Respondent 1 states that Complainant accepted the first offer, and the backup offer was received on 1/9/15 that was contingent on the sale of the backup buyer's home and \$5,800 of closing costs being paid by the seller with a closing of 3/31/15. Respondent 1 states that the backup offer was unsigned because it was never completed. Respondent states that Complainant is an acquaintance of the backup buyer and had numerous conversations regarding the offer. Respondent 1 advised Complainant on several occasions that further inquiries from the backup buyer should be directed through the agents. Respondent 1 states that the original contract seemed to be on pace to close by 1/28/15, as the lender was only waiting for the VA's notice of value which could arrive at any time. Complainant signed an extension for a 2/2/15 closing because Complainant would be out of the country. Respondent 1 states that the next day, Complainant requested that they extend the closing to 2/10/15. Respondent 1 states that Complainant advised they were to present the 2/10/15 extension just prior to 2/2/15. Respondent 1 states that Complainant's reasoning was to extend the closing in small increments in hopes that the buyers may be unable to close, giving Complainant an opportunity to walk away from the contract. On 1/27/15, Respondent 1 spoke with Respondent 2 regarding a phone call received from the buyers' lender inquiring about scheduling with the title company to close on 1/28/15. Respondent 1 states that the only thing missing was the VA's Notice of Value, which the lender advised would arrive at any moment. Respondents 1 and 2 agreed that the 2/2/15 extension should be submitted to avoid potential breach of contract for Complainant. Respondent 1 spoke with Complainant after the extension was submitted in which Respondent 1 explained that it was for Complainant's benefit and protection. Respondent 1 states that Complainant's frustration is centered around the desire to get out of the original contract and close the backup offer. Respondent 1 denies being rude or indignant with Complainant. Respondent 1 is sorry that Complainant is upset.

Respondent 2 submitted a response stating that the backup offer was contingent upon the sale of a condo that was neither under contract nor on the market. Respondent 2 states that it was never accepted as a binding backup offer and states that Complainant contacted the backup buyer directly to negotiate the agreement. Respondent 2 states that Respondent 1 advised Complainant that communication should be through the agents, but Complainant did not cooperate. Respondent 2 states that this direct communication made it difficult to know what transpired. Respondent 2 states that there did not appear to be any problems or concerns throughout the majority of the transaction, but Respondent 1 made Respondent 2 aware that Complainant would be out of the country during closing. Respondent 2 states that it was Respondent 1's understanding (from a previous international trip taken by Complainant and messages sent to Respondent 1 upon return) that Complainant did not have a data plan to communicate internationally during the trip from 1/26-1/30. Respondent 2 states that Respondent 1 advised that Complainant instructed Respondent 1 not to submit the first extension until buyers said they could close on 1/28/15. Respondent 2 states that the lender advised that the buyers could be ready to close, so Respondent 1 submitted the extension. Respondent 2 states that it was Respondent 2's understanding that, if buyers were not ready to close on 2/2/15, then Complainant would terminate the contract. Respondent 2 reached out to Complainant on 1/28/15 by email explaining their understanding of events.

Recommendation: Dismiss as to both Respondents.

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

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

30. 2015005741

Opened: 6/4/15

First License Obtained: 10/1/14

License Expiration: 9/30/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker (Inactive)

History: No Prior Disciplinary Action

License was placed into Inactive status on or about 4/8/15.

31. 2015005751

Opened: 6/4/15

First License Obtained: 10/2/87

License Expiration: 6/23/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

An anonymous Complainant submitted a complaint which alleged that Respondent 1 (affiliate broker) was operating a property management company without a real estate firm license. The property management company is registered as an LLC with the Tennessee Secretary of State. The anonymous Complainant attached printouts from Craigslist which advertise the property management company as "...a full service Real Estate company." The anonymous Complainant also attached printouts of the property management company's website which advertises that it manages residential properties. Despite the fact that the property management company's name is featured prominently in all of the internet advertising providing its services, the name and telephone number and even address of the licensed firm where Respondent 1 is affiliated does appear to be featured, as well. TREC opened a complaint against Respondent 2 (principal broker) on a potential failure to supervise issue regarding Respondent 1.

Respondent 1 states that Respondent 1 was under the impression that because all marketing material and all performance was to be done at Respondent 1's principal broker's firm location, that Respondent 1 was compliant with TREC's rules. Respondent 1 states that Respondent 1 sought direction from different licensees and attorneys before posting advertising. Respondent 1 states that the property management firm has never entered into a third party management agreement or lease agreement with a resident, and no money has been collected.

Respondent 2 states that Respondent 1 is newly licensed and intended to do property management. Respondent 2 states that, at no time was Respondent 1 operating outside of a broker and has not actually engaged in any business or transactions. Respondent 2 states that the LLC name is simply Respondent 1's branding as a great number of other licensees do and call themselves teams, groups, etc. Respondent 2 stated that, soon after the complaint was filed, Respondent 1 decided to retire Respondent 1's license and decided to manage only Respondent 1's own personal properties.

Respondent 1's advertising appears to include consistent references to the licensed firm, its telephone number, and even its address. That fact combined with Respondents' assertions that the unlicensed property management company has never entered into third party management or lease agreements or collected any money and that the name was just Respondent 1's branding appears to indicate that Respondent 1 was not operating a separate branch office. However, it appears that Respondent 1's description of the unlicensed property management company as a "...full service Real Estate company" and descriptions that the unlicensed company provides residential management services constitute advertising in a false, misleading or deceptive manner in violation of Rule 1260-02-.12(2)(e). Based on the office of legal counsel's recent online search, Respondent 1's website had been pulled down.

Recommendation: As to Respondent 1, Consent Order for \$500 for violations of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(2)(e), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$500 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

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

Commissioner Blume made a motion to accept the recommendation of legal counsel as to Respondent 1, Consent Order for \$500 for violations of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(2)(e), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$500 for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order; motion seconded by Commissioner McMullen; motion passes unanimously.

32. 2015005761

Opened: 3/30/15

First License Obtained: 12/12/75

License Expiration: 9/6/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

33. 2015005771

Opened: 3/30/15

First License Obtained: 11/1/06

License Expiration: 10/31/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complaints were opened against Respondents (Respondent 1 is a broker; Respondent 2 is an affiliate broker) because Respondents advertise as a team giving the impression that they are affiliated with the same firm. In reality, at the time the complaint was filed, Respondent 1 was principal broker of a referral firm, and Respondent 2 was affiliated with another firm.

Respondents each submitted responses. Respondent 1 states that Respondent 1 believed that Respondents were both affiliated with the same firm (which was the firm with which Respondent 2 was actually affiliated). Respondent 1 attached a printout from VerifyTN.gov which shows part of a firm name which appears to be the beginning portion of the name of the firm where Respondent 2 is affiliated (and is not the name of the referral firm). Upon investigating the complaint further, Respondent 1 states that Respondent 1 discovered that Respondent 1's license was with the referral company. Respondent 1 states that Respondent 1 has now taken steps to transfer Respondent 1's license to the same firm as Respondent 2, and Respondent 1 has relinquished the principal broker position with the referral firm. Respondent 1 states that Respondent 2 had no knowledge of Respondent 1's license status. Respondent 2 also submitted a response stating that Respondent 2 was unaware that Respondents were not affiliated with the same firm. Respondent 2 states that Respondent 2 is and has been an affiliate broker with the same firm, which Respondent 2 states is co-owned by Respondent 1. Respondent 2 also states that VerifyTN.gov indicated that Respondents were affiliated with the same firm.

It is legal counsel's opinion that, if VerifyTN.gov had incorrect information, Respondent 2 cannot be held in violation for not knowing the firm where Respondent 1 was affiliated. However, it is also legal counsel's opinion that, despite any errors that may have been on VerifyTN.gov, Respondent 1, as a principal broker and TREC licensee for approximately forty (40) years, should have been aware of the firm where Respondent 1 was affiliated despite any correction of the issue after the complaint.

Recommendation: As to Respondent 2, dismiss. As to Respondent 1, Consent Order for \$250 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 (advertising highlighting subsection (2)(e) (no licensee shall advertise in a false, misleading, or deceptive manner), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order.

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

Commissioner Janet made a motion to accept the recommendation of legal counsel as to Respondent 2, dismiss. As to Respondent 1, Consent Order for \$250 for violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12 (advertising) highlighting subsection (2)(e) (no licensee shall advertise in a false, misleading, or deceptive manner), plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order; motion seconded by Commissioner McMullen ; motion passes unanimously.

34. 2015005781

Opened: 3/30/15

First License Obtained: 10/27/99

License Expiration: 11/20/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2015005241 – Under review by legal

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015005771 above (hereinafter "affiliate broker"). Respondent was not the principal broker of the other Respondent broker in complaint 2015005761 above (hereinafter "broker") at the time of the complaint because, at the time the complaint was filed, that broker was a principal broker of a different firm, which was the issue of the complaints.

Respondent submitted a response stating that VerifyTN.gov showed that Respondents were both affiliated with the same firm, but Respondent corrected the situation by speaking with both Respondents and making the appropriate TREC transfers.

As stated above, it is legal counsel's opinion that, if VerifyTN.gov had incorrect information, other licensees such as Respondent cannot be held in violation for not knowing this.

Recommendation: Dismiss.

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

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

CONSENT ORDER TRACKING

Ms. Cropp asked if the Commissioners had any questions about the consent order log.
The Commissioners did not have any questions.

LEGISLATIVE UPDATES

Assistant General Counsel Julie Cropp updated the Commission regarding the rulemaking hearing rules, advising the Commission that the legal department is still awaiting hard copies of the signed rules from the Attorney General's Office. Ms. Cropp further updated the Commission that the proposed rule is scheduled to have an effective date of August 4, 2015, and the proposed rule is scheduled to go before the Joint Government Operations Rule Review Committee on July 15, 2015.

2016 Calendar Discussion

Commissioner DiChiara made a motion to accept staff proposed calendar as presented with the exception of May dates being changed to May 5 & 6, 2016; motion seconded by Commissioner Hills; motion unanimously passes.

Commissioner McMullen made a motion to have only 11 monthly meeting and to skip month on December; motion seconded by Commissioner Franks; roll call vote motion unanimously passes.

Commissioner Franks made a motion to for monthly TREC meetings to stay on the 1st Wednesday and Thursday of month; motion dies due to lack of second.

Commissioner DiChiara made a motion to approve 2016 calendar as amended; motion seconded by Commissioner McMullen; motion unanimously passes.

EDUCATION REPORT

Mr. White, the Education Director, presented the educational courses J1 – J23 set forth on the July, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve J1 – J23 courses; motion seconded by Commissioner Franks; motion carries.

Instructors Approvals

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red J1 – J23 to be approved as Instructors.

Commissioner DiChiara made a motion to approve all instructors, since Education Director White recommended for approval J1 – J23; motion seconded by Commissioner Franks; motion carries.

INFORMAL APPLICANT APPEARANCE

APPLICANT: JOHN ALLEN MORRIS #332514

PRINCIPAL BROKER: SUE ACEE #282767

FIRM: WYNDHAM SMOKY MOUNTAINS #256346

Principal Broker: Sue Acee #282767 is the PB of Wyndham Smoky Mountains located in Sevierville, TN.

Ms. Acee was first licensed as a timeshare salesperson on 4/16/2002 and was licensed as an affiliate broker in TN in 2011. She tested and got her broker license in Tennessee on 4/30/2014, after being licensed and practicing in Alabama. At that time, reciprocity was still a recognized process in TN and Ms. Acee obtained his broker license pursuant to the former reciprocity agreement with Kentucky. Since obtaining his TN broker license, Ms. Acee has been affiliated with several firms as a principal broker and as a broker.

Applicant: John Allen Morris has submitted both an Application for licensure as a timeshare salesperson and has passed required exam. If approved by the Commission to move forward in the licensure process, Mr. Morris plans to complete the licensure process.

Mr. Morris has revealed he was convicted of a misdemeanor in his Application.

After much discussion, Commissioner Collins made a motion for Applicant Mr. Morris to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.

Chairman Griess adjourned the meeting on Wednesday,

July 1, 2015 at 4:40 p.m.

STATE OF TENNESSEE

DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE REAL ESTATE COMMISSION

TENNESSEE REAL ESTATE COMMISSION MINUTES

July 2, 2015

The Tennessee Real Estate Commission convened on Thursday, June 2, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Diane Hills, Commissioner Marcia Franks and Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, Assistant General Counsel Mallorie Kerby, Judge Marry Collier, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

9:00A.M. CST CALL TO ORDER

Education Director addressed Commission with request to amend approved courses and to add J24 to the list of approved course, which was previously approved on 7-1-15 to a 1 hour TREC course.

Commissioner DiChiara made a motion to approve J24 to a 1 hour TREC course; motion seconded by Commissioner Franks; motion passes unanimously.

FORMAL HEARING

The formal hearing on TREC v Carol Richards Docket 12.18-130847A
TREC v Deirdre N. Russell Docket # 12.18-13848A
convened at 9:02am TREC Meeting July 2, 2015 before Judge Collier.

The two cases were heard together per Judge Collier's request.

Commissioner McMullen made a motion that we adopt the following decision regarding Disciplinary Action, since no violation has occurred no Disciplinary Action is appropriate; motion seconded by Commissioner Franks; motion passed unanimously.

Commissioner McMullen made a motion to adapt the following Policy Statement. TREC performs an important function in protecting the public for what are for many the largest financial transactions they will participate in. A tool TREC uses in performing this function is the licensee duty to obey lawful client instructions. Although, this tool is useful it is important that we not dull the tool for inappropriate use. We must be careful to apply this duty only when supported by the facts. Hindsight is 20/20 the parties to this transactions did not have hindsight available to them when the offer was approved on April 9th, 2014 at that time the client received the benefit of the licensee skill, care, and loyalty to the client interest. The client followed the licensee recommendation and never issued a contrary instruction. Motion seconded by Commissioner Franks; motion unanimously passes.

Chairman Griess adjourned the meeting on Thursday,

July 2, 2015 at 12:37 p.m.

