



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

**March 4, 2015**

The Tennessee Real Estate Commission convened on Wednesday, March 4, 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 Grover Collins, Commissioner Diane Hills, Commissioner Marcia Franks, Commissioner Gary Blume, Commissioner Wendell Alexander and Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan, 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 Wednesdays February 25, 2015. Also, this meeting has been notice on the tn.gov website since Thursday, February 26, 2015.

**Commissioner Collins made a motion to approve the March 2015 agenda; seconded by Commissioner McMullen; motion carries.**

**Commissioner Collins made a motion to approve the February minutes; motion seconded by Commissioner Franks; Commissioner McMullen recuses; motion carries.**

**Audit Overview by Ahmad Lewis**

Auditor Lewis explains the purpose of the Mandatory Real Estate Audit is to assess whether a licensee has properly deposited, maintained, and disbursed funds from their respective escrow or trust account. Audit period is one year-current audit period is 1/1/14-12/31/14

**Audit will answer following questions:**

Have records been maintained in accordance with guidance in Tenn. Code Ann. § 62-13-321?

Have deposited funds been disbursed in accordance with guidance in Tenn. Rules 12-02-.09(6)?

**Documents Requested during Audit:**

- ◇ Bank Statements
- ◇ Copies of Bank Reconciliations
- ◇ List of individual ledger balances or individual tenant security deposits
- ◇ List of earnest money amounts held, disbursed and interpleaded
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- ◇ List of earnest money amounts held, disbursed and interpleaded
- ◇ HUD-1 statements for selected closings
- ◇ Copies of Purchase/Sales agreements
- ◇ Release of earnest money form
- ◇ Lease agreement for selected leases
- ◇ Copies of the journal or check register, including a record of daily balances
- ◇ List of outstanding checks and deposits by month
- ◇ List of all licensees affiliated with your firm currently

**After much discussion Commissioner Blume requested Auditor Lewis to return to April 1, 2015 meeting with additional options of conducting audits. Commissioner Alexander requested an update on the audit of Principal Broker Fran Hooten with Keller Williams to be discussed next month.**

**INFORMAL APPLICANT APPEARANCE**

APPLICANT: Cecil Harris Perry #331946

PRINCIPAL BROKER: James P. Bonifacino #250564

FIRM: GENERAL REALTY TENNESSEE #249883

Principal Broker: James P. Bonifacino #250564 is the Principal Broker of General Realty Tennessee # 249883 located in Mountain City, TN. Applicant: Cecil Harris Perry #331946 has taken and passed the national and the state exams and has applied for licensure as an affiliate broker. Mr. Perry has revealed the following in his Application for Licensure:

Mr. Perry had felonies and misdemeanors; he has completed all requirements ordered by the Courts and his probation has been completed.

**Commissioner Alexander made a motion to approve Mr. Perry to continue with the**

licensure process; motion seconded by Commissioner DiChiara; Commissioner Hills abstains; motion carries.

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

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

**PRINCIPAL BROKERS LIVING OUTSIDE 50 MILE RULE**

**IV All Out Of State Firms:**

<b>State</b>	<b>Firms</b>	<b>PB</b>	<b>Affiliate</b>	<b>Broker</b>	<b>Total Indiv</b>
AL	73	73	55	13	91
AK	22	22	13	0	35
AZ	1	1	0	0	1
CA	8	8	0	2	10
CO	2	2	0	0	2
DC	1	1	0	0	1
FL	31	31	6	1	38
GA	169	169	190	46	405
IA	3	3	0	0	3
IL	4	4	0	0	4
IN	1	1	0	0	1
KY	60	60	34	8	102
LA	2	2	0	0	2
MA	4	4	0	0	4
MD	2	2	0	0	2
MI	2	2	0	0	2
MN	1	1	0	0	1
MO	5	5	0	0	5
MS	63	63	94	15	172
MT	1	1	0	0	0
NC	86	86	17	23	126
NH	1	1	0	0	1
NJ	1	1	0	0	1
NM	1	1	1	0	2
NV	1	1	0	0	1
OH	3	3	0	0	3
OK	1	1	1	1	3
PA	4	4	0	0	4

<b>SC</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>5</b>
<b>TX</b>	<b>19</b>	<b>19</b>	<b>0</b>	<b>0</b>	<b>19</b>
<b>UT</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>VA</b>	<b>40</b>	<b>40</b>	<b>61</b>	<b>12</b>	<b>113</b>
<b>WI</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>WY</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>

**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, 350 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 2/24/2015, there were 716 licensees who remain suspended for E&O. 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.

<b>Status</b>	<b>Suspended</b>	<b>Percentage Suspended</b>	<b>Insured</b>	<b>Total Insured &amp; Suspended</b>
<b>Affiliate</b>	<b>402</b>	<b>2%</b>	<b>16,996</b>	<b>17,398</b>
<b>Broker</b>	<b>58</b>	<b>2%</b>	<b>3,161</b>	<b>3,219</b>
<b>PB</b>	<b>112</b>	<b>3%</b>	<b>3,632</b>	<b>3,744</b>
<b>Timeshare</b>	<b>144</b>	<b>20%</b>	<b>709</b>	<b>853</b>
<b>Total</b>	<b>716</b>	<b>3%</b>	<b>24,498</b>	<b>25,214</b>

**E&O Suspended/Insured Breakdown By Licensee Status**  
**(2/24/2015)**

3/1/2015

RISC (Rice Insurance)	18,242
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Alternate	6,179
None	80
<b>Total Active Licensees</b>	<b>24,501</b>

The table below shows the E&O breakdown as of 1/5/2015

**E&O Breakdown By Active Licensee Status (1/5/2015)**

Status	Uninsured	%Unins	Ins-RISC	Ins-Alt	Total
<b>Affiliate</b>	<b>6,144</b>	<b>35%</b>	<b>8,153</b>	<b>3,063</b>	<b>17,360</b>
<b>Broker</b>	<b>970</b>	<b>30%</b>	<b>1,709</b>	<b>599</b>	<b>3,280</b>
<b>PB</b>	<b>1,252</b>	<b>33%</b>	<b>2,009</b>	<b>499</b>	<b>3,759</b>
<b>Timeshare</b>	<b>82</b>	<b>11%</b>	<b>188</b>	<b>484</b>	<b>756</b>
<b>Total</b>	<b>8,448</b>	<b>34%</b>	<b>12,059</b>	<b>4,645</b>	<b>25,152</b>

**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

Ms. Maxwell states the annual **Professional Privilege Tax is due June 1, 2015**. A manual hold will be placed on licensees if renewal has not been paid up to date. Licensee will need to submit a tax clearance letter in order for hold to be lifted.

### **COMPLAINT STATISTICS REPORT**

Ms. Maxwell presented complaint statistics to the Commission. As of February 28, 2015, TREC had a total of 167 open complaints. There have been 270 closed this fiscal year starting 7-1-14 to present and 178 closed with no action, 11 were closed with a letter of warning, 80 with a Consent Order and 1 revocations.

### **Monies Collected 2/1/15 – 2/28/15**

Consent Orders Fees \$16,750.00; Reinstatement Fees \$23,710.00, Agreed Citations 500.00, E&O Penalty \$1,400.00 for a Total of \$42,360.00.

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

July, 2014 – February 28, 2015 total complaints presented to Commission 315.

July, 2014 – February 28, 2015 complaints presented to Commission involving Property Management are equal to 11% of complaints during this time involved Property Management.

Violation	No.	%
Agency/Pers Int	28	18%
Supervision	22	14%
Administrative Matters	6	4%
Advertising	20	13%
Fail to Respond	12	8%
Unlicensed	35	23%
Earnest Monies	7	5%
TCA 62-13-312(b)(14)	24	16%
Total	154	100%

## **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of February 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of February 28, 2015, there were 24,500 active licensees, 1,196 inactive licensees, retired licensees 7,274, broker release 316, and 736 suspended. There were 410 exams administered in month of February 2015. The total of exams taken year to date is 763. There were 330 approved applications in February 2015. Year to date total of approved applications 552. The number of licensees in retired and inactive status was 8,470. TREC total number of individual; licensees in active, inactive, retired, and broker release is 34,022. There were 3,830 active firms and 174 retired firms. Grand total of firms and retired firms 4,004.

## **FINGERPRINT UPDATE**

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(l); since 1-1-2015 there have been 641 individuals fingerprinted, 123 had an indication, 506 had no indication, and 12 were retaken.

**Executive Director Maxwell reminds Commissioners of the TAR meeting March 24, 2015 located at the Marriott in Cool Springs at 11:00am.**

**Arelllo update the Travel Authorization has been approved for April meeting tickets will be purchased soon.**

## **BUDGET**

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

**The Commission asked Executive Director Maxwell to recap available money Deputy Commissioner Giannini had discussed in February 4, 2015 meeting. Executive Director Maxwell explained TREC has an Education Recovery Fund of \$3.8 million but it can not be used for the Education programs it can only be used to pay out judgments against licensees. The only funds that can be used for Continuing Education Programs are the fees collected from course and instructor**

**applications, renewals, and interest earned on those sums. The amount as of 1/31/13 was \$77,000.00**

**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: MARCH LEGAL REPORT

DATE: March 4, 2015

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1. 2014024071

Opened: 10/7/14

First License Obtained: 7/25/05

License Expiration: 7/24/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant entered into a contract to purchase a home, and Respondent was sellers’ agent. Complainant states that the pool listed on the contract was damaged beyond repair, and sellers to fix it (note it is an above ground pool). Complainant states that Respondent called Complainant directly threatening Complainant to take the path of least resistance and move forward with the purchase. Complainant states that Respondent offered part of Complainant’s agent’s commission without speaking with the agent and lowered the price of the home to solicit more offers. Complainant states that the pool was not fixed and two (2) days before closing, the refrigerator which was to convey went missing. Complainant states the refrigerator was returned to pieces and thrown into the home.

Respondent submitted a response stating that the Complainant was not a party to the contract and was not listed anywhere on the contract. Respondent states that the buyer's agent was unresponsive, so the sellers asked that Respondent to contact the phone number they were given by Complainant to determine the status of inspection. Respondent states that the purpose of the call was to determine resolution of repairs. Respondent states the buyer signed an amendment on August 5, 2014 that stated in lieu of requested repairs, sellers are to allow buyer to have access to the home on August 11, 2014 to paint the interior and move belongings to the home as soon as the lender gives clearance to close. Respondent states that the sellers mistakenly removed the refrigerator but was returned within hours of Respondent contacting them.

Complainant submitted additional information stating that Complainant's spouse is the buyer, but Complainant is listed on the deed. Complainant states that sellers were present at the home inspection because of the damaged pool, thus Respondent did not contact Complainant to find out the inspection results. Complainant further states that Complainant's agent promptly called Complainant to alert Complainant of the price reduction; and Respondent called to speak with Complainant at the same time. Complainant states that sellers would not budge regarding the pool, and Complainant was strong-armed into accepting the offer with the impression that there was a better back-up offer waiting. Complainant further reiterates that sellers offered to fix the refrigerator then backed out at closing.

The Purchase and Sale Agreement appears to be between Complainant's spouse and sellers having a binding agreement date of July 11, 2014 for a closing to occur on August 15, 2014. Items listed to remain state, "all items listed in the MLS as of the offer date + cleaned out refrigerator." Buyer's inspection and resolution period was twenty-one (21) days after the Binding Agreement date with a resolution period of five (5) days and a final inspection one (1) day prior to closing. A Repair/Replacement Amendment as described was submitted by sellers and accepted by buyer on August 5, 2014.

Recommendation: Dismiss.

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

**Commissioner DiChiara made a motion to accept counsel recommendation to dismiss; Commissioner Franks seconded; motion carriers.**

2. 2014024081

Opened: 10/7/14

First License Obtained: 5/29/97

License Expiration: 10/14/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent, principal broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014024071. Respondent states that the complaint is not justifiable because Complainant did not enter into a contract as suggested. Respondent states that Affiliate Broker complied with turning in all documents for the Purchase and Sale Contract on the property, and acknowledges that buyer signed the Amendment for early occupancy in lieu of requested repairs. Respondent further states that the pool is not listed on the contract or the MLS listing. Respondent states that the above ground pool was found damaged or vandalized on the day of the home inspection, as sellers did not reside at the property and were not aware of any damage. Respondent further notes that the parties agreed to early possession in lieu of repairs on August 5. Respondent further states that Complainant contacted one of the sellers regarding the pool situation, so the seller gave Affiliate Broker Complainant's contact information to resolve. Respondent states that Respondent spoke with Complainant after closing who advised that Complainant contact Complainant's agent because it appeared that Complainant had an issue with the sellers rather than with Affiliate Broker's job performance.

Recommendation: Dismiss.

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

**Commissioner Franks made a motion to accept counsel recommendation to dismiss; Commissioner Collins seconded; motion carriers.**

3. 2014025541

Opened: 10/27/14

First License Obtained: 12/13/93

License Expiration: 1/19/16

E&O Expiration: 1/15/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

This complaint was filed by a buyer who stated that at final inspection the home was not "broom clean," Respondent (seller's agent) stated that it was too late for the home to be cleaned, and Complainant wrote a statement stating Complainant no longer wanted to purchase the property. Complainant states that the seller sued Complainant for not purchasing the property. Complainant states Complainant requested the earnest money from Respondent on July 16, 2014, but the earnest money was returned to the seller. Respondent states that the contract was dated March 31, 2014 for a closing date of April 24, 2014, but there were multiple extensions due to financing delays. Respondent states that both original lender and Complainant's agent terminated their relationships with Complainant because Complainant was verbally abusive. Respondent states that Complainant agreed to move forward unrepresented and signed a confirmation of agency status to that effect. Respondent states that the original offer asked that the home be professionally cleaned inside and out, but the counter-offer which was accepted by Complainant states the home will be "broom clean condition." Respondent states that during the final walk through Complainant asked why the home had not been professional cleaned, and Respondent attempted to explain that the accepted offer stated broom clean. Respondent is of the opinion that the home was very clean. Respondent denies telling Complainant that it was too late in the game or stating that seller would sue Complainant. Respondent acknowledges the earnest money request and states that Respondent's broker reviewed the file and felt that Complainant defaulted on the contract. Complainant submitted additional response stating that Complainant requested the home to be cleaned because it was not clean when the offer was submitted. Complainant states it appeared that nobody had been in the home after the staged items were moved out. Complainant states that it is the seller and seller's agent's responsibility to have the home clean and ready for buyer to move in.

The Purchase and Sale Agreement was submitted by Complainant on March 29, 2014 for a date of April 25, 2014. The two hundred fifty dollar (\$250) earnest money was to be held with Respondent's firm. Final inspection was to occur no later than one (1) day prior to closing. The special stipulations section states "Have the home [professionally] clean instead and out. Have all the tree limbs remove[d]. Have the heat vent in the extra [room checked] out."

The offer was countered and accepted on March 31, 2014, which states among other things, "...seller will not professionally have home cleaned inside or out, but will be broom clean condition..." On May 22, 2014, buyer and seller executed an Amendment to Agreement stating the earnest money will be returned to the buyer (Complainant) at closing. On May 30, 2014, Complainant executed a Confirmation of Agency Status stating Complainant is unrepresented and additional disclaimers and disclosures. On July 15, 2014 buyer and seller executed a closing and possession date amendment # 5 for a closing to occur on July 18, 2014. On July 15, 2014 Complainant executed a Buyer's Final Inspection which checked the box that buyer has made the final inspection of the property and confirm it to be in the same or better condition as it was on the Binding Agreement Date. The section requiring any repairs to be completed prior to closing was left blank. On July 16, 2014 Complainant submitted an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement referring to an Attachment # 1, which states that Complainant is withdrawing from the purchase agreement due to the final walk through.

Recommendation: Dismiss.

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

**Commissioner Franks made a motion to accept counsel recommendation to dismiss; Commissioner Hills seconded; motion carriers.**

4. 2014025551

Opened: 11/6/14

First License Obtained: 5/9/01

License Expiration: 4/21/15

E&O Expiration: 1/15/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent, principal broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014025541. The complaint was accepted and signed for by certified mail by someone at the business address on October 15, 2014. The Respondent did not submit a response to the complaint.

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

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

**Commissioner DiChiara made a motion to accept counsel recommendation of a Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(a)(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; Commissioner Hills seconded; motion carriers.**

5. 2014022591

Opened: 10/27/14

First License Obtained: 8/5/85

License Expiration: 6/15/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant hired Respondent to sell Complainant's home. Complainant states that an offer was received for \$134,500, and Complainant alleges that Respondent told Complainant that the only costs to seller was the one-year home warranty and their own closing costs. Complainant states at closing the closing attorney noted that Complainant was to pay buyer's closing costs as well. Complainant states that Respondent admitted to not seeing that in the contract and offered to pay five hundred dollars (\$500) toward the closings costs due to the mistake. Complainant states that the buyer's closings costs totaled four thousand dollars (\$4,000). Complainant states that Complainant believes the contract was misleading due to where buyer's agent listed the closing costs on the contract. Complainant alleges willful misrepresentation stating Complainant relied on Respondent to read the contract to Complainant. Complainant also purchased a new home and state that their offer was to take possession on May 31, 2014. Complainant states that after closing, the sellers of the new home told Complainant that their counter altered the possession date to June 1, 2014. Complainant alleges that Respondent failed to disclose this information as well.

Respondent states that Complainant's family member referred Respondent to Complainant, and Respondent has been in the business over twenty years and has never had a complaint filed at TREC. Respondent states that in the listing agreement, Respondent agreed to a total commission of 3%. Respondent states that the 3% commission was paid to the selling agent, and Respondent did not receive commission as the listing agent. Respondent did not receive commission on the sale of Complainant's home, which saved Complainant \$4,035, which is the same amount Complainant paid toward buyer's closing costs. Respondent states that the contract was reviewed with Complainant and family in person, in detail. Respondent advised Complainant and family to read the contract in case Respondent missed anything, and one of the family members brought home a copy of the contract to read over before Complainant accepted. Respondent stated that nobody noticed the statement in small print regarding closing costs that was typed to modify language in B 1, 2, and 3. Respondent states that it has always been addressed under the special stipulations heading. Respondent further

states that the closing attorney had the contract two (2) weeks before closing and did not comment on it. Respondent further states that because multiple professionals did not notice throughout the closing process, it is Respondent's belief that Complainant had good reason to void the contract; however, Complainant chose to close, after having a day to think about it. Respondent further states that regarding Complainant's purchase, Respondent had no knowledge that the sellers were still in possession on May 31, but called sellers' agent while out of town to arrange transfer of keys. Respondent states that Respondent depends on sellers' agent to give notification if something changes regarding the contract. The Purchase and Sale Agreement for the home Complainant sold is on a TAR form and states under Title expenses, "Seller / Buyer." Beneath the phrase, "Not all of the above items are applicable to every transaction and may be modified as follows:" in the same section, it states, "Seller to pay buyer's closing costs and prepaids, not to exceed 3% of the sales price." This is printed in very small lettering and one must look for it. The settlement statement for this property shows that Respondent's commission is zero dollars (\$0.00). The counter-offer regarding the home purchased by Complainants, which was accepted by both parties, states that possession date is May 31, 2014.

Recommendation: Dismiss.

DECISION: The Commission voted to authorize a Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(1), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

**Commissioner Franks made a motion to accept legal counsel recommendation to dismiss; Commissioner Collins seconded motion; Commissioner McMullen made a substitute motion to authorize a Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(1), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner DiChiara; vote 7 yes and Commissioner Hills voted no; motion carriers.**

6. 2014025751

Opened: 11/5/14

First License Obtained: 3/19/12

License Expiration: 3/18/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants states they partnered with Respondent for the purpose of flipping a home. Complainants state that Respondent found a house, but Complainants did not provide earnest money or sign any contracts. Complainants state that they purchased the property on June 3, 2014 and state that Respondent could not contribute to the purchase price because funds were tied up. Complainants allege that Respondent found an investor for \$15,000 but the funds were not received. Complainants further allege that Respondent would reinvest the commission received from the sale of the home back into the flip business. Complainants further state that Respondent agreed to pay utilities if the home did not sell, but Respondent did not follow-through. Complainants further state that Respondent never provided a partnership agreement as promised. Complainants state that Respondent introduced them to the contractor, and Complainants ensured that the contractor knew that Complainants, as the homeowners, must authorize all improvements. Complainants later requested that Respondent release the investor from the project and discovered that the investor was Respondent's clerical assistant who required payment for expenses incurred. Complainants allege that the investor requested reimbursement for two (2) loan payments and the cost of home inspection. Complainants state that no money was ever received from the investor, and Complainants were not notified that a home inspection was done. Complainants further state that Respondent placed the firm's rent to own signs on the property without having a contract in place. Complainants further state that they discussed selling the home for \$105,000 with Respondent, but Respondent listed the home on MLS without a contract in place. Complainants met with the owner and principal broker of the firm, and Complainants state the owner acknowledged that Respondent did not follow proper procedures regarding paperwork and money and advised not to have further contact. Complainants allege that Respondent continued to contact them stating Complainants owed Respondent money. Complainants state that they maintained contact through the principal broker and obtained the keys to the property on September 16, 2014. Complainants state that the investor continued to contact Complainants demanding money and stated a lien would be placed on the property.

The complaint was signed for an accepted by a representative of the firm on October 17, 2014, and Respondent did not respond to the complaint.

Office of legal counsel performed additional research and determined per the property assessor, that Complainants purchased the home on June 2, 2014. The home was

transferred to Complainant's LLC on August 4, 2014, and the LLC still owns the property. Affiliate was broker released from the firm on November 13, 2014

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(a)(2) (failure to respond), plus attendance 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 accept the recommendation of legal counsel.

**Commissioner DiChiara made a motion to accept recommendation of legal counsel of a Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(a)(2) (failure to respond), plus attendance 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 carries.**

7. 2014025791

Opened: 10/28/14

First License Obtained: 4/1/03

License Expiration: 4/25/16

E&O Expiration: 1/1/17

Type of License: Real Estate Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014025751. Respondent acted as Affiliate Broker's Principal broker between December 18, 2013 and November 13, 2014. Respondent states that Affiliate Broker approached Respondent in June regarding the subject property stating Complainants wanted to market the property immediately, so a buyer would be in place when the rehab was finished, but Affiliate Broker was concerned with placing it on MLS as it was not available for viewing. Respondent advised Affiliate Broker to complete a listing agreement and incorporate the date they thought it would be ready to place on MLS on line 36 of the TAR form Exclusive Right to Sell Listing Agreement. Respondent advised that lines 339-356 should be the actual day the Complainants agreed to have Affiliate Broker represent them. Respondent further advised to include in special stipulations that the home would not be put on MLS until all rehabilitation had taken place. Respondent states that Affiliate Broker met with Complainants on September 8, 201, and while Complainants were in the office, Affiliate Broker prepared and submitted the MLS listing with Complainants approval. Respondent states that Complainants further advised affiliates that they had transferred ownership to their LLC and would provide supporting documents. Respondent states that Affiliate Broker advised that Respondent would have the listing paperwork to Respondent the next day. Respondent states that on September 9, 2014,

Complainants met with the owner and Respondent to discuss auctioning a separate parcel of land. Respondent states that Complainants proceeded to ask about the subject property because the repairs ended up being more costly. Respondent states that Complainant indicated that there was a listing agreement with Affiliate Broker, but it was not dated since neither party had knowledge about when it would be put on the market. Respondent further states that Complainants acknowledged Affiliate Broker placed a sign in the yard and that proceeds would be split with Affiliate Broker and the investor. Respondent states that the firm owner and Respondent followed Complainants to the home and discussed additional repairs, and Complainants requested that Respondent list the home instead. Respondent declined and offered to refer Complainants to somebody else. Respondent states that Complainants' stories changed from time to time and Respondent did not feel comfortable with the listing being at the firm. Respondent met with Affiliate Broker who states that Respondent had not been given the listing documentation because Affiliate Broker was waiting on the LLC paperwork. Respondent states that Affiliate Broker told Complainants that Affiliate Broker could not invest, but the investor, who occasionally assists Affiliate Broker with clerical duties, paid the earnest money on the purchase and met Complainants during the closing and paid closing costs. Respondent states that Respondent spent several hours with Affiliate Broker reviewing the transaction, and there were multiple discrepancies between Complainants' statements and Affiliate Broker's statements. Respondent further states that Affiliate Broker advised Complainants to contact an attorney for a partnership agreement with the investor. Respondent further states that Affiliate Broker introduced Complainants to a contractor, but Complainants negotiated the bid on their own. Respondent states that Affiliate Broker's had proper documentation to corroborate the events. Respondent states that Respondent spoke with Complainants on September 11, 2014 regarding switching agencies, and Complainants advised Respondent to remove the MLS listing, which Respondent did. Respondent states that it appears the crux of the complaint is that Affiliate Broker advertised the property without consent. Respondent states that Complainants signed the listing agreement and sat in Affiliate Broker's office while it was prepared for MLS. Respondent states that the office policy is for the Affiliate Broker to provide copies of listing agreements to Respondent within forty-eight (48) hours. Respondent states that Respondent was attentive with Affiliate Broker and provided feedback on advertisements and grammatical errors. Respondent states that Affiliate Broker did what Complainants instructed. Respondent states that Respondent supervised Affiliate Broker during this transaction, and Complainants' problems are with the investor and do not regard the transaction with Affiliate Broker. The owner of the firm also submitted a statement, which follows closely to Respondent's. The file included a purchase and sale agreement and other transaction documents executed by previous Complainant. The file also included a one hundred fifty dollar (\$150) money order, dated May 10, 2014, signed by the investor and made payable to a title company with the property address listed in the memo line. An Exclusive Right to Sell Listing Agreement was executed by previous Complainant on September 1, 2014 for a specified listing period of September 8, 2014 through September 30, 2015. The file also included an MLS archive report showing the home was listed on September 8, 2014 and withdrawn September 11, 2014. Except for statement of Complainant, there is no proof of any partnership between previous Complainants and Affiliate Broker and nothing provided

supports that statement. Affiliate Broker no longer is in Respondent's office. The firm closed in November 2014 and Affiliate Broker went to work in another firm. Too it appears that there are signed documents concerning this entire transaction in complete contradiction as to what the previous Complainant 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 DiChiara; motion carriers.**

8. 2014026171

Opened: 10/29/14

First License Obtained: 12/23/87

License Expiration: 5/31/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

A complaint was filed by a tenant stating the owner of the home gave tenant twenty-four hour notice to enter the home to see what condition it was in to refinance the home loan. Complainant states that it was later determined that the true intent for entering was so Respondent could have access to the home in order to sell it. Complainant alleges deceptive business practices. Complainant states that Respondent placed a sign in the yard without Complainant's consent. Respondent filed a response stating that Respondent met with the owner to list the home for sale, and Respondent explained to the tenant that Respondent was there to list the home. Respondent states that the terms of the existing lease agreement will not change and the new owner will honor the lease agreement. Complainant submitted additional information stating that Respondent did not volunteer the information that the owner was listing the home for sale. Complainant further states that several weeks later, the owner kicked the door in to gain entry and Complainant eventually had to vacate without notice pursuant to the Landlord Tenant Act. Complainant states that Respondent is lying and encouraged owner's behavior.

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 carriers.**

9. 2014026211

Opened: 11/3/14

First License Obtained: 4/28/10

License Expiration: 4/27/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is seller and Respondent (affiliate broker) is Seller's agent. This complaint resulted after Complainant attempted to terminate Buyer's Representation Agreement and was told by Respondent that Complainant must pay \$1,000.00 for that termination. Complainant lists a number of issues with the house Complainant attempted to purchase with much of the issues concerning the Property Disclosure document. Complainant states that Complainant had pre-qualification letter but after many repairs as requested in the contract, Complainant was denied for a loan. But Complainant states this did not occur until one week after house in question was re-listed. Complainant states Respondent would not answer emails or telephone questions but instead put these issues to principal broker to resolve. Complainant states that, in one email, Respondent states that Respondent was not handling the matter in the way Complainant deserved and that Respondent was frustrated over the repair list and that Respondent did ask principal broker to handle the matter as Respondent was in the process of moving. Complainant further states that the earnest money for this potential sale was sent to a wrong location three times and that the documents sent for signatures were wrong. Complainant further states that mortgage company had delays that resulted in Complainant missing sales deadlines but that this has nothing to do with representation problems with Respondent and that three day period of no written interaction following home inspection was not acceptable. Complainant states that Complainant had to contact regional manager of firm for release from representation agreement and after several emails this occurred.

Respondent states that this was a first time home buyer and the home inspection revealed many issues. A list for repairs was provided to the seller and a general contractor had to be engaged for a quote on the repairs and this delayed the normal contract process past three days resolution time. Once the list was accepted by seller, Complainant asked for additional repairs and an excess of \$8,000.00 was paid by seller for repairs not on original list. After this delay, Respondent states that the lender Complainant chose did not respond promptly and the contact person changed three times. These issues caused a miss of the original closing date which was then extended by seller. The Complainant did not get approved due to information provided by Complainant that proved to be not true or accurate. Respondent states that Respondent represented interests of Complainant throughout the process and worked to correct any problems and enlisted principal broker to assist in same. Concerning the buyers representation agreement, Respondent states Respondent believes Respondent is due commission for helping find the property and for negotiating the agreement, but that Respondent is willing to terminate contract.

Buyers representation agreement states that the agreement has a term of six months and that client has a duty to purchase property through Respondent during this period and has a carry-over clause as well. Use of another agent during this period requires buyer to pay a commission. Commission is 3% of purchase price, in this case 3% of \$155,000.00. The agreement was terminated after Complainant contacted the regional manager on several occasions.

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 carriers.**

10. 2014026241

Opened: 11/5/14  
First License Obtained: 6/14/99  
License Expiration: 1/4/17  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: No Prior Disciplinary Action

Respondent is Principal Broker for Respondent above. This matter was opened on a failure to supervise. As of this preparation, there is no response from Respondent.

Recommendation: Consent Order for \$1,000.00 for failure to respond in violation of Tenn. Code Ann. §§ 62-13-312(b)(14) and 62-13-313(a)(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 accept the recommendation of legal counsel.

**Commissioner McMullen made a motion to accept the recommendation of legal counsel of a Consent Order for \$1,000.00 for failure to respond in violation of Tenn. Code Ann. §§ 62-13-312(b)(14) and 62-13-313(a)(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 Collins; motion carriers.**

11. 2014026251

Opened: 11/4/14

First License Obtained: 2/8/06

License Expiration: 2/7/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is former handy man for Respondent (affiliate broker) property manager. After termination, Complainant filed this complaint alleging that he, Complainant, was working to rent properties without a license. Complainant also states he never saw principal broker in office and that Respondent was not supervised. This complaint resulted when there were problems with how and when Complainant was being paid and his services were terminated.

Through an attorney, Respondent states that the allegations are not clear and allege Complainant has no standing but that Complainant was an independent contractor whose services in maintenance were terminated by Respondent. Respondent states that Respondent works as manager in office as an affiliate broker and that the principal broker was the person who first hired Complainant. Respondent states Complainant was hired to do maintenance services on the residential and commercial properties and that after being fired is attempting to use TREC to vent Complainant's frustration.

There is nothing in this file to support any unlicensed activity and nothing to support the statement that the principal broker was not supervising Respondent. Therefore, the recommendation is to dismiss.

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 carriers.**

12. 2014026271

Opened: 10/30/14

History: No Prior Disciplinary Action – Unlicensed

This Respondent was the individual who filed the previous complaint. This complaint was opened after Complainant above sent in a statement that Complainant told Respondent above that Complainant had no license. Complainant states Complainant had keys to all property and that he would be requested to open the properties for viewing and after viewing he would lock the property. Complainant states Complainant did no paper work and that he was paid a fee the next month. There is nothing more to support Complainant's statements including nothing to show Complainant was paid for opening and closing properties. There is no proof to show that Complainant was negotiating, soliciting the listing, sale, or rental of any of the properties in question nor was Complainant collecting rent or attempting to collect rent. Therefore, it would appear that no license would be required.

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 Collins; motion carriers.**

13. 2014026261

Opened: 11/5/14

First License Obtained: 3/16/72

License Expiration: 7/6/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014026281 – Under review by legal

14. 2014026281

Opened: 11/5/14

First License Obtained: 3/16/72

License Expiration: 7/6/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014026261 – Under review by legal

Complaints were opened against Respondent (same individual who is a principal broker) for potential failure to supervise issue of Respondent affiliate broker in complaint 2014026251 above and for potentially having the previous unlicensed Respondent in complaint 2014026271 working without a license.

Respondent states that the Complainant above was a vendor for the affiliate broker and that the affiliate broker dealt with that Complainant as the affiliate broker did with all vendors. Respondent states Respondent found no need to be directly supervising the affiliate broker's dealings with vendors as the affiliate broker was always consistent and treated all vendors in the same manner. Respondent further states that Respondent, the affiliate broker, and licensed agents are the only ones to show and lease property owned by others. Respondent further states that Respondent is kept informed of any question about the rules and laws of TREC, that Respondent reviews all property management contracts, that Respondent helps in the development of standards and procedures to deal with all owners, tenants and vendors so that there is compliance with all rules and laws.

There appears to be regular supervision of affiliates, regular contact and supervision of procedures and vendors thus no violation of failure to supervise. Additionally, there is no proof that the Complainant did any activity requiring a license.

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 carriers.**

15. 2014026361

Opened: 11/4/14

History: No Prior Disciplinary Action – Unlicensed

Complainant is owner of property purchased from Respondent, that property being in Tennessee. Complainant lives in California and Respondent lives in Kansas. This property was purchased from Respondent and as a part of that purchase agreement, Respondent agreed to provide property management on this property, free of charge, for a period of 17 months. Complainant terminated contract and states Respondent refused to return keys, etc.

Respondent states that Respondent was not aware Respondent required a license in Tennessee and all other properties in Tennessee are owned by Respondent. Respondent is in process of selling those properties as Respondent states it is too difficult to manage from Kansas. Respondent states that Respondent is the one who terminated this contract due to the long distance problem, but as Respondent was managing other properties for Complainant in Kansas, Respondent sent a bill for those services. Respondent states Respondent has not been paid for those out of state properties.

There is only the one property mentioned in Tennessee. Although Complainant states that Respondent manages others, there is no proof of any other. Too, Respondent is selling all of Respondent's other rental properties located in Tennessee, and Respondent is the owner of those properties. While it could be argued that Respondent did receive compensation in the form of an initial sale, it would appear that no other money on the Tennessee property was received or requested. Because there are no other properties in Tennessee not owned by Respondent, it is recommended that Respondent be sent a letter of warning.

Recommendation: Letter of warning regarding T.C.A. §§ 62-13-102(4)(A) and (B), 62-13-103, and 62-13-301.

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel a Letter of warning regarding T.C.A. §§ 62-13-102(4)(A) and (B), 62-13-103, and 62-13-301; motion seconded by Commissioner Collins; motion carriers.**

16. 2014026321

Opened: 11/6/14

First License Obtained: 8/31/81

License Expiration: 8/21/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Complainant is owner/seller and Respondent (broker) is seller's agent/facilitator. This matter began in 2010 when Complainant entered into a listing agreement with Respondent. Complainant states that Respondent recommended a lease purchase agreement, to which Complainant agreed due to moving. A buyer then entered into a purchase and sale agreement, but that agreement had hand written terms to make the matter, in essence, a lease purchase with rental charges and a land contract with owner financing. In this process, Respondent reverted to facilitator. The land contract provided that there would be monthly payments and that title would pass to the buyers after the completion of payment of the purchase price. The land contract further provided that any assignment had to be agreed in writing by seller and that the assignment, it would appear, would be through the buyer. An additional document provided that Complainant would

pay Respondent a rental management fee for collection of rents until closing (which, in the original purchase and sale agreement, was May 1 2010, but, in the land contract, the termination date for the full purchase price was April 1, 2013) and further provided for the further payment of commission at that closing. In August 2012, Complainant states they were informed that the buyers were moving out, and Complainant contacted another licensee for the purpose of listing the home. Complainant states Complainant was informed by that licensee that the house was already on the market through Respondent and had been since February 2012.

(Documents provided by Respondent show that a listing agreement was signed by Respondent and the original buyers listing those buyers as owners on March 23, 2012, and further documents show the home was listed on or about that same day.) This was not known to Complainant. Complainant then called Respondent who informed Complainant that there was another party willing to do the same agreement already in place. Complainant states that Respondent's purchasers only wanted to deal through Respondent so that all monthly payments would come through Respondent. A new confirmation of agency document was drafted listing Respondent as facilitator, instead of agent for the "buyers" in the March documents. A new residential lease agreement with the Complainant as owner was signed in September 2012, and this document had hand written at the top "& Assumption Agreement w/ lease purchase." This document provided that the Complainant owners were the property management company. An assumption agreement addendum was provided signed by Complainant and buyers. Complainant states this new agreement was adequate, but, in 2014, payments came later and later each month. In February, Complainant drove by the house and was very concerned about the condition and called Respondent, and Complainant states that Respondent admitted that one party, wife, had returned to Mexico but that an aunt had moved in and signed a new lease, Complainant states without knowledge of Complainant. A residential lease agreement and "assumption agreement" was signed by "aunt" on August 13, 2013. (This document does not have the signature of Complainant but the "assumption agreement addendum" does.) Problems with payments continued and in May 2014. Complainant states Complainant was informed by Respondent that the entire family had moved back to Mexico, and, when Complainant asked to be see the property, Respondent promised to go into the home after the May holiday weekend. Complainant then states Complainant was informed that "aunt" had sold the property to someone else who was living in the house. Complainant called a meeting, and Complainant states it was at this meeting Complainant discovered the 2013 "aunt" contract. Complainant states there was much damage to the property from the various tenants.

Respondent, replying through an attorney, states that, in March 2012, the original buyers contacted Respondent and that Complainant was notified and the property was listed for sale. (Respondent does not address the fact that the March 2012 documents had signatures of the original buyers as the owners, or the listing of the property for sale in March 2012 with no apparent notice to Complainant.) Respondent states Respondent secured new purchasers who were willing to assume the existing land contract, and this transaction occurred in September 2012. Respondent states that, in August 2013, new buyer wife advised Respondent that wife's mother was ill in Mexico but asked if Aunt

could take over the contract. Respondent states this relayed to Complainant and that Complainant agreed. A new residential lease agreement “assumption agreement” was signed by aunt on August 13, 2013, listing owners as property managers. This document was not signed by Complainant as landlord. Nor was the Tennessee Residential Property Condition Exemption Notification, or the Amendment to Agreement Amendment “temporary assumption” but the Assumption Agreement Addendum appears to have been signed by Complainant. Respondent states that, despite these changes, Complainant received payments timely for over three years but after the “Aunt” moved in payments came late so Respondent made efforts to contact “Aunt” and learned that “Aunt” had “sold” the property to another unknown to Respondent or Complainant. At the meeting, it was learned that the parties living in the home had paid money for sale but Respondent stated Complainant agreed to allow the parties to stay, and a tenant information addendum and a receipt for payment of “rent” were provided as exhibits. But no new lease or “lease purchase/assumption” was provided. In June of that year, the third party informed Complainant that she could no longer afford the property, but, at that time, the 2012 parties were back in the country and willing to retake possession, and an “amendment to agreement amendment A” was signed on June 28 by Complainant and the lessees/purchasers. Respondent states the property is in better shape than when initially sold and provided pictures of the property. Respondent further states that Complainant received all payments from 2010 forward.

Only the land contract appears to have been recorded and that document provided that all assumptions had to be approved in writing by Complainant, but appears to be a potential assignment from the original sellers and no documents were provided to show that those sellers made any such assignment to any party. However, the 2012 listing agreement with those buyers listed as owners has a provision that the land contract could be assumed, and that document was signed by those buyers. The original lease/purchase in 2010 is on a purchase and sale agreement with the terms of the rental charges in writing and terms that are confusing at best. The original listing agreement in 2012 is with the original buyers, not Complainant, and the property was listed in March 2012. The Complainant did sign the August 2012 Lease agreement, again with somewhat confusing hand written terms, and the 2012 Assumption Agreement Addendum does not mention the land contract or assumption of same. As mentioned above, the August 2013 residential agreement/assumption agreement is not signed by Complainant and neither is Residential Property statement nor the Amendment to Agreement Amendment “temporary assumption”, but the Assumption Agreement appears to be signed by Complainant. There was no lease or any other document provided for the third party “buyers” who paid Aunt for purchase. When the home was again occupied by the 2012 purchasers, the Amendment to Agreement Amendment A was signed by all and provides for a balance due and monthly payment but has no information concerning the “assumption” although it perhaps assumes the original terms. Each lease purchase agreement provided that owner (Complainant) was the property manager except for the original 2010 lease purchase. There was no property management agreement provided to outline the obligations of Respondent.

From a review of all the documents provided and the statements of these parties, it does appear that Respondent and Complainant had issues but that ultimately the Complainant did agree to each transaction. However, the documents are confusing, not recorded, and, if Respondent was the property manager, there is no contract for same. Too, Respondent signed a listing agreement with parties who were not the owners and did not inform Complainant. This property was listed from March 2012 to the finalization of the new lease purchasers in September 2012 and there is no new listing agreement with Complainant. In 2013, there were new documents signed by new party, and, while Respondent's attorney claims that the Assumption Agreement Addendum shows that Complainant was "fully involved," all documents with this party were not signed by Complainant. At best, these documents are sloppy and do not appear to adequately address the original land contract issues. There does not appear to be any intention of Respondent to act in a fraudulent manner, but collectively it does appear that Respondent did not exercise reasonable care for Complainant, was not loyal to the interests of the Complainant, and in total acted improperly.

Recommendation: Consent Order with \$1,000.00 civil penalty for violation of §62-13-312(b)(14) for violation of §62-13-403( 1) not diligently exercising reasonable skill and care in the 2010 lease purchase on a sales contract, \$1,000.00 civil penalty for the same violations for the 2012 listing without Complainant, \$4,000.00 civil penalty for March, April, May, June listing without Complainant's knowledge or contract with Complainant in violation of §62-13-312(b)(20) improper conduct, \$1,000.00 civil penalty for not securing the written signatures on the 2013 documents in violation of §62-13-403(1), \$1,000.00 civil penalty for not securing contract for the 2014 person living at home, same violation, \$1,000.00 civil penalty for apparently managing property with no written agreement in violation of §62-13-404(2)(failing to be loyal to interests of client), for a total civil penalty of \$9,000.00, attendance at an entire TREC meeting, six (6) hours of continuing education on contracts, and suspension of license until all terms are satisfied.

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

**Commissioner Franks made a motion to accept the recommendation of legal counsel of a Consent Order with \$1,000.00 civil penalty for violation of §62-13-312(b)(14) for violation of §62-13-403( 1) not diligently exercising reasonable skill and care in the 2010 lease purchase on a sales contract, \$1,000.00 civil penalty for the same violations for the 2012 listing without Complainant, \$4,000.00 civil penalty for March, April, May, June listing without Complainant's knowledge or contract with Complainant in violation of §62-13-312(b)(20) improper conduct, \$1,000.00 civil penalty for not securing the written signatures on the 2013 documents in violation of §62-13-403(1), \$1,000.00 civil penalty for not securing contract for the 2014 person living at home, same violation, \$1,000.00 civil penalty for apparently managing property with no written agreement in violation of §62-13-404(2)(failing to be loyal to interests of client), for a total civil penalty of \$9,000.00, attendance at an entire TREC meeting, six (6) hours of continuing education on contracts, and suspension of license until all terms are satisfied; motion seconded by Commissioner Hills; motion carriers.**

17. 2014026351

Opened: 11/4/14  
First License Obtained: 6/29/73  
License Expiration: 6/4/15  
E&O Expiration: Uninsured (Retired license)  
Type of License: Broker  
History: No Prior Disciplinary Action

Respondent was the Principal Broker of above Respondent when the first set of transactions occurred in April 2010 but transferred in November 2010 of that year. In response to the 2010 matter, Respondent states that the contract closed on April 29, 2010 and that the real estate office did not receive a commission. He further provided copies of transfer in November 2010. He does not address the fact that the terms of a lease purchase are on a purchase and sale agreement nor does he address the different closing dates in the land contract and the purchase agreement, or the short addendum regarding managing the property for collecting rents and being paid at closing, date unknown.

Recommendation: Consent Order for \$1,000.00 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 accept the recommendation of legal counsel.

**Commissioner DiChiara made motion to accept recommendation of legal counsel for a Consent Order for \$1,000.00 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; motion seconded by Commissioner Franks; motion carriers.**

18. 2014019591

Opened: 8/21/14  
First License Obtained: 1/4/94  
License Expiration: 8/9/16  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: No history of disciplinary action.

February 2015 Meeting:

A complaint was filed by a potential buyer for a property that was listed by Respondent. Complainant states that the home was listed as a three (3) bedroom home. Complainant states that Complainant's offer was accepted and alleges that the home inspection report stated that the two (2) spare bedrooms do not qualify as bedrooms because they do not have windows or closets. Complainant requested that Respondent reimburse the inspection fee but was denied by Respondent and Principal Broker. Complainant filed an ethics complaint with the local association of REALTORS, and the hearing panel determined that Complainant did not meet the burden of proof that Respondent was knowingly dishonest or untruthful. Respondent did not submit a response to the complaint.

Recommendation: Consent Order with a civil penalty in the amount of \$500 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

At the February 2015 meeting, a complaint was also opened against this Respondent's principal broker on a potential failure to supervise issue (which was complaint 2014019621). At that time, the following information was presented summarizing the principal broker's response: "Respondent states that the property has been listed as a three (3) bedroom home by three (3) separate listing agents. Respondent states the seller purchased the home directly from the original owner/builder. Respondent further states that seller's previous home inspection did not note that the two bedrooms in the basement were not classified as bedrooms." The principal broker's complaint was dismissed, and this Respondent's Consent Order was authorized only for failure to respond. The principal broker contacted legal counsel upon receipt of the Consent Order and stated that the response was intended to be a response from both the principal broker and this Respondent, as they prepared the response together. The principal broker noted that the cover letter only had the principal broker's complaint number because neither individual realized that the complaint numbers were different, as neither individual had ever had a complaint, and both were unfamiliar with the process. The principal broker pointed out that the first sentence of the cover letter addressed enclosed copies of letters from both Respondent and the principal broker to the local association explaining the situation described in the complaint. Under these unique circumstances, it appears likely that the letter to the association written and signed by this Respondent (which included substantive responses to the complaint allegations) was intended to function as this Respondent's TREC complaint response, it is recommended that the Commission discuss possible reconsideration of this Consent Order for failure to respond.

New Recommendation: Discuss.

DECISION: The Commission voted to dismiss the complaint.

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; vote 6 no and 2 yes; after much discussion Commissioner Hills made a motion to dismiss; motion was seconded by Commissioner Franks; motion carriers.**

19. 2014021571

Opened: 9/22/14

First License Obtained: 8/30/04

License Expiration: 6/19/16

E&O Expiration: 1/1/17

Type of License: Affiliate broker

History: No history of disciplinary action.

February 2015 Meeting:

A complaint was filed by an agent who worked a transaction with Respondent. Complainant represented the sellers and Respondent represented the buyers. Complainant alleges that a binding agreement was entered on May 31 for a 50% cash transaction and requiring an earnest money check. Complainant requested the check, proof of funds, and a lender's authorization to no avail. Complainant states that their principal brokers were in touch and alleges that Respondent's principal broker was not aware of the transaction and had no documents in the office but would contact Respondent. Complainant also alleges that Respondent's principal broker stated that Respondent does not live in the same city. Complainant alleges that Complainant got in touch with Respondent on June 13, 2014 who indicated that Respondent was unable to work due to a back injury and would obtain the earnest money check and documentation that day. Complainant states that the buyer decided not to have a formal home inspection but requested a termite inspection, and Complainant advised that a termite inspection was outside the contract date but assisted in setting one up for June 16 anyway. Complainant states that the termite inspection was cancelled on June 16 because the check and documentation were not received. Complainant states that the earnest money check was received on June 18 as well as bank statements which appeared to indicate funds were available, but no lender's letter was provided. Complainant states that Respondent indicated buyer decided to do an all cash transaction, but on June 20 there was only proof that half the funds were deposited for closing. Complainant states that Respondent was not responsive to the title company but finally provided an addendum to the contract on July 1 but did not provide the additional funds needed for closing by the closing date of July 10. Complainant states that a closing date/possession date amendment to extend for one week was received on July 11 without any explanation why the funds were not received. Complainant alleges that the principal broker knew the closing would not occur on the scheduled date because a lender was not obtained, but this was not communicated to Complainant.

Complainant further alleges that Complainant's Principal Broker called the buyer directly to assist in finding a lender, but the Buyer did not provide the lender the documentation needed, and Complainant received a request to release the earnest money on August 9. Complainant states that the form was filled out incorrectly by Respondent.

Respondent admits to not responding to Complainant on two (2) different occasions due to health issues on the first occasion and a broken phone on the second occasion. Respondent states that the contract files are kept on a dropbox, which an administrative assistant has access to. Respondent admits that the earnest money was not received in compliance with the contract stating the check was at an old building. Respondent states that the buyer had 50% cash for the transaction and was able to obtain funds from a property owned in another state. Respondent states that buyer did not have the home inspection because the seller was not willing to do any repairs with the accepted sales price. Respondent denies being unavailable on June 10, the original closing date, stating that Respondent was on the way to closing when Respondent was notified by the buyer that the funds were not there yet. Respondent states that Respondent spent the rest of the day helping the buyer since the buyer had already brought the U-haul and belongings to Tennessee for the move. Respondent states that Complainant's principal broker requested to speak with the buyer to offer finance solutions, but buyer was not comfortable with using the lender and began looking for another home. Respondent states that Complainant's principal broker was notified immediately, and the extension was not signed by seller. Respondent states that this was a hard outcome for everybody involved, and the buyer has had medical problems and is back in the other state receiving treatment. Respondent further states that Respondent's ailing father lives in the city where Respondent's firm is, which is why Respondent is working in that area. Respondent denies being dishonest or unethical and apologizes for the earnest money situation. Respondent states that all parties lost out, and the buyer agreed to settle with the sellers for \$7,500 for not closing.

The office of legal counsel reviewed the documentation provided and conducted additional research. It appears that the city that affiliate broker lives in is within 35 miles of the real estate firm. The Purchase and Sale Agreement was accepted with Counter Offer # 2 for a purchase price of \$210,000, with a financial contingency of obtaining a loan up to 50% of the purchase price, and a \$1,000 Earnest Money requirement to be deposited at Respondent's firm. The binding agreement date was May 31 for a closing on July 10. An Addendum 1 was executed on May 31 for the sale of the home to be "As Is." An Addendum "F" was executed by seller on July 3 stating "This offer is going from finance to cash deal." An Amendment "C" closing date/possession date was executed by buyer to extend closing date to July 18. It appears that the earnest money check is dated June 1 with a deposit receipt for June 19. Bank statements showing funds equal to approximately half of the purchase price were printed on June 9. The earnest money disbursement and mutual release states that the binding agreement was May 30 with the statement that the money is being disbursed per agreement between seller and buyer and was executed August 9. It appears that Complainant amended the earnest money disbursement form to the binding agreement date of May 31 and to state that it should be returned to buyer. An email from buyer to Respondent was included in the

transaction documents stating that the money was wired from two different accounts at two different banks, but one of the bankers made a mistake, and seller requested an additional seven (7) days to close.

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (2) stating that an affiliate broker shall pay over to the broker... all...earnest money immediately upon receipt and (9) stating that earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: The Commission voted to defer the matter for Commissioner Blume's review.

New Recommendation: Commissioner Blume to discuss.

DECISION: The Commission voted to authorize a Consent Order with a civil penalty in the amount of \$2,000 for violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (2) stating that an affiliate broker shall pay over to the broker... all...earnest money immediately upon receipt and (9) stating that earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, plus attendance 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 to authorize a Consent Order with a civil penalty in the amount of \$2,000 for violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (2) stating that an affiliate broker shall pay over to the broker... all...earnest money immediately upon receipt and (9) stating that earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; Commissioner Franks seconded motion; Commissioner Blume recues; motion carries**

20. 2014021591

Opened: 9/26/14

First License Obtained: 4/8/87

License Expiration: 12/22/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

February 2015 Meeting:

TREC opened a complaint against Respondent, Principal Broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014021571. Respondent apologizes for the incident stating that no complaints have been filed against Respondent or the firm and apologizes to the previous Complainant's principal broker for the way business was conducted. Respondent states that Respondent had many conversations with the affiliate broker during the transaction, and Respondent understands Complainant's concerns regarding communicating with the affiliate broker. Respondent states that both Respondent and affiliate broker failed in their duties as professionals. Respondent states that very strict guidelines regarding the process of closings have been effectuated in Respondent's firm since this transaction. Respondent apologizes and requests that the Commission consider that this is the first complaint since Respondent's licensure in making a determination. Respondent has used this incident as a learning tool.

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violation of T.C.A. § 62-13-312(b)(15) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (3) stating brokers are responsible at all times for...earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: The Commission voted to defer the matter for Commissioner Blume's review.

New Recommendation: Commissioner Blume to discuss.

DECISION: The Commission voted to authorize a Consent Order with a civil penalty in the amount of \$2,000 for violation of T.C.A. § 62-13-312(b)(15) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (3) stating brokers are responsible at all times for...earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract, plus attendance 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 authorize a Consent Order with a civil penalty in the amount of \$2,000 for violation of T.C.A. § 62-13-312(b)(15) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (3) stating brokers are responsible at all times for...earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract, plus attendance 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 DiChiara; Commissioner Blume recues; motion carries.**

21. 2014023291

Opened: 10/2/14  
First License Obtained: 11/18/03  
License Expiration: 12/18/15  
E&O Expiration: 1/1/17  
Type of License: Affiliate Broker  
History: No Prior Disciplinary Action

Anonymous Complainant states that Respondent (affiliate broker) placed a billboard which includes Respondent's first name (listed as part of web address) as the largest part of the ad.

Prior to the subject billboard, Respondent states that Respondent had another billboard which was replaced with the current billboard on March 24, 2014 after it came to Respondent's attention that the old design included Respondent's name larger than the company name. Respondent states that Respondent self-reported the old design's non-compliance and assured it would be fixed, which was done by installing the current design. Respondent states that the anonymous Complainant appears to take issue with a part of the billboard "flickering," and Respondent states that there is no compliance issue with the flickering product on the billboard.

The size of the web address (which includes Respondent's first name) is larger than any part of the firm name on the billboard photo submitted. This appears to legal counsel to be a violation of T.C.A. § 62-13-310(b). It also appears to legal counsel, from examining the billboard photo, that Respondent's full name as listed on the billboard is larger than part of the firm's name.

Recommendation: Consent Order for \$500 for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-310(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 a Consent Order for \$1,000 for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-310(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 DiChiara made a motion to accept recommendation of legal counsel; motion seconded by Commissioner Hills; Commissioner Blume made a substitute motion to authorize a Consent Order for \$1,000 for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-310(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; motion seconded by Commissioner Franks; motion carriers.**

22. 2014023301

Opened: 10/2/14  
First License Obtained: 9/10/03  
License Expiration: 11/29/16  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: No Prior Disciplinary Action

A complaint was opened against this Respondent (principal broker), who is the principal broker of the previous affiliate broker Respondent in complaint 2014023291 (hereinafter “affiliate broker”) for a potential failure to supervise issue. The substance of Respondent’s response was identical to the information outlined in the affiliate broker’s response above.

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 a 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.

**Commissioner Alexander made a motion to authorize a 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; motion seconded by Commissioner Hills; motion carries.**

23. 2014023341

Opened: 9/26/14  
History: No Prior Disciplinary Action – Unlicensed

24. 2014023351

Opened: 9/26/14  
History: No Prior Disciplinary Action – Unlicensed

Complainant wrote TREC regarding issues Complainant experienced with Respondent 1 (unlicensed individual) who works with Respondent 2 (unlicensed firm). Complainant addresses issues such as failure to return a deposit paid by Complainant, lack of attention to a problem with the bathroom mirror shattering during the tenancy, allowed use of Complainant’s parking spot by another tenant, and inaccurate photos of the property’s

balcony prior to renting. Respondent 2's website was printed on September 12, 2014, and it states that it, "...has mini-farms, rental property, apartment buildings, condominiums, residential lots, commercial lots and large tracts of land...If you are interested in buying land for development or for residential purposes, please contact us..." The website further states that it is a group of properties that are owned individually or collectively by members of a family. The website states, "We are not a real estate company. We only manage, buy, and sell our own property..."

A response was submitted for both Respondents from an individual who states that, as to the Complainant's allegations, expenses and repairs totaled more than the deposit which was why it was not returned, that the mirror was replaced within a few days at Respondents' expense, that Respondents thought the parking spot situation was resolved to Complainant's satisfaction, and that Complainant was given the opportunity to see the unit and signed the lease without objecting to the type of balcony. The individual submitting the response on behalf of Respondents states that the individual owns several pieces of property which have been acquired over the lifetime of the individual and her deceased husband. The individual states that Respondent 1 is an employee who collects the rent and leases out Respondent 2's own condominiums and apartment buildings. The individual states that she understands that she does not have to have a license to lease her own property even if she has an employee help with doing this. Further the individual states that she does not lease or manage apartments for the public or sell properties for the public but only leases and sells properties that the individual owns herself, and, if this is not permitted, the individual would like to have it clarified so that she would know how to comply with the law. The individual states that she has never represented herself as a realtor, property management company, or broker or sold a property that she did not personally own.

Office of legal counsel researched the property leased by the Complainant. It appears that the property is owned by an LLC which appears to be a combination of the individual's name and that of her deceased husband. Based on the information at this time, it would appear to legal counsel that Respondent 1's actions fall within the description of the licensing exemption found at T.C.A. § 62-13-104(a)(1)(E). It does not appear that Respondent 2 unlicensed company is covered by the exemption at T.C.A. § 62-13-104(a)(1)(A) because the LLC and not the individual owns the property and does not appear to be covered by the exemption at T.C.A. § 62-13-104(a)(1)(F) because the property is owned by an LLC which is not included in that exemption per the Attorney General's Opinion.

Recommendation: Dismiss as to Respondent 1. As to Respondent 2, Consent Order for \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

DECISION: As to Respondent 1, the Commission voted to dismiss the complaint. As to Respondent 2, the Commission voted to authorize a Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

**Commissioner Blume made a motion to accept recommendation of legal counsel but to increase Civil Penalty to \$1,000.00 per violation; Commissioner Hills seconded motion; Commissioner McMullen made a substitute motion as to Respondent 1 to dismiss the complaint. As to Respondent 2, to authorize a Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; Commissioner Franks seconded motion; motion carriers.**

25. 2014023361

Opened: 10/9/14

First License Obtained: 2/11/09

License Expiration: 2/24/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant (a licensee) alleges that Respondent (now principal broker as of February 25, 2015, but at the time an affiliate broker) advertised a house for rent prior to Respondent's client purchasing the home. Complainant represented the seller of the subject property. Complainant states that the original intention was for the property to close on June 15, 2014, but the closing was delayed multiple times due to lending issues. Complainant states that the property was listed on June 19 for rent on MLS by Respondent. Complainant further states that the photos used for advertising were taken from Complainant's MLS listing. Complainant further alleges that a sign was placed in the yard on or about June 23 prior to closing. Complainant spoke with Respondent's principal broker and Respondent on June 24. Complainant states that Respondent apologized but did not correct the issue. Complainant provided Respondent's MLS listing, photographs of the "for rent" sign in the yard, and a copy of the settlement statement showing a June 24 closing. Respondent did not represent anyone in the purchase and sale transaction.

Respondent states that the client advised that the home would close on June 17, and Respondent placed the "for rent" sign on June 23 based on that information from Respondent's client. Respondent states that the property was advertised online beginning on June 19, and the photo used was taken from another website and not through an MLS listing. Upon meeting the client on June 23, Respondent states that the client said the closing had been delayed on June 17 and again on June 20 but was going to close that afternoon on June 23. Respondent states that Respondent did not learn until speaking with Respondent's broker (who had been contacted by Complainant) on June 24 that the closing did not occur on June 23. Respondent states that Respondent immediately removed all advertising of the property and called Complainant to explain and apologize. Respondent states that the sale ultimately closed on June 24. Respondent states that Respondent's actions were based on information available at the time and were not

malicious in nature. It appears to legal counsel, based on the close timing between the apparent closing and the client's desire to list the property, that Respondent did not diligently exercise reasonable skill and care in making sure that the closing had occurred before advertising the property.

Additionally, although not listed as one of Complainant's allegations, documentation provided with the complaint and response indicates that Respondent was advertising an unlicensed property management company. Specifically, the yard sign contains the unlicensed entity's name, its telephone number, and web address with no mention of Respondent's licensed firm, which is also an advertising violation. Additionally, e-mails between Respondent and the client reference Respondent as "Property Manager" with the unlicensed company. Finally, the Management Agreement executed by Respondent and the client references only the unlicensed company and not the firm. It appears that the unlicensed company became licensed as a firm on or about February 25, 2015.

Recommendation: Consent Order for \$1,500 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), 62-13-403(1) (duty to exercise reasonable skill and care), and Rule 1260-02-.12 (advertising rule) 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 \$3,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), 62-13-403(1) (duty to exercise reasonable skill and care), and Rule 1260-02-.12 (advertising rule) 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 to authorize a Consent Order for \$3,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), 62-13-403(1) (duty to exercise reasonable skill and care), and Rule 1260-02-.12 (advertising rule) 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 carries.**

26. 2014023381

Opened: 10/8/14

First License Obtained: 2/27/91

License Expiration: 5/20/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014023451 - Under review by legal

TREC opened a complaint against Respondent, principal broker, for failure to supervise previous Respondent (hereinafter “affiliate broker”) in previous case number 2014023361. Respondent states that Respondent’s firm did not represent the buyer with the purchase or participate in the sale transaction in any way. Respondent further states that transactions in MLS are frequently not changed by the listing agent to “closed” until several days after the closing occurs. Respondent states that, after receiving the phone call from Complainant, Respondent immediately spoke with the affiliate broker. Respondent states that the affiliate broker was instructed by the client to list it for rent and told that the property had closed. Respondent’s conversation was the first time that the affiliate broker heard the property had not closed. Respondent states that Respondent instructed the affiliate broker to immediately withdraw the property from MLS, remove the property from the website, and drive to remove the yard sign proof the property had closed. Respondent believes that Respondent did everything possible to rectify the error as quickly as possible Respondent further provided information concerning Respondent’s oversight of affiliated agents, including the policy and procedures manual and training documents.

It does not appear to legal counsel that Respondent was exercising adequate supervision over the affiliate broker’s activities. Additionally, there are violations of the advertising rule, and Respondent is responsible for directly supervising all advertising.

Recommendation: Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 accept the recommendation of legal counsel.

**Commissioner Franks made a motion to accept the recommendation of legal counsel a Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 DiChiara; motion carries.**

27. 2014023401

Opened: 10/3/14

First License Obtained: 11/1/07

License Expiration: 11/9/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Complainant states that Respondent (broker) was assigned to Complainant as an agent and relocation specialist by a company who was assisting Complainant with possible relocation. In 2010, Complainant signed a recruitment agreement and contract with a medical practice where Respondent's spouse was a majority shareholder. At that time, Complainant states that Complainant hired Respondent as Complainant's realtor. Complainant states that Respondent stated on multiple occasions that Respondent had no financial interest in the medical practice. Complainant alleges that Respondent was on the payroll of the practice, had access to the billing software, was previously the attorney for the practice, and received Respondent's 401(k) through the practice. Complainant ultimately signed a contract in 2012 to have a home constructed, which closed on February 28, 2013. Complainant states that Respondent's spouse terminated Complainant in May 2013 and is currently involved in lawsuits involving the practice, one for wrongful termination and another for fraud. Complainant alleges that Complainant met with Respondent's spouse in January 2013 regarding possible fraud, but Respondent's spouse waited to terminate Complainant until after closing so Respondent could receive a commission. Complainant states that Respondent was dishonest and misleading by not disclosing Respondent's financial interest in the practice.

A response was submitted through an attorney stating that the complaint does not concern Respondent's professional real estate services. Respondent states that Complainant acknowledges that Complainant was aware of the relationship between Respondent and the medical practice before Complainant engaged Respondent in 2010. Respondent states there are no allegations that violate the applicable statutes or rules but only assert violations of the Realtor code of ethics. Respondent states that neither Respondent, Respondent's family, nor Respondent's firm possessed an interest in the subject real estate. Respondent states that Complainant acknowledged that Respondent informed Complainant that Respondent had previously worked for the practice, but Complainant chose to engage Respondent anyway. Respondent further denies participating in the management or having financial interest with the practice. Respondent further states that the complaint contains no assertion that Respondent made any misrepresentations in real estate communications. Respondent states that Complainant is seeking damage for Respondent because Complainant was terminated.

Complainant submitted additional information through an attorney stating that the primary issue is Respondent's lack of candor and failure to disclose information. Complainant states that Complainant would not have hired Respondent if Complainant was fully informed of Respondent's association with the practice. Complainant alleges that Respondent has a fiduciary duty to provide services with undivided loyalty, and a breach of that duty results in forfeiture of compensation and may be subject to damages. Complainant alleges that Respondent acted for an adverse party without consent and worked in an undisclosed dual agency. Complainant states that the tensions between Complainant and Respondent's spouse were present during the representation, and

Complainant would have spoken with Respondent to determine if continued representation was warranted had Complainant known that Respondent was involved with the practice. Complainant states that Respondent possessed some knowledge of the practice's intentions regarding Complainant's employment and alleges that this violates the code of ethics. Complainant further alleges that Respondent may use confidential information to assist Respondent's spouse in defense of the pending lawsuits. Respondent submitted a response stating that the Construction Contract and Agreement for Purchase and Sale of Real Estate was executed by Complainant on April 25, 2012 and denies having knowledge that Complainant would be terminated by the practice. Respondent states that the closing occurred on February 28, 2013 and denies that Respondent had knowledge that Complainant would be terminated by the practice. Respondent states that Respondent earned a commission on a transaction and denies having knowledge that Complainant would be terminated or that the practice was considering terminating Complainant.

Complainant's attorney again asserts that Respondent repeatedly ignored Complainant's inquiries about Respondent's association with the practice. Complainant states that an adverse fact in real estate is a fact that would cause an ordinary buyer to reconsider the purchase, and Respondent's associations and undisclosed dual agency constitute adverse facts.

It does not appear to legal counsel that there was a failure to disclose adverse facts, that there was a dual agency created, or that there was the type of personal interest that should have been disclosed pursuant to the provisions of the Broker Act, and, in legal counsel's opinion, the information provided does not appear to show a violation of the Broker Act.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carriers.**

28. 2014023411

Opened: 9/29/14

First License Obtained: 4/20/01

License Expiration: 6/22/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014023401 (hereinafter “broker”). Respondent submitted a response through an attorney stating that at all times, Respondent’s supervision of the broker was consistent with the requirements of TREC. Respondent states that the complaint never accuses Respondent of wrongdoing. Respondent forwarded a copy of the transaction file in order to demonstrate that Respondent acted in a normal, supervisory capacity in this transaction, stating that the firm maintains highest standards to comply with all regulations. A copy of the Sales Contract Checklist and the firm’s Policy and Procedures Manual was also provided. Respondent states that there was no personal interest requiring disclosure in the transaction. Respondent further monitors continuing education of brokers, the advertisement of designations used by brokers, and ensures that the realtors do not engage in the practice of law. Respondent contends that the complaint was vague and that Respondent’s supervision of the Broker has, at all times, been well within the guidelines and regulations.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.**

29. 2014023421

Opened: 10/30/14

First License Obtained: 3/7/14

License Expiration: 3/6/16

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

\*This licensee’s license is currently in inactive status.\*

Complainant (a licensee) states that Complainant was interviewing candidates for a receptionist position, and Complainant states that Respondent (affiliate broker) advised that Respondent worked for Firm 1, but Complainant discovered that Respondent is a buyer’s agent for Firm 2. Complainant included a website URL from a third party website that states Respondent is affiliated with Firm 2.

Respondent states that Complainant and Respondent communicated by e-mail regarding a possible position but at no time actually met for an interview. Respondent states that Respondent told Complainant that Respondent previously worked for Firm 2 as a buyer's agent.

According to TREC records, it appears that Respondent was affiliated with Firm 1 from on or about May 29, 2014 until on or about February 10, 2015 (the complaint was filed in this time period). It further appears that Respondent was affiliated with Firm 2 between on or about April 8, 2014 and May 29, 2014. It does not appear to legal counsel that there is any evidence of Respondent working for two firms at one time.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.**

30. 2014023441

Opened: 10/1/14  
First License Obtained: 1/22/98  
License Expiration: 9/28/16  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: 2013013591 – Closed (Consent Order)

TREC opened a complaint against Respondent (principal broker) for failure to supervise previous Respondent affiliate broker in complaint 2014023421 (hereinafter "affiliate broker"). Respondent is the principal broker for Firm 1 referenced in the previous complaint summary.

Respondent states that Respondent spoke with the affiliate broker, who told Respondent that the affiliate broker did not represent herself as a current member of Firm 2 but referred to past experience as buyer's agent with that firm. Respondent states that, upon starting work with the firm, the affiliate broker was advised to following advertising guidelines, including checking all ads to ensure that current changes have been posted, and the affiliate broker met all of the requirements. Respondent states that the affiliate broker's request to remove information off of the third party website referenced in the complaint was not acted out until recently. Respondent states that there was no intent of misrepresentation of firm affiliation and no failure to supervise.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.**

31. 2014023451

Opened: 9/29/14

First License Obtained: 2/27/91

License Expiration: 5/20/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014023381 - Under review by legal

TREC opened a complaint against Respondent (principal broker) for failure to supervise the previous Respondent affiliate broker in complaint 2014023421 (hereinafter “affiliate broker”). Respondent is the principal broker for Firm 2 referenced in the affiliate broker’s summary.

Respondent states that affiliate broker left Respondent’s firm in May 2014 and provided a copy of the TREC 1 Transfer, Release and Change of Status form noting Respondent’s change from Firm 2 to Firm 1 in May 2014. Respondent states that the affiliate broker left Respondent’s firm before having the subject conversations with the Complainant.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.**

32. 2014023511

Opened: 10/20/14

First License Obtained: 11/3/94

License Expiration: 4/6/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

A letter was submitted from a fellow licensee, which claims there is a disregard of advertising rules in a certain area of the state. The letter referenced a few examples, but, as to this Respondent (affiliate broker), it only stated to please observe Respondent’s ad. The complaint did not include a photograph or copy of this Respondent’s advertisement.

After the complaint was opened, Complainant wrote the TREC office stating that Complainant did not wish to file a complaint against the licensees and stated Complainant would pursue no further action.

Respondent submitted a response stating that there was no supporting photo or documentation provided with the complaint. Respondent states that Respondent contacted the TREC office and was informed that there was no further documentation to send. Respondent states that Respondent strives to adhere to the advertising rules of the Commission.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.**

33. 2014023561

Opened: 10/20/14

First License Obtained: 3/6/14

License Expiration: 4/21/16

E&O Expiration: 1/1/17

Type of License: Broker

History: 2014021611 - Consent Order authorized

2014023591 – Under review by legal

TREC opened a complaint against Respondent (broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014023511 (hereinafter “affiliate broker”). Respondent was the affiliate broker’s principal broker at the time the complaint was filed.

Respondent states that there were no relevant supporting photographs or documents attached with the complaint. Respondent states that Respondent’s firm strives to adhere to the advertising rules of the Commission and instructs agents monthly regarding same.

Recommendation: Dismiss.

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion carries.**

34. 2014023571

Opened: 10/2/14  
First License Obtained: 5/16/02  
License Expiration: 2/14/16  
E&O Expiration: 1/1/17  
Type of License: Affiliate Broker  
History: No Prior Disciplinary Action

A letter was submitted from a fellow licensee, which claims there is a disregard of advertising rules in a certain area of the state. The letter referenced a few examples, but, as to this Respondent (affiliate broker), it stated that Respondent's firm is mentioned in a newspaper advertisement, but Respondent's photo, name, and numbers are dominant. The complaint did not include a photograph or copy of this Respondent's advertisement. After the complaint was opened, Complainant wrote the TREC office stating that Complainant did not wish to file a complaint against the licensees and stated Complainant would pursue no further action. It does not appear to legal counsel (based solely on the description of the ad since that was all that was provided) that the referenced newspaper advertisement is in violation of the advertising rule in its current form.

Respondent submitted a response stating that a copy of the newspaper advertisement referenced in the complaint was not included, and, when speaking with TREC staff, Respondent was told that there was no example of Respondent's advertising supplied with the complaint. Respondent states that Respondent strives to adhere to the advertising rules of the Commission.

Recommendation: Dismiss.

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.**

35. 2014023591

Opened: 10/20/14  
First License Obtained: 3/6/14  
License Expiration: 4/21/16  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014021611 - Consent Order authorized

2014023561 – Under review by legal

TREC opened a complaint against Respondent (broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014023571

(hereinafter “affiliate broker”). Respondent was the affiliate broker’s principal broker at the time the complaint was filed.

Respondent states that there was no relevant supporting photograph or document attached, as referenced in the complaint. Respondent states that Respondent’s firm strives to adhere to the advertising rules of the Commission and instructs agents monthly regarding same.

Recommendation: Dismiss.

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion carries.**

36. 2014023631

Opened: 9/26/14

First License Obtained: 6/3/13

License Expiration: 6/2/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant sought to purchase a lot and build a home. Respondent (affiliate broker) was the builder’s sales agent. Complainant states that Respondent confirmed that the desired floor plan could be built on the desired lot in March 2014. Complainant states Complainant sent a five hundred dollar (\$500) check to secure the lot, signed a Purchase and Sale Agreement, and submitted an additional two thousand dollar (\$2,000) earnest money check. Complainant also states a five hundred dollar (\$500) check was also submitted to hold a second lot for family. Complainant alleges that Respondent said that a copy of the contract would be forwarded by mail, but Complainant did not receive it until April 2014. Complainant alleges that Respondent misplaced the first five hundred dollar (\$500) check and used the second instead. Complainant further alleges that the builder was offering a \$15,000 incentive in March if the homebuyer used a specific mortgage company. Complainant states that Respondent caused delays in the mortgage application process by not having all the paperwork signed or providing copies in a timely manner, but Complainant was verbally pre-approved for the loan on April 2, although a pre-approval letter was not received. Complainant further states that Respondent was transferred to a different subdivision, and Complainant was informed that the contract Respondent wrote was incorrect. Complainant was told that the lot was not big enough for the home. Complainant states that the sales manager intimidated and bullied Complainant to back out of the contract, but Complainant wanted to proceed. Complainant states that another agent assisted Complainant with making changes to the contract, and Complainant initialed and dated next to these changes and provided the

agent with a second installment of the earnest money. Complainant further states the sales manager caused discrepancies with the options Complainant chose for the home, attempted to extend the contract, and interfered with the loan process. Complainant alleges that the builder advised the mortgage company that Complainant no longer was purchasing the home, which Complainant states is untrue. Complainant states that the earnest money deposit in the total amount of twenty-one thousand five hundred dollars (\$21,500) was returned via mail and dated April 25, 2014, but Complainant did not cash the check. Complainant alleges that the builder discriminated against Complainant by refusing to sell the home, although Complainant was approved for the full amount of the loan.

Respondent answered via General Counsel for Respondent's former real estate firm. The attorney states that Respondent worked as a sales marketing representative, stating Respondent was adequately trained and was at all times acting in accordance with the law. The attorney states that Complainant visited the office multiple times to complete a Purchase Agreement and make various selections related to the home. The attorney states that, before the offer to purchase was complete, Respondent transferred to a different community, and the sales manager completed the process, though Respondent returned from the other community for a transition meeting with Complainant. The attorney states that only the Vice President and Division manager can ratify a contract, and there was never a binding agreement with Complainant. The attorney states that the home was not legally buildable because the selected house with various options did not fit on the selected lot. The attorney states that Complainant was given multiple opportunities to choose a different house and/or a different lot, but Complainant was unwilling. The attorney states that the mortgage company refunded the earnest money deposit in full, but Complainant returned the check. The attorney further states that the earnest money refund was offered again with an additional five thousand dollars (\$5,000) as a gesture of goodwill in exchange for full release, but Complainant denied the offer. The attorney states that Respondent did not take any action related to Complainant that was motivated by discrimination.

Complainant submitted additional information stating in part that the purchase agreement was executed on March 8 but was not provided until corrections were made on April 6. Complainant also states that Complainant was told there were more documents to sign on March 22, which Respondent stated Respondent forgot to have them sign on March 8.

A "Sale of Existing Home Addendum to Purchase Agreement" was drafted but not executed and dated April 19, 2014, and is stated to amend a Purchase Agreement dated March 8, 2014. A letter dated April 25, 2014 and the twenty-one thousand five hundred dollar (\$21,500) earnest money disbursement check was sent to Complainant from the builder stating that the builder never executed the purchase agreement, and thus the contract was not binding. Settlement discussions ensued between the attorneys. On or about July 25, 2014, Complainant's attorney returned the earnest money disbursement check to the builder's attorney. Complainant subsequently sent a request to the builder's attorney to file an interpleader for the earnest money disbursement check on September 11, 2014.

Office of legal counsel requested additional documentation. It appears that there is a check dated March 8, 2014 for the amount of two thousand dollars (\$2,000) in the file that stated the first lot number in the memo line and a second check dated March 8, 2014 for five hundred dollars (\$500) in the file that stated the second lot number in the memo line. The Purchase and Sale agreement was executed March 8, 2014 by the buyers for the first lot, which requires the first deposit upon execution of the agreement in the amount of two thousand five hundred dollars (\$2,500), and a second payment due on or before April 8, 2014 in the amount of twenty seven thousand dollars (\$27,000). The agreement is not executed by the seller. There is an affiliated business agreement executed by buyers on March 8, 2014 stating the seller has a business relationship with the mortgage company and settlement company. The Confirmation of Agency Status form was not completed until March 22, 2014, which is signed by the Complainant and Respondent but not the seller (Complainant was unrepresented). There is a sale of existing home addendum to purchase agreement dated April 6, 2014 and signed by buyers on April 7, 2014, which is crossed out and states "VOID" and "Extension to June 8th + July 8th." There is also a note stating "copy of POA upon request." Further, there is a deposit installment addendum to purchase agreement dated April 6, 2014 and executed by buyers only which states that the second payment would be for the amount of nineteen thousand dollars (\$19,000), and it includes a copy of the check. There is an error correction acknowledgment for the purchase and sale agreement dated April 6, 2014, which adds the buyers' telephone. There is also a second copy of the purchase and sale agreement with buyer initials and the April 6, 2014 date next to the correction and signature page. It does not appear that sellers executed any of the transaction documents. To legal counsel, it appears that there is a lack of reasonable skill and care in the handling of the contracts by Respondent considering the offer was signed by Complainant, Complainant paid money and had multiple meetings regarding selections for the home before being later told the seller did not sign, and there was no contract. Further, it appears the confirmation of agency was not signed with an unrepresented buyer until weeks after the offer was submitted. Finally, Complainant repeatedly states in the complaint and earlier e-mails that Complainant was never given copies of the contract until about a month later, and Respondent does not rebut this.

Recommendation: Consent Order in the amount of \$2,000 for violation of T.C.A. §§ 62-13-312(b)(8) and (14), 62-13-403(1) (failing to exercise reasonable skill and care), and 62-13-405(a) and (b) (failing to disclose agency status in writing at time of offer), plus completion of six (6) hours of continuing education in contracts and attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission all within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to authorize a Consent Order in the amount of \$3,000 for violation of T.C.A. §§ 62-13-312(b)(8) and (14), 62-13-403(1) (failing to exercise reasonable skill and care), and 62-13-405(a) and (b) (failing to disclose agency status in writing at time of offer), plus completion of six (6) hours of continuing education in contracts and attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission all within one hundred eighty (180) days of Respondent's execution of Consent Order.

**Commissioner Blume made a motion to accept the recommendation of legal counsel to authorize a Consent Order in the amount of \$3,000 for violation of T.C.A. §§ 62-13-312(b)(8) and (14), 62-13-403(1) (failing to exercise reasonable skill and care), and 62-13-405(a) and (b) (failing to disclose agency status in writing at time of offer), plus completion of six (6) hours of continuing education in contracts and attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission all within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner DiChiara; motion carries.**

37. 2014023651

Opened: 10/9/14  
First License Obtained: 9/1/95  
License Expiration: 10/4/16  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise the previous Respondent affiliate broker in complaint 2014023631 (hereinafter "affiliate broker"). Respondent states that Respondent was not the principal broker at the time of the complaint. Respondent acted as the affiliate broker's principal broker beginning June 23, 2014 through present. The timeframe of the previous complaint was March through April 2014.

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 carries.**

38. 2014025411

Opened: 10/20/14  
First License Obtained: 3/13/89  
License Expiration: 3/7/17  
E&O Expiration: 1/1/17

Type of License: Principal Broker  
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise the Respondent affiliate broker in complaint 2014023631 above (hereinafter “affiliate broker”). Respondent was the affiliate broker’s principal broker between on or about October 31, 2013 and on or about June 23, 2014. Respondent answered via General Counsel for the real estate firm. The attorney states that Respondent had no personal involvement in the interactions with Complainant. The attorney maintains that the affiliate broker conducted herself properly throughout the sales process, and Respondent did not fail to supervise the affiliate broker.

Recommendation: Consent Order in the amount of \$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 accept the recommendation of legal counsel.

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel of a Consent Order in the amount of \$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; motion seconded by Commissioner Franks; motion carries.**

Assistant General Counsel Robyn Ryan addresses the Commission with new from the attorneys of Ms. Perry regarding the formal hearing for 3-5-15. The attorney is in agreement with the impending weather conditions that a continuation of the hearing is acceptable for either April 2, 2015 or September 3, 2015.

**Commissioner Franks made a motion to continue formal hearing of TREC v Carrie Perry for until either April 2, 2015 or September 3, 2015; motion seconded by Commissioner McMullen; motion passes.**

39. 2014023681

Opened: 10/8/14  
First License Obtained: 1/31/02  
License Expiration: 2/18/17  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014023731 – Under review by legal

2014023781 – Under review by legal

2014023821 – Under review by legal

2014023851 – Under review by legal

2014023871 – Under review by legal

40. 2014023711

Opened: 10/8/14

First License Obtained: 1/6/99

License Expiration: 10/24/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014023761 – Under review by legal

2014023791 – Under review by legal

2014023841 – Under review by legal

2014023861 – Under review by legal

2014023891 – Under review by legal

41. 2014023731

Opened: 10/8/14

First License Obtained: 1/31/02

License Expiration: 2/18/17

E&O Expiration: 1/1/17

Type of License: Broker

History: 2014023681 – Under review by legal

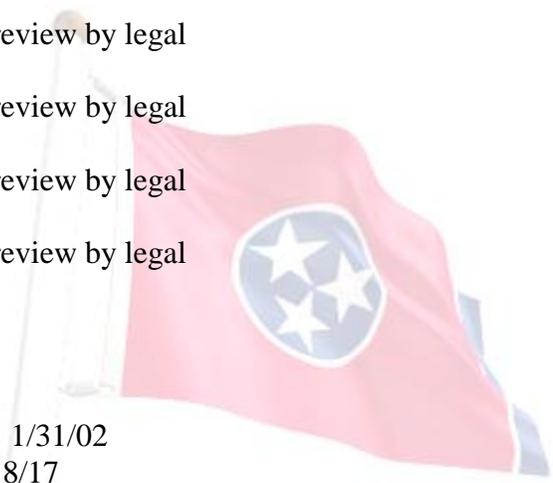
2014023781 – Under review by legal

2014023821 – Under review by legal

2014023851 – Under review by legal

2014023871 – Under review by legal

42. 2014023761



Opened: 10/8/14  
First License Obtained: 1/6/99  
License Expiration: 10/24/15  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: 2014023711 – Under review by legal

2014023791 – Under review by legal

2014023841 – Under review by legal

2014023861 – Under review by legal

2014023891 – Under review by legal

43. 2014023781

Opened: 10/8/14  
First License Obtained: 1/31/02  
License Expiration: 2/18/17  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014023681 – Under review by legal

2014023731 – Under review by legal

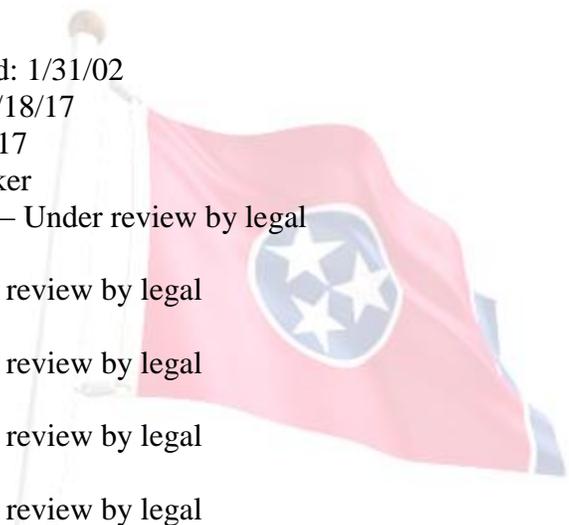
2014023821 – Under review by legal

2014023851 – Under review by legal

2014023871 – Under review by legal

44. 2014023791

Opened: 10/8/14  
First License Obtained: 1/6/99  
License Expiration: 10/24/15  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: 2014023711 – Under review by legal



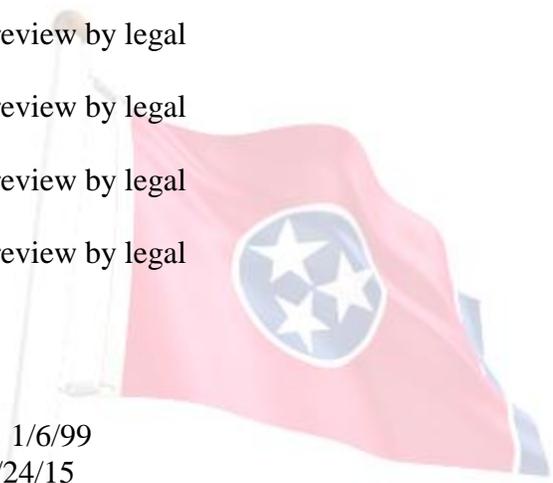
2014023761 – Under review by legal  
2014023841 – Under review by legal  
2014023861 – Under review by legal  
2014023891 – Under review by legal  
45. 2014023821

Opened: 10/8/14  
First License Obtained: 1/31/02  
License Expiration: 2/18/17  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014023681 – Under review by legal

2014023731 – Under review by legal  
2014023781 – Under review by legal  
2014023851 – Under review by legal  
2014023871 – Under review by legal  
46. 2014023841

Opened: 10/8/14  
First License Obtained: 1/6/99  
License Expiration: 10/24/15  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: 2014023711 – Under review by legal

2014023761 – Under review by legal  
2014023791 – Under review by legal  
2014023861 – Under review by legal  
2014023891 – Under review by legal



47. 2014023851

Opened: 9/22/14  
First License Obtained: 1/31/02  
License Expiration: 2/18/17  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014023681 – Under review by legal

2014023731 – Under review by legal

2014023781 – Under review by legal

2014023821 – Under review by legal

2014023871 – Under review by legal

48. 2014023861

Opened: 10/8/14  
First License Obtained: 1/6/99  
License Expiration: 10/24/15  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: 2014023711 – Under review by legal

2014023761 – Under review by legal

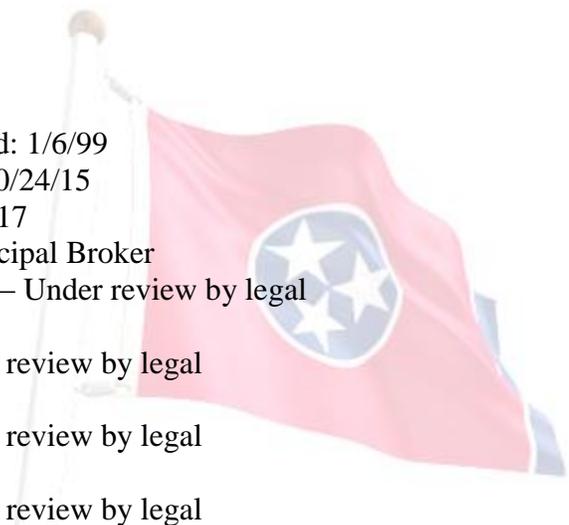
2014023791 – Under review by legal

2014023841 – Under review by legal

2014023891 – Under review by legal

49. 2014023871

Opened: 10/8/14  
First License Obtained: 1/31/02  
License Expiration: 2/18/17  
E&O Expiration: 1/1/17  
Type of License: Broker  
History: 2014023681 – Under review by legal



2014023731 – Under review by legal

2014023781 – Under review by legal

2014023821 – Under review by legal

2014023851 – Under review by legal

50. 2014023891

Opened: 10/8/14

First License Obtained: 1/6/99

License Expiration: 10/24/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014023711 – Under review by legal

2014023761 – Under review by legal

2014023791 – Under review by legal

2014023841 – Under review by legal

2014023861 – Under review by legal

Six complaints of a similar nature were all received regarding the same Respondent 1 (broker). Respondent 2 (principal broker) is Respondent 1's principal broker, and the complaints were opened on the potential issue of failure to supervise. Complaint 2014023681/2014023711: Complainants state that they purchased a new home in February 2014 which was still under construction by the builder. Respondent 1's spouse is the President and one of the members of the LLC which was building the home. Complainants state that Respondent 1 showed them the home and showed them color options and other finish options. Complainants state that Respondent was their point of contact, and Respondent 1 had the construction rushed so Complainants could move in when their lease ended. Complainants state that, when they moved in, the home was not finished or cleaned, but Respondent 1 guaranteed it would be finished by closing. Complainants state that there were flaws at the final walk through and, after closing, there was no help from Respondent 1. Complainants also state that Respondent 1 promised that if Complainants got orders to move within twelve (12) months, they would buy back the house or have the first option to buy it back, but this was never put in the contract. Complainants state that nothing Respondent 1 promised would be done was ever done and Complainants' calls were not returned. Complainants state that the builder LLC has filed for bankruptcy. Complainants state that there is a lien of almost \$5,400 on the home.

Respondent 1 states that Complainants were unrepresented in the transaction, and Respondent 1 attached a copy of signed disclosures which included a Personal Interest Disclosure & Consent and an Agency Disclosure Statement. Respondent 1 states that the builder's crew was at the property when the parties went to closing, but the responsibility for the completion of the home belongs to the builder and not the real estate agent. Respondent 1 states that Complainants were given instructions to contact the builder directly after closing and were given a list of contact information. Respondent states that the purchase contract was between one of the Complainants and the builder, and the request to have the first option to purchase if Complainants got orders to leave within the first six (6) months was from Respondent 1 as an investment opportunity, but this was not attempt to make a false guarantee that the home would be purchased if Complainants received orders, and the builder would not have been a party which was why this was not included in the contract. As to the lien, Respondent 1 states that a title search was performed by the closing agent, and there were no liens or the loan would not have closed. Respondent 1 states that neither Respondent has been contacted with complaints on Respondent 1's performance, and this complaint was filed by a disgruntled homeowner after the builder LLC's meeting of creditors in the bankruptcy court. Respondent 2 states that Complainants did not have a home inspection, but the home was appraised with only two items noted and then re-inspected by the appraiser prior to closing. Respondent 2 states that Complainants had the option not to close if the property was not in the condition expected, but the responsibility for construction, completion and cleanliness was with the builder. Respondent 2 states that, at closing, buyers got a letter from the builder outlining the procedures of the one year builder's warranty, which does not mention contacting the listing agent after closing. Respondent 2 states that Complainants failed to take steps to minimize their risks, and the builder LLC has filed bankruptcy so Complainants are going after Respondent 1.

Complaint 2014023731/2014023761: Complainant states that Complainant and spouse purchased a new home from Respondent 1 and the builder LLC which was not finished. Complainant states that a home inspector noted six (6) problems at the time of closing, which representatives of the builder promised to rectify. Complainant states that Respondent 1 told Complainant not to worry. Complainant states that the builder LLC is now filing bankruptcy.

Respondent 1 states that Complainant's spouse was the only person on the contract, and Respondent 1 enclosed a signed Personal Interest Disclosure. Respondent 1 states that the foreman and member of the builder LLC was in contact with Complainant during and after closing, and, according to him, the listed items were addressed. Respondent 1 states a home inspection was performed, and the final walkthrough was held, and none of the items from the home inspection were listed on the final walk through signed by Complainant (copy included). Respondent 1 states Complainant was given contact information for the builder LLC and subcontractors for concerns after closing. Respondent 1 states that the property closed almost a year before the complaint was filed, and Complainant did not have any complaints against Respondent 1 until after the builder LLC filed bankruptcy. Respondent 1 attached documentation including emails between

Complainant and Respondent 1, wherein at one point Respondent 1 stated that, as a realtor, when the closing happens, Respondent 1 is no longer part of the process and, "...all real estate relationships due at the closing table..." Respondent 2 states that Complainant and spouse purchased the home and had a home inspection shortly before closing. Respondent 2 states that the items mentioned in the complaint were not reflected in the New Home Orientation/Walk Through Checklist signed by Complainant (which was provided). Respondent 2 states that the complaint is not about Respondent 1's performance as a real estate agent but instead the poor performance of the builder LLC.

Complaint 2014023781/2014023791: Complainant states that Complainant and spouse purchased a home under construction in February 2014 which was being built by a builder LLC where Respondent 1's spouse is President and a member. Respondent 1 was representing the seller in the transaction. Complainant states that Respondent 1 was the point of contact for choosing things in the home and for explaining the builder's warranty as well as issues regarding walk throughs and repairs. Complainant states that there is \$15,000-\$20,000 in damages due to poor workmanship and unfinished work, and there is a lien on the home from a subcontractor who was not paid by the builder LLC. Complainant states that Respondent 1 knew of these issues and sold Complainant the home anyway. Complainant states that Respondent 2 was always unavailable. Complainant attached text messages between Complainant and Respondent 1 discussing issues such as repairs and the subcontractor who apparently placed the lien on Complainant's property, and these appear to indicate knowledge by Respondent 1.

Respondent 1 submitted a response stating that Respondent 1 was the listing agent for the builder LLC/seller, and Complainant and spouse were represented by another licensee. Respondent 1 states that Complainant was given a list of contacts for the builder LLC for concerns after closing. Respondent 1 states that Respondent 1 is not a member of the builder LLC and is not a contractor or home inspector. As to the lien, Respondent 1 states that the home closed with a title search, and there were no liens on the property at the time of closing. Respondent 1 states that the home closed approximately seven months prior to the complaint being filed, and there were no complaints against Respondent 1's performance until the builder LLC filed bankruptcy.

Respondent 2 states that Respondent 2 has never been contacted by Complainant or Complainant's agent in the transaction regarding Respondent 1's actions. Respondent 2 states that Complainant did not have a home inspection, and the VA Appraisal only lists a few minor repairs. Respondent 2 questions how Respondent 1 should have known of a lien that the closing attorney did not find at closing and states that Respondent 1 is not a member of the builder LLC.

Complaint 2014023821/2014023841: Complainants purchased a new home from a builder LLC and state that Respondent 1 was the selling agent representing the builder LLC. Complainants state that Complainants have been unsuccessfully trying to communicate with one of Respondent 1's representatives since May 2014 about the annual walk through. Complainants state that they were told the walk through should take place in August 2014 but have heard nothing despite attempts at contact.

Respondent 1 states that Complainants were given written instruction from the builder LLC to contact the construction office directly after closing with concerns and were given contact information. Respondent 1 states that the property closed approximately a year before the complaint was filed, and Respondent 1 states that Complainants have never contacted Respondents regarding Respondent 1's performance as a realtor. Respondent 2 submitted a response stating that Respondent 1 was the listing agent for the home, which closed in September 2013. Respondent 2 states that communication between the office manager for the builder LLC and Complainants is an issue with the builder LLC and does not involve Respondent 1.

Respondent 2 offers that the builder LLC filed bankruptcy in July 2014. Complaint 2014023851/2014023861: Complainant states that Complainant and spouse purchased a home in June 2013 and had issues with Respondent 1's office manager in scheduling repairs. Complainant states that Respondent 1 assisted with selecting a floor plan and finishes and accompanied Complainant on the walk through. After repeated attempts to contact Respondent 1, Respondent 1's office manager, and even the licensee who represented Complainant regarding setting up repairs, Complainant spoke with Respondent 1's spouse regarding the repairs who assured they would be set up. Complainant states that Complainant contacted the homeowner's association regarding a concrete pad on the home being constructed next door which was listed by Respondent 1 since Complainant was told a boat was going to be parked there (which was prohibited). Complainant states that Respondent 1 reacted with yelling and name calling, telling Complainant that nothing would be fixed in Complainant's house. Complainant states that Respondent 2 did nothing to help with the situation. Complainant states that Respondent 1 had another principal broker at the time of the contract who had done everything possible to help Complainant, but, since Respondent 1 changed firms, that principal broker's hands were tied. Complainant states that the builder has not fulfilled the warranty, and Respondents will not assist with the matter.

Respondent 1 states that Complainant's issues are with the builder. Respondent 1 states that Respondent 1 did not represent Complainant in the transaction. Respondent 1 states that Complainant caused delays by contacting multiple parties over the concrete pad for a trash can and walking path, that the home did not close and other damages occurred. Respondent 1 states that Respondent 1's former broker was the listing agent on the neighboring property. Respondent 1 states that Respondent's call and e-mail referenced by Complainant was due to many contacts from Complainant to the point of harassment. Respondent 2 states that Respondent 1 came to Respondent 2's firm from another firm on May 28, 2013. Respondent 2 states that the property was closed while Respondent 1 was at the previous firm, and Respondent 2's firm did not have involvement in the transaction.

Complaint 2014023871/2014023891: Complainant states that Respondent 1 listed Complainant's home and then made changes to the price of it without notifying Complainant. Complainant states that Complainant told Respondent 1 to remove Respondent 1's sign and lockbox and states that Respondent 1 raised the price again. Complainant states that the price of the home going up caused it not to sell, and Complainant states that Complainant has \$55,000 in liens against it. Complainant explains that Respondent 1's spouse (who is president and a member of the builder LLC) convinced Complainant to do investment homes with the builder LLC by providing credit for the build loan in exchange for Complainant receiving 2% of the sale price. Complainant states that Complainant was told the home was pre-sold and was assured that all subcontractors were being paid. Complainant states that there was a contract with the buyer and the buyer was preapproved. Complainant states that Complainant then found that the home was listed on the MLS, and later found out from Respondent 1's spouse that the buyer fell through. In May 2014, Complainant states that a building supplier put a lien on the home. Complainant states that Complainant later learned that the builder LLC had filed for bankruptcy. Complainant states that Respondent 1 then contacted Complainant stating that Respondent 1 had learned that the home was not in the builder LLC's name, and Respondent 1 wanted to sign a listing agreement with Complainant. Complainant states that, after telling Respondent 1 to remove Respondent 1's lockbox and sign, the home was still listed on MLS, and Complainant had to contact Respondent 2 to get it removed. Complainant states that Complainant has taken over the house and spent money to finish it, but, by the time Complainant finishes and sells it, Complainant will be at a loss of thousands of dollars. Complainant believes that Respondent 1 deliberately raised the price of the house so it would not sell in an attempt for the builder LLC to sell all non-investor homes to try to get as much profit as possible before filing bankruptcy. Complainant provided a copy of text conversations in which Respondent 1 tells Complainant that Respondent 1 just realized the week before that the property was not quit claimed to the builder LLC, and Complainant tells Respondent 1 to remove the sign and lockbox. Complainant also attached text messages between Respondent 1 and another investor wherein Respondent 1 discussed the operating money in an account for a build, which Complainant states shows that Respondent 1 knew the day to day operations of the builder LLC.

Respondent 1 states that the listing agreements were between the builder LLC and Respondents' firm with Respondent 1 as designated agent. Respondent 1 states that the builder LLC provided Respondent 1 with documents listing the builder LLC as the owner. Respondent 1 states that the home was listed, and Respondent 1 received notice that the builder LLC filed bankruptcy, and the builder LLC's bankruptcy attorney instructed the builder LLC's members and Respondent 1 to continue efforts to find buyers on listed properties. After Complainant removed the sign and lockbox and Complainant contacted Respondent 2, Respondent 1 states that the builder LLC and the firm executed a mutual release of the listing agreement. Respondent 1 states that Respondent 1 was not a party to any business arrangement between Complainant and the builder LLC. Respondent 2 states that the home was listed for sale by Respondent 1 for the builder LLC pursuant to listing agreements. During the listing period, Respondent 2 states that Respondent 2 had no complaints from Complainant.

Upon being contacted by Complainant, Respondent 2 saw it as a rift between the builder LLC and investor, and the mutual release was signed and the property withdrawn from the MLS. Respondent 2 states that Complainant's issues are with the builder LLC and not Respondent 1. Respondent 2 cites facts that Respondent 1 has completed over 800 transactions and has over \$110,000,000 in sales volume.

It appears to legal counsel, based on a review of all files, that there were misrepresentations made to Complainants to close regarding things that would be taken care of and promises made which could not be kept by the builder LLC. It would appear to legal counsel from several aforementioned communications from Respondent 1, that Respondent 1 was more involved with the builder LLC than Respondent 1 conveys in responses. Further, there are repeated references to an individual who Respondent 1 calls the Office Manager for the builder LLC, but there are multiple e-mails between several Complainants and that individual, and the individual's e-mail signature says that the individual is the office manager for Respondent 1's team at the real estate firm. The documentation suggests that Respondent 1 and spouse used the same individual as their office manager, further blurring the line. On the one hand, Respondent 1 filled out TAR forms disclosing the personal interest that an immediate family member is the seller, but then Respondent 1 attempts to say that Respondent 1 knew nothing. In the final complaint, it appears that Respondent 1 advertised a property without written permission of the true owner (that Complainant). Further, in complaints 2014023731 and 2014023821, agency disclosure statements signed by the Complainants are unclear as to Respondent 1's agency status (the form says the buyer is represented by Respondent 1 near the top and at the bottom is filled out to suggest that Respondent 1 only represents the seller). There appears to be a failure to exercise reasonable skill and care and failure to disclose adverse facts when viewing these complaints together.

Recommendation: As to Respondent 1, Consent Order for one hundred eighty (180) day license suspension and payment of \$6,000 for violations of T.C.A. §§ 62-13-312(b)(1) (substantial and willful misrepresentation), (2) (making a promise of a character likely to influence, persuade, or induce a person to enter into contract when licensee could not or did not intend to keep promise), (3) (pursuing continued and flagrant course of misrepresentation) and (14), 62-13-403(1) (diligently exercise reasonable skill and care), (2) (disclose adverse facts), and (4) (provide services to party with honesty and good faith), 62-13-405(a) and (b) (requiring written disclosure of agency status), and Rule 1260-02-.12(2)(c) (shall not post sign advertising property without written authorization from owner) 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 \$3,000 for failure to supervise in 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: As to Respondent 1, the Commission voted to authorize a Consent Order for one hundred eighty (180) day license suspension with a provision that, at the end of the 180 days, Respondent 1's license will be downgraded to an affiliate broker's license and Respondent 1 will not be permitted to test again to be a broker for 1 year from the date of the downgrade, and payment of \$6,000 for violations of T.C.A. §§ 62-13-312(b)(1) (substantial and willful misrepresentation), (2) (making a promise of a character likely to influence, persuade, or induce a person to enter into contract when licensee could not or did not intend to keep promise), (3) (pursuing continued and flagrant course of misrepresentation) and (14), 62-13-403(1) (diligently exercise reasonable skill and care), (2) (disclose adverse facts), and (4) (provide services to party with honesty and good faith), 62-13-405(a) and (b) (requiring written disclosure of agency status), and Rule 1260-02-.12(2)(c) (shall not post sign advertising property without written authorization from owner) 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, the Commission voted to authorize a Consent Order for \$6,000 for failure to supervise in violation of T.C.A. § 62-13-312(b)(15), plus completion of a thirty (30) hour office broker management course within one hundred eighty (180) days of Respondent 2's execution of Consent Order 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.

**As to Respondent 1, Commissioner Alexander made a motion to accept recommendation of legal counsel to authorize a Consent Order for one hundred eighty (180) day license suspension with a provision that, at the end of the 180 days, Respondent 1's license will be downgraded to an affiliate broker's license and Respondent 1 will not be permitted to test again to be a broker for 1 year from the date of the downgrade, and payment of \$6,000 for violations of T.C.A. §§ 62-13-312(b)(1) (substantial and willful misrepresentation), (2) (making a promise of a character likely to influence, persuade, or induce a person to enter into contract when licensee could not or did not intend to keep promise), (3) (pursuing continued and flagrant course of misrepresentation) and (14), 62-13-403(1) (diligently exercise reasonable skill and care), (2) (disclose adverse facts), and (4) (provide services to party with honesty and good faith), 62-13-405(a) and (b) (requiring written disclosure of agency status), and Rule 1260-02-.12(2)(c) (shall not post sign advertising property without written authorization from owner) 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 DiChiara; motion carries.**

**As to Respondent 2, Commissioner DiChiara made a motion to authorize a Consent Order for \$6,000 for failure to supervise in 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; friendly amendment motion made by Commissioner Alexander plus completion of a thirty (30) hour office broker management course within one hundred eighty (180) days of Respondent 2's execution of Consent Order motion carries; motion seconded by Commissioner DiChiara; motion carries.**

51. 2014023901

Opened: 10/20/14

First License Obtained: 9/22/11

License Expiration: 9/21/15

E&O Expiration: 1/1/17

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

Complainant states that Respondent (time-share salesperson) may have a criminal history which was not reported on Respondent's license application. Complainant states that Respondent had a misdemeanor charge to which Respondent pled no contest in 1999, and Respondent's license should be revoked. According to the records found online for the clerk's office, it appears that Respondent pled nolo contendere to a misdemeanor breach of the peace charge; however, the information from the clerk's website indicates that the adjudication of guilt was withheld by the judge and there was no conviction. Further, the nature of this criminal matter would not have affected Respondent's ability to become licensed. Respondent answered through an attorney who attached a retraction letter from the named Complainant. Complainant's signed statement asserts that Complainant did not file the online complaint and states that whatever former complaint was made was under false pretenses and requests to retract any statement made under Complainant's name. Respondent's attorney requests dismissal of both complaints.

Recommendation: Dismiss.

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

**Commissioner McMullen made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.**

52. 2014023911

Opened: 11/5/14  
First License Obtained: 3/6/00  
License Expiration: 8/14/16  
E&O Expiration: 1/1/17  
Type of License: Principal Broker  
History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise the Respondent time-share salesperson in previous complaint 2014023901. Respondent answered through an attorney who attached a retraction letter from the person named as the Complainant, and Respondent's attorney requested dismissal of both complaints. It does not appear that there was a failure to supervise.

Recommendation: Dismiss.

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

**Commissioner McMullen made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.**

53. 2014024721

Opened: 10/20/14  
History: No Prior Disciplinary Action - Unlicensed

54. 2014024722

Opened: 10/20/14  
History: No Prior Disciplinary Action - Unlicensed

55. 2014024751

Opened: 11/5/14  
History: No Prior Disciplinary Action - Unlicensed

56. 2014024752

Opened: 11/5/14

History: No Prior Disciplinary Action - Unlicensed

A complaint was filed by tenants stating that they entered a rental agreement with Respondent 1 (unlicensed property management company) on August 12, 2013. Respondent 2 is an unlicensed individual who appears to be doing business as Respondent 1. Complainants state that Respondent 1 is now operating through a successor company, Respondent 4 (also an unlicensed property management company). Respondent 3 is an unlicensed individual who appears to be the sole member of Respondent 4 (which is an LLC). Respondents 2 and 3 have the same last name and appear to be related.

Complainants state that when repairs were needed Complainants requested notification, but the repairmen would enter without notice. Complainants state that emergency repairs were not addressed immediately, making part of the home uninhabitable. Complainants further state that somebody entered the premises on or about September 4, 2014 to leave a letter dated September 3, 2014 that the lease had expired, would not be renewed, and required a move-out date of October 3, 2014. Complainants contacted Respondent 2 to inquire about the non-renewal even though rent was paid on time, and Complainants state that Respondent 2 stated they were paying a lesser amount in rent than they were actually paying, which was not enough to cover the home. Complainants later inquired about the non-renewal with Respondent 4 and were told that they complain too much and expect maintenance requests to be handled immediately. Complainants state that a Respondent 4 advised that they have over four hundred (400) properties. Complainants state they were contacted September 8, 2014 and were offered lease renewal for an additional one hundred dollars (\$100) per month. Complainants further state that a second notice to vacate was received on September 23, 2014 to vacate by September 30, 2014. Complainants also state that Respondent 2 filed bankruptcy. Complainants state they were contacted by the homeowner who stated they can remain in the property. Respondent 1 and 2 were mailed a complaint, which was returned undeliverable. Respondent 3 and 4 signed for and accepted the complaint on October 6, 2014, but did not respond.

Office of legal counsel reviewed the file and performed additional research. The lease agreement dated August 12, 2013 uses a header which includes Respondent 1's name, and the parties to the agreement were Respondent 2 and Complainants. The notice to vacate letters dated September 3, 2014 and September 22, 2014 use a letterhead which includes Respondent 4's name, and the letters are executed by Respondent 3 as owner. Respondent 2 filed for bankruptcy early 2014. A copy of Respondent 1's website was printed on September 30, 2014, which advertised properties. Office of legal counsel was able to determine that the property rented by Complainant was not owned by any of Respondents during the period of tenancy.

Recommendation: For Respondent 1, dismiss due to the fact that it is essentially a d/b/a for Respondent 2. For Respondents 2, 3 and 4, authorize separate Consent Orders for \$1,000 each for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said orders 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 recommendation of legal counsel for Respondent 1, dismiss due to the fact that it is essentially a d/b/a for Respondent 2. for Respondents 2, 3 and 4, authorize separate Consent Orders for \$1,000 each for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said orders to also include order to cease and desist all unlicensed activity; motion seconded by Commissioner Hills; motion carries.**

57. 2014024761

Opened: 10/20/14

First License Obtained: 9/21/11

License Expiration: 9/20/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History:

The complaint is a copy of a civil lawsuit complaint filed by Respondent's former firm against Respondent (affiliate broker) alleging Respondent forged checks made payable to a company, which is alleged to be Respondent's pseudo-company. The lawsuit alleges that Respondent embezzled a substantial amount of money from the firm and its associated LLCs while working there as a bookkeeper and property manager.

Respondent submitted a response through an attorney stating that the civil complaint does not contain allegations which give rise to an action with TREC. Respondent submitted an answer and a proposed counter-complaint alleging assault by Respondent's previous principal broker and stating that Respondent's former principal broker created the alleged pseudo-company to spy on business associates, and the former principal broker paid Respondent money for Respondent's services in assisting with that pseudo-company. Respondent states that Respondent does not have access to the documentation and cannot provide it to TREC because Respondent is no longer with that firm. 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: Litigation Monitoring Consent Order.

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

**Commissioner McMullen made a motion to accept recommendation of legal counsel for a Litigation Monitoring Consent Order; motion seconded by Commissioner Collins; motion carries.**

58. 2014024851

Opened: 11/7/14

First License Obtained: 1/10/12

License Expiration: 1/9/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

This is a TREC opened complaint based on information received by the TREC office regarding Respondent (affiliate broker). Respondent's LinkedIn page was submitted stating that Respondent is a Real Estate Investor at an LLC. Further, Respondent's website includes the name of a second LLC that advertises property listings and buying and selling homes. The website does not include the name or phone number of the firm where Respondent is affiliated. Further, Respondent has a Facebook page that is named after the second LLC, which includes posts regarding property showings and available properties. Finally, a third party website lists a property, and Respondent and the second LLC are listed as the contact information.

Respondent submitted a response apologizing for the lack of clarity in advertising Respondent's affiliation with the licensed firm. Respondent states that, in all situations, Respondent discloses that Respondent is affiliated with the firm. Respondent states that there was never any intent to hide the fact that Respondent was an agent. Respondent states that the Facebook page has been removed until it can be more clearly labeled. Respondent further states that the homepage of the website and LinkedIn pages were updated immediately upon receipt of the complaint to include the firm name and phone number. Respondent further states that the home listed on the third party website has been removed. Respondent further states that Personal Interest and Disclosure forms have been completed for every transaction. Respondent provided documentation showing that all internet advertisements were updated and printed on November 2, 2014.

Office of legal counsel also confirmed that, as of February 27, 2015, Respondent submitted an application for a firm license for the second LLC on or about February 11, 2015. Respondent also pre-registered for the broker exam on January 7, 2015.

Recommendation: Consent Order in the amount of \$2,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), and Rule 1260-02-.12 (advertising rule), 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 accept the recommendation of legal counsel.

**Commissioner Franks made a motion to accept recommendation of legal counsel for a Consent Order in the amount of \$2,000 for violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A) (each office shall have a real estate firm license), and Rule 1260-02-.12 (advertising rule), 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 carries**

59. 2014024901

Opened: 11/7/14

First License Obtained: 3/18/96

License Expiration: 5/6/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent (principal broker) for failure to supervise previous Respondent affiliate broker in complaint 2014024851 (hereinafter "affiliate broker"). Respondent states that Respondent reviewed the complaint materials and addressed each one with the affiliate broker. Respondent states that Respondent advised that advertisement of affiliate broker's LLC must include the firm name and phone number on all advertising pages, and affiliate broker corrected this. Respondent states that the affiliate broker is a very good, honest and reliable real estate agent and thrives to succeed. Respondent attached revised copies of the advertisements.

Recommendation: Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 accept the recommendation of legal counsel.

**Commissioner DiChiara made a motion to accept recommendation of legal counsel for a Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 carries**

60. 2014025821

Opened: 10/22/14

First License Obtained: 4/10/97

License Expiration: 10/28/16

E&O Expiration: Uninsured

Type of License: Broker

History: No Prior Disciplinary Action

\*License in retirement status as of 1/15/09

An anonymous complaint was filed stating that Respondent (broker – retired license) rearranges closings in order to use the purchase funds to pay personal bills and company expenses. Complainant states that Respondent takes care of the clients who threaten to report Respondent to the Board of Realtors first. Complainant alleges that Respondent edits the contracts without contacting buyers to see if they would like to proceed although Respondent did not fulfill obligations in the contract. Complainant further states that funds are moved from the escrow account into a business account. Complainant further states that Respondent behaves inappropriately toward employees and cheats them out of fair wages. Respondent states that employees and sales agents are owed large amounts of money but cannot obtain accounting to verify amounts owed. There was no documentation included.

Respondent, who lives out of state, stated that Respondent was licensed by TREC because Respondent previously worked for a timeshare. Respondent states that, at the current company, Respondent's position does not utilize a real estate license. Respondent states Respondent has never listed or sold any real estate in Tennessee. Respondent's current company is a brokerage that lists and sells timeshare weeks for owners and Associations. Respondent states that Respondent's company has never had a contract for any property in Tennessee, and has never listed or sold any weeks for properties that are in Tennessee. Regarding the sales issues, Respondent states that the company has active contracts with 16 timeshare associations representing 1,145 units in nine (9) states, not including Tennessee. Respondent denies ever moving funds from an escrow account to a business account stating that a title company is used for all transactions, and the title company receives escrow funds directly. Respondent states that Respondent is proud of the way employees are treated and provide statistics of employee retention. Respondent further states a third party processes their payroll, and benefits are provided. Respondent stated Respondent would provide a more detailed response and paperwork if needed. Office of legal counsel reviewed Respondent's website, and the "resort locations" page did not include any resorts within Tennessee.

Recommendation: Dismiss.

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

**Commissioner Alexander made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.**

### **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 reported the Legislative Updates currently only one showing recent activity is **House Bill 248 and Senate 145** regarding the one hour Continuing Educating courses it is currently in the Business and Utility subcommittee of the House as of 3-3-15. The last action showing is REC assuming it means recommended to pass by that subcommittee. The rest of the bills have been assigned to subcommittees but do not appear to have gone anywhere in the past month.

### **EDUCATION COURSES FOR DISCUSSION**

Mr. White, the Education Director, presented the educational courses set forth on the March, 2015 Education Report for Commission Approval.

**Commissioner Collins made a motion to approve M1 – M35 courses; motion seconded by Commissioner DiChiara; motion carries.**

### **Instructors Approvals**

Education Director, Mr. White presented instructors some are previously approved and some need approval they are marked in red, M-1 – M35 to be approved as Instructors on the March Educational Report:

**Commissioner Franks made a motion to approve all instructors that Education Director White recommended for approval M1 – M35; motion seconded by Commissioner Collins; motion carries.**

**Chairman Griess adjourned the meeting on Wednesday,  
March 4<sup>th</sup>, 2015 at 4:16 p.m.**

**March 5<sup>th</sup>, 2015**  
**Formal Hearing was Continued**

