



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

September 2-3, 2015

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

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 12, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Friday 31, 2015. Also, this meeting has been notice on the tn.gov website since Friday 31, 2015.

Commissioner McMullen made a motion to adopt the agenda as amended by Commissioner Blume to add a discussion of rules before Executive Director Maxwell report; motion seconded by Commissioner DiChiara; as amended motion passes unanimously.

Commissioner DiChiara made a motion to approve the August minutes; motion seconded by Commissioner Hills; Commissioner Wood and Commissioner Taylor recuse from vote; motion passes.

Introductions of New Commissioners

**Commissioner Bobby Wood
Commissioner Fontaine Taylor**

Assistant Commissioner Brian McCormack Addresses Commission

Commissioner McCormack addressed the Commission with a proposed process and time line for replacing Executive Director Maxwell who plans to retire November 15, 2015. Applicants will have until October 16, 2015 to apply for Executive Director position. The screening of prospects for the Executive Director position will be conducted by a screening committee made up of Commissioner McCormack and Chairman Griess from October 19th– October 30th, 2015. Their candidate selection will be presented at the November 4, 2015 TREC monthly meeting.

The statute requirements for Executive Director are listed 62-13-207 (a):

The commission shall have an executive director, who shall have passed the broker's examination for this state. The commission shall set all other qualifications necessary for the position of executive director. The executive director shall be appointed by the commission, with the approval of the commissioner of personnel. The term of the executive director shall be four (4) years, and the executive director shall be eligible for reappointment. The commission shall also retain an administrator and other staff members that the commission may deem necessary and proper. The commission shall fix the compensation to be paid to the executive director, the administrator and staff of the commission, subject to applicable rules, regulations and law.

Commissioner Hills made a motion to approve the proposed process and timeline as presented; Commissioner Franks seconded motion; motion passes unanimously.

Announcement made state wide website verify.gov will be down for at least a week starting 8-31-15 due to the implementation of a new computer program.

Commissioner Blume proposed the possibility of Executive Director Maxwell creating and disbursing a Power Point of the proposed rules to each of the boards and Associations.

After much discussion, Commissioner Blume made a motion for Executive Director Maxwell to create and distribute a new rules power point through appropriate channels; motion seconded by Commissioner Franks; motion pass unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: CHARLES E FOWLER #333411

PRINCIPAL BROKER: ALLISON L. OAKS #271675

FIRM: PLATINUM REAL ESTATE SERVICES LLC d/b/a PLATINUM REALTY GROUP #260584

Principal Broker: Allison L. Oaks #271675 is the PB of Platinum Real Estate Services, LLC. d/b/a Platinum Realty Group #260584. The firm is located in Knoxville, TN.

Ms. Oaks was first licensed as an affiliate broker on 5/13/1999. She was first licensed as a broker on 7/17/2008 and became PB of the newly licensed Platinum Realty Group at that time. The TREC records reflect that Platinum Realty Group currently has 4 affiliate brokers, 0 brokers and 1PB. Ms. Oaks has had no disciplinary action taken against her by the Commission.

Applicant: Charles E. Fowler submitted an Application for Decision Regarding Criminal Convictions and an Application for Licensure. He has taken and passed the real estate exams and has completed the 90 hours of prelicensing courses. Mr. Fowler revealed the following:

He was convicted of a felony; terms of conviction have been met.

Commissioner Franks made a motion for Applicant, Charles E. Fowler, to move forward with the licensure process; motion seconded by Commissioner McMullen; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: KHALIF ABDUR RASHEED #333589
PRINCIPAL BROKER: CHERYL A. MUHAMMAD #274007
FIRM: ASSURED REAL ESTATE SERVICES #258403

Principal Broker: Cheryl A. Muhammad #274007 is the PB of Assured Real Estate Services #258403. The firm is located in Memphis, TN. Ms. Muhammad was first licensed as an affiliate broker on 12/21/1999. She was first licensed as a broker on 12/16/2004 and became PB of Assured Real Estate Services on 2/3/2005. The TREC records reflect that Assured Real Estate Services currently has 3 affiliate brokers, 0 brokers and 1PB. Ms. Muhammad signed and satisfied the terms of a Consent Order on 9/16/2014.

Applicant: Khalif None Abdur Rasheed submitted an Application for Decision Regarding Criminal Convictions and an Application for Licensure. He has taken and passed the real estate exams and has completed the 90 hours of prelicensing courses. Mr. Rasheed revealed the following:

He was convicted of a felony; terms of conviction have been met.

Commissioner Blume made a motion for Applicant, Khalif Abdur Rasheed, to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: SHELTON JUSTIN YOUNG #333618
PRINCIPAL BROKER: CHARLES ALAN ANDERSON
#285036 FIRM: SIGNATURE PROPERTIES #261651

Principal Broker: Charles Alan Anderson #285036 is the PB of Signature Properties #261651. The firm is located in Kingsport, TN. Mr. Anderson was first licensed as an affiliate broker on 10/22/2002 and he was first licensed as a broker on 6/15/2007. The records indicate that he has been a PB off and on since he was

licensed as a broker and became PB of Signature Properties on 8/15/2013. The firm was first issued a license on 3/7/2011. The TREC records reflect that Signature Properties currently has 23 affiliate brokers, 5 brokers and 1PB. Mr. Anderson has had no disciplinary action taken against him by the Commission. Applicant: Shelton Justin Young submitted an Application for Licensure. He has taken and passed the affiliate broker national and state real estate exams and has completed the 90 hours of prelicensing courses. Mr. Young revealed the following: He was convicted of misdemeanors; terms of conviction have been met.

Commissioner DiChiara made a motion for Applicant, Shelton Justin Young, to move forward with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

EDUCATION REPORT

Mr. White, the Education Director, presented the educational courses S1 – S32 set forth on the September, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve S1 – S32 courses; motion seconded by Commissioner Hills; Commissioner Franks; recuses from S1 vote; motion carries.

Instructors Approvals

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red S1 – S32 to be approved as Instructors.

Commissioner Blume made a motion to approve all instructors, since Education Director White recommended for approval S1 – S32; motion seconded by Commissioner Blume; Commissioner McMullen; motion carries.

TREC EDUCATIONAL SEMINAL UPDATE

Upcoming Educational Seminar in September and October will be in East TN; the new rules will be incorporated into the Seminars.

Sept. 30, 2015 12:30PM to 3:30PM

Northeast Tennessee Association of REALTORS, (NETAR)
105 Tri City Business Park Drive
Gray, TN 37615
Phone 423-477-0040

Oct. 28, 2015 1PM-4PM

Greater Chattanooga Association of REALTORS, (GCAR)
2963 Amnicola Highway
Chattanooga, TN 37406

Phone 423-698-8004

Oct. 19, 2015 1PM-4pm

Knoxville Area Association of Realtors, (KAAR)
609 Weisgarber Road
Knoxville, TN 37919
Phone 865-584-8647(ext. 6)

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL

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

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of August 2015. The statistics presented included tables which compared several years’ number of licensees, firms, exams taken, applications approved and renewal percentages. As of August 31, 2015, there were 25,975 active licensees, 1,009 inactive licensees, retired licensees 6,395, broker release 376, and 487 suspended. There were 625 exams administered in month of August 2015. The total of exams taken year to date is 4,792. There were 336 approved applications in August 2015. Year to date total of approved applications 2,681. TREC total number of individual licensees in active, inactive, retired, suspended, and broker release is 34,242. There were 3,811 active firms and 148 retired firms. Grand total of firms and retired firms 3,959.

E&O Update/Quarterly Claims Report

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

As of **8/31/2015**, there were **435 licensees who remain suspended for E&O**. **240 are Affiliate Brokers, 24 are Brokers, 43 are Principle Brokers, and 128 are Timeshare Representatives** that are in a suspended status. The table below shows the breakdown of those remaining in suspension. Licensees who show proof of E&O coverage within 30 days of suspension shall be reinstated without the payment of any fee. Starting with 31st day of suspension, the licensee must pay a penalty fee and show proof of E&O in order to be reinstated.

Rule 1260-01-16

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

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

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

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

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

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

(b) Conditions for

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

1. Reapply for licensure, including payment of all fees for such application;

2. Pay the penalty fees outlined in subparagraph (a) above;

3. Pass all required examinations for licensure, unless the Commission waives such examinations; and

4. Meet any current education requirements for licensure, unless the Commission waives such

August 31, 2015

E&O Suspended/Insured Breakdown by Licensee Status

(8/31/2015)

Status	8/31/2015 Suspended
Affiliate	240
Broker	24
PB	43
Timeshare	128
Total	435

Complaint Report for August 31, 2015

Rule Violations 562

7-1-14 – 6-30-15

Commission Heard complaints 482

Monies Collected 8/1/15 – 8/31/15

Consent Orders Fees \$20,570.00; Agreed Citation \$1,200.00; Agreed Order \$250.00; Reinstatement Fees \$16,850.00, E&O Penalty \$1,600.00 for a Total of \$40,470.00.

Fingerprints Updates

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 2,923 individuals fingerprinted, 537 had an indication, and 2,322 had no indication. In the month of August 2015 there were 50 indications, 251 no indication, 10 pending, 0 no reads
Total 312

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. **The Commissioners had no questions regarding the budget.**

CONSENT ORDER TRACKING

Ms. Kerby asked if the Commissioners had any questions about the consent order log. **The Commissioners did not have any questions about the consent orders report.**

INFORMAL APPLICANT APPEARANCE

APPLICANT: DARREN LEE ABRIOLA #333374
PRINCIPAL BROKER: LAWRENCE M. LIPMAN #3673
FIRM: LIPMAN R.E. INC. d/b/a THE LIPMAN GROUP SOTHEBY'S
INTERNATIONAL #3671

Principal Broker: Lawrence M. Lipman #3673 is the PB of Lipman R.E., Inc. d/b/a The Lipman Group Sotheby's International #3671. The firm is located in Nashville, TN.

Mr. Lipman was first licensed as an affiliate broker prior to 5/22/1972 and he was first licensed as a broker on 5/22/1972. The records indicate that he became PB of Lipman R.E., Inc. d/b/a The Lipman Group Sotheby's International on 5/22/1972, when the firm was first issued a license. The TREC records reflect that The Lipman Group Sotheby's International currently has 36 affiliate brokers, 7 brokers and 1PB.

Mr. Lipman has had no disciplinary action taken against him by the Commission.

Applicant: Darren Lee Abriola submitted an Application for Decision Regarding Criminal Convictions and an Application for Licensure. He has taken and passed the real estate exams and has completed the 90 hours of prelicensing courses. Mr. Abriola revealed the following:

He was convicted of misdemeanors; terms of conviction have been met.

Commissioner DiChiara made a motion for Applicant, Lawrence M. Lipman, to move forward with the licensure process; motion seconded by Commissioner Wood; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: TIFFANY MICHELLE MURRAY #333633 PRINCIPAL BROKER:
FRANCES "FRAN" J. HOOTEN #230310 FIRM: KELLER WILLIAMS REALTY-MT.
JULIET #258732

Principal Broker: Frances "Fran" J. Hooten #230310 is the PB of Keller Williams Realty-Mt. Juliet #258732. The firm is located in Mt. Juliet, TN. Ms. Hooten was first licensed as an affiliate broker in 1986 and she was first licensed as a broker on 7/1/1997. The records indicate that she has been a PB off and on since she was licensed as a broker and became PB of Keller Williams Realty-Mt. Juliet on 6/10/2013. The firm was first issued a license on 8/16/2005. The TREC records reflect that Keller Williams Realty-Mt. Juliet currently has 98 affiliate brokers, 5 brokers and 1 PB. Ms. Hooten has had no disciplinary action taken against her by the Commission.

Applicant: Tiffany Michelle Murray submitted an Application for Licensure. She has taken and passed the affiliate broker national and state real estate exams and has completed the 90 hours of prelicensing courses. Ms. Murray revealed the following: She was convicted of misdemeanor; terms of conviction have been met.

Commissioner DiChiara made a motion for Applicant, Tiffany Michelle Murray, to move forward with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

LEGAL REPORT, MALLORIE KERBY, ASSISTANT GENERAL COUNSEL

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Kerby 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: MALLORIE KERBY, Assistant General Counsel
SUBJECT: SEPTEMBER LEGAL REPORT
DATE: SEPTEMBER 2, 2015

*Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.

1. 2015008101
Opened: 04/07/15
First License Obtained: 03/10/2015
License Expiration: 03/09/17
E&O Expiration: 01/01/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

2. 2015008102
Opened: 04/07/15
First License Obtained: 02/25/88
License Expiration: 09/12/16
E&O Expiration: 01/01/17
Type of License: Principal Broker
History: No Prior Disciplinary Action

3. 2015008103

Opened: 04/07/15
First License Obtained: 03/09/15
License Expiration: 03/08/17
E&O Expiration: 01/01/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

The following was presented in regard to all three Respondents at the August 2015 meeting:

Complainant states that Complainants submitted an offer on property via Respondent 1 (affiliate broker) on February 3, 2015. Complainant states that, immediately after Complainants submitted their offer, Respondent 1 told them there were multiple offers on the property. Complainants state that their agent asked Respondent 1 if they needed to submit a best and final offer and were told by Respondent 1 that the bank (seller) would counter all offers. Complainants state that they tried to stay in touch with Respondent 1 to make sure they were given this opportunity were told on February 19 that they would have a reply soon. On February 25, Complainant and went to Respondents' firm to see what was going on because they had not heard anything regarding a counter offer. Complainant states that Complainant met with Respondent 3 (then unlicensed) who told Complainant that the offer was never submitted. Complainants' agent then submitted a new offer to Respondent 3. Complainants state that they were told by Respondent 2 (Principal Broker) the next day that the bank had countered the offer. Complainants state that they immediately accepted the offer and submitted the proper forms. Complainants state that they were sent separate disclosure and confidentiality forms from Respondent 3 on February 25 and 27 which they signed and returned. Respondent 3 then sent environmental reports to Complainants. Complainants state that on March 2, their agent contacted Respondent 3 asking for the final contract from the bank. Respondent 3 told Complainants that another bidder had come up in price and his offer was accepted. Complainants state this was nearing the end of their inspection period. Complainants state that they had a contract with the bank (seller) but that the bank then entered a contract with another buyer. Complainants also state that Respondent 3 negotiated pricing and other aspects of the transaction while unlicensed.

Respondent 1 states that Respondent 1 was out of the office dealing with personal issues during the time of this transaction. Respondent 1 states that Respondent 1 recalls passing all correspondence related to this property onto Respondent 2 (principal broker). To the best of Respondent 1's recollection, Respondent 1 was no longer the listing agent on this property at the time these events took place, never met Complainants or their agent, and never showed them the property. Respondent 1 states that Respondent 1 is no longer affiliated with this firm and, therefore, has no access to any emails or documents related to this transaction and defers all other response to Respondent 2 (principal broker).

Respondent 2 (principal broker) states that a potential buyer put in an offer on the property in mid-January of 2015 after the price was reduced significantly from \$255,000 to \$90,000. The bank (seller) did not want to execute any documents at that point because

it did not want to go through all of the corporate approvals in advance, only to have the buyer back out during the due diligence period. Instead, the bank supplied the buyer with the due diligence information after executing a confidentiality agreement. Respondent 2 states that Complainant came into the firm office with an offer for the same price as the first buyer on February 25. Respondent 2 states that Respondent 3 told Complainant that they had never received a previous offer from Complainant, therefore, an offer was never transmitted to the seller. Respondent 2 states that Complainant then sent an offer via email to Respondent 3 the same day with the same offer and same dates as the supposed previous offer the firm never received but with the wrong seller name. Complainant's agent was copied in the email containing the offer. Respondent 2 stated that Respondent 3 provided Complainant with the correct seller information and Complainant returned an offer with the correct information. Respondent stated that Complainant's agent replied, thanking Respondents for their help. Respondent 2 states that Respondent 2 then advised the seller that there were now two legitimate purchasers and seller asked Respondent 2 to work with both potential purchasers to get the best price and move the sale as quickly as possible since they were going to be losing a substantial amount of money on this loan. Respondent 2 states that Respondents then sent Complainant the confidentiality agreement and due diligence information which Complainant signed and returned. Respondent 2 states that the other buyer went up in his offer, meeting Complainant's offer and that Respondent 2 recommended the seller accept Complainant's offer. The Seller, however, accepted the other buyer's offer. Respondent 2 states that Complainant is upset that he was unable to purchase the property but that Complainant's offer was not any higher than the original offer and was not worthy of any special consideration. Regarding the allegation that Respondent 3 was conducting unlicensed real estate activity, Respondent 2 states that Respondent 3 did nothing more than assemble and pass along documents pertaining to the transaction as well as keep the parties apprised of the current status of the transaction. Respondent 2 states that all of these actions were at Respondent 2's direction by phone while Respondent 2 was out of town at a conference. Respondent 2 states that Respondent 2 negotiated the price with Complainant's agent directly over the phone and Respondent 3 never did any negotiating of price, terms or conditions and never showed the property. Respondent 2 states that Respondent 3, at the time, had already submitted her documentation to TREC to receive her affiliate broker's license and had successfully completed the educational requirement and was very familiar with the required separation of administrative and licensee duties.

Respondent 3 states that Respondent 3 did nothing but disclose the status of a listed property and deliver documents, which is allowed under TREC laws. Respondent 3 states that Complainant came in on February 25 to discuss a contract for a listed property with Respondent 2. Respondent 3 states that Respondent 2 was at a conference but Respondent 3 was aware of the status of the property and informed Complainant. Respondent 3 states that Respondent 2 then spoke with the owners who decided that they would put the drafting of a contract with another buyer on hold to consider Complainant's offer. Respondent 2 then told Respondent 3 to send Complainant the confidentiality agreement and due diligence forms in case the bank went with Complainant's offer because the bank did not want to lose any more time. Respondent 3 states that, on the following work day, Respondent 2 told Respondent 3 that the seller has countered both parties and are waiting

until the end of the week for responses. Respondent 3 let Complainant's agent know of the delay and gave him the lockbox code, which he had requested. On Thursday of that week, Respondent 2 notified Respondent 3 that the seller decided to go with the original buyer. Respondent 2 asked Respondent 3 to notify Complainant's agent since Respondent 2 was still out of town to which Complainant's agent wanted further explanation. Respondent 3 states that since Respondent 3 had not spoken with the owners, Complainant's agent would have to speak with Respondent 2 when he got back in town. They spoke the following week. Respondent 3 states that Respondent 3 had successfully completed the real estate courses and examination and was issued a license on March 8th.

Complainant provided nothing indicating any contact with Respondent 1 nor did Complainant produce any evidence of an offer submitted before February 25th. Email correspondence between the parties indicate that Complainant submitted an offer on February 25 via email to Respondents 2 and 3. In a previous email that day, Respondent 3 tells Complainant's agent that Respondent 2 will submit the offer to the owners. On the 27th, Complainant's agent returns the signed confidentiality agreement which provides that the form does not obligate the buyer or seller as to the purchase or sale of the property. Respondent 3 immediately replies with the due diligence documents. An email sent from Respondent 3 to Complainant's agent on March 2 states that, since the bank now has two offers on the table, they are giving the other buyer until the end of the week to go up in his offer. Email correspondence also indicates that the bank was drafting a contract for the original buyer when Complainant's offer was submitted but put it on hold to consider Complainant's offer. Email correspondence also shows Respondent 2 stating that Complainant is a legitimate buyer and that Respondent 2 will recommend Complainant's deal to the seller on an upcoming conference call. Email shows that the other buyer increased his offer to Complainant's price and the seller chose the other buyer. There is no documentation or correspondence indicating that a counteroffer was made or accepted. The written offer submitted by Complainant on February 25 was unexecuted. There is no correspondence indicating that Respondent 3 negotiated any terms or did anything other than deliver documents and disclose the status of a listed property.

Recommendation: Dismiss as to all three Respondents.

DECISION: The Commission voted to refer the matter to Commissioner Hills for review as to all three respondents and to report at the next Commission meeting.

Upon further review, legal counsel has found additional pertinent information in regard to Respondent 1. Respondent 1's first license was issued in July of 2005 and expired in July of 2009. Respondent 1 reinstated the license in December of 2009 and it again expired in September of 2013. Respondent 1 retested and reapplied and was issued a license in March of 2015. TREC records indicate that Respondent 1 did not have a valid license from September 5, 2013 until March 10, 2015. Respondent 1's current license was issued just after the events of this complaint took place. Legal counsel found several news articles and blog posts on the website for the firm for which Respondent 1 supposedly was working during the time Respondent 1 was unlicensed (Respondent 2's firm) which

detail specific properties where Respondent 1 represented a party in the transaction during the unlicensed period. In addition, there are blog posts and news articles written by or about Respondent 1 during the unlicensed period which identify Respondent 1 as a real estate broker. In Respondent 1's response to the above complaint, Respondent 1 stated that Respondent 1 was no longer the listing agent on the property when the events of the complaint took place. Legal counsel followed up with Respondent 1 and Respondent 2 to find out when Respondent 1 was the listing agent on the property, when Respondent 1 was employed at Respondent 2's firm and what Respondent 1's role was at the firm. Respondent 1 replied stating that Respondent 1 has no further information and has spent too much time on this issue and requests that it come to a conclusion. Respondent 2 replied similarly (which legal counsel finds odd considering they no longer work at the same firm) stating Respondent 2 has no further information and that Respondent 1 is no longer an employee. Respondent 2 also stated that Respondent 2 has spent way too much time on this \$75,000 property and requested the matter be brought to conclusion. Respondent 2 stated that legal counsel has enough information to determine that the potential buyer is just "sour grapes" because the seller did not choose his offer.

Recommendation: Open a complaint against Respondent 1 for unlicensed activity and a complaint against Respondent 2 for violation of T.C.A. § 62-13-302 (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or affiliate broker for performing any acts regulated by this chapter...). In regard to the complaint on hand, the recommendation is to discuss upon the conclusion of Commissioner Hills' presentation.

DECISION: As to Respondent 1, Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-301 and 62-13-312(b)(14), plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's execution of the Consent Order.

Commissioner McMullen made a motion as to Respondent 1, Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-301 and 62-13-312(b)(14), plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's execution of the Consent Order; motion seconded by Commissioner DiChiara; Commissioner Hills abstains; motion passes.

As to Respondent 3, Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-301, plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's execution of the Consent Order.

Commissioner McMullen made a motion as to Respondent 3, Consent Order in the amount of \$500 for violation of T.C.A. § 62-13-301, plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's execution of the Consent Order; motion seconded by Commissioner DiChiara; Commissioner Franks amends motion as to Respondent 3, Consent Order in the amount of \$500 for violation of T.C.A. § 62-13-301, plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's

execution of the Consent Order; motion seconded by Commissioner DiChiara; Commissioner Hills abstains; motion passes.

As to Respondent 2, Consent Order in the amount of \$2,000 for 2 violations of T.C.A. § 62-13-312(b)(14), § 62-13-302 (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or affiliate broker for performing any acts regulated by this chapter...), plus attendance at two (2) entire regularly scheduled meetings of the Commission within 180 days of Respondent's execution of the Consent Order.

Commissioner McMullen made a motion as to Respondent 2, Consent Order in the amount of \$2,000 for 2 violations of T.C.A. § 62-13-312(b)(14), § 62-13-302 (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or affiliate broker for performing any acts regulated by this chapter...), plus attendance at two (2) entire regularly scheduled meetings of the Commission within 180 days of Respondent's execution of the Consent Order; Commissioner Franks seconded motion; Commissioner Hills abstains; motion passes.

Open a new complaint(s) against Respondent 1 for unlicensed activity and against Respondent 2 for violation of T.C.A. § 62-13-302.

Commissioner McMullen made a motion to open a new complaint(s) against Respondent 1 for unlicensed activity and against Respondent 2 for violation of T.C.A. § 62-13-302; Commissioner Franks seconded motion; Commissioner Hills abstains; motion passes.

4. 2015008031

Opened: 3/26/15

First License Obtained: 5/1/07

License Expiration: 11/16/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No prior disciplinary action.

Respondent listed Complainant's home for sale in November of 2013. Complainant states that Complainant did not receive a copy of the contract until January of 2015.

Complainant states that an offer was made in August of 2014 and that closing was cancelled because buyers had to admit parents to assisted living. The buyers needed the cash they were going to use towards purchasing the house to pay for the parents' assisted living deposit but would be able to get the money out of a retirement account in a couple of weeks. A new closing date was set. Complainant states Respondent claims Respondent had Complainant sign an extension but Complainant does not have a copy. The second closing was cancelled because the IRS had seized buyers' funds. Buyer then arranged for an investor to purchase the property from whom buyer would repay later on. Complainant states that Respondent told Complainant that buyers would be bringing Respondent earnest

money but when Complainant asked about the funds again later, Respondent said the IRS had frozen the escrow account and Respondent could not access the money at that time. Complainant states that there were many excuses for months regarding the reasons the buyers could not close. Complainant states Complainant asked Respondent about the earnest money again in January of 2015 and Respondent said Respondent should be receiving the funds the following Friday. After 15 months, Complainant switched realtors. Complainant again asked Respondent about funds and was told that buyer was not going to pay the funds. Complainant states that Respondent also represented buyer.

Respondent states that Respondent left a copy of the listing agreement and all other listing documents with Complainant when Complainant signed the documents and that Complainant put the documents in the basket under the side table next to the recliner she was sitting in after signing. Respondent states that in January of 2015, Complainant called Respondent stating Complainant could not find her copy of the paperwork so Respondent dropped off another copy at Complainant's house the next day. Respondent states that Complainant is mistaken in stating that Complainant never received a copy of the extension. Respondent states that Complainant signed it when Complainant's and Respondent's families were all at a high school football game. Respondent states that she remembers this because Complainant was sharing candy with Respondent's daughter and Respondent had to hold the candy while Complainant put her copy in her purse. Respondent states that buyers provided a \$1400 check which Respondent deposited in the escrow account. Respondent received notice a few days later of insufficient funds which buyer advised was due to the account being hacked. Respondent states that the bank verified this information. Respondent states that Complainant was willing to give buyers another chance. Buyers provided another check which did not clear because the IRS had frozen the account. Respondent states there were many additional excuses for delaying closing given by the buyer including buyer having the flu, investor out of town, investor had the flu etc. Respondent states that every time there was a delay, Respondent called or went to Complainant's home and each time Complainant did not want to give up on the buyer because no other offers had come in. Respondent states that Respondent was only a facilitator in the transaction. Respondent states that Respondent was shocked when Complainant wanted to hire another realtor as Respondent loved working for Complainant and Respondent had tried everything in Respondent's power to sell the home.

Respondent provided transaction documents which include a purchase and sale agreement dated August 8, 2014 with a closing date of September 18, 2014 and an earnest money requirement of \$1400. There is no indication that the buyer terminated the agreement by written notice after failing to receive the earnest money within one day after the check bounced as stated in the agreement. There is a partially executed extension that is unsigned by Complainant. Respondent provided documentation from the IRS and text messages with the buyers indicating that buyers presented Respondent with all of the various excuses mentioned by both Complainant and Respondent for not providing the earnest money or closing. There is nothing indicating that Respondent ever received any earnest money from buyers. As of the time of this report, the house appears to still be on the market. From reviewing the documents provided, it appears that

Respondent and Complainant were patient with the buyers because there were no other offers on the house and, unfortunately the sale did not go through because earnest money was never provided and no closing took place. The Confirmation of Agency form indicates that Respondent was acting as a facilitator. It is legal counsel's opinion that none of Respondent's actions constituted a violation of TREC statutes and rules.

Recommendation: Dismiss

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

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

5. 2015013431

Opened: 7/16/15

First License Obtained: 3/29/96

License Expiration: 9/11/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

6. 2015013432

Opened: 7/16/15

First License Obtained: 6/14/99

License Expiration: 9/6/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2015013991-Under legal review

7. 2015013433

Opened: 7/16/15

First License Obtained: 3/18/02

License Expiration: 1/29/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

8. 2015013991

Opened: 7/16/15

First License Obtained: 6/14/99

License Expiration: 9/6/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2015013432—Under legal review

Complainant was the buyer in the transaction with Respondents 1 (broker) and 3 (affiliate broker) acting as facilitators for both buyer and seller. Complainant states that Respondents 1 and 3 claimed they never received Complainant's earnest money, which Complainant alleges had been cashed and cleared by the bank. Complainant states that closing was extended from March 31, 2015 to April 2, 2015 against Complainant's wishes and Complainant did not feel comfortable closing because the contract had expired. Complainant alleges that Respondents 1 and 3 were unethical and states several transaction documents were not signed and disappeared. Complainant alleges that Respondent 1 had Complainant send checks to Respondent 1's home address and alleges that one check disappeared but was cashed. Complainant states that the attorney at closing refused to speak with Complainant about the expired contract, and Complainant did not know what to do because Respondents had Complainant's earnest money. Complainant alleges that Respondents 1 and 3 are not trustworthy. Complainant further states that Complainant contacted Respondent 4 (principal broker) about the seller not being out of the house and finally received a call back from Respondent 1. Complainant alleges that Respondent 1 would not help and told Complainant to contact the seller directly. Complainant states that none of the agents made an effort to assist Complainant. Respondents 1 and 3 submitted a joint response stating they went above and beyond their duties while working with Complainant. Respondents deny lying or being unethical during the transaction. Respondents further state that Complainant has attempted to hire three (3) attorneys to file a civil suit against them, but the attorneys did not feel that Complainant had a case. Respondents state that the earnest money was placed in their firm's escrow account, and returned to Complainant's attorney at closing. Respondents state that the closing date on the contract was for March 31, 2015, and Complainant's attorney asked to extend the closing, so Respondents notified Complainant. Respondents state that Complainant advised that Complainant was too busy to sign an extension but would sign it at closing. Respondents state that nobody forced Complainant to close. Respondents state that after closing, Complainant notified Respondents that the seller had not moved out, so Respondents contacted the seller on Complainant's behalf. Respondents state that Complainant, on Complainant's own accord, went over to the home to visit the seller several times during the transaction and Respondents are not sure what transpired during these visits. Respondents state they have been realtors for a long time and have never been accused of lying or being unethical. Respondents feel like they are being slandered by Complainant's false accusations.

Respondent 2 is a duplicate case opened against Respondent 4, principal broker. TREC opened a complaint against Respondent 4 (principal broker) for failing to supervise Respondents 1 and 3. Respondent 4 submitted a response stating that neither the firm nor the agents involved have ever had a complaint filed against them and that Respondents take pride in fair, honest and ethical dealings. Respondent 4 explained that the Complainant entered into a contract to purchase a home on March 11 with an original closing date with March 31. Due to survey work performed on the Complainant's behalf, it was necessary to move the closing to April 3, 2015. Respondent 4 states that Complainant told Respondents that Complainant was too busy to have the agents come get her signature and would instead sign the extension at closing. Respondent 4 states that the closing attorney agreed to proceed with preparing the closing documents because she knew the Complainant personally. Respondent 4 states that Complainant was very

aware of the new closing date because Complainant came to the closing at the newly scheduled day and time. Respondent 4 states that it was Complainant's attorney who told Complainant to stop talking about the contract being expired due to the extended closing and that Complainant was in no way forced to close. Respondent 4 states that Complainant came by the office requesting copies of the transaction documents the following week. These documents were provided to Complainant, and Complainant did not mention being dissatisfied. Respondent 4 next heard from Complainant on April 15 when the seller did not give possession, so the agents contacted the seller who had movers coming April 16. Respondent 4 states that Complainant hung up on the agent when this information was relayed. Respondent 4 states that Complainant contacted Respondent 4 again on April 22, 2015 expressing unhappiness with the firm and asked the firm to buy back the home for the full purchase price and all closing costs. Respondent 4 further states that in May (after closing), the firm coordinated the installation of countertops between seller and Complainant, pursuant to the contract. Respondent 4 further states that the \$500 earnest money was provided by Complainant in two separate checks and states that they were promptly deposited in the firm's escrow account upon receipt. Respondent 4 further states that a check in the amount of \$500 was written to the closing attorney the day of closing, and Complainant was given a \$500 credit on the settlement statement. Respondent 4 further states that the firm recently underwent a TREC audit and no concerns were found. Respondent 4 further states that Complainant filed a Better Business Bureau complaint, which was closed. Respondent 4 has tried diligently to be reasonable and sympathetic with Complainant but states that Complainant has not been appeased. Respondent 4 feels that this is a case of buyer's remorse, and Respondent 4 sympathizes with Complainant but cannot remedy it. Respondent 4 further states that Complainant listed the property for sale with the firm (different location and agent) on April 22, 2015. Respondent 4 provided bank statements showing two checks in the amount of two hundred fifty dollars (\$250) each, which were deposited on 3/18/15 and 3/27/15 into the firm's escrow account. Documentation shows that the firm wrote two checks for two hundred fifty dollars (\$250) each to the law firm that facilitated the closing which came out of the escrow account on April 1, 2015. The settlement statement shows that the \$500 was credited to Complainant at closing and was signed by the seller, Complainant and attorney/settlement agent on April 2, 2015. Respondent 3 was listed as the transaction broker or facilitator for both seller and Complainant in the Confirmation of Agency Status. The purchase agreement was executed by the Complainant on March 11, 2015 with an original closing date set for March 31, 2015 and possession of the property on April 15, 2015. There is nothing to indicate that Complainant was forced to close or that Complainant was unhappy with the transaction until Complainant could not take possession when agreed in the contract. This, of course, was no fault of Respondents. Recommendation: Dismiss as to all Respondents. DECISION: The Commission accepted the recommendation of legal counsel.

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

9. 2015012761

Opened: 7/10/15

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 alleges that Respondent is withholding funds from rental agreements in the amount of \$9,145.60. Complainant hired Respondent to manage six properties, and Respondent terminated the contract on August 31, 2014. Complainant's owner statements from August 31, 2014 reflect ending balances of \$3,527.84, -\$141.58, \$6,638.10, \$351.87, \$238.63, and \$3,530.74 for the six properties for a total outstanding balance of \$14,145.60. Complainant submitted a series of emails to Respondent requesting the outstanding balance beginning in February of 2015 and received a final payment in the amount of \$5,000 on April 15, 2015 from Respondent, leaving a total balance owed of \$9,145.60. Complainant has yet to receive the remaining balance. Respondent did not submit a response.

Recommendation: Consent Order in the amount of \$1,500 for violations of T.C.A. § 62-13-312(b)(5) (failing to account for or remit moneys that belong to others), (14), and T.C.A. § 62-13-313(a)(2) (failing to respond), and Rule 1260-02-.09(7) (failure to disburse money held in escrow within 21 days of written request).

DECISION: Consent Order in the amount of \$11,000 for violations of T.C.A. § 62-13-312(b)(5) (failing to account for or remit moneys that belong to others), (14), and Rule 1260-02-.09(7) (failure to disburse money held in escrow within 21 days of written request) for each of the five (5) properties with an outstanding balance, plus a violation of T.C.A. § 62-13-313(a)(2) (failing to respond), plus attendance and one (1) entire regularly scheduled Commission meeting within one hundred eighty days (180) days of Respondent's execution of the Consent Order.

Commissioner Blume made a motion of a Consent Order in the amount of \$11,000 for violations of T.C.A. § 62-13-312(b)(5) (failing to account for or remit moneys that belong to others), (14), and Rule 1260-02-.09(7) (failure to disburse money held in escrow within 21 days of written request) for each of the five (5) properties with an outstanding balance, plus a violation of T.C.A. § 62-13-313(a)(2) (failing to respond), plus attendance and one (1) entire regularly scheduled Commission meeting within one hundred eighty days (180) days of Respondent's execution of the Consent Order; motion seconded by Commissioner Hills; motion passes unanimously.

10. 2015012801

Opened: 7/10/15

First License Obtained: 3/16/72

License Expiration: 7/6/16

E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No prior disciplinary action.

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise regarding the previous Respondent affiliate broker in the above complaint 2015012761. Respondent did not submit a response.

Recommendation: Consent order in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(15) (failing to supervise), (14), and T.C.A. § 62-13-313(a)(2) (failing to respond).

DECISION: Consent order in the amount of \$2,000 for violations of T.C.A. § 62-13-312(b)(15) (failing to supervise), (14), and T.C.A. § 62-13-313(a)(2) (failing to respond), plus attendance and one (1) entire regularly scheduled Commission meeting within one hundred eighty days (180) days of Respondent's execution of the Consent Order.

Commissioner DiChiara made a motion of a Consent order in the amount of \$2,000 for violations of T.C.A. § 62-13-312(b)(15) (failing to supervise), (14), and T.C.A. § 62-13-313(a)(2) (failing to respond), plus attendance and one (1) entire regularly scheduled Commission meeting within one hundred eighty days (180) days of Respondent's execution of the Consent Order; motion seconded by Commissioner Hills; motion passes unanimously.

11. 2015013291
Opened: 7/10/15
First License Obtained: 9/28/79
License Expiration: 7/9/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2011030851 and 2011030871 \$1,500 Consent Order (misleading or untruthful advertising, unlicensed property management company)

Complainant states that Complainant rented a home from Respondent and has had numerous problems with the house including issues with the stove, the dishwasher, and the garage door. Complainant states that repairs took way too long to complete because the property management company had to get permission from Respondent who then arranged the repair. Complainant alleges that Respondent paid for repairs with a personal credit card and accepted rent payments on behalf of a property management company, despite Respondent being a broker for another real estate firm. Complainant states that Respondent collected the deposit and first and second month's rent even though the rent checks were made out to the property management company. Complainant states that Complainant dropped off the next 6 or 7 rent checks at Respondent's real estate firm office which was at least five miles from the property management company office. Complainant further states that Respondent's attorney stated that Respondent had nothing to do with the property and had only referred Complainant to the property management

company. Complainant states that Respondent showed Complainant the property, filled out the lease and signed it. Complainant denies allegations from Respondent's attorney that Complainant harassed Respondent when Complainant dropped off a rent check at Respondent's real estate firm office. Complainant sent a demand letter to Respondent, requesting Respondent to answer several questions, but Respondent did not respond.

Respondent submitted a response denying the allegations and states this has been an ongoing dispute with Complainant over the last few years. Respondent states Respondent had listed the house for sale but since they had not found a buyer, the homeowner asked Respondent to put the house up for rent. Complainant knew Respondent through a family member and notified Complainant that the house was available. Respondent states that the property management firm prepared a lease, which was signed by Complainant on June 1, 2012. Respondent states that the homeowner is Respondent's client, so when the homeowner asked if Respondent could take care of maintenance for the property, Respondent agreed. Respondent alleges Respondent made Complainant aware that Complainant was renting from the property management company and not Respondent's real estate firm or Respondent. Respondent alleges that whenever Complainant complained to the property management firm of any problems, the property management firm called Respondent, who called the homeowner to get permission to fix problems. Respondent stated that the homeowner made sure all repairs were kept up, and after completing the repairs, Respondent received reimbursement from the homeowner. Respondent stated that Respondent is allowed to pay for repairs, since Respondent received approval from the homeowner. Respondent admits that Complainant paid rent at Respondent's real estate firm office, but states the receptionist always delivered the check to the property management company which rented an office in the same building. Respondent alleges that Complainant came to Respondent's real estate firm and became angry and threatening, requiring Respondent and other agents to escort Complainant out of the building. After the property management firm moved offices, Respondent alleges that Respondent informed Complainant to deliver rent to the new location and not Respondent's real estate firm's office. Respondent alleges that Complainant has harassed Respondent, resulting in Respondent ceasing involvement with the property.

Office of Legal Counsel followed-up with Respondent requesting any written agreements between any of the parties involved. Respondent submitted an additional response by and through an attorney stating that there are no written agreements between Respondent, Respondent's firm, the owner of the property or the property management company. Respondent states that Respondent received small upcharges on the repairs and maintenance of the property and does not possess any documentation of payment or reimbursement from the owner. Respondent states that Respondent is not the landlord and does not have a copy of the lease. Complainant submitted a copy of the lease which was on the property management company's letterhead and had Respondent's signature on the "landlord" line with the property management company's name printed underneath. Respondent states that Respondent's firm accepted the rent checks and delivered them to the property management company because they were located in the same building. Respondent states that when the property management firm moved to

their new location, Respondent told Complainant he must take rent payments directly to the property management company. The address for the property management company listed on the lease is the company's current address which would seem to indicate that Respondent's firm and the property management company were never located in the same building during the lease term. According to TREC filing records, the property management company moved to the address listed on the lease in April of 2011.

Recommendation: Discuss possible violations - T.C.A. § 62-13-312(b)(1) (making any substantial and willful misrepresentation), (3) (pursuing a continued and flagrant course of misrepresentation), (11) (accepting a commission or any valuable consideration by an affiliate broker...from any person, except the licensed real estate broker with whom the license is affiliated), or any others the Commission deems applicable.

DECISION: Consent Order in the amount of \$3,000 for violations of T.C.A. § 62-13-312(b)(1) (making any substantial and willful misrepresentation), (3) (pursuing a continued and flagrant course of misrepresentation), (11) (accepting a commission or any valuable consideration by an affiliate broker...from any person, except the licensed real estate broker with whom the license is affiliated), plus attendance at one (1) entirely scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of the Consent Order.

Commissioner DiChiara made a motion of a Consent Order in the amount of \$3,000 for violations of T.C.A. § 62-13-312(b)(1) (making any substantial and willful misrepresentation), (3) (pursuing a continued and flagrant course of misrepresentation), (11) (accepting a commission or any valuable consideration by an affiliate broker...from any person, except the licensed real estate broker with whom the license is affiliated), plus attendance at one (1) entirely scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of the Consent Order; motion seconded by McMullen; motion passes unanimously.

12. 2015014561

Opened: 7/23/15

First License Obtained: 11/4/05

License Expiration: 11/3/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

Complainant states that Complainant sublet a room in the house Respondent was renting and Respondent was responsible for paying the utilities. Complainant states that several times utilities were shut off due to tardy payments and that the house had other issues including faulty wiring, no smoke detectors and leaking appliances. Complainant states that Complainant gave Respondent plenty of notice to find a new tenant before Complainant moved out. Complainant states that, after moving out, Respondent gave Complainant a check for the \$575 security deposit and \$225 for the washer/dryer fee.

Complainant states both checks bounced right away and Respondent rarely responds to Complainant's calls requesting to meet with the money.

Respondent states that Respondent rented the subject property in April of 2014 in order to have a place to stay upon selling Respondent's home. The closing on Respondent's home was delayed until late June so Respondent subleased the rooms in the subject property. Respondent had all sublessees pay a security deposit and sign a lease stating that the deposit was only refundable if Respondent was given 30 days' notice to secure a new sub-tenant. Respondent states that complainant gave only 10 days' notice right around the Christmas holiday and demanded a refund of the deposit. Respondent states that, although Respondent does not believe Respondent was under any obligation to return the security deposit, Respondent wrote refund checks as a courtesy. Respondent states that Respondent bought a home and moved out of town in the late fall and, in December of 2014, the checks bounced due to a separate check being cashed that was meant to be held. Respondent state that there were issues with the central heat/air unit in the summer and that it was finally fixed after numerous calls by the Respondent to the owner and property manager. Respondent states that Respondent spent some of Respondent's own money to fund repairs on the house to keep the room renters comfortable. Respondent states that there was a time or two that a utility was shut off (Respondent thinks it was cable) because Respondent did not always make it back to Respondent's post office box in Respondent's old hometown to retrieve mail and bills in a timely manner but that Respondent called and got it turned back on right away.

Respondent provided the Respondent's lease with the owner as well as the sublease with Complainant. It is legal counsel opinion that there are potential problems with this transaction in terms of the Tennessee Uniform Residential Landlord Tenant Act and possibly some contractual issues. However, Respondent was not acting as an agent for anyone involved but was acting on behalf of Respondent's own leasehold interest. Therefore, it is legal counsel's opinion that there are no apparent violations of TREC statutes and rules.

Recommendation: Dismiss.

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

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

13. 2015015651

Opened: 6/26/15

First License Obtained: 1/16/01

License Expiration: 6/4/16

E&O Expiration: 1/1/17

Type of License: Broker

History: 2015015151 Under legal review.

TREC opened a complaint against Respondent (previously a principal broker) for a potential failure to supervise Respondent (“Affiliate Broker”) in case number 2015014561 above. Respondent was Affiliate Broker’s principal broker from December 11, 2014 through July 7, 2015. Respondent submitted a response stating that it was Respondent’s understanding that when the affiliate broker joined the firm, the affiliate broker did not provide rental services as an agent for other property owners. In addition, Respondent states that the events of the complaint take place in the summer of 2014 and the affiliate broker did not join Respondent’s firm until December of 2014.

TREC records indicate that the affiliate broker did not join Respondent’s firm until December 11, 2014. Even if the above referenced Respondent was found to be in violation of TREC statues or rules, Complainant moved out shortly thereafter and there is nothing to indicate that Respondent should have known anything about the situation.

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 Franks; motion passes unanimously.

14. 2015014631

Opened: 6/17/15

First License Obtained: 11/7/07

License Expiration: 6/27/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

A complaint was filed against Respondent (Principal Broker) by a seller stating that Respondent failed to pay off Complainant’s mortgage as agreed to in the sale of Complainant’s property. Complainant states that Complainant has no knowledge of agreeing to an assumption of the loan or entering into an agreement with the name of the person who is shown as the purchaser on the property. Complainant states that Complainant did not meet the person who signed as purchaser of the property until April 20, 2015 when Complainant signed the closing documents. Complainant suspects Complainant’s name was scanned onto the document, the assumption line was checked on the document and Respondent’s name was replaced with the other name. Complainant further states that a Quitclaim Deed to change ownership of the property was entered at the Register of Deeds. Complainant further states that Respondent did not forward a copy of the closing documents as promised. Complainant states that Complainant was told to provide the password for the online mortgage so Respondent could obtain the payoff that day. Complainant states that when Complainant attempted to access the account later, the password and address on the account had been changed, there had been no pay-off and a mail-in payment for May 2015 had been received. Complainant states Respondent took out an insurance policy in Complainant’s name. Complainant alleges

that Respondent made false promises, made willful misrepresentations, and participated in improper, fraudulent and dishonest dealings.

Respondent denies the allegations stating that there have been no altered documents in the transaction. Respondent disclosed to Complainant that Respondent was a broker and was not representing Complainant in this transaction. Respondent met with Complainant explaining that Respondent and spouse (through the spouse's company) were interested in purchasing the property as an investment (not as an agent). Respondent did not receive a commission or referral fee from the sale and did not represent Complainant. Respondent states that Respondent did not prepare any of the transaction documents, did not correspond with the title company, did not review the HUD prior to closing, and did not attend the closing. Respondent states that Respondent met with Complainant on March 24th to present two offers to purchase. The first offer was to purchase the property for \$104,000, which included buyer financing, and the second offer was for \$118,000 in which the buyer's would leave the existing mortgage in place. With the second offer, Respondent and spouse would not be assuming the loan or paying off the loan stating the loan would be in Complainant's name, and Respondent's and spouse's company would make the monthly mortgage payments. In addition, Complainant would receive \$300 a month for 47 months. Respondent states that Complainant chose the second offer in order to use the extra money to pay off credit card debt. Respondent states that Respondent explained that if Complainant wanted to purchase another property and obtain financing, the loan would still show up, but Complainant was not concerned, stating Complainant had no plans to purchase another property. Respondent states that Respondent reviewed the purchase and sale agreement with Complainant, which was between Complainant and Respondent's spouse's company. Respondent states that Complainant elected to receive a copy by email. Respondent states that Respondent's spouse reviewed and signed the documents and Respondent emailed the fully executed Purchase and Sale Agreement to Complainant the next day, March 25, 2015. Respondent states that on April 20, Complainant met Respondent's spouse and the title company's closing agent to close. Respondent was not present but states that Respondent has knowledge that Complainant signed an Addendum stating that Complainant understood that the buyer was not assuming or paying off the loan. Respondent states the insurance company admitted to making a mistake by sending a bill to Complainant instead of the lender. Respondent denies representing either party in the transaction, denies forging any documents or signing Complainant's name. Respondent states that Respondent treated Complainant with the highest level of professionalism and honesty, explaining everything entirely.

Office of legal counsel followed-up with Respondent to obtain additional information and the transaction file. Respondent states that Complainant was aware that Respondent was a broker because Complainant referred a family member to Respondent. Respondent states that there is currently civil litigation against Respondent, Respondent's spouse, Respondent's spouse's company, and the title company. Respondent states that the title company made a mistake on the settlement statement by including the words "payoff" instead of stating the company was buying the property "subject to" the existing mortgage. Respondent further states that Complainant and Respondent's spouse signed a

Promissory Note, and Complainant retains the original, executed Promissory Note. Respondent further states that the company has been paying the \$300 per month, which Complainant has been accepting.

The Standard Agreement to Purchase Real Estate is dated March 24, 2015 in which Respondent's spouse's company is listed as the purchaser and Complainant is the seller. It states that the purchase price is \$118,000 payable in the amount of \$300 for forty-seven months and that purchaser will be taking over payments. It appears that Respondent's spouse signed his own name at the bottom. It appears that this contract was emailed to Complainant by Respondent on 3/25/15. There is an Acknowledgement Agreement and Addendum dated April 20, 2015, stating, in relevant part, that Complainant acknowledges, understands and agrees that the existing loan will not be transferred to the buyer and the buyer has no intention of assuming or paying off subject loan. Also included is a Promissory Note in which Purchaser agrees to pay Complainant \$15,900 in monthly payments of \$300, but it is not executed. The settlement statement is dated 4/20/15 with Complainant's family land trust listed as borrower and Complainant as the seller. There are multiple trust documents in which Complainant grants the deed to Complainant's family's land trust with a third party acting as trustee. Complainant also quit claimed the property to purchaser. There are checks and bank documents indicating mortgage payments have been made by the purchasing company as well as \$300 checks to Complainant that Complainant has cashed. Further, it appears that Complainant has filed a civil lawsuit against Respondent, Respondent's spouse, purchaser and the title company. At this time, only the title company has been dismissed from the suit. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

Recommendation: Consent Order for Litigation Monitoring.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel of a Consent Order for litigation monitoring; motion seconded by Commissioner Franks; motion passes unanimously.

15. 2015014801

Opened: 6/19/2015

First License Obtained: 10/15/1987

License Expiration: 5/29/2016

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was a potential buyer's agent for the subject property. Complainant via principal broker states that Complainant submitted a cash offer of \$35,000 on the subject property on 12/29/14. Respondent (seller's agent) told Complainant that Complainant's offer would be back-up and since Respondent had another offer that was going to be

considered first because the seller addendums had already been sent. Complainant states that the property closed on 1/27/15 for \$28,000. Complainant states that the property was sold again on 1/29/15 for \$35,000 to the Complainant's buyer (using a different agent). Complainant believes that Complainant's offer was never submitted by Respondent because Complainant's offer would have certainly been accepted. Complainant states that Respondent did not work in the best interest of Respondent's client and violated the law by not submitting Complainant's offer. Complainant believes Complainant should receive the commission on this sale.

Respondent states that the sellers had accepted an offer prior to receiving Complainant's offer as indicated in email correspondence and confirmation from the website. Respondent states that Respondent was not involved in the resale of the property to Complainant's former client. Respondent states that a different agent contacted Respondent to see if the buyer would be interested in selling the property to her client (Complainant's old client). Respondent gave the new agent the number of the buyer's agent. Respondent states that the same complaint was submitted to the local association which was dismissed based on the fact that there was already an accepted contract in place before Complainant submitted an offer.

Supporting documents show an offer made by the first buyer on 12/21/14 and accepted on 12/26/14 with addendums sent to the first buyer on 12/27/14. Email correspondence indicates that Complainant's offer was not made until 12/29/14. Therefore, documentation indicates that the property was under contract at the time Complainant's offer was submitted which was why the seller did not accept Complainant's offer. There is nothing indicating Respondent was involved with the resale of the property. Correspondence from the local association indicates that the complaint was found to be non-arbitrable and subsequently dismissed because an offer was accepted before Complainant's offer was submitted.

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 Wood; motion passes unanimously.

16. 2015014821

Opened: 6/19/2015

First License Obtained: 8/5/1985

License Expiration: 6/15/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against the principal broker for the above referenced affiliate broker (complaint number 2015014801). Respondent states that Complainant contacted Respondent regarding these accusations and threatened with complaints to TREC and the local associations. Respondent states that Respondent spoke to the affiliate broker about the transaction and it was clear to Respondent that the affiliate broker had complied with TREC regulations. Respondent states that Respondent supervises the activities of all Respondent's agents.

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 McMullen; motion passes unanimously.

17. 2015015131

Opened: 6/23/15

First License Obtained: 3/9/05

License Expiration: 2/20/16

E&O Expiration: 7/1/16

Type of License: Affiliate broker

History: No Prior Disciplinary Action

Complainant retained Respondent to assist Complainant in purchasing a house. Complainant states that Respondent did not provide a copy of the buyer's agreement at the time of signing or shortly thereafter, nor was it completely explained to Complainant. Complainant states that Complainant did not receive copies of the offers Complainant put in on two other properties. Complainant states that the buyer's representation agreement only states that Complainant was looking for a \$70,000 house and makes no mention of the two bedroom two bath with garage in a particular part of town requirement. Complainant states that Complainant requested to see a particular property to which Respondent responded that it needed work and wouldn't qualify for FHA financing. Complainant believes the pictures indicate otherwise. Complainant states Respondent consistently suggested houses above Complainant's budget or out of the Complainant's target area and would speak negatively of properties under \$75,000. Complainant states that Respondent suggested Complainant view a particular house which Complainant ended up viewing via Respondent's cell phone flashlight because there were no utilities. Complainant states Respondent continually suggested Complainant should buy the home and that it wouldn't last long. Complainant states Complainant repeatedly told Respondent that Complainant was not interested and it was over budget. Complainant states Respondent gave Complainant misinformation about how the repair escrow would affect financing for a HUD house. Complainant states Complainant received the contract and corrected information when Complainant signed the HUD contract. Complainant contacted Respondent on April 9, 2015 requesting a copy of the buyer's representation agreement and Respondent told Complainant it was for a year agreement because Complainant was looking at short sales. Complainant states Complainant never stipulated

that Complainant was only interested at short sales. Complainant requested that the contract be terminated to which Respondent responded, insinuating that Complainant's religious and financial prudence were the reasons Complainant had not bought a house. Complainant states Respondent then demanded \$500 to terminate contract. Complainant states that Respondent is not trustworthy and Complainant wishes to be released from the agreement without penalty.

Respondent states that Complainant never went through with any of the properties she chose and used Respondent's time and services with no intention of purchasing a home. Respondent states that Respondent caused no harm and did everything required as a realtor. Respondent states that Respondent met Complainant at a property Complainant requested to see after Complainant solicited Respondent via Facebook. Complainant wanted to make an offer on the house so Respondent wrote the offer and Complainant signed a buyer's representation agreement there at that time. Respondent states that Complainant asked a lot of questions about everything she signed that day and all information was explained to Complainant thoroughly. Complainant did not request any more time to review any of the documents. Respondent states that Respondent provided a copy of the agreement to Complainant at that time. Respondent states Complainant did not get this home because the seller would only take a cash or a conventional loan offer which Complainant could not do. Respondent states that Complainant was not happy with anything Complainant viewed in Complainant's price range so Respondent began to look for homes slightly over the price range in order to give Complainant more options. In regard to another home referenced by Complainant, Respondent states that it was a short sale but the lender was flexible and it was in a high selling area. Respondent was informed that it was showing quite a bit and Respondent had an opportunity to get Complainant's offer in first position. Respondent states that the listing agent did not inform Respondent that there were no utilities so Respondent did the best Respondent could do by using the cell phone flashlight (it was evening). Respondent states that Complainant loved the home and Respondent offered to bring Complainant back the next day to view the home in the daylight. Respondent states Complainant said Complainant wanted to sleep on it and would let Respondent know the next day if Complainant wanted to make an offer. The next day, Complainant informed Respondent that Complainant did not want to view anymore homes until after Lent and Respondent respected Complainant's wishes. Before Lent was over, Complainant contacted Respondent to see a home which Complainant loved and placed an offer on (HUD home). Respondent states that the HUD offer was placed electronically so Respondent had nothing of which to give Complainant a copy. The offer was accepted and Respondent did a lot of leg work to get the HUD contract prepared for execution. Complainant backed out of the contract the next day saying Complainant needed to be better prepared for purchasing and would wait until a later time. Complainant expressed how thankful she was to work with Respondent and the lender. Respondent states that the information regarding the HUD escrow account came from the lender which Respondent relayed to Complainant and that Respondent, Complainant, and the lender had a conference call prior to Complainant signing the contract where the lender explained how all the financing was going to work. Respondent states that Complainant emailed on April 9, 2015 asking for a copy of the agreement and the date of termination which Respondent found odd because, the last time they spoke,

they left on great terms and Complainant just needed more time to get finances in order. Respondent states that Respondent chose to date the agreement a year from the signing date because most of the homes Complainant showed interest in were short sales which can be a lengthy process. Respondent states that Complainant's response regarding termination of the contract felt coached and went from very pleasant and thankful to being unhappy with Respondent's services very abruptly. Respondent further states that the \$500 fee to terminate the contract is to compensate Respondent for the hours Respondent's spent searching for homes meeting Complainant's criteria for a month, the time spent answering questions via phone and email and the gas money spent and mileage put on Respondent's cars. Respondent states that if Respondent offered bad services to Complainant, Respondent would release the contract without hesitation. Respondent states that at no time before requesting to be released from the agreement did Complainant express dissatisfaction with Respondent's services.

Email and text message documentation were submitted by Complainant, none of which substantiate any of Complainant's claims. The buyer's representation agreement is signed by Complainant. It seems that Respondent found and showed several homes to Complainant and Complainant back out of the contract Complainant had on a home. Text messages show Complainant stating that Complainant wishes to put the home search on hold until after Lent and Respondent states "ok, I will check back with you after Easter." That same evening, Complainant sends Respondent a text message asking about another house. In an email chain in early April where Complainant is trying to terminate the agreement, Complainant states that during Lenten fasting Complainant received revelations and conversations about various issues and needs to make personal and business changes to be in order with them. Respondent replies stating that Respondent respects Complainant's position but needs clarification as it pertains to their business relationship and to Complainant's intentions for the agreement so Respondent knows what is going on. There is nothing to indicate that Respondent said anything that would be considered offensive to Complainant.

Recommendation: Dismiss

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

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

18. 2015015151

Opened: 6/23/15

First License Obtained: 1/16/01

License Expiration: 6/4/16

E&O Expiration: 1/1/17

Type of License: Broker

History: 2015015651 Under Review

TREC opened a complaint against Respondent for failure to supervise the above referenced affiliate broker. Respondent submitted a response stating that Respondent was not the affiliate broker's principal broker at the time of this buyer's representation agreement.

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 Wood; motion passes unanimously.

19. 2015015671

Opened: 6/29/15

First License Obtained: 10/25/13

License Expiration: 10/24/17

E&O Expiration: 1/1/17

Type of License: Broker

History: No Prior Disciplinary Action

Respondent represented the buyer in the sale of Complainant's home. Complainant states that the purchase contract on Complainant's property had expired and Respondent came to Complainant's home to deliver an extension check. Complainant states that Complainant indicated to Respondent that Complainant did not intend to accept the check and Respondent became agitated. Complainant states Respondent told Complainant that his role was to be the enforcer for which he carried a gun and made a dramatic gesture indicating he had the gun with him. Complainant believes he was threatened and now he and his wife feel uneasy in their own home.

Respondent states that Respondent and Complainant had developed an amicable working relationship and the transaction had been smooth up until 4/23/15. Respondent states he and Complainant bonded over having both lived in NYC for a period of time and the fact that both of their wives were expecting babies. Respondent states that Respondent received an email from Complainant on 4/23/15 stating that they had placed multiple offers on homes which were rejected and that it was not the right time to find a home they liked. Complainant's email stated that, since they did not receive an extension check from the purchaser that day or the day before, the house was no longer under contract and they were no longer interested in selling. Respondent states that Respondent immediately contacted Complainant and Respondent explained that Respondent did not believe they were late on payment and mentioned all of the good faith work that the buyer was doing to get the deal ready to close (local government approval process, getting surveys and engineering work started). Respondent states that Complainant said the change of heart was due to the fact that they had been unable to find a house they could afford in the neighborhood they desired to live in and that his attorney had advised him that he could get out of the contract. Respondent offered to help Complainant find a home and offer to

speak with the buyer about letting Complainant stay in the home longer after the baby is born. Complainant agreed to allow Respondent to bring the extension check that same day (buyer had a cashier's check ready at the bank). When he arrived, Complainant stated that he was refusing the check and is no longer bound by the deal. Respondent states that he never told Complainant that he was an "enforcer" and that the gun reference is completely out of context. Respondent states they had gotten into a conversation about how dangerous it can be to be realtor that specializes in new construction because there have been multiple break-ins and workers attacked at job sites. Respondent mentioned to Complainant that many builders and realtors feel that need to protect themselves when traveling between projects so Respondent sometimes carries a gun in the car for safety. Respondent states that Complainant sent a letter wishing to close the matter and the buyer decided to close the matter and move on. Respondent is deeply offended by Complainant's comments and finds them unfounded and slanderous. Respondent states Respondent is a hardworking, honest person who conducts business with complete transparency and the highest moral standards. Respondent believes that Complainant was trying anything he could to get out of a sales contract and now wants to cause Respondent harm by hurting his reputation.

The sale of Complainant's property appears to have been contingent upon the buyer getting the proper zoning approval from the local government. In light of the contingency, the purchase and sale agreement had provisions for extensions on the closing date. It is unclear to legal counsel whether or not the payment was late since it would have been a one day differentiation; however, both parties signed a mutual release agreement with the earnest money going to the buyer. There was nothing provided to substantiate any threat made by Respondent.

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 Wood; vote 6 yes and 2 no; motion passes.

20. 2015015681

Opened: 6/29/15

First License Obtained: 4/20/01

License Expiration: 6/22/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened a complaint against Respondent for failure to supervise the above referenced broker (complaint number 2015015671). Respondent states that the broker is an active agent who comes in the office very single day and has close communication with Respondent. Respondent states that Complainant and broker engaged in friendly

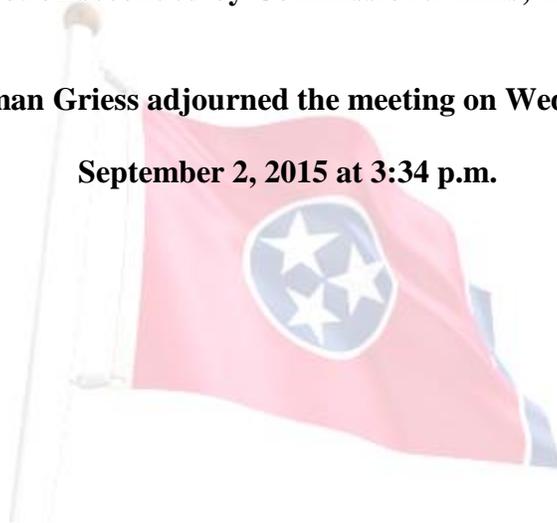
discourse throughout the length of the transaction which took a turn when Complainant discovered that Complainant could not find a suitable replacement property. Respondent states that there was a disagreement about the timeline of the contract and the broker and his client agreed to close the matter and move on. Respondent states that Complainant took the gun comment way out of context and is using it to unfairly accuse the broker of threatening him. Respondent states that the broker was very distraught when he received the TREC complaint and brought it to Respondent's attention right away. Respondent states that the complaint for failure to supervise is unfounded because the broker was diligent in his communication of the events of the transaction as they unfolded and the accusations against him are untrue.

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 passes unanimously.

**Chairman Griess adjourned the meeting on Wednesday,
September 2, 2015 at 3:34 p.m.**



STATE OF TENNESSEE

DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE REAL ESTATE COMMISSION

TENNESSEE REAL ESTATE COMMISSION MINUTES

The Tennessee Real Estate Commission convened on Thursday, September 3, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Diane Hills, Commissioner Austin McMullen, Commissioner Fontaine Taylor, Commissioner Bobby Wood, and Commissioner Marcia Franks. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Robyn Ryan, Assistant General Counsel Mallorie Kerby, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

September 3, 2015

Formal Hearing

**TREC v. Carrie Peery 12.18-13 12.18-129699A
Case No. 2014067910007 A**

A formal hearing was held before the Commission with an Administrative Law Judge presiding. After consideration of the testimony and the evidence presented the Commission decided to issue a letter of reprimand and assess the cost of the hearing to the respondent.

Chairman Griess adjourned the meeting on Thursday,

September 3, 2015 at 1:44 p.m.