



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

November 4th, 2015

The Tennessee Real Estate Commission convened on Wednesday, November 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 Gary Blume, Commissioner Diane Hills, Commissioner Austin McMullen, Commissioner Fontaine Taylor, Commissioner Bobby Wood, Commissioner Johnny Horne 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 Thursday October 29, 2015. Also, this meeting has been notice on the tn.gov website since Thursday October 29, 2015.

Chairman Griess welcomed newest Commissioner from Chattanooga, TN. Johnny Horne.

Commissioner Taylor added a discussion of requiring attendees signing in and out of meeting to the agenda after Executive Director Maxwell report; Commissioner McMullen made a motion to adopt the agenda as amended; motion seconded by Commissioner DiChiara; motion passes unanimously.

Commissioner DiChiara made a motion to approve the October minutes; motion seconded by Commissioner Hills; Commissioner Franks, Commissioner Horne, and Commissioner McMullen abstains from vote; motion passes.

Assistant Commissioner Brian McCormack accompanied by Michael Driver Legal Counsel

Discussion of search for new Executive Director with Chairman Griess; we received roughly 30 written applications. Mr. McCormack and Chairman Griess reduced applicants down to 9 people we wanted to talk to; out of the 9 people; we narrowed it down to 3 people we would like to talk to in person, so almost immediately one of the 3 people withdrew her name from the list, so I don't want to say we were left with two candidates. These are 2 good candidates and in the last 10 days, week, or so; we have met with those 2 candidates both very well qualified people that we would be proud to be associated with. We have come up with a single candidate to present to this Commission, and as you know it is the Commissions job to hire the Executive Director. This committee of 2 will make a recommendation to you shortly that candidate is in the audience. We hope he that he will talk to you all as a group, and by the way audience we have to do everything in the sunshine, so you might be saying this is a waste of time, but it's how we have operate. So, we'll ask that candidate when we introduce him to you, to tell you a little about himself then give the Commission all the time you need to ask questions and at the end of that conversation if the Commission is so inclined I have a motion that I hope someone will consider making, so that is where we are going with this now.

Assistant Commissioner Brian McCormack introduces Malcom Young; he has an extensive background in the real estate industry; he served with the Louisianan Realtors Association for a number of years, and was Director of that association for a long time. I think his expertise and knowledge of the industry will be of benefit to you all, so in addition to that his management experience and some of the roles he has been participating in some of the years in terms of leadership are the vital roles that we felt are important.

Chairman Griess wanted Commissioners to beware of a few more things. Mr. Young has a consulting business and he is under contract with the Alabama Association of Realtors, and he almost chose not to pursue this job because he felt obligated to that commitment to the Alabama Association of Realtors. He has assured Brian and myself that commitment can officially expire as late as end of January 2016, so there would be a period of time if this Commission chooses to hire Mr. Young that we would have to rely on Brian and additional staff with help that you can provide to kinda fill in that gap. Brian and myself are comfortable that is not going to be a huge issue especially with the holidays coming up, but I want you to be aware of that first of all.

Commissioner Hills made a motion that Mr. Young be approved to take the TN. Broker Exam for the sole purpose of qualifying for this position of Executive Director of the Commission and that pending all appropriate state approvals and passage of that exam that Mr. Young be hired as Executive Director for the Commission at a salary of \$83,304.00 per year with a start date of February 1st, 2016 or earlier as agreed upon; motion seconded by Commissioner Wood; Commissioner

Blume amended motion in addition to passing TN Broker exam, Assistant Commissioner Brian McCormick be in charge with following up with references Mr. Young provided that those references turn out to be satisfactory; motion seconded by Commissioner Franks; motion passes unanimously. Vote on main motion passes as amended by Commissioner Blume with 8 yes and 1 no vote by Commissioner DiChiara.

Commissioner Taylor made a motion to give the prospective Executive Director, Malcom Young, of up to \$5,000.00 moving allowance; motion seconded by Commissioner Franks; motion passes unanimously.

EDUCATION REPORT

Mr. White, the Education Director, presented the educational courses N1 – N9 set forth on the November, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve N1 – N9 courses; motion seconded by Commissioner Franks; Commissioner McMullen abstains from N1 vote; motion carries with 8 yes and 1 abstention.

Instructors Approvals

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red N1 – N9 to be approved as Instructors.

Commissioner Franks made a motion to approve all instructors, since Education Director White recommended for approval N1 – N9; motion seconded by Commissioner DiChiara; Commissioner McMullen abstains from N1 vote; motion carries with 8 yes and 1 abstention.

INFORMAL APPLICANT APPEARANCE

APPLICANT: LINDA NAY CARTER

PRINCIPAL BROKER: JONH BURTON HUGHES #294692

FIRM: GREATER CHATTANOOGA REALTY d/b/a KELLER WILLIAMS REALTY #258433

Principal Broker: Jon Burton Hughes #294692 is the PB of Greater Chattanooga Realty d/b/a Keller Williams Realty #258433. The firm is located in Chattanooga, TN.

Mr. Hughes was first licensed as an affiliate broker 9/20/2004. His license expired and he retested and reapplied and was issued an affiliate broker license on 3/10/2008. He was

licensed as a broker on 5/24/2013. The records indicate that Mr. Hughes became the principal broker of the firm on 6/3/2013. The firm was first licensed on 2/16/2005.

The TREC records reflect that the firm currently has 125 affiliate brokers, 8 brokers and 1PB.

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

Applicant: Linda Nay Carter submitted an Application for Decision Regarding Prior Criminal Convictions and has taken and passed the national and state exams and has submitted an application for licensure.

Ms. Carter revealed the following: She was convicted of a misdemeanor and terms have been met of her conviction.

Commissioner Franks made a motion to approve Ms. Linda Nay Carter to continue with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: ROBERT CLAY WILSON

PRINCIPAL BROKER: JONH BURTON HUGHES #294692

FIRM: GREATER CHATTANOOGA REALTY d/b/a KELLER WILLIAMS REALTY #258433

Principal Broker: Jon Burton Hughes #294692 is the PB of Greater Chattanooga Realty d/b/a Keller Williams Realty #258433. The firm is located in Chattanooga, TN.

Mr. Hughes was first licensed as an affiliate broker 9/20/2004. His license expired and he retested and reapplied and was issued an affiliate broker license on 3/10/2008. He was licensed as a broker on 5/24/2013. The records indicate that Mr. Hughes became the principal broker of the firm on 6/3/2013. The firm was first licensed on 2/16/2005.

The TREC records reflect that the firm currently has 125 affiliate brokers, 8 brokers and 1PB.

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

Applicant: Robert Clay Wilson submitted an Application for Decision Regarding Prior Criminal Convictions and has taken and passed the national and state exams for licensure as an affiliate broker. Mr. Wilson revealed the following: He has been convicted of felonies. The terms of his convictions have been met.

Commissioner DiChiara made a motion to approve Mr. Robert Clay Wilson to continue with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: BENJAMIN P. POSPISI L

PRINCIPAL BROKER: BOBBI E NOREEN #250878

FIRM: VILLAGE PEOPLE, LLC d/b/a VILLAGE #255411

Principal Broker: Bobbie Noreen #250878 is the PB of Village People, LLC d/b/a Village #255411. The firm is located in Nashville, TN.

Ms. Noreen was first licensed as an affiliate broker 1/23/1988 and was first licensed as a broker on 2/11/1993. The records indicate that Ms. Noreen has been a principal broker off and on since getting her broker license and became the PB of Village on 1/27/2005. The firm was first licensed on 9/25/1996.

The TREC records reflect that the firm currently has 176 affiliate brokers, 11 brokers and 1PB.

Other than paying an E&O penalty in 2009, Ms. Noreen has had no disciplinary action taken against her by the Commission.

Applicant: Benjamin P. Pospisil submitted an Application for Decision Regarding Prior Criminal Convictions. Mr. Pospisil revealed the following: He was convicted of felonies and that the terms of his sentences have been met.

Commissioner DiChiara made a motion to approve Mr. Benjamin P. Pospisil for the licensure process; motion seconded by Commissioner Franks; Commissioner Horne abstains; motion passes 8 yes and 1 abstention.

INFORMAL APPLICANT APPEARANCE

APPLICANT: CHRISTY BARNARD LAGRONE

PRINCIPAL BROKER: WILLIAM "CARL" C. NICHOLS #208435

FIRM: CEEGEE INVESTMENTS, INC d/b/a REALTY GROUP #256228

Principal Broker: William "Carl" C. Nichols #208435 is the PB of CeeGee Investments, Inc. d/b/a Realty Group #256228. The firm is located in Tazewell, TN.

Mr. Nichols was first licensed as an affiliate broker prior to 1982 and

was first licensed as a broker on 10/18/1983. The records indicate that he became PB of CeeGee Investments, Inc. d/b/a Realty Group when the firm was first licensed on 1/8/1999.

The TREC records reflect that the firm currently has 8 affiliate brokers, 0 brokers and 1PB.

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

Applicant: Christy Barnard LeGrone submitted an Application for Decision Regarding Prior Criminal Convictions. Ms. LeGrone revealed the following: She was convicted of felonies and the terms of her sentences have been served.

Commissioner DiChiara made a motion to approve Ms. Christy Barnard LeGrone to move forward in the licensure process; motion seconded by Commissioner Wood; motion passes with 7 yes and Commissioner Blume and Chairman Griess vote no.

INFORMAL APPLICANT APPEARANCE

APPLICANT: SHAVONDA M ICHELLE POL K #282528
PRINCIPAL BROKER: JERRY T. KIDDY #6562
FIRM: HOME FRONT REALTY & AUCTION, LLC #225363

Principal Broker: Jerry T. Kiddy #6562 is the PB of Home Front Realty and Auction #225363. The firm is located in Lawrenceburg, TN.

Mr. Kiddy was first licensed as an affiliate broker on 10/20/1982 and was first licensed as a broker on 3/26/1985. The records indicate that he became PB of Home Front Realty and Auction, LLC on 2/7/1986, when the firm was initially licensed.

The TREC records reflect that Home Front Realty and Auction, LLC Team currently has 3 affiliate brokers, 2 brokers and 1PB.

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

Applicant: Shavonda Michelle Polk was previously licensed as an affiliate broker in TN from 4/2/2002-12/31/2002, at which time her license expired because she did not complete the required number of CE hours for renewal. Ms. Polk retested and reapplied for licensure as an affiliate broker. She has passed both exams and has submitted an application. Ms. Polk's TBI/FBI report revealed the following:

Ms. Polk has been convicted of misdemeanors and felonies; she has served her time and has been issued a certificate of restoration.

Commissioner DiChiara made a motion to approve Ms. Shavonda Michelle Polk to move forward with her licensure process; motion seconded by Commissioner Franks; motion passes unanimously.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

Executive Director Maxwell reminded Commission in 2010 after great discussion an ALJ, Administrative Law Judge, sitting alone without the presence of the Commission can hear:

- Unlicensed Activity Cases
- Administrative Measure Cases
- Failure to Respond Cases
- E&O Cases

The legal department wanted to clarify that the Commission still felt the same as they did in 2010 since the Commission has several new Commissioner now.

Commissioner Franks made a motion that an ALJ can continue to hear these four types of cases without the presence of the Commission sitting as jury; motion seconded by Commissioner Hills; motion passes unanimously.

TREC EDUCATIONAL SEMINAL UPDATE

2015 Education Seminars had a total of 683 attendees for the year.

Calendar Discussion

June 2016 hotel reservations are not available where Commissioners currently stays and rooms at alternate locations are available at a considerably higher rate than what is reimbursed by the state, due to the CMA festival going on during that time. The Commission meeting is set for June 8-9, 2016 asking if the Commission would consider changing the date to June 1-2, 2016, to keep from being charged for rooms now and it being non-refundable.

Commissioner DiChiara made a motion to change June 8-9, 2016 meeting to June 1-2, 2016; motion seconded by Commissioner Hills; motion passes unanimously.

Chairman Griess addressed the Commission to let them know Knoxville Area Association Realtor would be glad to host TREC's October 2016 meeting and Commissioner DiChiara said Jackson Association would be glad to host TREC's May 2016 meeting.

Commissioner Hills made a motion for the May 2016 meeting to be held in Jackson, TN. and for the October meeting be held in Knoxville, TN.; motion seconded by Commissioner Franks; motion passes unanimously.

Exams Taken in Month of October Reported in November Meeting

In the month of October 2015 631 exams were taken through PSI, in October 2014 489 exams were taken. The year to date total of exams taken in 2015 is 6,004. The total of exams taken in 2014 was 5,310.

EXAMS TAKEN BY LICENSE TYPE

License Type of License	10/1/2015-10/30/2015	10/1/2014-10/30/2014	Diff. 10/1/2014- 9/2015 Exams Taken
Acquisition Agent	4	20	-16
Affiliate Broker	555	415	+140
Broker	47	40	+7
Timeshare	25	17	+8
TOTAL	631	489	+142

Monies Collected 10/1/15 – 10/30/15

Agreed Citation \$1,200.00; Reinstatement Fees \$33,300.00, E&O Penalty \$600.00 for a Total of \$34,300.00.

Fingerprints Updates

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 3,674 individuals fingerprinted, 674 had an indication, and 2,928 had no indication. In the month of October 2015 there were 68 indications, 297 no indication, 7 pending, 0 no reads Total 372

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. The Commissioners asked several questions regarding the budget process.

Discussion of Signing In and Out During Meeting

Commissioner Taylor made motion for attendees to sign in when they arrive to the meeting, sign out for lunch, signing back in from lunch, and sign out at the end of the meeting due to it being reported to the Commissioners that some attendees have not been staying for full meeting; motion seconded by Commissioner Franks; motion passes 7 yes and 1 no by Commissioner Wood.

Consent Orders

The Commissioners had no questions about the consent orders report.

CONSENT ORDER TRACKING

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

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: NOVEMBER LEGAL REPORT

DATE: NOVEMBER 4, 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. **2014029111**
Opened: 12/18/14
First License Obtained: 6/15/09
License Expiration: 6/14/15

E&O Expiration: Uninsured
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
**License is in expired status*

The following was presented at the May 2015 meeting:

A complaint was filed by Respondent (affiliate broker) 's previous principal broker upon submitting a broker release form. Complainant states that Respondent engaged in property management and failed to submit rents in the amount of approximately \$6,000 to the office. Complainant states that Respondent set up a false email account for the owner and sent a fraudulent e-mail representing that Respondent was the property owner requesting return of the security deposit which was held by the firm. Complainant states that Respondent justified the missing rent by stating that the tenants could not pay rent and the owner wanted to help the tenants during a rough time. Complainant states that a police report was also filed. Complainant requests revocation of Respondent's license. Complainant released Respondent from the firm, and Complainant paid the owners back for the amounts stolen by Respondent personally. Respondent did not respond to the complaint.

Office of legal counsel followed-up with the Complainant and the police department. It appears that Respondent has been charged with theft of property from \$1,000 to \$10,000. Complainant submitted copies of hand written receipts on various pieces of paper which the Complainant obtained from the tenant showing payments made to Respondent. It does not appear from the information provided that Respondent deposited any of the money collected with the firm except for the initial security deposit which was later withdrawn through Respondent's fraudulent e-mail, and it appears that Respondent kept almost all of the money collected.

Recommendation: Consent Order for revocation of Respondent's license for violations of T.C.A. §§ 62-13-312(b)(1) (making any substantial and willful misrepresentation), (5) (failing to account for money coming into the licensee's possession that belongs to others), (11) (accepting commission or valuable consideration from any person other than broker), (14), and (20) (improper, fraudulent, or dishonest dealings) and 62-13-313(a)(2) (failing to respond to a complaint filed with the Commission).

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

The Respondent did not accept the consent order and was referred to litigation. On 8/10/15, Respondent was found guilty of theft under \$500 in General Sessions court and ordered to pay Respondent \$5,056.93 in restitution. Respondent has not reported this conviction to TREC or requested a hearing.

Recommendation: Revocation of Respondent's license for violation of T.C.A. § 62-13-312(f)(Respondent's license shall automatically be revoked unless Respondent makes a written request for a hearing within 60 days of the conviction).

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

Commissioner DiChiara made a motion to accept recommendation of legal counsel of revocation of Respondent's license for violation of T.C.A. § 62-13-312(f)(Respondent's license shall automatically be revoked unless Respondent makes a written request for a hearing within 60 days of the conviction); motion seconded by Commissioner Hills; motion unanimously passes.

2. 2014021721
 Opened: 10/22/14
 First License Obtained: 7/8/13
 License Expiration: 1/13/15
 E&O Expiration: Uninsured
 Type of License: Affiliate Broker
 History: No history of disciplinary action.
 ***This affiliate is in suspended status and was broker released 11/4/14.**

The following was presented at the February 2015 meeting:

This complaint was filed stating Complainant sent out an email looking for an agent in the Nashville area to show Complainant around, as Complainant was relocating from out of state. Complainant states that Respondent showed Complainant around for approximately a day and a half and then Complainant was blind-sided with the fact that Complainant owed Respondent and Respondent's company a fee of \$179. Complainant stated that Complainant paid the fee but then protested it and hasn't received a refund.

Respondent did not respond 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 Respondents' execution of Consent Order.

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

Update:

Respondent's license expired on July 7, 2015. Since the filing of the complaint in October 2014, Respondent first moved to Georgia and more recently to North Carolina. Because Respondent no longer lives in Tennessee and the license is expired, Respondent would have to pay additional monies to reinstate the license.

New recommendation: Close and flag, with the matter to be re-opened if there is any attempt to reinstate before July 7, 2016.

DECISION: The Commission voted to accept recommendation of legal counsel. Commissioner DiChiara made a motion to accept recommendation of legal counsel close and flag, with the matter to be re-opened if there is any attempt to reinstate before July 7, 2016; motion seconded by Commissioner Hills; motion unanimously passes.

3. **2014021791**
 Opened: 11/4/14
 First License Obtained: 7/27/07
 License Expiration: 7/26/17
 E&O Expiration: 6/19/15
 Type of License: Time Share Registration
 History: No history of disciplinary action

4. **2014021801**
 Opened: 9/23/14
 First License Obtained: 5/2/13
 License Expiration: 5/1/15
 E&O Expiration: Uninsured
 Type of License: Time Share Salesperson
 History: No history of disciplinary action.
 ***License Suspended for E&O and Expired**

5. **2014021821**
 Opened: 10/9/14
 First License Obtained: 2/14/02
 License Expiration: 7/6/16
 E&O Expiration: 1/1/16
 Type of License: Principal broker
 History: No history of disciplinary action.

The following was presented at the February 2015 meeting:

Complainants attended a presentation that Respondent 2 (affiliate broker) gave, and state they were offered a twelve (12) week vacation package for \$15,000 which would cost no more than \$169/month. Complainants state they were told they could use a credit card to earn points to pay toward membership fees. Complainants state they were told that they could sell three additional weeks if they wanted them. Complainants state they signed the documents and did not receive any financial papers but a huge notebook with information about the timeshare. Complainants state they were offered ninety (90) day training on how to schedule three weeks but allege they were not contacted to schedule this training. Complainants state their credit card bill was \$300 and their owner's statement was \$597, though they were told they would have enough points to cover the first owner's statement. Complainants request to be released from this debt.

Respondents did not respond to this complaint. The certified letters were returned "attempted not known," with no forwarding address. The complaint was subsequently emailed to Respondent principal broker who stated Respondent's attorney would forward a response.

Recommendation: *Dismiss.*

DECISION: *For Respondent 1, dismiss.*

For Respondent 2, 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.

For Respondent 3, 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

Update: This involves Respondent 2. The allegations against Respondent 2 occurred in spring of 2014. Respondent's license expired on May 1, 2015.

New recommendation: Close and flag, with the matter to be re-opened should Respondent attempt to reinstate Respondent's license prior to May 1, 2016.

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

Commissioner Hills made a motion to accept recommendation of legal counsel close and flag, with the matter to be re-opened if there is any attempt to reinstate before May 1, 2016; motion seconded by Commissioner DiChiara; motion unanimously passes.

6. 2012026631
 Opened: 1/11/13
 First License Obtained: 2/5/90
 License Expiration: 6/8/13
 E&O Expiration: 1/1/15
 Type of License: Broker
 History: No Prior Disciplinary Action

7. 2012026632
 Opened: 1/11/13
 First License Obtained: 4/1/05
 License Expiration: 10/9/14
 E&O Expiration: N/A
 Type of License: Firm

History: No Prior Disciplinary Action

The following was presented at the April 2013 meeting:

Complaint opened based on copy of Complaint which was filed in a court of law and sent to TREC by two individuals who are plaintiffs in the Complaint in the capacity of court-appointed receivers for several listed receivership companies. Several defendants are named in the court action, including Respondent 1 (broker) and Respondent 2 (firm). Respondent 3 (broker) and Respondent 4 (principal broker) are not named as defendants in the action or mentioned in the Complaint, but complaints were opened against these individuals since Respondent 4 is the current principal broker of Respondent 2 firm and Respondent 3 was the previous principal broker of Respondent 2 firm.

The Complaint indicates that the plaintiffs were appointed by the court as receivers for several companies to conserve and/or liquidate the assets of the companies and investigate unknown assets. The Complaint states that the plaintiffs discovered a number of irregularities attributable to Respondent 1, who controlled a majority interest in the receivership entities. The lawsuit contains a variety of allegations, including but not limited to various acts of false loan transactions, inappropriate distributions, fraudulent transfers, and altered contracts which were done to benefit the defendants during the period of 2006-2011. With regard to Respondent 2 firm, the Complaint states that Respondent 1 owns Respondent 2 firm and alleges that Respondent 1 charged excessive real estate commissions to one of the receivership entities through Respondent 2 firm during that period.

Respondents submitted brief responses stating that the matter is currently in litigation and, while Respondents deny the allegations, Respondents, on the advice of counsel, requested that the matter be delayed until the litigation is resolved. This civil litigation, in which Respondents 1 and 2 are named defendants, is currently active, and more information will be uncovered through the course of the litigation which would be important to the Commission's determination of this matter. At this time, there is no indication of violations by Respondents 3 and 4, and Respondents 3 and 4 are not parties to or mentioned in the court Complaint.

Recommendation: Consent Order for litigation monitoring as to Respondent 1 and 2. Close as to Respondents 3 and 4.

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

The litigation upon which this complaint was based was settled out of court. Due to the number of allegations in the complaint, lack of specificity of some of the allegations, complexity of the business entity formations and transactions involved, and sheer volume of the discovery produced, office of legal counsel was unable to find documentation to substantiate most of the allegations in the complaint. However, office of legal counsel was able to find documentation for three of the complaint's allegations. The first involves a false loan transaction between Respondent 1 via Respondent 2(firm) to an LLC of

which Respondent 2 had an 85% ownership interest. The above LLC was formed for the purpose of developing and selling real estate with Respondent 1 serving as chief manager. A wire transfer of \$600,000 from the LLC to Respondent 2 occurred on January 16th, 2007 and subsequently, on the same day, Respondent 2 issued a check to, presumably, Respondent 1 in the amount of \$600,000. The \$600,000 was originally booked as an Accounts Receivable but moved to the Notes Receivable account along with the remaining balance in Accounts Receivable from Respondent 2. \$1,400,000 of the remaining balance of Notes Receivable from Respondent 2 was then moved as a reversing entry to an equity account. This equity account shows the same corresponding journal entry to move the balance from Notes Receivable, but the amount that went in was an adjusting entry of \$2,380,336.62 which does not equal the amount that should've been moved. The entry of \$2,380,336.62 made to the equity account appears to be a reversing adjusting entry from 2006 of \$2,380,336.62. There was also an amount from Notes Receivable that was supposed to be reclassified in an admin expense account but, at year end, there was a zero balance for the expense account. The remaining balances in Notes Receivable for Respondent 2 for 2007 (which includes the \$600,000 loan) that was supposed to be moved to the equity account and the expense account never made it there, nor appeared in the ledger again in subsequent years. In addition, documentation establishing the loan terms for the \$600,000 was unable to be located from the available documentation. The second transaction is a sale of property by the above LLC (using Respondents as agents) to another LLC of which Respondent 1 has ownership interest. This property was sold for \$875,000 in April of 2007, however, an appraisal dated February 2007 estimates the property's value at \$4 million. The third substantiated allegation is that Respondent 1 paid himself more commission than agreed upon in the LLC's operating agreement for at least 6 property transactions. The agreement states that, if Respondent receives a commission, it will be no more than 1% unless approval is given by the investors (members other than Respondent 2). It goes on to say that anything requiring consent of members must be in writing. There was no documentation found showing consent of the investors for these commissions, in writing or otherwise.

Recommendation: As to Respondent 1, Consent order for a one year license suspension; \$1,000, for violation of T.C.A. § 62-13-312(b)(20)(improper, fraudulent or dishonest dealing), (14); \$1,000 for violation of T.C.A. § 62-13-404(2)(failure to be loyal to the interests of the client); \$1,000 for violation of T.C.A. § 62-13-403(7)(self-dealing without disclosure in writing); \$6,000 (\$1000 each) for 6 violations of T.C.A. § 62-13-404(1)(obeying all lawful instructions of the client); \$6,000 (\$1000 each) for violations of 62-13-312(b)(17)(paying, accepting, giving or charging any undisclosed commission) – for a total of \$15,000; plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order. As to Respondent 2, Dismiss.

DECISION: The Commission voted for revocation of Respondent 2's license. For Respondent 1, Consent Order for two (2) year license suspension, downgrade to affiliate broker status upon reinstatement of Respondent's license after the two (2) year period, \$1,000, for violation of T.C.A. § 62-13-312(b)(20)(improper, fraudulent or dishonest dealing), (14); \$1,000 for violation of T.C.A. § 62-13-404(2)(failure to be

loyal to the interests of the client); \$1,000 for violation of T.C.A. § 62-13-403(7)(self-dealing without disclosure in writing); \$6,000 (\$1000 each) for 6 violations of T.C.A. § 62-13-404(1)(obeying all lawful instructions of the client); \$6,000 (\$1000 each) for violations of 62-13-312(b)(17)(paying, accepting, giving or charging any undisclosed commission) – for a total of \$15,000, plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner Blume made a motion for revocation of Respondent 2's license; motion seconded by Commissioner DiChiara; motion passes unanimously.

Commissioner DiChiara made a motion for the revocation of Respondent 1 license; motion seconded by Commissioner Franks. Commissioner Hills makes a substitute motion of Respondent 1, Consent Order for two (2) year license suspension, downgrade to affiliate broker status upon reinstatement of Respondent's license after the two (2) year period, \$1,000, for violation of T.C.A. § 62-13-312(b)(20)(improper, fraudulent or dishonest dealing), (14); \$1,000 for violation of T.C.A. § 62-13-404(2)(failure to be loyal to the interests of the client); \$1,000 for violation of T.C.A. § 62-13-403(7)(self-dealing without disclosure in writing); \$6,000 (\$1000 each) for 6 violations of T.C.A. § 62-13-404(1)(obeying all lawful instructions of the client); \$6,000 (\$1000 each) for violations of 62-13-312(b)(17)(paying, accepting, giving or charging any undisclosed commission) – for a total of \$15,000, plus attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; Commissioner Wood seconded motion; roll call vote: Commissioner Blume yes, Commissioner Taylor yes, Commissioner DiChiara no, Commissioner Horne rescues, Commissioner Franks no, Commissioner Wood yes, Commissioner Hills yes, Commissioner McMullen absent, and Chairman Griess yes' motion passes 5 yes, 2 no, and 1 abstention.

8. 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.

The following was presented at the September 2015 meeting:

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.*

Respondent submitted a response by and through an attorney stating that Respondent was not engaged by Complainant to manage Complainant's properties. Respondent states that a global investment company engaged Respondent's firm to manage a pool of residential investment properties. Respondent states that Respondent was instructed by the global investment company, both verbally and in the management agreement, to communicate with the global investment company and not directly with the property owners. Respondent states that Respondent's firm experienced significant difficulties managing the portfolio because the global investment company refused to communicate with Respondent's firm concerning vital issues related to managing the properties, including failure to reimburse Respondent's firm for maintenance expenses, mortgage payments, and property taxes. Respondent states that many of the properties were in need of major repair and Respondent's firm could not get approval from the global investment company to do the maintenance needed to get the properties in safe and habitable condition. Respondent states that, as of June 2014, the global investment company owed Respondent's firm \$79,390.53 for reimbursable expenses under the management agreement. Respondent states that Respondent terminated the agreement with the global investment company pursuant to the terms of the management agreement with an effective date of August 31, 2014. Respondent states Respondent offset the indebtedness with current and future receipts and, once the indebtedness was paid off, Respondent sent \$5000 from the remaining rent receipts directly to Complainant. Respondent states that Respondent routinely sent accounting statements to its client, the global investment company, and the investment company ceased communicating with Respondent and, to Respondent's knowledge, to its principals as well. Respondent believes that the global investment company failed to deliver rental receipts received from Respondent to its principals or to properly account to its principals for the same. Respondent states that Respondent has remitted, either to the investment company or the principals themselves, all rental receipts less indebtedness or other reimbursable expenses and management fees

lawfully due to Respondent's firm and anything allegedly due to Complainant or any other property owners is owed by thire agent, the global investment company.

Respondent provided a copy of the management agreement which states that the agreement is between Respondent's firm and the global management company. The agreement states that Respondent's firm is to deal directly with the global management company and not the owner investors. The \$5000 payment was made to Complainant after the agreement between Respondent's firm and the global investment company was terminated. It is an unfortunate situation for Complainant but it appears that Complainant will need to go after the global investment company to recover any money owed.

New Recommendation: \$250 for violation of T.C.A. § 62-13-313(a)(2) (failing to respond), T.C.A. § 62-13-312(b)(14), 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.

DECISION: \$1,000 for violation of T.C.A. § 62-13-313(a)(2) (failing to respond), T.C.A. § 62-13-312(b)(14), 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 Wood made a motion of \$1000 for violation of T.C.A. § 62-13-313(a)(2) (failing to respond), T.C.A. § 62-13-312(b)(14), 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 Hills second motion; Roll Call Vote: Commissioner Hills yes, Chairman Griess yes, Commissioner Blume yes, Commissioner McMullen absent, Commissioner DiChiara no, Commissioner Taylor yes, Commissioner Horne yes, Commissioner Franks no, and Commissioner Wood yes; motion pass 6 yes and 2 no.

- 9. 2015017591
Opened: 9/1/15
First License Obtained: 1/16/15
License Expiration: 1/15/17
E&O Expiration: 12/03/15
Type of License: Principal Broker
History: No history of disciplinary action.**

The following was presented at the October 2015 meeting:

Complainant states that Respondent has as principal broker's license in Tennessee but is submitting offers through Respondent's firm's office in Arizona. Complainant states that Respondent's assistants are practicing real estate in Tennessee from the Arizona office. Complainant submitted an email from a person at the Arizona branch of Respondent's firm introducing themselves as a property acquisition assistant and stating that the buyer Respondent represents wants to make a cash offer on Respondent's Tennessee property. The email has the offer and the proof of funds attached. The email states to direct all

questions to Respondent. Another email is from a different person at the Arizona branch stating that the buyers would like to raise their offer to \$124,500 and to let them know if Complainant's client could work with that amount. That person's email signature also states "property acquisition assistant".

Respondent did not submit a response. It is legal counsel's opinion that the first individual was only delivering documents because the individual refers to Respondent as the person representing the buyer. It also instructs that any questions should go to Respondent. The other individual, on the other hand, appears to be making an offer on behalf of the client with no reference to the Respondent other than the email signature.

Recommendation: \$500 for violation of T.C.A § 62-13-302(a) (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), (14), \$500 for violation of T.C.A § 62-13-313(a)(2) failure to respond, and attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order.

Decision: \$1,000 for violation of T.C.A § 62-13-302(a) (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), (14), \$1,000 for violation of T.C.A § 62-13-313(a)(2) failure to respond, and attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order.

Respondent states that Respondent never received the Complaint and was unaware of the matter prior to receiving the consent order. Respondent states that the email in question was a counter offer and the original offer was the first email referenced which clearly indicates that Respondent was the agent responsible for the offer. Respondent states that Complainant clearly knew that the offer was coming from Respondent and not from the assistant because Complainant had received the first email, which was done properly. Respondent states the assistant in the second email did not properly define Respondent as the agent who had approved the transaction. Respondent states that it was not the intent of the assistant's email to appear as if the offer was coming from the assistant and that the assistant's signature states that she is an assistant. Respondent states that no consumer was injured in the emails and Respondent has spoken to the assistant about the importance of the procedures the firm has in place to ensure compliance of the laws. Respondent states that this is a first time offense in the 1,000 plus transactions Respondent has conducted and does not warrant substantial monetary penalties and classes.

Recommendation: Discuss.

DECISION: The Chair rules that the original decision stands for lack of motion.

10. 2015017601
 Opened: 7/20/15
 First License Obtained: 8/4/05
 License Expiration: 7/17/17
 E&O Expiration: 1/1/17
 Type of License: Principal Broker
 History: agreed citation for failure to maintain E&O

- 11. 2015018751**
Opened: 8/10/15
First License Obtained: 12/6/91
License Expiration: 1/4/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary action

Complainant states that Complainant first worked for Respondent 1 at the firm where Respondent 2 was Principal Broker. Complainant states that Complainant conducted unlicensed activity at the direction of Respondent 1 which Complainant realized was unlawful when Complainant began studying for her affiliate broker's license. Complainant states Complainant showed properties and negotiated contracts, was compensated based on the sale of properties in the form of \$100 bonuses for closings, was forced to forge Respondent 1 and clients' signatures to save time because Respondent 1 hates paperwork. Complainant states that Complainant made Respondent 2 aware of these things multiple times. Complainant states that Respondent 1 then formed a separate firm so that Respondent 1 could pay Complainant for closings, showing properties, and doing paperwork. Complainant states Complainant received 15% of Respondent 1's commission plus \$195 per side of the transaction. Complainant states Complainant was forced to lie to bank clients in the form of false inspections and false re-key charges to a locksmith company that does not exist. Complainant states that Respondent 1 uses this front company so Respondent 1 can pocket the money. Complainant states that Respondent 1 would also ask Complainant to inflate invoices from contractors so Respondent 1 could use the extra cash. Complainant states that Complainant served as listing agent for several clients. Complainant states that when foreclosure properties became available from the bank, Respondent 1 would make the property active just long enough to print and MLS sheet then immediately place the property as inactive. Then, during the required waiting period, Respondent 1 would have an investor friend place a bid on the property so that when the property went back active, that would be the only bid accepted and the bank would think the property was listed the whole time.

Respondent 1 states that Complainant's job title was listing/transaction coordinator and responsibilities included giving showing updates, providing contractor information to existing clients, and getting signatures after the negotiations were complete. Respondent 1 states that Complainant was never directed or authorized to persuade clients for price reductions but was required to forward such calls to Respondent 1 who would do the negotiation and then Respondent 1 would have Complainant gather the paperwork and send to clients for signatures. Respondent 1 states that Complainant did not receive 15% of Respondent 1's commission but did receive \$195 per side of the transaction which Respondent 1 states is industry standard for a transaction coordinator. Respondent 1 states that Complainant was never authorized to forge clients' or Respondent 1's signature and that Respondent 1 only signed documents for out of town clients with written permission. Respondent 1 states Complainant was never a listing agent which

meant she installed signs and lockboxes and got paperwork signed when needed. Respondent 1 states that Respondent 1 has never falsified inspections or directed Complainant to alter contractor invoices. Respondent 1 states that the locksmith company used to re-key properties is a real company but does not have a tax ID because it is a sole proprietorship earning less than \$3000 per year and is not required to have a license. Respondent states that Respondent 1 has never made a property inactive so that someone else can purchase the property before the public knows about the property. Respondent 1 states that Complainant was eventually terminated for not doing her job and that this complaint is that of a disgruntled employee that is upset because Respondent 1 fought Complainant's unemployment claim.

Respondent 2 states that Complainant first worked for Respondent 2 but then went to work for Respondent 1. Respondent 1 also used to work for Respondent 2 before forming his own firm. Respondent 2 states that Complainant seemed to do a good job while Complainant was at Respondent 2's firm but after Complainant left, Respondent 2 saw areas that had been mis-managed by Complainant. Respondent 2 states that Complainant told Respondent 2 about having to sign documents for Respondent 1 and Respondent 2 spoke to Respondent 1 about it and thought the matter had subsided. Respondent 2 states that when Complainant worked for Respondent 2, they did pay Complainant "bonuses" for closings but later realized this was not right and stopped doing so.

Office of legal counsel sent an investigator out to gather more information based on this complaint. The investigator reported that the Complainant was less than cooperative and did not return the investigator's calls after the initial interview. Respondents produced the transaction files for the transactions referenced by the Complainant, bank statements and vendor invoices. Most of Complainant's allegations cannot be substantiated based on the he-said, she-said nature of the action; however, documentation does exist for the payment of commission to Complainant and the use of a false company to gain re-keying payments. Respondent 2 admits that Respondent 2 paid Complainant bonuses for closings processed while Complainant worked at Respondent 2's firm. Documentation shows that a percentage of the broker's commission was paid to Complainant for 17 transactions while Complainant worked at Respondent 1's firm. Documentation shows seven invoices for re-keying transactions for a company that appears to not be a real company. The invoice has no phone number for the company and the address is a PO Box. The invoice also says to make checks payable to a person's name, not the company. After a quick Facebook search, it was discovered the person to whom the checks are to be made out is Respondent 1's wife (using her maiden name). The company is not a licensed locksmith company with the state of Tennessee and a complaint has been open by the Locksmith board.

Recommendation: For Respondent 1, \$8,500 (\$500 each) for 17 violations of T.C.A. § 62-13-312(b)(17)(paying or accepting, giving or charging any undisclosed commission, rebate compensation or profit or expenditures for a principal or in violation of this chapter), \$3,500 (\$500 each) for 7 violations of T.C.A. § 62-13-312(b)(20)(improper, fraudulent, or dishonest dealing) for a total of \$12,000, and

attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

For Respondent 2, \$500 for violation of T.C.A. § 62-13-302(b)(a licensee shall not give or pay cash rebates, cash gifts, or cash prizes in conjunction with any real estate transaction), T.C.A. § 62-13-314(b)(14), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

DECISION: For Respondent 1, \$17,000 (\$1000 each) for 17 violations of T.C.A. § 62-13-312(b)(17)(paying or accepting, giving or charging any undisclosed commission, rebate compensation or profit or expenditures for a principal or in violation of this chapter), \$7,000 (\$1000 each) for 7 violations of T.C.A. § 62-13-312(b)(20)(improper, fraudulent, or dishonest dealing) for a total of \$24,000, and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

For Respondent 2, \$1000 for violation of T.C.A. § 62-13-302(b)(a licensee shall not give or pay cash rebates, cash gifts, or cash prizes in conjunction with any real estate transaction), T.C.A. § 62-13-314(b)(14), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner DiChiara made a motion for Respondent 1 to accept 1 legal counsel recommendation but to raise civil penalty to \$1000 each for 17 violations of T.C.A. § 62-13-312(b)(17)(paying or accepting, giving or charging any undisclosed commission, rebate compensation or profit or expenditures for a principal or in violation of this chapter), \$7,000 (\$1000 each) for 7 violations of T.C.A. § 62-13-312(b)(20)(improper, fraudulent, or dishonest dealing) for a total of \$24,000, and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; motion seconded by Commissioner Franks; motion passes unanimously.

Commissioner DiChiara made a motion for Respondent 2, \$1000 for violation of T.C.A. § 62-13-302(b)(a licensee shall not give or pay cash rebates, cash gifts, or cash prizes in conjunction with any real estate transaction), T.C.A. § 62-13-314(b)(14), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; motion was seconded by Commissioner Franks; motion unanimously.

12. 2015015021
 Opened: 7/27/15
 First License Obtained: 6/1/04
 License Expiration: 8/24/16
 E&O Expiration: 1/1/17

Type of License: Principal Broker
History: no prior disciplinary action

13. **2015018081**
Opened: 7/27/15
First License Obtained: 6/1/04
License Expiration: 8/24/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary action

These two related complaints were filed against the same Respondent. Complainant 1 states that Respondent has been running a property management company and Complainant 1 hired Respondent to manage a property. Complainant 1 states that Respondent is overcharging and creating expenses to increase his revenue and is withholding owners' checks and writing bad checks. Complainant 1 states that vendors aren't being paid while owners are being charged. Complainant 1 received an email from an employee of Respondent that confronts Respondent on his fraudulent checks to owners and vendors. The employee states the rental account have been frozen by the bank. The email alleges that Respondent has been funneling money from the company to pay personal debts. Complainant 2 states that Respondent has been managing some of Complainant 2's properties. Complainant 2 states that Complainant 2 terminated the agreement with Respondent in compliance with the terms of the agreement because Respondent owed for two prior months of rent. Complainant states that Respondent owes Complainant 2 \$7041.48 plus prepaid rent in the amount of \$4223.00 and also needs to transfer the rental security deposits to Complainant 2's new manager. Complainant 2 states Respondent has promised to pay several times and fails to follow through on those promises. Complainant 2 states Complainant 2 has filed a police report for criminal activities.

Respondent did not submit a response.

Office of legal counsel had an investigation conducted. The investigator went to Respondent business address to find it locked. However, the property manager's assistant (for the office building) unlocked the door for him. The property manager's assistant said Respondent had vacated the property over two months ago in haste, leaving behind a disheveled office space. The assistant said all files were gone and only obsolete printers and tangled cords were left behind. The assistant said he had suspicions about the tenant because many different people had been by looking for Respondent and were visibly irate. The assistant said he had not heard from Respondent lately and that Respondent had skipped town. The investigator spoke to Complainant 1 who said he tried to file a civil suit but, since Respondent's business is a partnership, the costs would be excessive so Complainant 1 was pursuing criminal charges instead. Complainant 2 also said he is pursuing criminal charges. The investigator went to the local police department and spoke to a detective who acknowledged that several people other than the Complainants had contacted him about Respondent for theft. The detective was able to find three active

indictments for theft from three different complaints. The investigator states that Respondent's arrest is imminent once he can be located. The investigator called Respondent and left a message. Someone identifying themselves as Respondent called him back and said he was out of town but would call back later. The investigator could not establish further contact with Respondent. Complainant 2 provided documentation showing an owner payment due on all properties totaling \$7,041.48.

Recommendation: Consent order for license revocation based on violations of T.C.A. § 62-13-312(b)(5)(failing to remit moneys...), (14), (20)(improper, fraudulent, or dishonest dealing) 1260-02-.09(7)(failure to remit funds), T.C.A. § 62-13-313(a)(2)(failure to respond).

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

Commissioner Franks made a motion to accept legal counsel recommendation of consent order for license revocation based on violations of T.C.A. § 62-13-312(b)(5)(failing to remit moneys...), (14), (20)(improper, fraudulent, or dishonest dealing) 1260-02-.09(7)(failure to remit funds), T.C.A. § 62-13-313(a)(2)(failure to respond); motion seconded by Commissioner Hills; motion passes unanimously.

**14. 2015018571
 Opened: 8/5/15
 First License Obtained: 2/14/05
 License Expiration: 7/28/16
 E&O Expiration: 1/1/17
 Type of License: Principal Broker
 History: Two complaints opened, not yet referred to legal.**

Complainants allege that Respondent's firm willfully and knowingly misrepresented properties, continued a flagrant course of misrepresentation, participated in misleading and untruthful advertising, and that Respondent's conduct constitutes improper, fraudulent or dishonest dealing. Complainants state that Respondent's firm was the exclusive listing agent for a subdivision and provided the marketing materials that stated the subdivision had an "existing sewer system and common ramp area," but that neither of these items exist or have ever existed in the subdivision. Complainants allege that Respondent sold properties in the subdivision without disclosing the sewer issues, stating that the existing system could only accommodate nine (9) homes or twenty-seven (27) bedrooms. Complainants state that they purchased eight (8) of the thirty-nine (39) lots in the subdivision in 2004-2005 and verified with TDEC how the sewer system works prior to purchase, but that Respondent, the developer, nor TDEC disclosed that the existing sewer system was not built for the thirty-nine (39) lots. Complainants state that in October 2012, a TDEC representative informed Complainants about the illegal or unapproved sewer system and advised that electrical permits cannot be pulled for building until the sewer issue is resolved. Complainant state that they notified Respondent who denied the problem and assured them Respondent had all the needed paperwork at Respondent's office, asking Complainants not to mention this to the other

property owners. Complainants assumed the TDEC issue was resolved. Complainants called TDEC in January 2013 and discovered that there had been one or more proposals filed by the developer which had all been denied by TDEC. Complainants state that they filed an injunction in February 2013 and the judge ruled in favor of Complainants prohibiting the sale or transfer of the sewer property by the developer, but the developer transferred the sewer field line property to a utility company in June of 2014. Complainants state that Respondent signed an application for a Certificate of Convenience and Necessity with the Tennessee Regulatory Authority in the name of the developer in November 2014, and in April 2015 the property owners filed a Petition to Intervene on the utility company's application. Complainant states that in May 2015, the Consumer Advocate Division of the Attorney General's office filed a Petition to Intervene. Complainants state that Respondent's firm knowingly oversold the subdivision and, as of May 13, 2015, TDEC states the sewer system cannot accommodate more than nine (9) homes of twenty-seven (27) bedrooms, but there are over 30 bedrooms currently on the system. Complainants further state that Respondent has not provided a copy of the subdivision's sewer plans or maintenance records as requested on numerous occasions. Complainants state that these issues have hindered their ability to sell their lots. Finally, Complainants state that Respondent has a conflict of interest by being the broker of the real estate firm and secretary of the developer.

Respondent states Respondent was not present at the firm from 1993-2003, and the previous principal broker passed away in December 2010. Respondent states that the developer hired Respondent's firm as the exclusive listing agent for the subdivision, stating that the only compensation earned by Respondent and the previous principal broker was in the commissions earned in the sale of the lots, and the last vacant lot sale was in 2010. Respondent states that all statements and testimony given to the property owners or potential buyers has been the truth as Respondent knew it at the time, which was based on information received by the previous principal broker, engineers, and TDEC representatives. Respondent feels a moral and ethical obligation to defend the property owners of the subdivision and has always had their best interest in mind because Respondent's firm sold the lots. Respondent has conferred with the developer to help facilitate an equitable solution for all parties. Respondent states that Respondent was not licensed in 2004 and Respondent's role was a secretary to the previous principal broker. Respondent applied for licensure in February 2005. Respondent states that Complainants first conveyed concerns regarding the sewage system in May 2012, and Respondent believes that Complainants are outside of their statute of limitations as defined in T.C.A. § 62-13-313. In reference to the allegations of the complaint, Respondent states that the previous principal broker encouraged Complainants to contact TDEC at the time of sale and the previous principal broker told Respondent that the TDEC representative did not state that the system was inadequate but was more than adequate to support the subdivision. Respondent further states that the previous principal broker was made secretary of the developer in order to expedite paperwork, permits, etc. that may be needed in the development process. In 2011, the developer made Respondent, who had become principal broker of the firm after the passing of the previous principal broker, secretary of the developer. Respondent states that neither the firm, previous principal broker, nor Respondent has equitable interest in the developer. Respondent states that, in

October 2012, Respondent received a call from Complainants stating a TDEC representative had informed them there was an illegal or unapproved sewer system. Respondent states that the developer paid over \$35,000 to repair/correct the blocked pipe and that additional land was acquired for the needed septic expansion in 2013. Respondent further states that Respondent visited the electric company and found no validity to the claim that no permits were allowed or that there was a problem with the sewage disposal system. Respondent states that the TDEC representative statement to Complainants was based on the fact that TDEC couldn't find the permits, drawings and necessary paperwork but that in an email dated May 11, 2015, a water company representative stated they found the permits and TDEC would allow eighteen (18) lots on the current sewage system. Respondent acknowledges telling Complainants that copies of documents regarding the septic system were in the firm's files and that Respondent would contact the other property owners after Respondent found out exactly what was going on. Respondent further states that the developer agreed to turn over the septic system to the homeowners after the situation was rectified and stated that the state guidelines and what was approved 20+ years ago was not being allowed today and that the state rules and regulations have significantly changed. Respondent states Respondent discovered in April 2013 in a meeting with TDEC, an engineer, and the septic installer that the septic system was no longer going to be allowed to service the subdivision in its present state. Respondent states that the developer did everything it could to reconcile the situation, and Respondent advocated for the homeowners. Respondent further states that the TDEC representative to which Complainants spoke was inciting confusion and animosity between all parties. Respondent states that the developer obtained a legal permit in 1994 to install the system and a legal permit in 2008 to expand the system, both signed by an authorized representative of TDEC. Respondent denies lack of communication stating that the situation changed daily, and Respondent waited for the experts, developer and TDEC to come to a conclusion. Respondent states that in April 2013, the developer opted to apply for and build a completely new system at the developer's expense, so they prepared an application for a Certificate of Convenience and Necessity. Respondent further states that a rule was implemented stating that the HOA could not own the system based on state rules, so the developer moved forward in its own name. Respondent further states that TRA informed the developer that the rules had changed again and now the developer could not own the system either, so the developer formed the utility corporation, in which Respondent executed the deed as secretary which was recorded May 2014. Respondent states that Respondent never received a copy of the order for the injunction until a copy was brought to Respondent's office after the deed had been transferred. Respondent states Respondent informed the developer who said they would take care of it. Respondent states Respondent relied on attorneys and principals of the corporation to address the situation and continued to follow up as to when they were going to take care of it. Respondent states that Complainants are hindering a solution to the problem. Respondent states Complainants purchased lots in 2004-2005 and thire family and friends purchased lots in 2004, 2006 and 2008. Respondent states that there were no issues with the septic at that time and that no lots have been sold since 2010, prior to the previous principal broker's death. Respondent states that the marketing materials referenced by Complainants were put together in 1993, 1994 and 1995 when Respondent did not even live in the state of Tennessee and have not

been used in many years. Respondent states that Complainants overbuilt thire home and are regretting thire choices and seeking monetary remediation from the developer. Respondent states that there are no maintenance records for the septic system as it was designed to be a maintenance-free gravity fed system and that all other documents requested by Complaints will be introduced into evidence and the chancery court hearing. Respondent states that all of Complainants lots are being serviced by the existing system and the septic system is not prohibiting the sale of thire homes that are on the market as TDEC is allowing the 7 existing home to remain on the existing system unencumbered.

It appears from the documentation that there were differences of opinion or bad information relayed to various parties involved in this situation. According to a letter from TDEC to Complainants dated May 13, 2015, TDEC authorized the installation of 5,400 feet of a disposal field that would serve 18 lots of 3 bedrooms each. However, the Certificate of Completion indicates that only 2,276 feet, designated as "Cell A," was installed with no explanation in the documentation as to why the reduced drain field was installed. The letter also indicates that TDEC authorized a repair in 2008 for 5,010 feet of additional disposal field which was installed according to the Certificate of Completion. The letter notes that it is important to note that state standards prohibit repair permits and construction to be deemed system enlargement to support additional structures or lot development. Thus, according to state rules and regulations, the system can only accommodate 9 lots with 3 bedrooms each. On the other hand, a letter to the Commission on behalf of Respondent from the engineer that designed the original system in 1994 says that they designed a system for 18 lots and that TDEC issued a permit for enough septic line for 18 more lots in 2008. An email from another TDEC representative to Respondent from May of 2015 states that only half of the system permitted was installed in 1995 but that they would honor 18 lots if the original system was used instead of installing a decentralized system. Respondent was not licensed nor did Respondent work for the Respondent's firm in 1994 when the septic was first put in and the lots were sold to Respondents. The repair done in 2008 was requested and handled by the previous principal broker who is now deceased. It appears from the correspondence between Respondent and Complainants and Respondent and other parties involved that Respondent was acting in good faith with the information received at any given time which appears to have been constantly changing. Respondent is also not an agent for Complainant and never has been. Respondent is involved in as an officer of the developer. A motion was filed in chancery court by Respondent's firm to lift the restraining order prohibiting the transfer of the land housing the septic system because Respondent did so in order to comply with state law. Legal counsel is not aware if there has been a ruling on this motion. There is also a letter from the engineer to Respondent advising Respondent to transfer the land to the newly formed utility company to comply with state law. While there seem to be a host of problems with the septic system on this development, it does not appear that Respondent got involved until much of the problem already existed and Respondent relied on the information others had provided. It does not appear that Respondent made an willful representation, produced any misleading or untruthful advertising, or conducted any improper, fraudulent or dishonest business.

Recommendation: Dismiss.

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

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

**15. 2015018651
 Opened: 8/10/15
 First License Obtained: 6/1/01
 License Expiration: 1/26/17
 E&O Expiration: 1/15/17
 Type of License: Broker
 History: no prior disciplinary action**

Complainant is agent for the buyers. Complainant states that Respondent, agent for the sellers, removed the sales contingency on the listing and returned it to fully active status while there was a binding agreement. Complainant states that the sellers are demanding a higher sales price and threaten to void the contract. Complainant states that Respondent contacted the home inspector and asked for a copy of the inspection directly.

Respondent states that the sales contingency was removed per the instructions of the sellers and that there was a misunderstanding on the price and what items were to remain the house. Respondent states that both parties acknowledged that there was misunderstanding and began to negotiate again in good faith but could not come to an agreement on price or which items would remain with the house. Respondent states that the buyers' requests changed several times. Respondent states that the sellers know there was not a true meeting of the minds and that there was no contract to void. Respondent states that it is not against the law to ask for a copy of the home inspection. Respondent states that the buyers, sellers, and agents released each other from any claim arising out of this transaction and payment was made to the buyers from the sellers for thire travel involved.

Complainant provided no further details or documentation. Respondent provided the executed Earnest Money Disbursement and Settlement Agreement which released the earnest money to the buyers plus \$800 in travel costs. The agreement states that none of the parties, including the licensees involved, will file any claims against any of the other parties arising from or connected with the property.

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 Taylor; motion passes unanimously.

16. **2015018681**
Opened: 7/27/15
First License Obtained: 10/30/92
License Expiration: 10/3/16
E&O Expiration: 1/15/17
Type of License: Principal Broker
History: no prior disciplinary action

Respondent is Principal Broker for the above affiliate broker (2015018651). Respondent states that the listing was returned to active and the sale contingency removed at the instruction of the sellers. Respondent states that it was evident that the sellers and buyers had not come to a meeting of the minds. Respondent states the allegation that the seller is now demanding a higher price is not relevant to the affiliate broker. Respondent states that it is not illegal to request a copy of the home inspection. Respondent states that the parties, including the agents, released each other from any other related claims.

Recommendation: Dismiss.

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

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

17. **2015019751**
Opened: 8/14/15
First License Obtained: 3/18/03
License Expiration: 5/20/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary action.

Complainant states that Complainant contacted Respondent to find and show Complaint properties over a period of several months. Complainant states that, during and internet search, Complainant found a property of interest asked Respondent to set up a showing. The property was listed at \$99,000. Complainant states that Respondent showed Complainant the property in late December or early January. Complainant states that Respondent took photos of the property which Complainant assumed Respondent would use to show other potential buyers the property in the event that Complainant did not want to purchase it. Complainant states that Complainant decided to make and offer but Respondent told Complainant that the listing agent told Respondent that a couple was flying in from Maryland to look at the property and Complainant needed to wait and see what that couple would do. Complainant states that, the next time they spoke, Respondent

informed Complainant that they had made an offer contingent on some tests or inspections and that Complainant needed to wait and see if the offer went through. Complainant states that, the next time they spoke, Respondent stated the property was sold and off the market. Complainant states that in May of 2015, Complainant found the property for sale again for \$187,000 and listed by an agent in Mississippi but the agent to contact was Respondent. The photos taken by Respondent were used on the listing. Complainant states that Respondent conspired with the agent from Mississippi for the agent from Mississippi to purchase the property and relist it with Respondent at a higher price. Complainant states that Respondent lied to Complainant about the couple from Maryland purchasing the property and, when Complainant inquired about the property after it was relisted, Respondent told Complainant he would “have to pass on this one now” in order to keep the unethical deal from being found out. Complainant states that Complainant purposely tried to scare Respondent via email, hoping Respondent would make a mistake and let something slip that would be incriminating but this tactic did not work.

Respondent states that Respondent was first contacted by Complainant in April of 2014 asking about a property and expressing a desire for property that could be used for hydro-electric power and a maximum price range of \$150,000. Respondent showed Complainant the subject property (101 acres) on January 3, 2015. Respondent states that the sun began to go down so they made plans to make a second trip to the property. Respondent walked the property with Complainant on January 16, 2015. The listing agent was not there but communicated with Respondent via phone and told Respondent that a potential buyer was flying in to view this tract of land the next day and likely making an offer. Respondent states that Respondent never told Complainant that Complainant would have to wait to make an offer. Respondent states that Complainant liked the property but would need time to see if it would work for his needs. Respondent states that Complainant did not make an offer nor mention making an offer and told Respondent he would let Respondent know regarding the property. Respondent states that Respondent emailed Complainant the photos and video taken four days later to which Complainant replied “thanks” but did not mention anything about making an offer. Respondent states that a buyer’s representation agreement was never signed and Complainant was also looking at properties in other counties. Respondent states that Respondent was working with other buyers during that time period, including the agent from Mississippi and Respondent sent the pictures and videos from the subject property to several of these clients. Respondent states that on January 19, 2015, the same day Respondent sent the pictures and videos, the Mississippi agent decided to make an offer on the property. The offer was accepted the next day. The Mississippi agent filled out a Personal Interest Disclosure form and decided to title the property in her company’s name. Respondent states that Complainant contacted Respondent on January 20, 2015 stating Complainant would like to view the property again to see if the water flow was strong enough for hydro-electric power. Respondent states that Respondent told Complainant that the property was under contract but subject to a 10 day feasibility study so Complainant could put in a back-up offer if desired. Respondent also told Complainant Respondent was willing to revisit the property with Complainant. Complainant did not submit a back-up offer. The property closed on February 6, 2015. Respondent states that the Mississippi

agent asked Respondent to list the property on March 23, 2015 for \$187,000. Before this time, Respondent showed Complainant other properties. After this time, Respondent states that Respondent did not hear from Complainant until May 2, 2015. Respondent received an email from Complainant stating that Complainant found the listing and wanted to know what was going on with the property. Respondent replied that the buyer bought it as an investment and Respondent told Complainant that Complainant would probably have to pass on it because it was above his maximum price. Respondent states Respondent never told or insinuated to Complainant that the Maryland couple was the buyer. Respondent states that Complainant saw the Mississippi agent's name on the landwatch.com add for the property because the agent thought she could post her personal property there without her company logo showing up on the add but it didn't work and she removed it as soon as she found out. Respondent states that Respondent did not conspire with the Mississippi agent and is in no way affiliated with that agent's company. Respondent states that the next email received threatened Respondent with blackmail and criticized Respondent's moral character. Respondent believes that Complainant is enraged because Complainant missed the opportunity to purchase the land at a lower price. Respondent states that Respondent tried to help Complainant by finding a property suitable to Complainant's needs and that Complainant had an opportunity to purchase the property but failed to put in an offer. Respondent states that Respondent spent 2 full days physically showing Complainant properties and hiked over 100 acres of rugged land to show them this property. Respondent states that Complainant filed a complaint with the BBB as well as the Southwest Mississippi Board of Realtors against the Mississippi agent, both of which have been closed/dismissed.

Complainant and Respondent both included emails and other documents which corroborate Respondent's version of the events, including an email from Respondent telling Complainant that Complainant can put a back-up offer on the property in case the contract falls through. There is no indication that Complainant ever tried to make an offer or expressed a desire to make an offer.

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.

**18. 2015019551
 Opened: 8/13/15
 First License Obtained: 1/5/05
 License Expiration: 8/5/17
 E&O Expiration: 1/1/17
 Type of License: Affiliate Broker
 History: no prior disciplinary action**

Buyer entered into a contract for a home and subsequently terminated the contract based upon an inspection contingency. Complainant, buyer's agent, states that buyer and seller had successfully negotiated a repair contingency except for the structural deficiencies detailed in a structural engineering report. Complainant states that buyer had a structural engineering inspection done which indicated that serious structural repairs were needed. Complainant states Respondent, seller's agent, had received a copy of the report when Respondent and seller called the chief building inspector of the city to look at the foundation. Complainant states that Respondent did not disclose to the inspector that a structural engineer had just inspected the home. Complainant states that, upon Complainant showing the city inspector the structural engineering report, the city inspector said the engineer's findings constituted a major adverse fact and that he would defer to the engineer's assessment insofar as what sort of repair would be necessary. Complainant states that the buyer terminated the purchase and sale agreement three days after meeting with the city inspector. Complainant states that the home was under contract again shortly with another buyer and that the new buyer's agent was not told that a previous sale had fallen through as a result of an unresolved contingency and had no knowledge that any prior inspections had been performed on the home. Complainant also states that Complainant had other unrelated clients who had instructed Complainant to temporarily withdraw their listing from the MLS in order to do some work on their home. Complainant states that immediately after withdrawing the listing, an unlicensed assistant of Respondent called the clients to solicit the listing, telling the clients that their listing had expired on the MLS.

Respondent states that the city inspector was never in agreement with the structural engineer's report. Respondent states that seller, city inspector and his colleague all met at the property and the seller showed them each of the areas of concern noted in the structural report. Respondent states that the city inspector and his colleague then issued their professional opinion which stands in direct contrast to the structural report. Respondent states that Complainant kept attempting to contact the city inspector in writing and eventually approached him in his office where Complainant was very aggressive and questioned whether the city inspector really wanted to go on record against a structural engineer. Respondent states that the city inspector assured the seller that the work performed was top-notch, the structure sound and that he stood by his previous assessment. Respondent also states that the seller consulted a third party builder with structural experience who gave the house high marks and identified no other action needed than the repairs suggested by the chief building inspector. Respondent states that there were no adverse facts to disclose to the subsequent buyer and that disclosure of the failed contract and the reason for it were disclosed. Respondent states that the new buyer's agent followed up with the buyer to confirm this and the buyer verified that he knew about the previous structural concerns on the front end, personally felt comfortable with the seller's work and explanation, performed a home inspection which further validated his comfort level, and has been living happily in the home since. Respondent states that Complainant's buyer did receive a call on behalf of Respondent which was an honest mistake and rapidly terminated. Respondent states that Respondent had signed up with a service called Land Voice which promised to provide a daily summary of all cancelled and expired listings along with the contact information of the property owner.

Respondent states that, unbeknownst to Respondent, Land Voice had a glitch which did not distinguish between the MLS Temporary Withdrawal and Permanent Withdrawal/Cancellation and reported both as a cancelled listing contract. Respondent states that the call was terminated as soon as Complainant's client told them there was still a listing agreement. Respondent states that Respondent immediately contacted Land Voice who is actively working to fix the problem and that Respondent does not rely on third data anymore. Respondent states Respondent was shocked and ashamed at the mistake.

Complainant and Respondent included email correspondence between all parties involved and other related documents. However, none of the email correspondence from the city inspector state that he deferred to the findings of the structural engineer. An email from Complainant to Respondent states that he did defer and an email from Respondent to Complainant states that he stuck by his original findings. Respondent did include a letter written in response to this complaint by the agent of the person who closed on property stating that Respondent disclosed that the home had been under contract and had fallen through and the buyer and seller met and went over this in great detail in addition to the buyer having a home inspection. The seller also submitted a letter stating that some of the structural engineer's repairs did not have to do with a structural component of the house but would bring the structure up to current code, which was not required by the city. The seller states that the seller got another offer from someone seller goes to church with and the seller told him that the previous buyer and his agent thought there were structural issues. The seller states that the new buyer got an inspection and had no issues. The seller states that the seller and Respondent have worked together on several properties and Respondent has always been professional and done everything straight and proper. While the phone call to Complainant's other client soliciting a listing very well may have been a mistake, it does appear that an unlicensed assistant made this phone call.

Recommendation: Consent order for \$500 for violation of T.C.A. § 62-13-302(a) (it is unlawful for any licensed broker to employ any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), T.C.A. § 62-13-312(b)(14), and attendance at one regularly scheduled meeting of the Commission within 180 days of the execution of the consent order.

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

Commissioner Wood made a motion to accept the recommendation of legal counsel of consent order for \$500 for violation of T.C.A. § 62-13-302(a) (it is unlawful for any licensed broker to employ any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), T.C.A. § 62-13-312(b)(14), and attendance at one regularly scheduled meeting of the Commission within 180 days of the execution of the consent order; motion seconded by Commissioner DiChiara; motion passes unanimously.

Opened: 8/19/15
First License Obtained: 3/11/09
License Expiration: 3/10/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary action

Complainant states Respondent has been working as a managing broker at a firm with which Respondent does not have an affiliated license. Complainant states that Respondent's license is also expired. Complainant states that a local publication came out showing Respondent as Managing Broker at the aforementioned firm. Complainant states that Respondent sent emails to a client on the same day but showing two different firms in the email signature.

Respondent states that Respondent was hired in April of 2015 to be the trainer/sales manager at Respondent's current firm. Respondent states Respondent was hired specifically to recruit, train, and manage the sales team. Respondent states Respondent was taken by surprise when Respondent was unable to renew his license because of Privilege Taxes owed. Respondent states that Respondent has been working with the TN Department of Revenue since April to get this resolved and that the issue has been remedied. Respondent states that his activities at the new firm have been that of an unlicensed employee/assistant and at no time has he engaged in activities that would require a license. Respondent states that the principal broker does not need to oversee his activities since he is not an acting affiliate broker. Respondent states that the complaint is clearly frivolous and an attempt by former affiliate brokers to discredit his employer.

While Respondent's license did show expired while delinquent in paying the Privilege Tax, once that issue is remedied, the license dates back to the date when Respondent had everything else for renewal submitted. A note in Respondent's file shows that the Privilege Tax was the only thing keeping Respondent from renewing. Therefore, in effect, there was no time when Respondent had an expired license. However, emails from Respondent to others starting in April of 2015 say "Managing Broker" in the email signature. An email from one of the owners to the team sent in April introduces Respondent as the new Managing Broker. Two advertisements for the Respondent's new firm shows Respondent listed as the Managing Broker. This advertisement does not have a date on it but this Complaint was filed in mid-July so it had to have been published prior. Complainant included email correspondence from Respondent to a client in April asking them to call him regarding their listing with the company (also including "Managing Broker" in the signature). According to TREC records, Respondent requested and paid money to switch firms sometime after September 8, 2015. Therefore, it appears that Respondent was employed by and holding himself out as a broker at a firm with which he was not affiliated with for several months.

Recommendation: \$1000 (\$500 each) for violation of 1260-02-.02(2)(...The licensee shall not engage in any activities defined in T.C.A. § 62-13-102 until a change of affiliation form is received and processed by the Commission), T.C.A. § 62-13-

312(b)(4)(misleading or untruthful advertising), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

DECISION: \$2000 (\$1000 each) for violation of 1260-02-.02(1) and (2)(licensee wishing to terminate affiliation must submit TREC 1 form)(...The licensee shall not engage in any activities defined in T.C.A. § 62-13-102 until a change of affiliation form is received and processed by the Commission), T.C.A. § 62-13-312(b)(4)(misleading or untruthful advertising), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner Blume made a motion to accept legal counsel recommendation but to increase Civil Penalty to \$1000 each for each violation of 1260-02-.02(1) and (2)(licensee wishing to terminate affiliation must submit TREC 1 form)(...The licensee shall not engage in any activities defined in T.C.A. § 62-13-102 until a change of affiliation form is received and processed by the Commission), T.C.A. § 62-13-312(b)(4)(misleading or untruthful advertising), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; motion seconded by Commissioner Franks; Commissioner Hills abstains; motion passes with 7 yes and 1 abstention.

**19. 201502007
 Opened: 8/19/15
 First License Obtained: 9/5/13
 License Expiration: 9/4/17
 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 above Broker (2015017761). Respondent states that Respondent does not supervise the above Broker because he is not an affiliate with Respondent's firm and does not engage in any activities that require a Tennessee real estate license. Respondent states that the above Broker's duties are specific to training, recruiting and office management.

Recommendation: \$500 for violation of T.C.A. § 62-13-312(b)(15)(failure to supervise) and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

DECISION: \$1000 for violation of T.C.A. § 62-13-312(b)(15)(failure to supervise) and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner Blume Commissioner Blume made a motion to accept legal counsel recommendation but to increase Civil Penalty to \$1000 each for each violation of T.C.A. § 62-13-312(b)(15)(failure to supervise) and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; Commissioner DiChiara second motion; motion passes Commissioner Hills abstains; motion passes with 7 yes and 1 abstention.

**20. 2015020141
Opened: 8/19/15
First License Obtained: 6/4/87
License Expiration: 8/26/17
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: no prior disciplinary action**

**21. 2015020151
Opened: 8/19/15
First License Obtained: 12/16/83
License Expiration: 10/28/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary history**

**22. 2015020161
Opened: 8/19/15
First License Obtained: 10/4/07
License Expiration: 2/16/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: no prior disciplinary action**

**23. 2015020171
Opened: 8/19/15
First License Obtained: 2/24/86
License Expiration: 8/18/16
E&O Expiration: 1/1/17
Type of License: Broker
History: no prior disciplinary action**

Respondent 1 represented the sellers in the transaction. Complainant, potential buyer, states that Complainant has a signed counter offer as of July 19, 2015 at 10:30am. Complainant states that at 6pm on July 19, 2015, Complainant's agent told Complainant that the sellers have another contract on the property that proceeds thires with a home contingency and a 48 hour kick-out clause. Complainant states this clause was supposedly enacted at 6pm on July 18. Complainant states that thire signed contract

mentions nothing of another contract or that Complainant's is a back-up offer. Complainant states that it is unlawful and deceitful to have multiple contracts for sale on a single home with no mention of other legally binding contracts. Complainant states that Respondent 1 has ignored Complainant's communication in attempt to fulfill the binding contract. Complainant states that Respondent 3, Complainant's agent, informed Complainants verbally of an agreement which Complainants documented at 6pm on July 18 and sellers sign at 6:30am on July 19. Complainant states that Respondent 3 informed Complainants that there is a back-up contract on the evening of July 19 when Respondent 3 brought a listing agreement for Complainant's to sign. Complainant states Respondent 3 claims Respondent 3 just found this out but Complainant states Respondent 3 knew of the other contract prior to counter offer 2 which makes no mention of the other contract. Complainant states Respondent 3 did not act in their best interests and failed to follow through with her representation.

Respondent 1 submitted a response by and through an attorney stating that Respondent 1 has been licensed since 1987 and has never received any previous complaints. Respondent 1 states that multiple offers were made on the property on July 16, 2015 and there was a binding contract on the property on July 17, 2015 that included a contingency clause for the sale of the buyer's home and a "Seller's First Right of Refusal and Seller's Right to Further Market Property" agreement. This agreement included a 48-hour kick-out clause which allowed the sellers to continue to market the property and, if another acceptable offer was received, notice would be given to the buyers that they had 48 hours to remove the contingencies or the contract would terminate. Respondent 1 states that Complainants also made an offer on July 16, 2015. Respondent 1 states that two counter-offers were exchanged on July 18 and that Respondent 1 disclosed in a text message that afternoon/evening to Complainant's agent that there was a prior contract on the home with a kick-out clause and followed up with Complainant's agent via phone that evening. Respondent 1 states that Respondent 1 gave notice to the buyer's agent, triggering the kick-out clause, on the evening of July 18. Respondent 1 states that the sellers accepted Complainant's offer in the morning on July 19, 2015 and that Respondent 1 received a call from Complainant's agent that morning stating Complainant's agent had not yet had an opportunity to discuss the prior contract and kick-out clause with Complainants but would do so that afternoon. Respondent 1 states that the first buyers gave written notice contractually removing the sale contingency of their home from the PSA and moved forward with the purchase of the home. Respondent 1 states that Respondent 1 did nothing unlawful or deceitful and acted professionally, fairly and in good faith when communicating with Complainant's agent. Respondent 1 states that Respondent 1 did not breach any duty owed to Complainants and that it's typical to have a primary and a secondary contract on the property. Respondent 1 states that there is no requirement that a PSA has to have language designating it as secondary or back-up.

Respondent 3, Complainant's agent, states Respondent 3 feels horrible this happened to Complainants and that it all could have been avoided if Respondent 1 would have told her on Friday, July 17, that the sellers had already accepted an offer because Complainants offer would have expired that night. Respondent 3 states that Respondent 1 told Respondent 3 on July 17 that that Respondent 3 would be meeting with the sellers

the next morning to discuss all offers since sellers preferred to meet in person instead of do things electronically. Respondent 3 states that Respondent 1 had an opportunity to disclose that there was an accepted offer on Saturday, July 18, before Respondent 1 sent counter offer 1 but did not do so, nor did Respondent 1 mention it when Respondent 3 asked if Complainants could view the property one more time before responding to counter offer 1. Respondent 3 states that Respondent 3 again did not mention the other contract when they verbally agreed on the terms of counter offer 2. At that time, Respondent 1 said she would have sellers sign counter offer 2 on Sunday morning. Respondent 3 states that Respondent 1 said in a text message later that afternoon that she would have to throw out the kick-out clause because they can't buy without selling. Respondent 3 states she responded that no kick out clause is needed because it is not contingent on a home sale. Respondent 1 responded that she was talking about the other contract but Respondent 3 didn't know what that meant. Respondent 3 states that Respondents 1 and 3 spoke on the phone later that evening and Respondent 1 could not tell Respondent 3 when the other offer was accepted or if it was legally binding but that the sellers wanted to work with Complainants' contract. Respondent 3 states that Respondent 1 told her that only the husband had signed the contract and that the wife was out of town and not sure she wanted to make an offer so Respondent 3 was very uncertain as to whether this contract existed. Respondent 3 states Respondent 3 did not think Respondent 1 would have the sellers accept Complainant's counter offer 2 if they were already in a binding contract. Respondent 3 states Respondent 3 contacted Respondent 1 on the 19th about scheduling inspections to which Respondent 1 responded about the kick-out clause. Respondent 3 again called Respondent 1 who again could not tell Respondent 3 when the contract was accepted or if both parties had signed. Respondent 3 states that Respondent 3 advised Complainants of the situation on Sunday (after consulting an attorney) and they decided to wait out the 48-hour kick-out period which expired Monday at 6pm. Respondent 3 told Complainants that, if Respondent 3 had known for sure that another contract existed, they would have discussed it before Complainants signed counter-offer 2. Respondent 3 states that, in hindsight, Respondent 3 should have contacted Complainants at first mention of another contract but did not because she could not provide them with any information about when or if it was accepted and was told one of the parties did not sign the other offer. Respondent 3 states she did not know if there was actually a binding contract until a week after Complainant's initial offer was made. Respondent 3 states that, after Complainants were unable to get this home, Complainants informed Respondent 3 they no longer wished to have her represent them.

Respondent 2, Principal Broker for Respondent 1, did not submit a response.

Respondent 4 is one of the owners and a broker at Respondent 3's firm. Respondent 4 states that Respondent 4 was not a first-hand participant in the negotiations but first came into communication with Complainants on Monday, July 20 because Respondent 3 left that day to go out of the country and Respondent had asked Respondent 4 to help with the situation. Respondent 4 states Respondent 4 got up to speed on what had happened and it became clear to Respondent 4 that the listing agent had sold the house twice. Respondent 4 states that Respondent 4 followed up with thire attorney who affirmed what thire other

attorney had told Respondent 3 - Complainants could either wait out the 48 hours with a back-up contract or withdraw completely. Respondent 4 states that Respondent 1 then sent a copy of the binding agreement with the other buyers. Respondent 4 states Complainants were insistent on moving forward with the binding contract. Respondent 4 states that Complainant stated Complainants should receive some sort of compensation for the emotional trauma suffered and that \$5000 would make the whole thing go away. Respondent 4 did not appreciate being threatened and immediately called the firm's attorney who advised Respondent 4 not to have any further communication with Complainant. Respondent 4 states that Respondent 3 was ethical and honest and did not knowingly mislead or misrepresent Complainants. Respondent 4 states that the listing agent should have put language in the counter offer stating that Complainants contract would be in back-up position or never told her clients to sign another offer without that language.

Complainants have an executed counter offer signed by the sellers and Respondent 1 on July 19 at 10:30am. This contract makes no mention of there being a previous contract on the house. Text messages indicate that Respondent 1 did not disclose the prior contract until July 18 after the terms of counter offer two had been verbally agreed upon. A voicemail from Respondent 3 to Respondent 1 indicates that Respondent 3 became aware of the prior contract and 48-hour kick out clause at some point Saturday afternoon/evening but Complainants were out of pocket until Sunday afternoon.

Recommendation: Dismiss as to Respondents 3 and 4.

Respondent 1: \$1000 for 2 violations (\$500 each) of T.C.A. § 62-13-403(1)(failure to exercise reasonable skill and care) – one for non-disclosure to Respondent 3 of the prior contract and one for advising clients to execute a second contract on the property without contingency language – T.C.A. § 62-13-312(b)(14), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Respondent 2: \$500 for violation of T.C.A. § 62-13-312(b)(15)(failure to supervise), (14), \$500 for violation of T.C.A. § 62-13-313(a)(2)(failure to respond), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

DECISION: Dismiss as to Respondents 3 and 4.

Respondent 1: \$2000 for 2 violations (\$1000 each) of T.C.A. § 62-13-403(1)(failure to exercise reasonable skill and care) – one for non-disclosure to Respondent 3 of the prior contract and one for advising clients to execute a second contract on the property without contingency language – T.C.A. § 62-13-312(b)(14), \$1000 for violation of T.C.A. § 62-13-403(4)(provide services to each party to the transaction with honesty and good faith), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Respondent 2: \$1000 for violation of T.C.A. § 62-13-312(b)(15)(failure to supervise), (14), \$1000 for violation of T.C.A. § 62-13-313(a)(2)(failure to respond), \$1000 for violation of T.C.A. § 62-13-403(4)(provide services to each party to the transaction with honesty and good faith)and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner Blume made a motion for Respondent 1 of \$2000 for 2 violations (\$1000 each) of T.C.A. § 62-13-403(1)(failure to exercise reasonable skill and care) – one for non-disclosure to Respondent 3 of the prior contract and one for advising clients to execute a second contract on the property without contingency language – T.C.A. § 62-13-312(b)(14), \$1000 for violation of T.C.A. § 62-13-403(4)(provide services to each party to the transaction with honesty and good faith), and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; motion seconded by Commissioner Hills; motion passes unanimously.

Commissioner Blume made a motion for Respondent 2: \$1000 for violation of T.C.A. § 62-13-312(b)(15)(failure to supervise), (14), \$1000 for violation of T.C.A. § 62-13-313(a)(2)(failure to respond), \$1000 for violation of T.C.A. § 62-13-403(4)(provide services to each party to the transaction with honesty and good faith)and attendance at one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order; motion seconded by Commissioner Taylor; motion passes unanimously.

Executive Director Maxwell addresses the Commissioners and audience saying she has enjoyed her 8 ½ years she has worked with the Commissioners and staff that she has learned a lot and hopes that everyone continues to do well.

Chairman Griess adjourned the meeting on Wednesday,

November 4th, 2015 at 4:47 p.m.