



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE REAL ESTATE COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243
615-741-2273
<http://www.tn.gov/commerce/section/real-estate-commission>

MINUTES

The Tennessee Real Estate Commission held a meeting June 13, 2018 at 8:30 a.m. CST in Room 1A of the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243. The Meeting was called to order by Chairman John Griess.

Chairman John Griess welcomed everyone to the Board meeting.

Executive Director Caitlin Maxwell read the public disclaimer and called roll. The following Commission Members were present: Chairman John Griess, Commissioner Austin McMullen, Commissioner Diane Hills, Commissioner Fontaine Taylor, Commissioner Bobby Wood, Commissioner Gary Blume, and Commissioner Johnny Horne. Commissioner Rick Douglass and Commissioner Marcia Franks were absent. Quorum Confirmed. Others present: Chief Counsel Denard Mickens, Assistant General Counsel Anna D. Matlock, Assistant General Counsel Erica Smith, Assistant General Counsel Robyn Ryan, Assistant General Counsel Kelsey J. Bridges, paralegal Amanda Dean, Executive Director Caitlin Maxwell, Education Director Ross White, and board staff Aaron Smith.

The June 13, 2018 board meeting agenda was submitted for approval.

Motion to approve the agenda as amended was made by Commissioner McMullen and seconded by Commissioner Hills. Motion passed unanimously.

Minutes for the May 10, 2018 board meeting were submitted for approval.

Motion to approve the May 10, 2018 minutes as amended was made by Commissioner Wood and seconded by Commissioner Hill. Motion passed 5-0, Commissioner McMullen and Commissioner Horne abstaining.

EDUCATION REPORT- (Attachment A)

Education Director Ross White presented the Education Report to the Commission.

Motion to approve courses J1-J31 was made by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

Motion to approve Instructors presented was made by Commissioner Hills and seconded by Commissioner Wood. Motion passed unanimously.

INFORMAL APPEARANCES

Preston Williams appeared before the Commission along with Principal Broker John Linthcrum. Mr. Williams requested approval to obtain his Affiliate Broker license.

Motion to approve Mr. Williams was made by Commissioner Taylor and seconded by Commissioner Blume. Motion passed unanimously.

Jeremy Wilhoit appeared before the Commission along with Principal Broker Sue Acee. Mr. Wilhoit requested approval to obtain his Timeshare Salesperson license.

Motion to approve Mr. Wilhoit was made by Commissioner Blume and seconded by Commissioner Taylor. Motion passed unanimously.

David McMicken appeared before the Commission along with Principal Broker Christopher Clabough. Mr. McMicken requested approval to obtain his Timeshare Salesperson license.

Motion to approve Mr. McMicken was made by Commissioner Wood and seconded by Commissioner Hills. Motion passed unanimously.

Max Wasserman appeared before the Commission along with Principal Broker Denise Ross. Mr. Wasserman was requesting approval to obtain his Timeshare Salesperson license.

Motion to deny Mr. Wasserman was made by Commissioner McMullen, and seconded by Commissioner Wood. Motion passed unanimously.

MEDICAL WAIVER REQUEST

Executive Director Caitlin Maxwell, on the behalf of Charles Kimball, presented before the Commission, the request for waiver of penalty fees for late renewal and license reinstatement due to medical issues.

Motion to approve the medical waiver request was made by Commissioner Wood and seconded by Commissioner Blume. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT- (Attachment B)

Staff Updates

Executive Director Caitlin Maxwell updated the Commission that Amy Brown was hired filling one of the two vacant staff positions.

LEGISLATIVE UPDATE- Tennessee Task Force on Auction Law Modernization

Motion was made by Commissioner Taylor and seconded by Commissioner Hills for Commissioner Bobby Wood to serve on the Tennessee Task Force on Auctioneer Law Modernization. Motion passed unanimously

Assistant General Counsel Anna D. Matlock updated the Commissioners on the requirements of the Fresh Start Act and when it will take effect.

COMMISSION DISCUSSIONS

2019 Meeting Calendar

Commissioner Hills motioned to adopt the 2019 calendar dates. Commissioner Taylor seconded the motion and it passed unanimously.

Business Cards

Motion was made by Commissioner Wood and seconded by Commissioner Taylor, for legal to bring a proposal to changing the rules to include business cards as a part of the advertising rules. Motion passed 6-1, Commissioner McMullen voting against.

Virtual Offices

Motion made by Commissioner Wood to table discussion until the July meeting giving room for Commissioner Franks to add input on this subject.

LEGAL REPORT & CONSENT AGENDA

Consent Agenda:

The following cases were presented to the Commission via a Consent Agenda. All cases were reviewed by legal, legal has recommended dismissal. Commissioner Wood requested to pull case 2018000921, 2018006011, and 2018006051 from the consent agenda. Commissioner Hills requested to pull case 2017081901. Commissioner Blume requested to pull case 2018011701. The Commission voted to accept the recommendation of legal counsel on all other cases. Motion made by Commissioner Horne to accept the recommendation of legal counsel to dismiss all other cases listed on the consent agenda, seconded by Commissioner McMullen. Motion passed unanimously.

1.	2017080441	10.	2018003011	20.	2018005221
2.	2017081481	11.	2018003121	21.	2018005281
3.	2017081521	12.	2018003151	22.	2018005721
4.	2018000321	13.	2018004151	23.	2018005791
5.	2018000961	14.	2018004171	24.	2018007231
6.	2018000981	15.	2018000621	25.	2018011701
7.	2018001291	16.	2018000641	26.	2018011751
8.	2018001801	17.	2018004501	27.	2018012171
9.	2018001851	18.	2018004511	28.	2018009811
		19.	2018004591	29.	2018010131
				30.	2018014141

After further discussion by the Commission, Commissioner McMullen made the motion to close and flag case 2017081901, seconded by Commissioner Hills. Motion passed unanimously.

After further discussion by the Commission, Commissioner Wood made the motion to defer case 2018000921 to the July Agenda, seconded by Commissioner McMullen. Motion passed unanimously.

After further discussion by the Commission, Commissioner Wood made the motion to impose a \$1,000.00 civil penalty for duties owed to all parties in transaction on case 2018006011, seconded by Commissioner McMullen. Motion passed unanimously.

After further discussion by the Commission, Commissioner Wood made the motion to impose a \$1,000.00 civil penalty for failure to supervise in case 2018006051, seconded by Commissioner McMullen. Motion passed 6-1 with Commissioner Horne voting against.

After further discussion by the Commission, Commissioner Blume made the motion to accept the recommendation of legal counsel to dismiss case 2018011701, seconded by Commissioner Wood. Motion passed unanimously.

Legal Report:

Re-Presentations

The following two matters were presented in February 2018.

1. 2017067171

Opened: 10/10/2017

First Licensed: 2/20/2001

Expires: 9/3/2019

History: None

Complainant is home owner and Respondent is Complainant's agent. Complainant states Complainant has had two brain surgeries and mental disability and had to move to Tennessee so contacted Respondent about property in a specific location. In meeting with Respondent, Complainant asked if Respondent knew of any serious crime in subdivision and that Respondent stated nothing serious but a few break ins in sheds. Complainant called off the search until spring and contacted Respondent again who had moved to agency outside subdivision. Complainant states Respondent told Complainant that Respondent had a great house and that Respondent's boss, principal broker below, was friends with seller and could help Complainant get a good price. Before closing, Complainant states Complainant went to see Respondent and asked questions but that Respondent did not have the MLS to show Complainant, but did have a home inspection. Complainant states Complainant asked if there was anything about the house not known to Complainant that Complainant should know and Respondent states Respondent had told Complainant everything. At closing, the owners were present and Complainant asked owners the same question. Complainant states the house closed on April 7, 2015. At the end of May, 2015, the subdivision office contacted Complainant and told Complainant to contact fire department to have street numbers installed. A fireman then told Complainant that a woman was tortured, raped and murdered on the property. Complainant called Respondent and Respondent said that Complainant should have read MLS which states "someone died in house three years ago".. Complainant told Respondent that Respondent had not shown Complainant the MLS. Complainant states that the owners simply had the floor painted over blood in one room and mopped in another. Complainant filed this complaint in October 2017 but a law suit was filed in August 2017 against Respondent, Respondent below and owners.

Respondent states that this complaint was filed beyond two year statute of limitation and that state law specifically provides that neither owner not licensee is required to disclose a homicide, felony or suicide on property. Respondent states property was vacant from the time of the death

until this closing. Respondent states Respondent did give copy of the MLS to Complainant and pointed out section that said someone had died in home and that Complainant stated that did not bother Complainant. Respondent further states that Respondent and Complainant did talk about crimes in the neighborhood and that Respondent did not recall hearing about a homicide. Attached to the response were copies of depositions.

Complainant's attorney filed a motion to amend complaint. Respondent's attorney may file a motion for summary judgment after the issue of the amended complaint is heard. This matter is set for trial in October. There are numerous issues and a trial might reveal more information that would supersede the issue of statute of limitations or a grant of summary judgment would resolve the pending issues. Respondent's attorney has agreed to update with any court matters.

Recommendation: Litigation Monitoring.

Decision: Commission accepted counsel's recommendation.

Update: Respondent and Respondent below filed a Motion to Dismiss for failure to state a claim in the civil court matter. That Motion was granted. In the Order, the Judge specifically found that §66-5-207 specifically found that the failure to disclose a homicide, felony or suicide will not rise to a cause of action against home owner. The Judge further found that §66-5-401 did not supersede common law duties a licensee owes to parties in a real estate action and that there was no claim for breach of duties outlined in the act. The Judge further found that the Exclusive Buyer Representation agreement and the local association of realtors' code of ethics did not obligate these Respondents to any higher duties and that the Buyer's agreement did not create a duty to disclose the homicide. The breach of contract and the claim for civil conspiracy were dismissed. Respondents agreed not to seek discretionary costs or attorney fees and the complainant agreed not to appeal. Each side paid one half of costs.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion made by Commissioner Blume and seconded by Commissioner Hills. The motion passed 6-0 with Commissioner Wood recusing himself.

2. 2017067191

Opened: 10/10/2017

First Licensed: 4/8/1987

Expires: 12/22/2018

History: 2014 Consent Order with \$2,000 civil penalty for failure to supervise

Respondent is principal broker to above and did file a response.

Recommendation: *Litigation Monitoring.*

Decision: *Commission accepted counsel's recommendation.*

Update: See above.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion made by Commissioner McMullen and seconded by Commissioner Blume. The motion passed 6-0 with Commissioner Wood recusing himself.

3. 2014000141

Opened: 2/5/14

First License Obtained: 3/17/80

License Expiration: 6/9/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: None

JUNE 2014

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

interests regarding purchase price, comps, and the appraisal issue. The New Home Sales Contract indicates that the licensee signed as the selling agent and the listing agent.

Respondent submitted a response through an attorney with a copy of a lawsuit filed by Respondent's company for breach of contract against Complainant. Respondent states in the lawsuit that Complainant failed to purchase the property as provided, but Respondent allowed Complainant to continue to lease for an additional twelve (12) months. Respondent states that Complainant did not purchase at the end of this period, claiming that a new appraisal showed a significant decrease in value. Respondent states that, approximately six (6) months prior to execution of the sales contract and lease, there was an appraisal showing the property had a value higher than the contract price, and any decline in value did not affect the sales contract. Respondent further states that the contract provided for an appraisal at the time of loan application, but the contract did not provide for an appraisal contingency. Respondent states that the property later sold for a lower price, and, even giving Complainant credit for the security deposit paid, Respondent suffered a significant loss.

There are a number of disputes between the parties, including, but not limited to, the appraisal issue and whether the deposit paid by Complainant was refundable. This matter is currently in active litigation with a counterclaim and third party complaints filed by Complainant against Respondent individually and the other licensee who was involved in the transaction, and other information could be uncovered in the process which may be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

Decision: Commission accepted counsel's recommendation.

NOVEMBER 2017

Update: *Licensee below who was involved has an expired license. Original attorneys in this matter have withdrawn but new attorney filed appearance for Complainant in late September. No depositions have taken place. No date for trial is set. Respondent attempted to schedule a deposition with Complainant in July but got no response. This was a second request.*

New Recommendation: *Dismiss Respondent below and keep this matter in litigation monitoring in event something is revealed that shows a violation of the Broker's Act although in reading response, it does not appear that there was any violation.*

JUNE 2018

Update: **This matter is still in litigation but both parties have gone through several attorneys. Depositions have been scheduled several times with Complainant failing to attend. The primary issue in this matter is a contract dispute. The Respondent who was this Respondent's affiliate has since let license expire and has not renewed. There is no court date as of yet and last communication with Respondent indicates that Respondent is**

trying to get a court date by agreement. It does not appear that this will be heard any time in the near future. If there is a decision from the court in the future finding wrongful handling of funds or actions on part of Respondent or Respondent's affiliate in the contract matter, this could be helpful. But without that, there is little to go forward on and the case is four years old.

New Recommendation: Close and flag.

New Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Hills and seconded by Commissioner Wood. Motion passed unanimously.

4. 2017040641

Opened: 6/23/17

First Licensed: 9/8/92

Expiration: 10/13/19

Type of License: Principal Broker

History: None

Complainant is buyer, represented by Respondent below, and Respondent is owner/ agent. Complainant has filed a civil matter with allegations of misrepresentations. Complainant states Respondent and spouse purchase house in 2014 and made improvements such as a remodeled bathroom, pain, change of plumbing and electrical wiring in parts of house but did not contact city for permits. Complainant states Respondent did not obtain any inspection on the completion of project. Complainant lists other modifications including addressing a water leak from the roof which Complainant state was simply plastered over. In the sale process, Complainant states Respondent signed a residential disclosure but did not disclose all known material defects. Complainant states Respondent stated the home had one fireplace but did not disclose a second fireplace and chimney that had been removed. In the disclosure, Respondent stated Respondent was not aware of alterations or repairs not in compliance with codes or done without permits. Complainant states Complainant relied on this disclosure to Complainant's detriment. Complainant states that Complainant believes Respondent painted over rotten wood, removed a section of a support beam in basement, and further states Complainant has had issues with electrical work and other issues. Complainant filed a lawsuit against Respondent and Respondent spouse as well as Respondent below.

Respondent states that Respondent and spouse purchased 84 year old house in 2014 with intention of updating and living in home, but after purchase, the house was too small for the family and the addition of care for now elderly mother. Respondent states Respondent hired a home inspection prior to purchase and that inspection found termites but did not find any issues with structural beams. Spouse did the majority of work on the house and parties did remove a chimney chute that was located behind a false wall in kitchen. Respondent hired a roofing company for that removal and for repair on the roof where chute once was. Respondent states there were no removal of any fireplace and did nothing to or with structural beams. Concerning the leak, Respondent states the leak was remedied and there was nothing hidden. For these

repairs, Respondent states no permits were necessary. Respondent states Complainant waived getting home inspection and further states that Respondent had no knowledge of any adverse facts concerning the home and made every effort to assure home in good working order.

In rebuttal, Complainant states that city has informed complainant that electrical system not in compliance with city codes.

This matter is still in litigation and there is a jury date in April. Because the allegations are fraud, and violation of T.C.A. §62-13-403, it is probably best to wait until the matter has been resolved.

Recommendation: Litigation monitoring consent order.

Decision: Commission accepted counsel's recommendation.

Update: The Court granted summary judgment to all the defendants in the civil matter. The Court reviewed all allegations and found no liability on the part of any of the defendants for any breach of duty of care.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed unanimously.

5. 2017040661

Opened: 6/23/17

First Licensed: 7/28/95

Expiration: 5/24/18

Type of License: Affiliate Broker

History: None

Complainant is same complainant as above and Respondent is Complainant's agent. Complainant states that in reviewing this home, Respondent told Complainant that there were other offers on the property and that Complainant and Respondent agreed that Complainant would offer \$5,000 more than asking price. Complainant states Complainant relied on statements Respondent made about Respondent above in Complainant's decision to waive home inspection as well as relied on Respondent's opinion on property in decision to purchase.

Respondent, through attorney, states that Respondent did not discourage Complainant from getting home inspection and in the contract acknowledged that Respondent is not an expert in certain areas and it was strongly recommended to seek services of any expert or professional of Complainant's choice. The disclaimer notice signed by Respondent also states that all sellers and buyers should not rely on any statement, opinion or comment and in the document further

acknowledged that Complainant did not rely on advice, casual comments or verbal representations of any real estate licensee in relating to the matters in the contract.

Respondent provided copies of all disclaimer documents signed by Complainant, a text message from Complainant stating Complainant did not think needed an inspection, to which Respondent replied, "Great. I never tell my buyers I don't think they need an inspection. It is up to you," as well as a signed "get a home inspection and property survey" marked not to have an inspection or survey.

These parties are in litigation.

Recommendation: Litigation monitoring.

Decision: Commission accepted counsel's recommendation.

Update: See above.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed unanimously.

6. 2017040741

Opened: 6/23/2017

First Licensed: 4/19/1993

Expiration: 8/19/2018

Type of License: Principal Broker

History: None

Respondent is principal broker to above two respondents and Respondent firm is part of the litigation.

Recommendation: Litigation monitoring.

Decision: Commission accepted counsel's recommendation.

Update: See above.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed unanimously.

April 2017

RE-PRESENTED THIS MONTH AS IT RELATES TO COMPLAINT BELOW.

7. 2018000861

Opened: 12/8/2017

First Licensed: 2/3/2004

Expires: 4/22/2018

Type of License: Principal Broker

History: None

This complaint was filed against Respondent, and two Respondents below. Complainant states that there is an active litigation matter in Chancery Court. Complainant state Respondent and Respondent below refused to purchase and close on real estate because Complainant would not allow funds to be placed in escrow for an unrelated matter. Complainant states Respondents allowed another party to add hand written language in contract and initial a proposed amendment to sales when that person was not previously a party to contract. Complainant states Respondents did not provide required forms relating to agency and to conflict of interest, and in particular the TREC forms relating to same. Complainant states Complainant signed the sales agreement as administrator of estate to sell the real property and that Respondent and Respondent directly below were purchasers, with third Respondent representing the other two. Complainant states the property was required to close by October 27 but that Respondents refused to follow through on contact and instead offered a proposed amendment with closing date of November 15 and that sale was subject to net proceeds to be held in escrow by Respondent firm until agreement between parties or court adjudication. Complainant states this language was initialed by another person and that this person was attempting to add some form of escrow to sale of her property to benefit her. Complainant states she is not a party. Complainant states Complainant has inquired on the earnest money deposit and that Respondent agent has not offered proof of deposit.

Respondent, through attorney, states that complaint filed against Respondent is for failure to supervise third Respondent below. Respondent states that third Respondent is not a licensee supervised by Respondent. Concerning the refusal to purchase the property with Respondent below, Respondent states that it was discovered that Complainant does not own the property Complainant is trying to sell and is representing self as authorized to sell property on behalf of estate and that this is not true. Respondent states that the person who owned the property died intestate and that as a result, the real property passes to heirs at law outside of estate by virtue of TCA 31-2-103. Respondent states that Respondent does not have agreement of siblings and has sued Complainant's sister (person referred to in complaint above). Respondent states that Complainant cannot sell sister's property and that there is therefore no valid contract.

As noted, this was in litigation. The Court found that there was not a valid contract and that the estate did not own the property and therefore Complainant could not sell the same. The Court found that there was no claim for which relief could be granted and all defendants including Respondent, and the two Respondents below were dismissed and costs were taxed to Complainant.

Recommendation: Dismiss

Decision: The Commission accepted Counsel's recommendation.

Case was included for edification, the Commission has already ruled on this matter.

8. 2018000901

Opened: 12/28/2017

First Licensed: 6/24/2016

Expires: 6/23/2018

Type of License: Affiliate Broker

History: None

Respondent, who is mentioned in the complaint, did not file a response. There are the response of Respondent above and below in the file, but nothing from Respondent.

Recommendation: \$1,000 civil penalty for failure to respond or Litigation Monitoring Order.

Decision: The Commission accepted Counsel's recommendation.

Update: A last chance letter was sent and the attorney who represented all in the litigation filed a response. In that response, Respondent states that no complaint was opened against Respondent separately and that complaint only mentioned respondents above and below. Respondent further states that a complaint letter was apparently sent to Respondent but was returned undelivered to the State. Respondent, through attorney, further states that although Respondent's name was referred to in text of complaint, Respondent was never apparently designated as Respondent in complaint which was filed by attorney for complainant. Respondent states Respondent did not know Respondent was a part of this complaint. Respondent states that the underlying law suit was dismissed. Attorney for Respondent states attorney represented all three Respondents and assisted Respondents in responding to the complaint filed and had attorney known this Respondent was a part of that complaint, attorney would have specifically include Respondent in the response filed with the Commission.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed

unanimously.

RE-PRESENTED THIS MONTH AS IT RELATES TO ABOVE MATTER

9. 2018000941

Opened: 12/28/2017

First Licensed: 4/28/1999

Expires: 4/9/2018

Type of License: Affiliate Broker, Retired

History: None

Respondent filed response stating that above Respondents would still like to purchase property but that clear deed cannot yet be provided. Respondent states that to Respondent's knowledge, sister is executor of estate. Respondent states Respondent sent all paperwork to Complainant. Respondent also states that first Respondent is not Respondent's principal broker. Respondent states that financing has not been approved per the sale agreement but that it has been approved by local bank. Respondent states client, executor of estate, does not have access to email or fax so that amendments mentioned were included in her own handwriting. Concerning the money in escrow, Respondent states money was to be placed in escrow to give family members time to resolve issues.

This matter was dismissed by the Chancery Court who found there was no contract.

Recommendation: Dismiss

Decision: The Commission accepted Counsel's recommendation.

Case was included for edification, the Commission has already ruled on this matter.

Erica Smith

10. 2018001891

Opened: 1/4/2018

First Licensed: 2/10/2003

Expires: 12/22/2019

Type of License: Affiliate Broker

History: None

Complainant alleges Respondent became the agent for the property that Complainant wanted to purchase around December 2017. Complainant states this occurred after the owner/seller of the property, who is also a licensee, "recused himself" as the agent because of alleged "egregious

ethical violations” the owner/seller had committed. Since Respondent took over, Complainant alleges he has done nothing but try to verbally berate/intimidate Complainant’s agent using verbiage like “they better do this by this date or else.” Complainant alleges Respondent lacks fundamental understanding of the contract that was signed before he took over, and contract law in general. Complainant’s opinion is that Respondent has intentionally delayed closing, blatantly misrepresented facts about the property, as well as prior leasing amounts charged, etc. Complainant also states the property has no easement to the main house and is not just one address as indicated in the MLS, and states the property is not one parcel. Complainant provides copies of the TAR PSA, as well as various other TAR forms, and the 4 counteroffers that were presented between her and the seller, with the fourth being accepted by the seller on November 4, 2017 per the signatures on the counteroffer. All TAR forms were prepared by the Complainant’s agent, who is also an immediate family member to Complainant, which was disclosed properly via the TAR Personal Interest Disclosure and Consent form, signed by all parties. Respondent’s name is not listed and does not appear on any TAR form or anything provided by Complainant other than the summary of the complaint itself. Complainant does not provide further detail or any evidence to support the allegations.

Respondent’s attorney responded and states first and foremost that the Complainant has filed a civil suit against Respondent and the owner/seller licensee in the complaint 2018001921 below, in the county’s Chancery Court trying to enforce the purchase contract, even though Respondent states Complainant could not perform her part of the contract after several extensions of the closing date. Additionally, Respondent states Complainant maliciously put a lien on the property to try to stop it from being sold to someone else and refused to vacate the portion of the property that they had moved into per a Lease Agreement signed by all parties which ended January 31, 2018. Respondent claims this is in violation of the owner/seller’s property rights and the issues are for the court to decide at this point. Respondent’s attorney just filed a Motion for Summary Judgment which asks the Court to dismiss the claimants’ civil suit and it is currently set to be heard on July 11, 2018. Therefore, Respondent requests this complaint be put in Litigation Monitoring status until the civil case is resolved.

Counsel agrees that this should be placed in Litigation Monitoring status until the civil case is resolved and makes such recommendation in accordance with Tenn. Code Ann. §62-13-313(d).

Recommendation: Put in Litigation Monitoring status until the civil case is resolved, and then this complaint will be presented to the Commission in full.

Decision: The Commission accepted Counsel’s recommendation.

Motion by Commissioner Hills and seconded by Commissioner Taylor. Motion passed unanimously.

11. 2018001921

Opened: 1/4/2018

First Licensed: 5/16/2007
Expires: 5/4/2019
Type of License: Principal Broker
History: None

Complainant is the same as complaint 2018001891 above and Respondent is the owner/seller of the property as referenced in the complaint above.

Respondent is represented by the same attorney as the affiliate broker in the complaint above and also requests this complaint be in Litigation Monitoring status until the civil case is resolved. Respondent's attorney just filed a Motion for Summary Judgment which asks the Court to dismiss the claimants' civil suit and it is currently set to be heard on July 11, 2018.

Counsel agrees that this should be placed in Litigation Monitoring status until the civil case is resolved and makes such recommendation in accordance with Tenn. Code Ann. §62-13-313(d).

Recommendation: Put in Litigation Monitoring status until the civil case is resolved, and then this complaint will be presented to the Commission in full.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Hills and seconded by Commissioner Taylor. Motion passed unanimously.

12. 2018005161

Opened: 1/25/2018
First Licensed: 5/16/1990
Type of License: Real Estate Firm
License Status: Suspended since February 2018 for failure to appoint a principal broker and for paying for a change of firm name/address change with a bad check from a frozen account
Expires: 2/10/2019
History: 2010 \$1,000.00 civil penalty for failing to account for moneys coming into licensee's possession belonging to others; \$500.00 civil penalty for conduct which constitutes improper, fraudulent or dishonest dealing; 8 hours contract writing.

This complaint was opened at the request of the Commission after 5 complaints were presented to the Commission against the former principal broker, who was suspended in December 2017 for failing to pay professional privilege taxes and was summarily suspended as a result of the 5 complaints. These 5 complainants were just resolved when the principal broker agreed to surrender his license on May 10, 2018. Respondent had not had a newly appointed principal broker at the time this complaint was opened and was operating without one, and since this complaint was opened, Respondent's license has been suspended and all employees notified.

Respondent was not provided an opportunity to respond as there is no physical complaint to provide but was notified it was not in compliance by failing to appoint a new principal broker,

but Respondent has failed to comply and remains suspended. Additionally, Respondent was suspended for submitting an application to change the name of the firm and change the address by the suspended principal broker and the fees were paid for with a bad check from Respondent's account, which has been frozen and blocked by the treasury according to the stamp on the returned check for reasons unknown to our office.

Counsel notes Respondent has been suspended as a result of the substance of this administrative complaint, therefore discipline has been assessed. Counsel recommends closing and flagging this complaint in case Respondent attempts to appoint a new principal broker and reinstate the firm license before the renewal period ends. If that occurs, Respondent will have to come before the Commission to address the complaints that have been filed against Respondent and explain to the Commission to the Commission's satisfaction why Respondent failed to attempt to comply with the rules governing firms and allowed a suspended principal broker to lie on the application requesting the firm name change/address change, as well as pay us with a bad check without trying to rectify the situation. The Commission will have an opportunity to question Respondent and decide if Respondent will be allowed to renew its license in the future if it so applies in a timely fashion. The additional complaints filed against Respondent are being presented below.

Recommendation: Close and Flag.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

13. 2018008381

Opened: 1/25/2018

First Licensed: 5/16/1990

Type of License: Real Estate Firm

License Status: Suspended since February 2018 for failure to appoint a principal broker and for paying for a change of firm name/address change with a bad check from a frozen account

Expires: 2/10/2019

History: 2010 \$1,000.00 civil penalty for failing to account for moneys coming into licensee's possession belonging to others; \$500.00 civil penalty for conduct which constitutes improper, fraudulent or dishonest dealing; 8 hours contract writing.

Complainant alleges she found Respondent's leasing company online while searching for rentals, and the leasing company ended up sending her a list of available rentals on December 16, 2017. Counsel notes the leasing company has a different name than Respondent, although the names are very similar and use the same last name in the titles, which is the last name of the principal broker who was suspended and then surrendered his license last month. Complainant applied for the home she wanted to rent and paid a \$50 application fee as well as paying \$350 deposit to an employee with the leasing company to secure the rental for her. Complainant provided a copy of

the money order for \$350 which was made payable to Respondent, not the leasing company, and dated December 30, 2017. Complainant provides a copy of paperwork the employee who took her payment gave her that day and states the handwritten note on the document showing proof of payment was written by the employee and stated “taking house off the market,” since Complainant had secured the rental to move into. Complainant then noticed the rental she secured and was moving into was still showing up on the list of available properties to rent, as she received an updated list by email since she started working with Respondent. Since then, Complainant has been calling Respondent and the employee who took the money order, as well as going by the office when she can, but the employee avoids her and won’t respond most of the time. When the employee does speak with Complainant about her refund, he gives her the run around and states he will have it for her on certain days, but never does because he won’t even show up to the office or answer her calls.

Counsel notes Respondent has been suspended and cannot reinstate its license without having to come before the Commission and obtain Commission approval if we close and flag this complaint, as recommended for all the complaints presented today against Respondent. The Commission will have an opportunity to question Respondent and decide if Respondent will be allowed to renew its license in the future if it so applies in a timely fashion.

Recommendation: Close and Flag.

Decision: The Commission accepted Counsel’s recommendation.

Motion by Commissioner Hills and seconded by Commissioner Taylor. Motion passed unanimously.

14. 2018014021

Opened: 1/25/2018

First Licensed: 5/16/1990

Type of License: Real Estate Firm

License Status: Suspended since February 2018 for failure to appoint a principal broker and for paying for a change of firm name/address change with a bad check from a frozen account

Expires: 2/10/2019

History: 2010 \$1,000.00 civil penalty for failing to account for moneys coming into licensee’s possession belonging to others; \$500.00 civil penalty for conduct which constitutes improper, fraudulent or dishonest dealing; 8 hours contract writing.

Complainant states she is related to the previous principal broker for Respondent and alleges she was “robbed” by Respondent, the previous principal broker who is referenced as surrendering his license in May 2018 and in the complaints below, as well as the prior principal broker’s son, who does not have a license. Complainant states she paid Respondent a \$400 security deposit which was stolen, noting it happened to her just like the other Complainants who filed complaints that led to the surrendering of her uncle’s license. Complainant provides names of employees and her

relatives who worked for Respondent's leasing company and/or firm and these names match the names listed in the prior complaints already presented to the Commission.

Respondent states he closed the leasing company in September 2017, as previously explained when Respondent's previous principal broker responded to the 5 complaints that were already presented and led to the surrender of his license and the suspension of Respondent's license. Respondent's previous principal broker provided a copy of the Lease signed by his son and himself on September 1, 2017, stating the leasing company was being assigned in full to the son and the previous principal broker nor Respondent would have any interest or connection to it going forward. A press release was issued stating the terms of the lease agreement to explain to the public as soon as Respondent's previous principal broker found out about the theft of consumer deposits, like Complainant's, he dissociated himself and the firm completely and returned all deposits he knew of by February 2018. Respondent nor the previous principal broker had been notified of the Complainant's deposit being stolen until this complaint was filed, and the previous principal broker's daughter texted Complainant, her cousin, stating the son was at fault here and that she would try to get him to refund the money to Complainant. Complainant specifically filed this complaint against the son, not the previous principal broker or Respondent.

Counsel notes Respondent has been suspended and cannot reinstate its license without having to come before the Commission and obtain Commission approval regarding the above complaints, if they are closed and flagged. The Commission will have an opportunity to question Respondent and decide if Respondent will be allowed to renew its license in the future if it so applies in a timely fashion. Additionally, if we open complaints against the son and leasing company employee and investigate further, we will be provided with more information and possibly proof of these allegations against those who have not had any complaints opened against them yet. Counsel feels we have assessed the appropriate discipline against Respondent and the previous principal broker and cannot take further action against them, as they have a surrendered and a suspended license already. Therefore, Counsel recommends we dismiss this complaint.

Recommendation: Dismiss.

Decision: The Commission voted to close and flag the complaint.

Motion by Commissioner Hills and seconded by Commissioner Horne. Motion passed unanimously.

15. 2018014041

Opened: 3/2/2018

First Licensed: 9/22/1988

License Status: Voluntarily Surrendered May 2018

Type of License: Principal Broker

History: 2011 Consent Order for violation of TCA Section 62-13-312(5), 62-13-321, TREC Rule 1260-2.09 for \$1000.00; 2018 Agreed Order with Voluntarily Surrender of License

Complainant is the same as the complaint 2018014021 above.

Respondent provided the same response as summarized above.

Counsel recommends dismissal as explained in the complaint summary above.

Recommendation: Dismiss.

Decision: The Commissioned voted to close and flag the complaint.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

16. 2018014101

Opened: 3/2/2018

Type of License: Unlicensed

History: None

Complainant is the same as the complaints 2018014021 and 2018014041, and is Respondent's cousin. Complainant states Respondent is "running from what he's done." Complainant provided screenshots of texts between herself and Respondent's sister but did not provide any further detail than what is summarized in the complaints above, and did not provide any documentation to support the allegations in her complaint. The texts show Respondent's sister stated their father, the principal broker referenced in the complaints above, and his firm separated from the leasing company in September 2017.

Respondent is the son of the Respondent (previous principal broker and owner of the firm, and principal broker's license has been surrendered and firm's license is suspended), both referenced in complaints 2018014021 and 2018014041. Complainant is Respondent's cousin. Respondent's father responded to this complaint on behalf of Respondent and no separate response has been received from Respondent to date. Respondent's father confirms what Respondent's sister told Complainant via text, that Respondent has not worked for the firm since September 1, 2017, which was immediately after Respondent's father realized the leasing company, and most likely Respondent, was taking deposits from clients and prospective tenants when they shouldn't have, and never took responsibility for their actions, never refunded the deposits that were rightfully owed to those prospective tenants who were told they couldn't move in for some reason or another, and never tried to rectify the situations. Based on all of the complaints and responses related to the principal broker, the firm, the leasing company, and this Respondent, it is Counsel's conclusion that Respondent's father allowed Respondent to manage the leasing company and accept deposits from clients and prospective tenants, many of whom filed the complaints which led to the Respondent's father surrendering his license and led to the firm's license being suspended.

Counsel recommends closing and flagging this complaint considering Respondent's father, the principal broker for the firm Respondent worked for before the firm's license was suspended, has since surrendered his license and has paid restitution to the clients who have contacted him when their deposits weren't returned. Additionally, Respondent's father issued a press release stating anyone who has not received a refund of their deposits collected from the Respondent and/or the leasing company can contact him for a refund and provided his cell phone number and email in the press release. If Respondent has any more complaints filed against him or if he tries to apply for a license in the future, Respondent will have to come before the Commission and address this complaint and obtain approval from the Commission to obtain a license.

Recommendation: Close and flag.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Taylor and seconded by Commissioner Horne. Motion passed unanimously.

17. 2018021181

Opened: 4/3/2018

First Licensed: 9/22/1988

License Status: Voluntarily Surrendered May 2018

Type of License: Principal Broker

History: 2011 Consent Order for violation of TCA Section 62-13-312(5), 62-13-321, TREC Rule 1260-2.09 for \$1000.00; 2018 Agreed Order with Voluntarily Surrender of License

Complainant states Respondent rented her property to a known gang leader/convicted felon, retained deposits and rent owed to the landlord, performed expensive repairs without prior approval, and concealed a crime that occurred at the rental property. Complainant provides no documentation to support these allegations, and only submitted just over 80 pages of email correspondent between her and Respondent regarding the tenants in the home, repairs, deposits and rents, requests for an updated lease agreement and increase in rent, etc. Respondent was very responsive to every request and email from Complainant over the course of 6 months, up until September 2017 when Respondent was informed of the leasing company's thefts of deposits and his separation from them. Complainant actually asked Respondent if the firm did background checks on tenants and was told it could be done if requested, so she was informed of the processes and provided with the lease agreements, deposits, rents, the repairs she requested were made, and Respondent evicted the tenant once the HOA sent Complainant a letter that the tenant had too many cars at the property, and then made sure to find another tenant quickly, which Complainant approved.

Respondent denies all allegations, and states Complainant is the daughter of his good friend and Respondent helped Complainant with her rental as a favor to her father at his request.

Respondent states he paid for labor fees when he hired a UHaul and movers to get the furnishings out of the property that Complainant had left there and was never reimbursed. The property also had a large outstanding utility bill that Respondent took a day off to try to resolve for Complainant, and ended up paying the bill for Complainant but was reimbursed for this. Respondent diligently advertised for and found tenants and obtained their IDs, income information, applications and all were approved by Complainant. Respondent denies any knowledge of any tenant having gang affiliations. Respondent also made repairs that he was never reimbursed for, and when a tenant left the property trashed, Respondent paid to have it cleaned for a new tenant and was never reimbursed. Respondent states he has not pursued reimbursements because of his long friendship with Complainant's father, and notes Complainant thanked him many times as evidenced in the emails she provided to Counsel as referenced above.

Counsel finds no evidence whatsoever that Respondent violated any statutes or laws regarding this complaint and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed 6-1 with Commissioner Hills voting against.

18. 2017081811

Opened: 12/21/2017

First Licensed: 10/5/2009

Expires: 10/4/2019

Type of License: Affiliate Broker

History: None

Complainant remains anonymous and alleges Respondent has committed advertising violations because Respondent posted an advertisement on the firm's Facebook page which did not include the firm telephone number, it only lists Respondent's phone number. Additionally, if you click on the advertisement, it does take you directly to a video or photo of the property with the required information except for the firm phone number.

Respondent admits to this mistake and states he had hired three different companies over the period of a couple months to take over Respondent's social media marketing as Respondent felt he was unable to do a good job managing it on his own. Respondent does make sure to state he understands it is still his responsibility to review all advertisements to make sure they are compliant and Respondent will no longer use third party companies to manage his advertising. Respondent's principal broker immediately let Respondent know the Facebook ads were not in compliance and Respondent corrected them. Respondent notes his firm and principal broker has informed him many times about advertisement compliance and wants to make sure Respondent takes full responsibility for this, as Respondent feels he has received excellent training in this area.

Counsel finds clear evidence through Respondent's own admission and through internal research that Respondent violated Tenn. Comp. R. & Regs. 1260-02-.12(5)(a) and (6)(b) by failing to include the firm number in an advertisement and recommends \$1,000 civil penalty.

Recommendation: Consent Order assessing a \$1,000 civil penalty for advertising violation, specifically Tenn. Comp. R. & Regs. 1260-02-.12(5)(a) and (6)(b).

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Taylor and seconded by Commissioner Horne. Motion passed unanimously.

19. 2017081901

Opened: 12/28/2017

Type of License: Unlicensed

History: None

Complainant states she sold her home to Respondent and that the owner of Respondent company held himself out to be a licensee who sells real estate. Respondent is an active LLC based on the Secretary of State's records. Complainant states she contacted Respondent's owner in February of 2013 to discuss selling her home and the owner then came to her house, wrote up a lease purchase agreement to purchase Complainant's home, and all parties signed the agreement. Complainant further states Respondent has renters in the home now and pays the mortgage from the renters' monthly rent payments, but is in default on the mortgage payments. Complainant states she had an appointment with a real estate attorney and would send more information to include a copy of the agreement, but we have not received a copy of the agreement or any further information or documentation to support the allegations.

This complaint was mailed to Respondent via certified mail, which was returned as unclaimed/unable to forward, and the complaint was emailed to Respondent. The email showed that it was delivered to the email address but no response to this complaint has been received from Respondent.

Counsel notes this transaction occurred over 5 years ago and is outside the statute of limitations, which is 2 years. The Complainant has provided no details or documentation to support the allegations and without a response from Respondent or proof of any violations, Counsel recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to close and flag the complaint.

Motion by Commissioner McMullen and seconded by Commissioner Hills. Motion passed unanimously.

20. 2018000921

Opened: 1/3/2018

First Licensed: 11/14/2000

Expires: 4/10/2020

Type of License: Real Estate Broker

History: 2018 Consent Order and \$1,000 Civil Penalty for failure to supervise that an affiliate has E&O insurance

Complainant remains anonymous and simply provides an email she received from Respondent on September 6, 2017 with a handwritten note stating “[name of firm] is true broker – no reference in logo.” The logo included with the email uses the team name, phone number for the firm with their extension, email address and the website for the firm team. If you click on the website, all required information for advertisements is included. At the bottom of the email, the firm name and the same information from the logo is provided so Counsel is unsure what the handwritten note alleges is a violation, as the email, if considered an advertisement, meets the guidelines and rules for real estate advertisements.

Respondent was not provided with a copy of this complaint based on an administrative error, and thus has not provided a response. Counsel requested the complaint be sent to Respondent as soon as it was discovered when the file came to Counsel from the complaint division, and it was sent to Respondent on June 8, 2017. Counsel is awaiting a response from Respondent, and Respondent has 10 days to respond. Counsel is of the opinion that a response is not really required to determine that Respondent has not violated any statutes or rules, as the complaint provides enough information to make a determination, and thus Counsel recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to defer until next month to give Respondent an opportunity to respond.

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed unanimously.

Re-Presents

21. 2017074071

Opened: 11/13/2017

First Licensed: 11/1/2016

Expires: 10/31/2018

Type of License: Affiliate Broker

History: None

The following information was presented at the April 2018 meeting:

Complainant is a licensee who provided a screenshot of an Instagram post from Respondent's personal Instagram account showing a picture of a yard sign without the firm number.

Respondent was offered an Agreed Citation in the amount of \$500 by the Executive Director which was mailed to Respondent's home address (the only address provided to licensing by Respondent) via certified mail on November 20, 2017 and returned unclaimed. Counsel emailed Respondent offering her another chance to respond to this complaint on March 7, 2018 but has received no response to date.

Counsel finds clear evidence Respondent violated Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) by failing to include the firm number on the yard sign and violated T.C.A. § 62-13-104(b)(8)(A) by failing to respond. Counsel therefore recommends a civil penalty of \$500 for the advertising violation and \$1,000 for failing to supervise the affiliate broker.

Recommendation: *Consent Order assessing a \$1,500 civil penalty for failure to respond and for an advertising violation citing Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) and T.C.A. § 62-13-104(b)(8)(A)*

Decision: *The Committee voted to assess a civil penalty of \$2,000 for failure to respond and for an advertising violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) and T.C.A. § 62-13-104(b)(8)(A).*

New Information: **Counsel reviewed this matter again after speaking with Respondent and Respondent's principal broker at length. Counsel now realizes that the principal broker's response to the Respondent's complaint was intended to be a response on behalf of Respondent, as Respondent was suspended pending the outcome of this matter. Respondent provided proof she immediately forwarded all correspondence from our office regarding this complaint to her principal broker asking the principal broker to advise her on how to respond, and the principal broker specifically told Respondent that she would respond on her behalf and told Respondent not to respond to this complaint separately. Respondent followed her principal broker's instructions.**

Additionally, Counsel notes that the Commission did not assess a civil penalty for failing to respond in a similar situation regarding another complaint presented at the April 2018 meeting where the principal broker responded on behalf of the affiliate broker. Counsel recommends reducing the civil penalty from \$2,000 to \$1,000, thus voiding the failure to respond violation and moving forward with the civil penalty for the advertising violation.

New Recommendation: **Reducing the civil penalty from \$2,000 to \$1,000, only assessing a civil penalty for the advertising violation.**

Decision: **The Commission accepted Counsel's recommendation.**

Motion by Commissioner Taylor and seconded by Commissioner Wood. Motion passed 6-0 with Chairman Griess was absent from the vote.

22. 2017078761

Opened: 12/8/2017

First Licensed: 06/30/1994

Expires: 6/29/2018

Type of License: Affiliate Broker

History: None

The following information was presented at the May 2018 meeting:

Complainant is the buyer and Respondent was her agent. Complainant alleges Respondent did not answer her questions about the earnest money needed to purchase a home they looked at and further alleges Respondent tried to rush her to decide whether she wanted to purchase the home. Complainant states Respondent told her she would need to pay \$2,000 in earnest money or the buyer would not consider any offer made but Complainant was not prepared to pay the earnest money that day and also explained she had to sell her home before purchasing another home. After feeling pressure from Respondent and being told there were 3 other prospective buyers considering the home, as well as a couple driving up from Florida to see it, she told Respondent she could write a check for \$500 but instructed Respondent to hold it until her next pay day on 10/31/17, and asked Respondent to contact her before cashing the \$500 check. Complainant states Respondent told her the \$500 would be returned at closing. Complainant alleges Respondent did not follow her instructions and cashed the check. Complainant further states she is insulin-dependent, and has to check her bank account daily to budget for her medications as needed; because Respondent cashed her check before contacting Complainant, Complainant was short on the cash needed for her medicine. Complainant also states she asked Respondent 3 times for a list of fees that would have to be paid upfront when purchasing the home but never received it. Instead, Complainant states Respondent told her she was on a deadline to complete the necessary paperwork and inspections, including paying \$325 for a home inspection. Complainant did not understand what a home equity loan was and Respondent's cousin, who works for a bank, explained it to her, as Complainant did not want to end up with 2 mortgage payments. Complainant alleges Respondent contacted Complainant's long-time and dear friend without Complainant's knowledge or consent and asked the friend if she could front the money needed for Complainant to purchase the home she was shown and liked as referenced above. Complainant was humiliated, as \$130,000 was needed to purchase the home she liked and she never would have asked her friend for this. Complainant also states she ended up calling the banking rep. who had been assisting her and told her she had a panic attack and could not come up with the additional \$1,765 needed to close on the house, and said she was never informed there was a \$600 one-time fee just to live in the community where the home was located. Complainant told the banking rep. to stop the loan and decided she was done with trying to get this home and felt Respondent did not provide her with the information she had requested and needed to make this transaction possible. Complainant wrote a formal grievance letter and sent it to Respondent's principal broker explaining everything summarized above, and requesting to settle these issues and to be treated fairly. Complainant asked to be refunded the \$500 she had put towards the earnest money payment and to be released from any obligation to Respondent

and her firm. Complainant stated the firm had 8 days to refund the \$500 or she would forward the letter and information to TREC and file a complaint. Complainant provided proof the \$500 check was deposited and provided copies of portions of various TAR forms she had signed throughout the process. Complainant provided the first page of an Earnest Money Disbursement form which states the \$500 earnest money was forfeited by Complainant as the buyer to the seller as defined in the PSA but Complainant did not provide the PSA, only portions of an original Repair/Replacement TAR form and a subsequent Repair/Replacement #1, as well as providing a Property Disclosure form, a Disclaimer form and a Temporary Occupancy Agreement, all signed by Complainant.

Respondent and her principal broker sent a joint response to the complaint and addressed each allegation to the best of their ability. First, Respondent notes that her firm returned the \$500 to Complainant, provides a copy of the Earnest Money Disbursement TAR form signed by all parties and a copy of the check sent to Complainant, which was 7 days after the complaint was filed. Respondent states she showed Complainant and 3 of her friends 5 homes on October 21, 2017, and 3 homes were in one city while the other 2 homes were in another city and in a specific neighborhood Complainant really liked. Respondent states Complainant was the one who was in a rush, as she and her friends needed to return to their hometown to go to a family dinner by a certain time that day. Respondent also states she did tell Complainant during the second showing that the home would not have a \$600 one-time fee or POA monthly fee of \$93.75 like the other homes in the neighborhood she liked. However, Respondent also explained that in the city there are city/county taxes but in the neighborhood, there would only be county taxes. The owner was present at the last showing and Complainant loved this home, and the owner volunteered much information during that showing, including stating the home had already had 3 showings that day, she would have to close by 11/30/17 and she knew there was already one very interested buyer. Complainant informed Respondent she wanted to offer full price for the home they had just seen as they walked out to their cars. Respondent then went back to her office to prepare the necessary paperwork quickly considering the situation and Complainant's desire to get this home. Respondent called Complainant to ask if \$2,000 earnest money was possible to show intent to purchase, as Respondent knew nothing of Complainant's financial status at that time and only knew Complainant had health issues, was about to retire and wanted to stay in the \$125,000 range. One of Complainant's friends told her she could get an equity loan if her home did not sell in time, and her other friend who had been in the mortgage business agreed. Additionally, the same friend who suggested the equity loan suggested offering \$500 as an earnest money payment. Complainant wrote a check for \$500 for earnest money and asked Respondent to hold it until 10/31/17, which Respondent did and provided proof the check was not deposited until then. Complainant agreed to a home inspection and spoke with an inspector about having it done within 10-13 days, and told him she did not use credit cards and he agreed she could pay for the inspection at a later date when invoiced. Complainant and her friends went over home equity loans in detail on their own after the last showing. Respondent denies contacting Complainant's friend to ask her to pay for anything. Respondent simply told Complainant if she decided to get a home equity loan, Respondent's cousin worked at a bank and Respondent had used her in the past for loans, and Complainant decided to speak with Respondent's cousin at the bank on her own accord. Complainant thanked Respondent and her cousin for all of their help numerous times in emails provided to Counsel, and after completing the loan application, told Respondent she was "good to go" and could close on or before 11/30/17. Then Complainant found out about a second mortgage that she said she did not owe

and did not know about. As Respondent was receiving emails from Complainant, she and her cousin got the news Complainant had been to the emergency room. Respondent called Complainant's friend who had recommended Respondent to Complainant and who had used Respondent earlier in 2017 to sell her home to ask if she had heard about Complainant being at the hospital. Complainant's friend said she had not heard about this but offered to help Complainant in any way and Complainant was never humiliated, she thanked everyone for their assistance and for being concerned for her. At this time, Respondent notified Complainant she would have to forfeit the earnest money and pay for the home inspection if she did not honor the contract, and Complainant said she believed in karma and would never dream of not honoring it or forfeiting the earnest money and paying for the home inspection. Complainant's friend called the bank representative, Respondent's cousin, and asked for the equity loan numbers so she could help Complainant get the home. On November 22, 2017, Complainant notified Respondent she could not come up with the closing cost fees and could not close, and all closing fees were between Complainant and the title company, who she also emailed that day to notify she would not be closing, requesting Respondent to handle the details.

Counsel finds no evidence Respondent violated any statutes or rules and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission requested more information about the PSA and voted to defer until the next meeting.

New Information: Counsel obtained a copy of the TAR PSA from Respondent as requested and is prepared to discuss any questions or concerns the Commission has.

New Decision: The Commission voted to send a letter of warning about the handling of earnest money.

Motion by Commissioner Taylor and seconded by Commissioner Wood. Motion passed unanimously.

Kelsey Bridges

23. 2018006881

Opened: 1/31/2018

First Licensed: 6/9/2012

Expires: 6/8/2018

Type of License: Affiliate Broker

History: None

Complainant was the home seller (note: Complainant is a real estate broker, licensed in two states but not in Tennessee. As such, Complainant was represented by a Tennessee-licensed broker). Respondent represented the home buyer. Complainant states they accepted an all cash offer from the buyer on December 18, 2017, and that the buyer terminated their agreement on December 20. Respondent informed Complainant's agent that the buyer's grounds for

terminating the contract included dissatisfaction with the findings of the home inspection and a higher rate of crime than what was typical for the general area. Complainant alleges these were not sufficient grounds for termination and that Respondent failed to collect the home buyer's contractually required earnest money deposit. Complainant states this shows Respondent's intent to lock in the property without monetary risk to the buyer. Complainant also alleges that despite numerous requests, Respondent never provided Complainant or Complainant's agent with a binding agreement date. A copy of the TR Purchase and Sale Agreement provided by Complainant provides for a ten-day inspection period and shows the offer was accepted by Complainant on December 18, 2017 at 9:40 PM; however, the Binding Agreement Date clause was left blank. Complainant also provided a copy of the buyer's TR Notification which provides for a Purchase and Sale Agreement Binding Agreement Date of December 18, 2017. The Notification states in the appropriate field that the termination is based upon the buyer's home inspection, specifically, a lack of GFCI outlets in the kitchen. The Notification also states, "In addition to inspection contingency, buyer also wishes to terminate agreement based on high crime rate in the area."

Respondent states the contract was bound on December 19, 2017, and that the property was marked as "UC Showing" the same day. Respondent states and both parties' documentation confirms that the Purchase and Sale Agreement contained a ten-day inspection period. The buyer opted to conduct the home inspection himself, which Respondent notes is expressly permitted in the TR contract. Respondent also notes that, per the terms of the contract, in the event the agreement is terminated based upon the home inspection, the buyer is not required to provide the seller with a copy of the home inspection report; rather, they are only required to provide a list of written specified objections along with an immediate notice of termination. The documentation provided by both parties shows that Respondent notified Complainant of the termination and provided Complainant with the buyer's written specified objections on December 20, two days after Complainant accepted the offer. With regard to the home buyer's claim of high crime level, Respondent states that the TR contract contains a disclaimer advising the purchasing party to consult with local, state, and federal law enforcement agencies for criminal activity reported at or near the property. Respondent states the buyer conducted his own research and determined the crime was higher in the area immediately surrounding the property than in the general area. Respondent states they did not inquire as to the specifics of their client's research "to intentionally steer away from redlining." Respondent concludes by stating they feel they acted ethically and in good faith by quickly notifying Complainant of the buyer's termination, well within the ten-day home inspection period. With regard to the earnest money, Respondent adds that per the terms of the contract, an earnest money deposit was due three days after the Binding Agreement Date. Respondent states the contract was bound on the 19th, making the earnest money due no later than December 22. The agreement was terminated on the 20th, thus making the issue of the earnest money moot. Respondent provided copies of a completed and fully executed Purchase and Sale Agreement, which provides for a Binding Agreement Date of December 18, 2017 (not December 19, as stated in Respondent's answer to the complaint). Complainant states they never received this version of the executed agreement.

In rebuttal, Complainant reiterates that the Binding Agreement Date was never made available to their agent, and notes the discrepancy between the date as stated in Respondent's answer to the complaint and the Binding Agreement Date as written in the Purchase and Sale Agreement provided by Respondent. Complainant also submitted a copy of an email in which Complainant's agent requests the binding agreement date from Respondent, and states Respondent never replied. Complainant adds that the reasons for termination were invalid, as the property did contain the outlets the buyer claimed were lacking, and that Respondent should have ensured their client was making a fully informed decision when terminating the agreement.

Counsel notes that per the terms of the parties' TR Purchase and Sale Agreement, the Binding Agreement Date was the date the buyer or their agent received notice of the home seller's acceptance. Based upon email documentation provided by Complainant and both parties' copies of the Purchase and Sale Agreement, it is clear that the Binding Agreement Date was December 18, 2017, at or around 10:00 PM. Further, based upon the email exchanges between the agents and the updates to listing status, it appears Complainant's agent had actual knowledge of the binding date, regardless of whether they ever received written notice from Respondent. Per the terms of the agreement, the buyer was entitled to conduct their own home inspection and was not required to provide Complainant with a list of requested repairs prior to terminating the agreement. Finally, Respondent had no obligation to collect the earnest money deposit from the home buyer, as that money would have been due no later than December 21st, and the agreement was terminated on December 20.

Counsel recommends a Letter of Instruction to Respondent regarding the importance of delivering a fully completed and executed copy of the Purchase and Sale Agreement to all parties to the transaction, and the importance of understanding the binding agreement date, as it appears there is some confusion as to the determination of when the binding agreement date occurs and the calculation of time thereafter.

Recommendation: Letter of Instruction.

Decision: The Commission voted to authorize a consent order requiring 4 hours of continuing education in contracts within 180 days in addition to the normal required hours.

Motion by Commissioner Wood and seconded by Commissioner Hills. Motion passed unanimously.

24. 2018007021

Opened: 1/31/2018

First Licensed: 3/6/2013

Expires: 12/14/2018

License: Principal Broker

History: None

Respondent is the principal broker in related case number 2018006881. Respondent supports the actions of the affiliate broker, and notes that this is the first complaint they have ever received. Respondent states they advised the affiliate broker to “do the right thing” and advise the seller of the exact issues raised by the buyer in as timely a manner as possible. Respondent states that per the terms of the contract, the buyer had ten days to conduct any inspection they felt necessary and that the affiliate broker could have utilized that full ten-day period, but rather they chose to inform the sellers as soon as possible of the buyer’s objections. Respondent states that they believe the buyer had full right to terminate the contract based upon the home inspection contingency and the buyer’s own home inspection findings, and that the buyer did his due diligence within the provided time frame. Respondent states the affiliate broker provided the proper TR Notification to the listing agent on December 20, prior to the deadline for submitting any earnest money that may have been due per the terms of the contract.

Counsel finds no evidence of a failure to supervise.

Recommendation: Dismiss.

Decision: The Commission voted to authorize a consent order requiring 4 hours of continuing education in contracts within 180 days in addition to the normal required hours.

Motion by Commissioner Blume and seconded by Commissioner Taylor. Motion passed 4-3 with Commissioner Wood, Commissioner Horne. and Commissioner McMullen voting against.

25. 2018008151

Opened: 2/2/2018

First Licensed: 5/16/1988

Expires: 12/1/2018

Type of License: Principal Broker

History: None

Complainant alleges, generally, unethical property management against a vacation lodging services firm as well as the individual agents who work for the firm. A failure to supervise complaint was also opened against one of the agent’s current principal broker; however, the principal broker is unrelated to the vacation lodging services company and the allegations raised in the complaint. The present respondent is the owner of the vacation lodging services firm. Respondent is a licensed broker but has no current affiliations.

Complainant alleges Respondent, Respondent’s firm, and Respondent’s spouse have been selling and managing residential condos as rental investment properties in violation of the condominiums’ Master Deed and Home Owners Association (“HOA”) By-Laws. Complainant also alleges Respondents commingled funds, failed to keep proper accounting, and failed to make sure the development was properly insured. Complainant does not specify a timeframe for when any of these alleged events took place. Complainant provided a copy of the

condominiums' Master Deed, HOA By-Laws, and screen shots of Respondent's vacation lodging services firm website in support of Complainant's claims.

Respondent states they were hired by a project development group to help sell the third phase of newly constructed condominium units in 1986. Phases one and two were completed in 1983 and '84 and were already operating as vacation rentals. Shortly after Respondent began working for the development group, Respondent was hired by the condominiums' HOA to set up and operate an on-site rental program and to act as the HOA "manager" as that term is defined in the Master Deed. Respondent thereafter established their vacation lodging services company which continuously managed the affairs of the HOA board of directors and operated as an on-site rental office from 1986 through November 2016. Respondent's spouse, also a licensed broker, performed similar work for the HOA and vacation lodging services firm, although their specific role is not clear.

Respondent's answer to the complaint, read in conjunction with the Master Deed and HOA By-Laws provided by Complainant, make clear that Respondent was hired as a "manager" for the HOA board of directors, not the individual condominium owners. Respondent states as manager they handled daily administrative matters, scheduled HOA meetings, monitored common areas, and collected HOA dues and fees, which were deposited into the HOA account. Respondent states they received a fixed monthly fee for this work and denies ever using HOA funds to supplement the finances of the vacation lodging services company, which earned income from on-site vacation rentals.

Respondent denies all allegations of improper accounting, comingling of funds, and breach of covenant or by-laws. Respondent provided extensive documentation, including opinions of legal counsel retained by the home owners association as well as the HOA's accountant which support Respondent's position. It appears the only violation rising from this complaint is Respondent's failure to obtain a license for the vacation lodging services firm. As such, Counsel recommends this complaint be dismissed with respect to the individual licensees and that a civil penalty be assessed against the firm for unlicensed activity.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Griess and seconded by Commissioner Wood. Motion passed 6-1 with Commissioner Blume voting against.

26. 2018008171

Opened: 2/2/2018

First Licensed: 6/29/1984

Expires: 2/15/2020

Type of License: Affiliate Broker

History: None

Respondent is the above respondent's spouse. Respondent has been a licensed broker in Tennessee since 1984. Complainant did not allege any particular violation against Respondent,

and there is no indication that Respondent acted in any improper capacity. Respondent was licensed at all relevant times, and is currently licensed and affiliated with a licensed third party real estate firm which holds no relation to the matters raised in this complaint. Counsel recommends this complaint be dismissed.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Griess and seconded by Commissioner Wood. Motion passed 6-1 with Commissioner Blume voting against.

27. 2018008191

Opened: 2/2/2018

First Licensed: 1/26/2004

Expires: 3/13/2019

Type of License: Principal Broker

History: None

Respondent is the above licensee's current principal broker. This matter appears to have been opened based solely on the above licensee's current affiliation. In response to the failure to supervise complaint, Respondent states they were not the licensee's principal broker at the time of the alleged violations. Internal records show the licensee began working under Respondent's supervision in November, 2017. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Griess and seconded by Commissioner Wood. Motion passed 6-1 with Commissioner Blume voting against.

28. 2018008131

Opened: 2/2/2018

Type of License: Unlicensed

History: None

Respondent is the vacation lodging services firm. Counsel recommends disciplinary action for unlicensed activity.

Recommendation: \$1,000 civil penalty.

Decision: The Commission voted for a \$1,000 civil penalty for unlicensed activity and to order that the Respondent cease and desist.

Motion by Commissioner Taylor and seconded by Commissioner Horne. Motion passed unanimously.

29. 2018012031

Opened: 2/22/2018

First Licensed: 12/20/1993

Expires: 3/12/2019

Type of License: Principal Broker

History: None

This complaint was opened administratively following presentation of a related complaint against an affiliate broker under Respondent's supervision. The Commission voted to assess a \$1,000 civil penalty against the affiliate broker for offering referral fees to nonlicensed individuals via social media advertisement. The affiliate broker admitted to violating the advertising rules and stated they would get permission from their principal broker prior to publishing or distributing any future advertisements.

Respondent submitted an answer to this complaint but it was identical the answer provided in the affiliate broker's complaint. No further information was provided. Counsel recommends the principal broker be disciplined for failure to supervise.

Recommendation: \$1,000 civil penalty for failure to supervise.

Decision: The Commission accepted Counsel's recommendation.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

30. 2018013251

Opened: 2/27/2018

First Licensed: 6/25/2013

Expires: 6/24/2019

Type of License: Affiliate Broker

History: None

Complainant was the home seller and Respondent was the buyer's agent. Complainant states that in the week prior to closing, Respondent sent Complainant a request to allow some workers into the home to remove a floor-to-ceiling, original 1940s hardwood mantel per the buyer's preference. Complainant expressly forbade any work on the property prior to closing. Complainant states that nevertheless, over the next three days, workers entered the property and made modifications, including removal of the mantel and sheet rocking. Complainant states they contacted Respondent multiple times to get the work to stop, but the workers only ceased when Complainant's agent's assistant drove out to the property to shut it down and remove the combination box and keys. Complainant states the modifications were not required by the appraiser.

Respondent states this incident arose due to a miscommunication with the workers. Respondent states the crew tasked with repairing a faulty kitchen sink faucet began additional work without anyone's authorization. Respondent states this mix-up was communicated to Complainant's

agent, and that Respondent accepted full responsibility. Respondent states as an assurance to the sellers they signed an amendment in which Respondent personally agreed to repair the minimal damage and pay an additional \$5,000 in damages to the seller above and beyond any repair costs should the transaction not close. Respondent notes the damage that occurred was less than \$100. Respondent concludes their answer by stating they feel they have gone above and beyond to assume full responsibility for the miscommunication.

Counsel notes the sale of the property did close and thus no actual harm resulted to Complainant; however, Counsel is still concerned about the “miscommunication” and the amount of damages that could have occurred should the sale have not closed.

Recommendation: \$500 civil penalty for failure to exercise reasonable skill and care (Tenn. Code Ann. § 62-13-403).

Decision: The Commission voted to authorize a \$1,000 civil penalty.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

31. 2018013381

Opened: 2/27/2018

First Licensed: 6/20/1994

Expires: 7/4/2020

Type of License: Principal Broker

History: None

Respondent is the principal broker in the above related matter. Respondent answered through legal counsel. Respondent states that if Complainant had issues with the work done by the affiliate broker and/or the repair crew, they would not have closed on the property. With regard to the failure to supervise complaint, Respondent states they were not aware of this transaction until they received notice of the complaint and that they owe no duties to Complainant. Respondent states their responsibilities are dictated by the Real Estate Brokers License Act and that Tenn. Code Ann. §§ 62-13-403 and 404 (Duties of a Licensee to All Parties and Clients, respectively) establish duties owed by the licensee who actually provides real estate services in a transaction. In contrast, Respondent states, the Act does not create for the managing broker any direct duties to the parties to a real estate transaction when the managing broker is not actively involved in the transaction. Respondent notes a 1996 opinion of the Attorney General which states a principal broker has no specific duty to either the buyer or seller in a real estate transaction. Respondent states this complaint is totally without merit and should be dismissed immediately.

Respondent does not seem to understand that this matter was opened administratively following receipt of the complaint against the affiliate broker. While Respondent may be correct in that they do not directly owe Complainant any standard of care, they still are obligated to supervise

the actions of their affiliate brokers. Counsel further notes Respondent's statement that they was not aware of this transaction until receipt of the complaint and recommends the Commission authorize discipline for a failure to supervise.

Recommendation: \$500 civil penalty for failure to supervise.

Decision: The Commission voted to authorize a \$1,000 civil penalty and a 4 hour contracts class above other continuing education requirements within 180 days.

Motion by Commissioner Wood and seconded by Commissioner Taylor. Motion passed unanimously.

32. 2018006011

Opened: 1/29/2018

First Licensed: 1/12/1996

Expires: 5/23/2018

Type of License: Affiliate Broker

History: None

Complainant contracted to purchase a home listed by Respondent, but states the purchase and sale agreement was voided due to a discrepancy between the listed versus actual square footage. Complainant states the listing showed a square footage of 1,835. Complainant suspected this number was wrong and contacted the tax assessor's office. A representative came out to measure the property and found the square footage is actually 1,295. The representative stated the property records would be updated next year. Complainant states they informed their agent of the discrepancy and the contract was voided. Two days later, Complainant revisited the online listing and found the listing still contained the higher square footage. Complainant contacted Respondent to ask why the wrong square footage was still online, and states the Respondent said they had no reason to believe the square footage was inaccurate and that it would be up to whoever buys the home to determine the actual square footage through a home inspection or bank appraisal.

Respondent states the owner did not provide Respondent with the square footage—the owner has dementia and was represented by her daughter, who has power of attorney—and so Respondent relied on the county tax records in creating the listing. Respondent states this is what the Tennessee Association of Realtors advises when determining square footage. After the purchase and sale agreement was executed, Respondent received a call from Complainant's agent informing them about the square footage issue. Respondent asked Complainant's agent to verify who took the measurements and if they had anything in writing. Respondent states they never heard back on the issue and received Complainant's notice that they wanted to void the contract later that day. Respondent then contacted the tax assessor's office to have someone come out and measure the property again. While awaiting the second measurement, another buyer placed an offer on the property. Respondent states they informed the new buyer about the possible discrepancy with the square footage, and the new buyers signed a disclaimer. After the second measurement, Respondent provided the new buyers with the actual square footage, which is approximately five hundred square feet less than what was posted on the listing. Respondent states the new buyers are proceeding with the purchase. Respondent provided some

documentation, including Complainant's notification, dated January 25, and an updated listing on the property showing the revised square footage, dated February 2.

Counsel recommends this matter be dismissed as it does not appear Respondent had any intention to deceive or misrepresent the property's square footage and took measures to correct the listing upon learning the original number was wrong.

Recommendation: Dismiss.

Decision: The Commission voted to assess a \$1,000 civil penalty for failing to exercise duties owed to all parties in a transaction (Tenn. Code Ann. § 62-13-403).

Motion by Commissioner Wood and seconded by Commissioner McMullen. Motion passed unanimously.

33. 2018006051

Opened: 1/26/2018

First Licensed: 5/1/1989

Expires: 10/9/2018

Type of License: Principal Broker

History: None

Respondent is the principal broker in the above related matter. Respondent states they were advised by the Tennessee Association of Realtors to rely on local tax records in determining a property's square footage. Respondent provided a timeline of events that indicates the affiliate broker acted promptly in trying to work out the issue and informed all interested parties and amended the listing as soon as they received confirmation from the tax assessor's office of the true square footage. Respondent supports the actions of the affiliate broker.

This complaint contains no evidence of a failure to supervise. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Decision: The Commission voted to assess a \$1,000 civil penalty for failure to supervise.

Motion by Commissioner McMullen and seconded by Commissioner Wood. Motion passed 6-1 with Commissioner Horne voting against

Meeting adjourned by Chairman John Griess at 2 p.m.