



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE REAL ESTATE COMMISSION
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<http://www.tn.gov/commerce/section/real-estate-commission>

MINUTES

The Tennessee Real Estate Commission held a meeting May 10, 2018 at 8:30 a.m. CST in the George A. Smith Room in Jackson, Tennessee. 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 Diane Hills, Commissioner Fontaine Taylor, Commissioner Marcia Franks, Commissioner Bobby Wood, Commissioner Gary Blume, and Commissioner Rick Douglass. Commissioner Johnny Horne and Commissioner Austin McMullen were absent. Quorum Confirmed. Others present: Assistant General Counsel Sarah Mathews, Assistant General Counsel Anna D. Matlock, Assistant General Counsel Erica Smith, Assistant General Counsel Kelsey J. Bridges, Chief Counsel Mark Green, and Executive Director Caitlin Maxwell.

The May 10, 2018 board meeting agenda was submitted for approval.

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

Minutes for the April 11, 2018 board meeting were submitted for approval.

Motion to approve the April 11, 2018 minutes as amended was made by Commissioner Franks and seconded by Commissioner Wood. Motion passed unanimously.

EDUCATION REPORT- (Attachment A)

Executive Director Caitlin Maxwell presented the Education Report to the Commission on behalf of Education Director E. Ross White.

Motion to approve courses M1-M3 and M18-M30 was made by Commissioner Wood and seconded by Commissioner Hills. Motion passed unanimously.

Commissioner Franks asked to remove courses M4-M17 for further discussion. After further discussion, motion to approve courses M4-M-17 was made by Commissioner Blume and seconded by Commissioner Wood. Motion passed 5-2 with Commissioner Frank and Commissioner Hills voting against.

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

INFORMAL APPEARENCE

Edward Hamlet appeared before the Commission along with his Principal Broker, John Criswell. Mr. Hamlet was requesting permission to apply for licensure.

Request for licensure was approved. Motion made by Commissioner Douglass and seconded by Commissioner Blume. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT- (Attachment B)

Executive Director Caitlin Maxwell updated the Commission on the IT requests and an updated Outreach Plan. Executive Director Caitlin Maxwell along with Assistant Commissioner Carter

Lawrence presented the outreach plan to include a newsletter, a CE video, and interactive webinars.

TREC vs. Willoughby

Chief Counsel Mark Green presented to the Commission along with Assistant General Counsel Erica Smith their recommendation of an Agreed Order. Per the Agreed Order, Anthony Willoughby voluntarily surrendered his Real Estate license. This order was approved by the Commission and signed by Chairman Griess effective 5/10/18.

RULES UPDATE

Assistant General Counsel Anna D. Matlock presented to the Commission the revised fee reduction rules regarding licensure and the fees deposited into the real estate education and recovery account. The motion to accept counsel's revised rules as presented was made by Commissioner Franks and seconded by Commissioner Taylor. Motion passed unanimously.

COMMISSION DISCUSSIONS

Bill Tune Award:

Commissioner Wood made a motion to award the 2018 Bill Tune to Karen Lowe for her years of service to the real estate industry and all she has done for not only EMTAR but for all TN Associations. Motion was made by Commissioner Wood and seconded by Commissioner Franks. Motion passed unanimously.

2019 Meeting Commission Meeting Schedule:

Chairman Griess discussed the Commission meeting schedule for 2019 and asked that Commissioners begin reviewing their schedule. Chairman Griess asked the Commissioners to review the proposed schedule in anticipation of discussion at the June meeting.

Commissions, Virtual Offices, and Cash Advance Commissions:

Commissioner Franks discussed commissions at closing, virtual offices, and cash advance Commissions. She presented to the Commission an email she had received on cash advance commissions. She wanted to put these topics on the Commission's radar for future discussions.

LEGAL REPORT

cases 2018006481, 2018006501, and 2017078171 from the consent agenda. Commissioner Franks requested to pull case 2018010931. Commissioner Taylor requested to pull case 2017079631. The Commission voted to accept the recommendation of legal counsel on all other cases. Motion made by Commissioner Blume to accept the recommendation of legal counsel to dismiss cases 1-16 listed on the consent agenda, seconded by Commissioner Franks. Motion passed unanimously. Motion made by Commissioner Franks to accept the recommendation of legal counsel to dismiss cases 17-32 on the consent agenda, motion seconded by Commissioner Hills. Motion passed unanimously.

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|------------|-------------------|------------|-------------------|
| 1. | 2017081351 | 16. | 2017078781 |
| 2. | 2018003991 | 17. | 2017079981 |
| 3. | 2018005491 | 18. | 2017080001 |
| 4. | 2018005951 | 20. | 2017080121 |
| 5. | 2018005971 | 21. | 2017080601 |
| 6. | 2018006111 | 22. | 2017080821 |
| 9. | 2018008231 | 23. | 2017079781 |
| 10. | 2018008621 | 24. | 2017082201 |
| 11. | 2018009121 | 25. | 2017082231 |
| 13. | 2018010951 | 26. | 2018000561 |
| 15. | 2017078191 | 27. | 2018000731 |
| | | 28. | 2018000781 |

After further discussion by the Commission, Commissioner Wood made the motion to accept the recommendation of legal counsel to dismiss case 2018006481, seconded by Commissioner Franks. Motion passed unanimously.

After further discussion by the Commission, Commissioner Wood made the motion to accept the recommendation of legal counsel to dismiss case 2018006501, seconded by Commissioner Franks. Motion passed unanimously.

After further discussion by the Commission, Commissioner Wood made the motion to accept the recommendation of legal counsel to dismiss case 2017078171, seconded by Commissioner Franks. Motion passed unanimously.

After further discussion by the Commission, Commissioner Franks made the motion to accept the recommendation of legal counsel to dismiss case 2018008621, seconded by Commissioner Hills. Motion passed unanimously.

After further discussion by the Commission, Commissioner Taylor made the motion to accept the recommendation of legal counsel to dismiss case 2017079631, seconded by Commissioner Blume. Motion passed unanimously.

Kelsey J. Bridges

- 1. 2018008021**
Opened: 2/6/2018
Unlicensed
History: None

This is a referral from Consumer Affairs. In August 2015, Complainant listed sale of business with Respondent and in October, an offer was presented to Complainant. An agreement was made in that same month but closing went beyond letter of intent. Complainant was assured that earnest money was deposited and Complainant demanded the same. Complainant learned that Respondent had induced a buyer to form an entity to purchase business of Complainant. On advice of attorney, a mediated agreement was made with representative of Respondent, but Respondent violated agreement. A suit for fraudulent inducement was filed and set to be heard in April 2018.

Respondent states that Respondent was contacted in sale of business and all potential buyers were brought to Complainant. An offer was made and Complainant and attorney signed contracts for the sale. Respondent states that once a buyer and seller consummate a deal, Respondent does not participate. Respondent states there was no real estate involved.

No documents were provided and internet research shows that Respondent is a business broker. This was filed in January 2018 and the sale was in October 2015. More importantly, there was no real estate involved so there is no jurisdiction.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

- 2. 2018005991**
Opened: 1/26/2018
First Licensed Obtained: 3/24/2008
License Expiration: 3/23/2019
Type of License: Time Share Registration
History: None

Complainant is a timeshare owner and Respondent is a timeshare program. Complainant states Complainant has had issues with Respondent and has been attempting to address the same since August 2017 when Complainant requested the contract be cancelled and Complainant reimbursed. Complainant states the first purchase was in 2013 in another state. In October 2013, Complainant was in Tennessee and was told Complainant must attend an owners meeting. At that meeting Complainant stated Complainant told Respondent representative of issues with program but was convinced the only to fix was to purchase an upgrade. Complainant states at this meeting Complainant was urged to apply for credit card. The second upgrade occurred in 2014 in another state, again at an owner's update meeting. Complainant states Complainant took

previous representatives words at face value that initial ownership was made in error and that Complainant was guaranteed the dates and destinations Complainant desired. Complainant states on return home, Complainant attempted to cancel but was told time period for cancellation had ended. In August 2017, Complainant states Complainant was called at Complainant's home (in another state) and was asked why timeshare had not been used since 2014. After promises from representative for additional points, help in renting points, and a free cruise, Complainant again upgraded. Complainant states the cruise offered had an expiration date of 18 months not the 2 years representative told Complainant. Respondent representative wrote Complainant and stated that after review of the contract terms and documentations, Respondent found no grounds to warrant a cancellation but offered a financial hardship program. In that letter, Respondent representative also states that Respondent would review the complaint again if Complainant had more substantiation to support claim. Complainant replied to letter stating not interested in financial hardship program and that Complainant did not have hard evidence because Complainant had been stripped of all scratch paper upon leaving meetings.

Respondent states that on a visit to a property, guests might be invited to a sales presentation and usually receives a gift as an incentive. Guests are only obligated to attend sales presentation for designated period of time based on terms and conditions of agreement but that guest can then leave. Respondent states purchase options and terms vary from sales office to sales office depending on the laws and registration of the state involved. Respondent states that Complainant also has a membership in a Plus exchange program that offers variety in locations, seasons, length of stay and unit size. Respondent states that these members also can participate in a travel program which offers other benefits and that Complainant used options in a car rental in 2014 and 2015, and in 2016 for exchange deposits. Respondent described benefits of each program and states that contracts signed by Complainant had a statement of understanding, purchaser's summary, buyer's acknowledgment, ownership review, and quality assurance review. Respondent states there is no history of past complaints from Complainant and that when receiving the request to cancel contract in early September 2017, there were no grounds to merit the cancellation. Respondent states that in gesture of goodwill, Respondent agreed to cancel contract but not reinstate traded contract which would allow a loan debt relief to Complainant. Respondent did not agree to any refund.

Complainant's only purchase in Tennessee was in 2013. All subsequent purchases were in other states and Complainant does not live in Tennessee. Respondent's main place of business is not in Tennessee. It would appear that the 4 year statute of limitation has expired as this complaint was filed in January 2018 and that there is a question of jurisdiction as well on the subsequent purchases. Also, documents signed state that no representations written or oral outside of contract were relied on by Complainant, and no express or implied representation or warranty concerning accommodations or club properties, fitness for purpose, habitability etc. was made by seller.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

3. 2018005331
Opened: 1/25/2018
License: Unlicensed
History: None

Complainant is a licensee. Respondent is unlicensed but was an applicant at the time the complaint was filed. Respondent has since withdrawn the application.

Complainant alleged Respondent was holding themselves out as a broker without proper licensure and provided a screen shot showing Respondent's broker profile on the website of the principal broker with whom Respondent wished to affiliate. In Respondent's answer to the complaint, Respondent stated that they applied to become an affiliate broker in January 2018 and that while their application was pending Respondent began filling out paperwork with the principal broker. At the advice of the principal broker, Respondent filled out an order form for a website/broker profile so that Respondent could have the web address printed on Respondent's business card.

Respondent did not believe that the website would "go live" prior to becoming licensed, and was not aware that it had been published until receipt of the complaint. Respondent states that the publication was an unfortunate administrative error and that they did not assist any clients in any way. Respondent requested to withdraw their broker application on February 22, roughly three weeks after submitting their answer to the complaint.

The principal broker (Respondent in the below related matter) provided an answer to the related failure to supervise complaint which provides additional information regarding how the website/profile was posted. The principal broker confirmed that they advised Respondent to obtain a website address prior to ordering business cards. Respondent did not include any content to be posted on the website/profile on the order form. The form was given to the office administrator, who in turn forwarded it to "the appropriate departments at corporate headquarters." Neither Respondent nor the principal broker were aware that submitting the order form for marketing materials would result in the publishing of an online agent profile for Respondent. The website was "live" for a total of 15 days.

There is no indication that Respondent engaged in real estate practice in any meaningful way while Respondent's application was pending, and, as noted above, Respondent has since withdrawn their application. Respondent's statement, verified by the principal broker, that they only requested the website address in order to include it on their business card order form

appears to have merit. In light of these circumstances, Counsel recommends dismissal of this complaint.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

4. **2018005351**
 Opened: 1/25/2018
 First Licensed: 7/10/1995
 Expires: 1/6/2019
 Type of License: Principal Broker
 History: None

Respondent is the principal broker in the above-related matter. Respondent states that the applicant inquired about becoming an affiliate broker on January 2, 2018. Respondent offered to begin training the applicant but communicated that the applicant could not practice or advertise in any way until licensed. Respondent also explained to the applicant that they would need to know their professional contact information, including their website address, prior to ordering business cards. On January 10, the applicant submitted a website order form. The form shows the applicant did not provide any content for the website, because, according to Respondent, the applicant only wanted the website URL so that they could include it on their business card order form. Neither Respondent nor the applicant knew the website profile was active until receipt of the complaint. Respondent states that immediately upon receipt of the complaint Respondent contacted the office administrator to have the website taken down. Respondent provided email correspondence which shows the website became active on January 11, 2018, and was taken down on January 26, the same day they received notice of the complaint.

Counsel notes that Respondent cannot be sanctioned for failure to supervise as the statutory violation only applies to a principal broker's failure to supervise a licensee. Counsel recommends the Commission authorize a Letter of Instruction and/or Warning reminding the principal broker of their supervisory responsibilities under the Real Estate Broker License Act as well as Rule 1260-01-.04.

Recommendation: Letter of Instruction.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

5. **2018006731**
 Opened: 1/30/2018

First Licensed: 5/16/2002
Expires: 2/14/2020
Type of License: Affiliate Broker
History: None

Complainant states they have been under contract to sell their home since October 2017. Complainant received an email on January 24, 2018 to sign an amendment to lower the price. Complainant states they did not consent to a price reduction and did not sign any paperwork. On the 28th, Complainant saw the home on Zillow with the reduced price. Complainant was then told that their ex-spouse, who also owns the property, requested the price reduction. Complainant provided a copy of the unexecuted TR Amendment to the Listing Agreement.

Respondent states they spoke with the ex-spouse regarding a price reduction on January 11 and again on January 24. The ex-spouse directed Respondent and Respondent's co-agent to reduce the price on the home and the ex-spouse stated they would contact Complainant to discuss the change. Respondent provided text message records between Complainant and the ex-spouse that support this claim. Respondent states the January 24 email was delivered to Complainant at approximately 9 AM. The document was viewed by Complainant at roughly 1:45 PM. Complainant then texted the ex-spouse to object to the reduction and stated they would only agree if the ex-spouse would also agree to sell a separate jointly-owned property. Neither Complainant nor the ex-spouse communicated Complainant's objection to Respondent or Respondent's co-agent. According to the time stamps, at the same time Complainant's objections were received by the ex-spouse, the ex-spouse communicated via text to the co-listing agent that they were unable to open and sign the amendment but wanted to go ahead and authorize the price reduction. On January 29, the co-listing agent received an email from Complainant questioning the price change. The agent responded and explained the situation. Two hours later, Complainant signed and delivered the Amendment to Respondent.

Counsel believes Respondent's price reduction was premature and constitutes a violation under T.C.A. § 62-13-312(b)(7). Counsel notes that Complainant ultimately ratified the price reduction and as such it appears no direct harm resulted to any party. Counsel also notes Respondent has a long and clean history of licensure with the Commission. With these mitigating factors in mind, Counsel recommends the Commission authorize a Letter of Warning advising Respondent to obtain all parties' express permission prior to amending any terms to an agreement.

Recommendation: Letter of Warning or in the alternative a \$300 civil penalty for the violation of T.C.A. § 62-13-312(b)(7).

Decision: The Commission voted to authorize a consent order with a \$500 civil penalty and a four hour class in contracts to be completed within 180 days.

The Commission voted to issue a \$500 civil penalty and a course in contracts. The motion passed.

6. **2018006751**
Opened: 12/13/2017
First Licensed: 2/16/1994
Expires: 5/22/2019
Type of License: Principal Broker
History: None

Respondent is the principal broker in the above related matter. Respondent states there were other occasions where the ex-spouse would facilitate communications between the parties. Respondent and the co-listing agents were not made aware of Complainant's objection. Respondent states they were doing their best to accommodate the sellers who were sometimes at odds with each other and in this case neither Respondent nor the co-listing agents were made aware of Complainant's objection. Respondent notes that the complaint was filed the day after Complainant signed the Amendment.

Respondent adds they have been a long time continuing education instructor and states that they advise their affiliate brokers on contract best practices on a weekly basis. Respondent states they no longer sell properties and are exclusively dedicated to supervision, management, and teaching.

Counsel is concerned that Respondent is instructing courses and advising affiliate brokers on contract best classes when a party's failure to obtain all relevant parties' signature to a contract amendment is a direct violation of the Real Estate Broker License Act under T.C.A. § 62-13-312(b)(7). Counsel recommends the Commission consider requiring Respondent to attend a contracts course and/or be assessed a civil penalty for failing to adequately supervise a licensee.

Recommendation: Mandated education and/or a civil penalty in an amount no less than \$300 for failure to adequately supervise a licensee.

Decision: The Commission voted to authorize a consent order with a \$500 civil penalty and a Principal Broker Core class to be completed in 360 days.

The Commission voted to issue a \$500 civil penalty and a the Principal Broker Core class. The motion passed.

7. **2018007681**
Opened: 2/1/2018
First Licensed: 12/28/2017
Expires: 12/27/2019
Type of License: Affiliate Broker

History: None

Complainant submitted five complaints in succession against Respondent, an affiliate broker, and submitted the same five complaints against Respondent's principal broker in the matter below (ten complaints total). Each complaint is summarized as follows:

Complainant contracted to purchase a home. The sellers were represented by Respondent's firm.

#1 - Complainant alleges the respondents/broker team posted a sign in the yard of a property not listed for sale. Complainant provided a screen shot of an online posting for the property which states the property is "off market." It does not appear that this property is the property Complainant contracted to purchase.

#2 - Complainant alleges the affiliate broker posted personal and confidential information obtained from the parties' purchase contract on social media. Initially Complainant provided no further information; however later, as part of Complainant's rebuttal, Complainant provided a screen shot of the post at issue. It does not appear to mention any personal or confidential information or make any reference to Complainant by name.

#3 - Complainant states the principal broker represented the home sellers and Complainant was the home buyer. Complainant alleges the principal broker lied throughout the transaction. Complainant also alleges the principal broker advised Complainant's agent to advise Complainant to sue the principal broker's clients because they would not honor the terms of the parties' contract.

#4 - Complainant alleges the principal broker revealed to Complainant's attorney that all phone calls made to the principal broker's office are recorded. Complainant says this was never disclosed and is unethical.

#5 - Complainant states their attorney received a letter from the principal broker's attorney demanding Complainant remove unfounded claims made about the broker team from social media, as previously requested by the principal broker. Complainant does not deny making the posts on social media, but denies Respondent ever requested Complainant remove them.

Respondent in this matter—the affiliate broker— submitted a response to each complaint. As an initial matter, Respondent states they were not licensed at the time of the events described in the complaints and did not act as licensee until receiving their license some time later. Respondent provided numerous emails dated during the relevant period in which Respondent's signature includes the title "Operations Manager" and which show Respondent clearly assisting in administrative matters.

#1 - Respondent states they were not the listing agent on the property, but to their knowledge it is or was a bank-owned property. Respondent states that the banks require a sign to be in the yard to make the property easily identifiable. Respondent states they were only required to receive the owner's permission to post the sign; the property does not have to be active on the market.

#2 - Respondent states they worked as an unlicensed assistant on the transaction to which Complainant was a party. It appears the property referenced in the first complaint is not the same property Complainant contracted to purchase. At some point during Complainant's transaction, Respondent states Complainant posted a negative comment about the principal broker on Complainant's social media. Respondent thereafter posted the following, "Someone else's client was blaming [the principal broker] for things beyond [their] control." Respondent states they did not post any names, addresses, or other personal information; they only posted "the concessions [the principal broker] had made and concessions are a matter of public record." Respondent removed the post less than an hour later because they wanted to reach out to Complainant privately. Respondent emailed Complainant and requested they remove their social media post. When Complainant did not, the principal broker's attorney contacted Complainant to demand the same (see complaint # 5).

#3 - Respondent provided an email sent to Respondent and the principal broker from Complainant. In the email, Complainant stated the sellers were in breach of contract because they removed a freezer which was to be included in the sale per the terms of their agreement. Complainant also stated that their agent was informed by the principal broker that Complainant would have to sue the sellers for the freezer. The email concludes with Complainant stating they intend to take the principal broker's advice and sue if they do not receive the freezer within the next three days. Respondent replied to the email and requested Complainant not contact Respondent as they did not represent any parties to the transaction. Complainant replied to that email and threatened to reach out to all of Respondent's current listing clients with their negative feedback.

#4 - Respondent states it is not unlawful to record conversations as long as at least one party to the conversation is aware of the recording, and that this is a common business practice.

#5 - Respondent provided email records which show Respondent requested Complainant remove Complainant's social media post prior to the principal broker's attorney's demand.

Counsel recommends this matter be dismissed with regards to this respondent as the record supports Respondent's contention that they were not licensed at the time of the events described in the complaint and were not acting in the capacity of a licensee.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

8. 2018007711

Opened: 2/1/2018

First Licensed: 8/4/2005

Expires: 7/17/2019

Type of License: Principal Broker

History: 2010 Agreed Order- Failure to maintain E&O insurance; 2016 Consent Order, \$24,000 civil penalty and TREC attendance- paying or accepting, giving or charging any undisclosed commission, rebate compensation or profit or expenditures for a principal or in violation of this chapter, and improper, fraudulent, or dishonest dealing

Complainant's allegations are identical to those in Complaint # 2018007681. Respondent in this matter is the principal broker. Respondent's answer to each allegation is summarized as follows:

#1 - Respondent states they currently have a sign located on the subject property and that the property is in fact not listed for sale. Respondent states the property is a bank owned foreclosure that Respondent has in inventory. Respondent states they have a listing agreement which requires them to have a sign posted in the yard whenever the property is vacant.

#2 - Respondent states the affiliate broker (then an office manager) did not post anything personal or confidential from their social media account. The affiliate broker did post that the principal broker assisted Complainant by paying for the home warranty and repairs that the seller would not supply. Respondent states this was public information as they are required to list all concessions on the MLS listing upon closing. Counsel notes that in a rebuttal to Respondent's answer, Complainant provided screen shots of the posts in question. Respondent's statements are supported by the documentation.

#3 - Respondent states they did not lie at any point during the transaction. Respondent states they were upfront with Complainant's agent about the chances of Complainant getting early occupancy of the property, which was requested after they were bound to a contract which provided for a later closing date. Respondent adds that Complainant is upset because of a missing freezer which was meant to be left on the property per the terms of the purchase agreement. Respondent states the freezer was not on the property during the final walk through and Complainant raised no issues at that time.

#4 - Respondent states they legally record calls made to and from the office.

#5 - Respondent states they requested their lawyer send a letter to Complainant asking Complainant remove any untrue statements from their social media post after Complainant failed to respond to Respondent's request to meet and discuss the post(s) in person.

Respondent concludes by stating they feel they have done everything they could to fulfill their duties as a Realtor and the duties owed to their clients as well as Complainant, and reiterates that the affiliate broker (respondent above) was not acting as a licensee during the relevant period.

Counsel is inclined to recommend the Commission dismiss this matter but in light of Respondent's discipline history and the complicated nature of the complaint, Counsel would like to reserve making a formal recommendation until the matter has been presented to the Commission.

Recommendation: Dismissal.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

9. 2018012011
Opened: 2/22/2018
First Licensed: 10/20/2015
Expires: 10/19/2019
Type of License: Affiliate Broker
History: None

Complainant (anonymous) alleges Respondent has been offering non-licensed individuals referral fees on social media. Complainant provided documentation in the form of screen shots from her personal social media feed.

Respondent answered the complaint. Respondent states they read the complaint with their principal broker and they discussed Rule 1260-02-.33. Respondent admits to the rule violation and states they will not post any advertisements in the future prior to consulting with their principal broker. Respondent further states they have gone through and deleted any promotions they may have posted in the past.

Counsel recommends the Commission authorize a Letter of Instruction and/or Letter of Warning advising Respondent of T.C.A. § 62-13-302, which prohibits licensees from offering cash rebates, cash gifts, or cash prizes in conjunction with a real estate transaction and reminding Respondent that all advertisements must be done under the direct supervision of Respondent's principal broker.

Recommendation: Letter of Instruction/ Warning.

Decision: The Commission voted to authorize a consent order with a \$1000 civil penalty and to open a complaint against the principal broker.

The Commission voted to issue a \$1000 civil penalty and to open a complaint against the Principal Broker. The motion passed.

- 10. 2018012461**
Opened: 2/22/2018
First Licensed: 1/28/2008
Expires: 1/27/2020
Type of License: Affiliate Broker
History: None

Both Complainant and Respondent are licensees and Respondent is the majority owner of a firm where Complainant previously affiliated. Complainant alleges that Respondent failed to notify all brokers affiliated with their firm of the principal broker's termination. Respondent also alleges Respondent failed to appoint a new principal broker or otherwise communicate to the affiliate brokers who they could contact or who they would answer to. Respondent states that rather than appoint a new principal broker, Respondent assumed the role without the proper licensure. Complainant states that shortly after the former principal broker was terminated, they sent an email to all of the affiliate brokers addressing their termination and stating by law the firm had to have a principal broker at all times, therefore he would maintain that status until the firm found someone to replace him. The former principal broker stated they no longer had access to their office but would be available if any of the affiliates needed to contact him. Complainant states a few days later they contacted TREC staff and were informed that the terminated principal broker should sign Complainant's TREC Form 1. Complainant had the former principal broker sign the form, but also contacted another affiliate broker at Respondent's firm to inquire about the situation, just in case. Later that day, Complainant spoke with Respondent. Respondent stated to Complainant they disclosed the principal broker's termination via email, which Complainant states they never received. Complainant states that Respondent also stated the terminated principal broker had no authority to sign Complainant's form, and that Respondent would sign it. Complainant stated that was not allowed and says Respondent then hung up on them.

Respondent answered the complaint and stated that they never assumed the role of principal broker at their firm. Respondent first communicated the principal broker's termination via email to the administrative assistant's group mailing list. Respondent states they have since reviewed that group and made updates as needed.

Respondent also states they requested a broker from a "sister office" step in to fill the role of principal broker for Respondent's firm in the interim. Respondent states the former principal broker was terminated on February 17, 2018, and that Monday morning they met with a new broker and hired this person to act as principal broker for the firm. Respondent states the

following days they held a non-mandatory meeting where they announced to the agents the appointment of the new principal broker. Respondent states Complainant did not attend the meeting.

Respondent concludes by stating they never claimed to be the firm's principal broker and never acted in that manner.

Neither party in this matter provided any forms, emails, or other documentation in support of their respective claims; however, a review of TREC records shows a new principal broker was licensed with Respondent's firm on Tuesday, February 20, three days after the former principal broker was terminated. Respondent states that two brokers from the "sister office" filled in during the three-day interim period, but there is no documentation to support this.

Counsel reviewed the requirements of T.C.A. § 62-13-310 and Tenn. Comp. R. & Regs. 1260-02-.01 and 1260-02-.02 but is unsure as to the existence of any violations and would like to present this matter to the Commission for discussion.

Recommendation: Discuss.

Decision: The Commission voted to dismiss.

The Commission voted to dismiss. The motion passed.

11. 2018006121
Opened: 1/29/2018
First Licensed: 4/13/2005
Expires: 1/28/2019
Type of License: Real Estate Broker
History: None

Complainant and Respondent are licensees competing over the same listing. Neither party claims to have an agency agreement or exclusive listing agreement with the property owner. Complainant states that on January 28 they received an email advertising a listing which they and a co-agent had been "working on listing." Complainant states they met with the property owner and had agreed at their last meeting that they would meet and discuss the plans for listing the property after the owner received architectural plans for the project. Complainant inquired with owner about the January 28 email and states that the property owner explained he did not give Respondent written permission to advertise the property and that he was very upset.

Respondent states the property owner invited Respondent to meet with him on January 22. This was their second meeting after the project architect, a mutual friend, recommended Respondent to the property owner. Respondent discussed recent comparable sales with the property owner and stated they would love to see if there were any buyers interested in the property. Respondent further stated they would market and emphasize the [property] aspects to "gather intel" on prospective buyers. Respondent asked the owner if he was ready to sell and stated they would

like to see who might be interested; in response, Respondent states the property owner said, "Go for it, see what you can find out." Respondent states the owner also said he would be happy to meet Respondent and any potential buyer to view the property. Respondent added, "I felt 100% confident that the seller would honor my commission if I brought him a buyer, even if there was another realtor. He is an honest man and I knew we would work out the commission even though I did not have an exclusive right." Upon receipt of the complaint, Respondent states they contacted the owner, and the owner advised that Complainant is not his agent.

It appears neither licensee was an agent for the property owner and that Respondent violated no advertising rules. Counsel recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to defer until next month to obtain additional information from seller.

The Commission voted to defer until next month. The motion passed.

12. 2018006141
Opened: 1/29/2018
First Licensed: 4/13/2005
Expires: 1/28/2019
Type of License: Real Estate Broker
History: None

Respondent is the principal broker in the above related matter. Respondent does not believe the affiliate broker violated any advertising rules, specifically Rule 1260-02-.12(3)(d) and (e). Counsel agrees that it appears there were no violations of any advertising rules and does not perceive any indication that there was a failure to supervise; therefore, Counsel recommends the Commission dismiss this complaint.

Recommendation: Dismiss.

Decision: The Commission voted to defer until next month to obtain additional information from seller.

The Commission voted to defer until next month. The motion passed.

13. 2018010351
Opened: 2/16/2018
First Licensed: 9/8/2014
Expires: 9/7/2018
Type of License: Principal Broker
History: None

Complainant's sole issue is that when an individual views a listing on Respondent's firm's website, and clicks on the 'View Property' button/link, a popup window asks the individual if they are working with an agent. Complainant states this is unethical. The screenshot provided shows that when/if a customer indicates they are already represented, a follow up asks, "Are you open to switching to a Partner Agent?" and provides two options: "Yes, I'm open to switching to a Partner Agent to buy a home," or "No, I want to keep working with my current agent."

Respondent states that the only way to get to this popup is by selecting "Request Property Tour" on a listing. A popup window then appears and asks the individual for basic contact info and whether the individual is already working with an agent. If the customer selects "Yes" and indicates they are not willing to switch to a partner agent, the individual is redirected to another page which states the individual should contact their agent to schedule a tour. Immediately below this directive it states that Respondent's firm can only work with the individual if they are willing to be represented by one of their agents.

Recommendation: Dismiss.

Decision: The Commission voted to authorize a consent order with 4 hour course on agency to be completed within 180 days above and beyond what is required for licensees.

The Commission voted to authorize a consent order with a 4 hour course on agency. The motion passed.

Erica Smith

14. 2017078761
Opened: 12/8/2017
First Licensed: 06/30/1994
Expires: 6/29/2018
Type of License: Affiliate Broker
History: None

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.

The Commission voted to defer until next month. The motion passed.

15. 2017077801

Opened: 12/5/2017
First Licensed: 4/22/2016
Expires: 4/21/2020
Type of License: Affiliate Broker
History: None

Complainant is a licensee, specifically she was Respondent's principal broker during the time the transaction referred to in the complaint occurred. Complainant alleges Respondent participated in a closing where the buyer offered her a \$2,000 bonus. Complainant states the bonus was not added to the ALTA statement but the buyer wanted to pay the bonus so she emailed Complainant an invoice to pay the bonus as he requested. The following day, Respondent took the liberty of having her mother, who is not an attorney retained by the firm, invoice and collect the bonus separately. The next day, Complainant had Respondent come in before noon and released her from the firm. Complainant provided the complete file, copy of the paid invoice to a third party not hired by the firm, and a police report.

Respondent's attorney has notified Counsel that Respondent filed a civil suit against Complainant and her firm and the matter is still pending with the money at issue being held in Respondent's attorney's trust account until the Judge makes a ruling. The docket sheet from the civil court shows the complaint was filed with the court on or around February 16, 2018 and a docket call was held on March 14, 2018. As of April 30, 2018, the civil matter is still not resolved. Counsel requested that Respondent's attorney stay in contact with Counsel, especially when the matter is resolved.

Counsel feels this issue is one for the civil courts to handle and recommends putting this complaint in Litigation Monitoring status or dismissing it unless the honorable Commission finds Respondent committed or may have committed a violation.

Recommendation: Dismiss or put into Litigation Monitoring Status until civil case is resolved.

Decision: The Commission voted to put the matter into Litigation Monitoring Status until the civil case is resolved.

The Commission voted to accept Counsel's recommendation. The motion passed.

16. 2017080171
Opened: 12/15/2017
First Licensed: 9/24/2015
Expires: 9/23/2019
Type of License: Affiliate Broker
History: None

Complainant is a licensee and was the listing agent for a property that Respondent was interested in personally, not on behalf of a client or other party. Complainant alleges Respondent never disclosed that he was a licensee; that he was making an offer to purchase the property for himself for personal use; drafted and sent a very unprofessional and incorrect TAR Purchase and Sale

Agreement (“PSA”); and misled Complainant and the seller throughout the entire transaction which Respondent simply backed out of. The PSA Respondent drafted had many mistakes, including the following: 1) the seller’s name, the city and zip code were incorrect; 2) VA loan was marked when it was later discovered a hard money loan source would be used; 3) an addendum was referred to and claimed to be attached but no addendum was ever sent or attached; 4) “other” was marked but Respondent never explained what “other” meant; 5) the financing contingency was marked as waived but Respondent never gave a reason for this; 6) the real estate company’s name who Respondent wanted to give the earnest money to was misspelled and it turned out the company doesn’t even accept earnest money; and 7) as stated already, Respondent never disclosed that he was a licensee on the forms or provided a personal disclosure form.

After Complainant had the seller sign the documents, Complainant continuously had to ask Respondent when he would sign his portion of the offer, to which Respondent kept stating he was out of town with family and he would sign it when he had down time. However, Complainant states Respondent never expressed any hesitation or doubt regarding the purchase. Complainant and her client assumed they had a valid, agreed upon offer based on Respondent’s conversations with Complainant. On October 24, 2017, five days after Respondent made his first offer, he abruptly sent an email to Complainant stating “after going by the property we did not know it was occupied – we prefer properties that are already vacant – I’m sorry that is just the way I do things – I never like displacing a family from a home – I hope you get a great offer from someone else!” and simply walked out on the offer he had made. The family who was selling the home had already moved out and into a new home and the house had been vacant with no utilities on and with only a couple pieces of furniture, so Complainant does not understand Respondent’s assumption and reasoning.

Complainant alleges Respondent acted carelessly and abused his privilege of having a license to mislead a consumer into believing Respondent was going to purchase their home. Complainant contacted Respondent’s principal broker who Complainant states, “[...] was prompt to address the situation at hand.” The principal broker later sent an email to Complainant stating he spoke with Respondent and the firm attorney, and feels both Respondent and Complainant made mistakes in the transaction. The principal broker states Respondent made a mistake by failing to disclose he was a licensee upfront and he advised Respondent on how to handle a situation like this in the future. Additionally, the principal broker said Complainant made a mistake by accepting an unsigned offer from Respondent, and Respondent’s reason for not signing the offer was because he wanted to see the home first before locking himself into a contract. The principal broker advised Respondent to include a viewing contingency in the future if that is what he wants to do. The principal broker also noted Complainant countered the unsigned offer, and during the counter-period, Respondent decided not to move forward with the purchase. The principal broker stated that Complainant should never have advised her client to move without having a binding contract, not just an offer. In response to Complainant’s statement that legal action may be ensued, the principal broker stated he understood and it is Complainant’s prerogative, but as far as he can tell, there was never a contract in place, only an offer and a counter-offer.

Respondent confirms he made administrative errors on the TAR forms as stated by Complainant but states these errors were minor and unintentional. Respondent also confirms he did not

identify himself as an agent/buyer making the offer; however, Complainant clearly knew Respondent was an agent acting as the buyer when she filled out the counteroffer and put this information in the TAR form she sent to Respondent, where Respondent was listed on every page as the authorized agent. Additionally, Complainant is listed as the selling licensee on the last page of the counteroffer. Although Respondent admits to not formally acknowledging he was a licensee and buyer, it was obviously known and implied. Respondent states he never got the chance to send a personal interest TAR form but does not expand on that. Respondent states he was out of town with family which Complainant was well aware of and stated in her complaint and it should be known in the industry that not everything can be done away from the office. Respondent made it clear to Complainant that he would take care of signing the counteroffer if he accepted it when he returned to the office. Respondent feels Complainant should not have pressured her client into signing, countering, and making the client move out of the home over a weekend when there was no signed agreement or on an assumption there was a deal. Respondent notes when he went by the property and decided not to pursue the purchase, it was evident the home was very much occupied and feels Complainant said the seller moved out to pressure Respondent into signing the counteroffer.

Counsel finds clear evidence Respondent violated TCA §62-13-403(7)(A) which states a licensee must not engage in self-dealing without prior disclosure of the interest and timely written consent of all parties to the transaction and recommends assessing a civil penalty of \$1,000.

Recommendation: Consent Order assessing a \$1,000 civil penalty for violations of TCA §62-13-403(7)(A).

Decision: The Commission voted to authorize a Consent Order assessing a \$1,000 civil penalty for violations of TCA §62-13-403(7)(A) and take a 4 hour CE Contracts Writing Course above and beyond what is required for licensees within 180 days.

The Commission voted to authorize a consent order with a \$1,000 civil penalty and a 4 course on contracts. The motion passed.

17. 2017080201
Opened: 12/15/2017
First Licensed: 9/17/1996
Expires: 1/23/2020
Type of License: Principal Broker
History: None

Respondent is the principal broker for the affiliate broker in the complaint 2017080171 above. Respondent states he spoke with the affiliate broker regarding this situation and advised him how to handle this in the future. Respondent feels Complainant made a mistake by accepting an unsigned offer from the affiliate broker, and the affiliate broker's reason for not signing the offer was because he wanted to see the home first before locking himself into a contract. The Respondent advised affiliate broker to include a viewing contingency in the future if that is what he wants to do. The Respondent also noted Complainant countered the unsigned offer, and

during the counter-period, the affiliate broker decided not to move forward with the purchase. The Respondent stated that Complainant should never have advised her client to move without having a binding contract, not just an offer. In response to Complainant's statement that legal action may ensue, the Respondent stated he understood and it is Complainant's prerogative, but as far as he can tell, there was never a contract in place, only an offer and a counter-offer.

Counsel finds no evidence Respondent failed to supervise his affiliate broker in this situation because the affiliate broker was acting in his personal capacity for personal reasons, not in his capacity as an affiliate broker under Respondent or in the scope of his employment with Respondent's firm, and thus recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission voted to issue a Letter of Warning for failure to supervise.

The Commission voted to issue a letter of warning. The motion passed.

18. 2017080241
Opened: 12/15/2017
First Licensed: 10/24/2014
Expires: 10/23/2018
Type of License: Affiliate Broker
History: None

Complainant is the buyer and Respondent was Complainant's agent. Complainant bought a condo and felt misled by Respondent about the common drive lanes and traffic belonging to the adjacent apartment complex. Complainant states the owner of the building her condo is in also owns the adjacent apartment building and has retained a portion of Complainant's building for his and his tenants' convenience but Complainant does not explain this further. Complainant alleges Respondent failed to disclose the fact the owner/developer retained this property and states she would never have purchased it if she knew the property isn't a "whole, unified property." Complainant questions if this is a form of mortgage fraud. Complainant contacted the local Public Works Office (the "Office") and stated she takes issue with the following: 1) the adjacent building has an address that doesn't match the street name she feels the building is located on, as the entrance to the building is on another street; 2) there is constant traffic at Complainant's building from people trying to get to the other building from the street her building is located on and through her building's entrance; 3) an ambulance had pulled up one night at her building because she alleges that they thought they were at the adjacent building; and 4) people are jumping the fence, breaking the gate, etc. because of these problems and because they don't know how to behave. Complainant asks the Office what they can do about these issues and their response is that they cannot do anything because the property owner owns the property Complainant is complaining about, and advises Complainant that this is most likely a matter for civil court if anything because there are no issues that would cause the Office to take action.

Respondent states Complainant received and reviewed the development site plan prior to contract signing and move-in, and was also aware the road her unit is on is a public road with public guest parking in the front of her unit. Respondent is unclear as to what Complainant is complaining about regarding the services she provided to Complainant, but attempts to respond to the vague allegations and explain the roads surrounding the buildings. Respondent thinks Complainant is referring to the public road (“boulevard”) off the street her building is located on, which is also the street that she states the other building uses as an address. Both buildings’ parking areas are gated on either side of the boulevard. Apparently people are coming on the boulevard to get to the street and realize they have to go around to the other entrance which must be bothering Complainant. Respondent notes the only option to change traffic flow is to change the 100+ tenants’ mailing address that live in the other building and this is not feasible according to Respondent. Respondent states she never misled Complainant, acted professionally, fairly and in good faith regarding all communications with Complainant and the seller’s agent, and did not breach any duties owed to Complainant.

Counsel finds no evidence Respondent violated any statutes or rules and recommends dismissal, as this matter would best be handled in civil court if Complainant wants to pursue it further.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel’s recommendation.

The Commission voted to accept Counsel’s recommendation. The motion passed.

19. 2017080261

Opened: 12/15/2017

First Licensed: 2/11/2009

Expires: 5/6/2019

Type of License: Principal Broker

History: None

Respondent is the principal broker for the affiliate broker in the complaint 2017080241 above. Respondent represented the developer in this transaction and sold all 120 units in Complainant’s building. Respondent confirms the Complainant was well aware of the road structures and was given the development site plan well before entering into the contract and moving in, and notes Complainant even moved in 1 week before closing. Respondent believes the affiliate broker never misled Complainant, acted professionally, fairly and in good faith regarding all communications with Complainant and the seller’s agent, and did not breach any duties owed to Complainant. Respondent denies failing to supervise the affiliate broker in any way.

Counsel finds no evidence Respondent failed to supervise the affiliate broker and thus recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel’s recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

20. 2017082251
Opened: 12/15/2017
Unlicensed
History: None

Complainant is a licensee who chooses to remain anonymous and Respondent is a licensee in Kentucky since 1993, but Respondent is not licensed in Tennessee. Complainant wants to remain anonymous because she works for a firm who has dealt with Respondent in the past, and Respondent has recently contacted Complainant about Complainant's listings. Complainant alleges Respondent represented a buyer back in late 2014 who purchased land listed by Complainant's firm, and states Respondent was in and out of their office looking at other properties but only ended up closing on this one. Once Complainant's firm found out Respondent was not licensed in Tennessee just before closing, they switched the commission to a referral so they could pay Respondent even though he had been there doing the work. Recently, Respondent reached out to Complainant about properties Complainant currently has listed and when Complainant asked if Respondent had gotten a license in Tennessee, Complainant was told no. Respondent allegedly told Complainant he can just be paid a "full referral fee," as Respondent does many transactions in Tennessee each year and that is how Respondent is normally paid. Further, Complainant believes it is not legal to pay an agent for work done in Tennessee when they are only licensed in another state, and also believes it isn't legal for them to come to Tennessee and show properties here without a license in this state. Complainant alleges Respondent is doing this a lot, alleging Respondent rattled off 6-8 pieces of property Respondent bought for a very prominent business owner in Tennessee who will remain unnamed. Complainant did not provide any proof to support the allegations and since Complainant is anonymous, Counsel is unable to request more information.

Counsel looked at Respondent's Kentucky firm's website which states Respondent's main focus is commercial real estate, and specializes in commercial property development, land acquisitions, business development and expansion, and is adept in selling and leasing retail and industrial properties. Respondent's attorney responded on Respondent's behalf denying all allegations. Further, Respondent believes the Complainant is a licensee who filed an ethics complaint regarding the 2014 land transaction already with a Tennessee Association of Realtors® on January 21, 2015 and with the Kentucky Association of Realtors® on November 11, 2016, both which were provided to Counsel. These complaints were dismissed by both entities, with Respondent prevailing in arbitration and the licensee being awarded nothing from the Kentucky Association of Realtors®. Respondent also received compensation pursuant to a Commercial Referral Agreement Respondent and his firm entered into with a licensed firm in Tennessee. This Agreement states Respondent could refer potential clients to the firm regarding a Land Trust purchasing commercial land in 2014, as referenced above.

Due to lack of evidence and based on documentation provided by Respondent, Counsel finds no evidence Respondent violated any statutes or rules and recommends dismissal.

Recommendation: Dismiss.

Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

Mark Green

RE-PRESENTATION:

Presented in March 2018

21. **2017073221**
 Opened: 11/9/2017
 First Licensed: 7/18/1990
 Expires: 3/27/2019
 Type of License: Principal Broker
 History: 2000 \$1,000 CIVIL PENALTY

Complainant states that Respondent communicated with Complainant via an email account. Complainant states that Complainant was notified by assistant that email account had been compromised together with Respondent's Docusign account. Complainant states that Complainant was not notified before Complainant became the subject of an imposter email between Respondent and mortgage company. Complainant states Complainant was tricked into sending down payment to bogus account and Complainant lost the entire down payment.

This may or may not be a violation, but no response was filed so it is impossible to fully consider all of the issues.

Recommendation: \$1,000 civil penalty for violation of T.C.A. §62-13-313(a)(2) failure to respond.

Decision: The Commission accepted Counsel's recommendation.

UPDATE: As to the failure to respond - Respondent reports having moved out of state and that she submitted her change of address to the TREC office at the time the office was trying to send her the complaint to respond. TREC confirmed that update on address had been submitted but not updated at time the response was due. She has submitted a response at this point. Having read her response there does not appear to be an actionable violation under TREC statutes or rules. If anything, this appears to be a civil dispute and there is no evidence presented that shows the Respondent enticed the Complainant to wire funds to a title company using an imposter email.

New Recommendation: Dismiss.

New Decision: The Commission accepted Counsel's recommendation.

The Commission voted to accept Counsel's recommendation. The motion passed.

Meeting adjourned by Chairman Griess at 1 pm.