



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND
INSURANCE TENNESSEE REAL ESTATE
COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243
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<https://www.tn.gov/commerce/regboards/trec.html>

MINUTES

The Tennessee Real Estate Commission held a meeting September 09, 2020 at 8:30 a.m. CST via the WebEx meeting platform based at the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, TN 37243. The meeting was called to order by Chairman John Griess. Chairman Griess welcomed everyone to the Board meeting.

Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission Members were present: Chairman John Griess, Vice-Chair Marcia Franks, Commissioner Steven Guinn, Commissioner Joe Begley, Commissioner Jon Moffett, Commissioner Stacie Torbett, Commissioner DJ Farris, Commissioner Joan Smith, and Commissioner Geoffrey Diaz. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Associate General Counsel Anna D. Matlock, Chief Counsel Pam Spicer, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

Associate General Counsel Anna Matlock read the “Statement of Necessity” into the record.

Motion to approve the “Statement of Necessity” was made by Commissioner Guinn and seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

The September 09, 2020 board meeting agenda was submitted for approval.

Motion to approve the agenda as amended to include topic “TREC Meeting Preparation” to Commission Discussion was made by Commissioner Smith and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

Minutes for the August 12, 2020 board meeting were submitted for approval.

Motion to approve the August 12, 2020 minutes was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed 8-1 with Commissioner Smith abstaining from the vote.

INFORMAL APPEARANCE

Anthony Willoughby was to appear before the commission, but was not in attendance for the appearance.

REINSTATEMENT WAIVER REQUEST

Director Maxwell presented Grant Hessman to the commission for waiver.

Motion to deny the waiver request was made by Commissioner Guinn and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

Director Maxwell presented Pamela Robinson to the commission for waiver.

Motion to deny waiver request was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

EDUCATION REPORT

Education Director Ross White presented the education report to the Commission.

Motion to approve courses S1-S29 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

Education Director Ross White presented instructor biographies to the Commission.

Motion to approve instructors was made by Commissioner Diaz and seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on licensing & complaint numbers. She also informed them on the below topics.

- **PSI:** TREC is now receiving weekly updates from PSI regarding opened facilities, and the number of appointments opened.

- **KENTUCKY RECIPROCAL AGREEMENT:** Director Maxwell advised that work is still in progress and will be presented to the commission once it's completed to show our required laws and rules.
- **REMOTE CLASSROOM COURSES:** Executive Director discussed with the commission that classes are approved through 12/31/2020. More discussion is taking place with legal and Department heads to determine if a rule or law change is necessary.
- **OCTOBER MEETING:** Associate General Counsel Matlock clarified the Governor's Executive Order in effect through October 2020. Commission discussed further and a motion was made by Commission Diaz, that the October meeting would be held remotely, seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

COMMISSION DISCUSSION:

- **Monthly Meeting:** Vice-Chair Franks advised each board member the importance of reading the monthly meeting documents, and engage any discussion to render duties more efficiently.

CONSENT AGENDA:

The following cases were presented to the Commission via a Consent Agenda. All cases were reviewed by legal, legal has recommended either dismissal or discipline.

A motion to accept counsel's recommendation for cases 1-70 with exception of the following cases which were pulled for further discussion: 2020031571, 2020031581, 2020039431, 2020036311, 2020029541, 2020029571, 2020039331, 2020032241, 202004191, 2020041031, 2020041051, 2020041061, 2020041411, 2020046491, 2020030081, 2020038711, 20180\3421, 2019096241, 2017010661, 2018011111 was made by Vice-Chair Franks, and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion **The Commission elected to issue a \$3,000.00 civil penalty and require Respondent to attend the Principal Broker Core class course within 180 days of the execution of the Consent Order that will not count toward regular Continuing Education required for licensure.** On complaint 2020031571, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion **The Commission elected to issue a \$1,000.00 civil penalty for failure to supervise and to require the Principal Broker Core class within 180 days of the execution of the Consent Order.** On complaint 2020031581, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Commissioner Diaz made the motion **The Commission elected to issue a \$1,000.00 civil penalty for failure to exercise reasonable skill and care.** on complaint 2020039431, seconded by Commissioner Torbett. Motion passed 8-1 with Commissioner Guinn voting no.

After further discussion by the Commission, Commissioner Smith made the motion **to issue a \$1,000.00 civil penalty for the Unauthorized Practice of Law** on complaint 202003631. The motion was seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation** on complaint 2020029541, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion **to issue a civil penalty in the amount of \$5,000.00 and to require that Respondent complete the Principal Broker Core class within 180 days of the execution of the Consent Order. The Class will be over and above the CE required for licensure.** On complaint 2020029571, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion **to accept counsel's recommendation of the \$3,000.00 civil penalty and also to suspend the Respondent's license for six months.** On complaint 2020039331, seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice -Chair Franks made the motion to **issue a \$2,000.00 civil penalty for unlicensed activity** on complaint 2020032241, seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation** on complaint 2020040191, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation** on complaint 2020041031, seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation** on complaint 2020041051, seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's**

recommendation on complaint 2020041061, seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation of a \$2,000.00 civil penalty but to also include a flag on Respondent's license to appear requiring that Respondent personally appear before the Commission prior to re-activating license out of "retirement" status** on complaint 2020041411, seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation of \$3,000.00 civil penalty and to include the requirement that Respondent attend the Principal Broker Core class within 180 days of the execution of the Consent Order and that the class not be counted toward yearly CE requirements** on complaint 2020046491, seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Commissioner Diaz made the motion to **accept counsel's recommendation** on complaint 2020030081, seconded by Commissioner Vice-Chair Franks. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **issue a One thousand dollar (\$1,000.00) civil penalty for unlicensed activity** on complaint 2020038711, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **summarily suspend the Respondent** on complaint 2018073421, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote

After further discussion by the Commission, Vice-Chair Franks made the motion to **accepted counsel's recommendation** on complaint 2019096241, seconded by Commissioner Diaz. Mon passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **accept counsel's recommendation** on complaint 2017010661, seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission, Vice-Chair Franks made the motion to **defer this matter to the next meeting to allow counsel enough time to get more information regarding the ownership of the properties** on complaint 2018011111, seconded by Commissioner Diaz. Motion passed unanimously.

1. **2020031571**
Opened: 5/4/2020
First Licensed: 9/9/2019
Expires: 12/16/2021
Type of License: Principal Broker

History: None

The Complainant is a Tennessee resident and the Respondent is an Arizona resident and a licensed Tennessee Principal Broker.

The Complainant drove by a home and saw a sign stating “Fixer Upper Worth \$300K. Price \$125K 392-1593.” The Complainant contacted the Respondent and asked about the property. The Respondent indicated the signs are put in front of new properties, but the sign is not placed in front of an actual property. The sign does not indicate a brokerage name or phone number. The Complainant indicated the sign was misleading and it appeared to advertise a specific property and price, but the property does not actually exist.

There are violations of TENN. COMP. R. & REGS. 1260-02-.12(3)(a) states No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business, TENN. COMP. R. & REGS. 1260-02-.12(3)(b) states “All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of a licensee or the name of any team, group or similar entity;

The Respondent failed to provide a response pursuant to Tenn. Code Ann. § 62-13-313(2).

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$1,000 for the above specified violation.

Decision: The Commission elected to issue a \$3,000.00 civil penalty and require Respondent to attend the Principal Broker Core class course within 180 days of the execution of the Consent Order that will not count toward regular Continuing Education required for licensure.

- 2. **2020031581**
Opened: 5/4/2020
First Licensed: 11/16/2006
Expires: 3/8/2021
Type of License: Principal Broker
History: None

This complaint was administratively opened by the Tennessee Real Estate Commission against the Respondent. The Respondent is a licensed Tennessee Principal Broker. This complaint was opened against the Respondent for failing to supervise an Affiliate Broker.

The Respondent provided a response and stated the Affiliate Broker was acting solely with the Affiliate’s Broker own property rental business and the Respondent allows the Affiliate to work in the Affiliate Broker’s side business. This had nothing to do with the Principal Broker or the Real Estate firm. The Respondent rents private homes for private individuals and the Respondent is not involved in any of the transactions and does not receive any kind

of compensation from the homeowners or the renters. The Respondent indicated the tenant in one of the properties did not want to pay a higher rent at the time and the homeowner requested the Affiliate Broker assist in eviction proceedings. Once the tenant moved, the homeowner was upset the home had not been rented and no income was being generated.

Recommendation: Close.

Decision: The Commission elected to issue a \$1,000.00 civil penalty for failure to supervise and to require the Principal Broker Core class within 180 days of the execution of the Consent Order.

3. **2020029281**
Opened: 5/4/2020
First Licensed: 1/14/2014
Expires: 1/13/2022
Type of License: Real Estate Firm
History: None

The Complainant is a Tennessee resident and homebuyer. The Respondent is a licensed Tennessee real estate firm.

The Complainant entered into an agreement with the Respondent to purchase a newly constructed home in the subdivision being developed by the Respondent. The Complainant noticed there were several construction issues and contacted the necessary individuals to express the Complainant's concerns. During the final walk through in October 2019, there were numerous issues that were not addressed, including the light fixtures not being centered in the rooms, a broken window that was not repaired for months, uneven door frame heights throughout the home, poor carpet installation, poor tile work, bows in walls, poorly constructed wall treatments, driveway material issues and other exterior issues. This resulted in the Complainant documenting two pages of items and a follow-up meeting. The following week, the work needed had not been begun by the Respondent. The Respondent wanted the Complainant to move forward with the closing date when the issues had not been addressed. The Complainant did not want to set the closing date and believed that if the issues were not addressed prior to closing, the Respondent would not address them later. The Complainant knew that there were others that had opted out of the contract at this juncture because of construction issues and had received the return of the full deposit from the Respondent. The issues were not addressed by the Respondent for several months and the Complainant decided not to move forward with the closing because of the poor-quality construction and lack of attention to detail in a \$430,000 home. The Complainant has contacted the Respondent's President directly and worked through the Better Business Bureau for the past several months to obtain the return of the deposit monies from the Respondent. The Respondent still refuses to return the \$7,500 deposit monies because the Complainant's refused to set a closing date. The closing was not contingent on any financial terms.

The Respondent provided a response and stated many if the items brought to the Respondent's attention are completed during the final walk through process and are on the final punch list phase. The Respondent stated the Complainant failed to obtain the final non-contingency financing. Also, the bank confirmed that the financing was contingent upon the sale or lease of the Complainant's current residence. The contract with the Respondent was non-contingent financing contract. The Respondent discovered a few days before the closing scheduled for October 18, 2019 there was a financing contingency and the Complainant was in default of the contract with the Respondent. This is a contractual dispute between the parties.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

4. **2020030281**
Opened: 5/4/2020
First Licensed: 7/3/2014
Expires: 7/2/2020
Type of License: Real Estate Firm
History: None

The Complainant is a North Carolina resident and the Respondent is a Tennessee licensed real estate firm.

The Complainant wanted to purchase a piece of land and wanted to build a home on the land. The Complainant was told that there were three septic systems and three water wells already on the property. The Complainant contacted the Tennessee Department of Environment and Conservation and payed \$200 for a septic permit. The Respondent later stated there was no septic system. The Complainant then had a soil test done and paid \$525. The soil test indicated there is no place on the entire property suitable for a septic system. The property has no value to the Complainant because a septic system cannot be installed.

The Respondent provided a response and provided the property disclosure signed by the Power of Attorney. Although the property owner and her sister, the POA do not live on the property, the property owner told the POA the property had three wells and three septic tanks. There are two houses that were built in the 1940s that are rundown, and the county does not keep records of sewage disposal systems from that date. The Respondent did attempt to find out about the sewage disposal system and provided the information retrieved from the county and the year the houses were built.

The Respondent relied on the information provided by the Seller and the POA and stated same in the comments in the MLS "Seller says there are three septic tanks and three wells." Also, the Complainant signed the property condition disclosure during the time the offer

was made. The contract was contingent upon a building permit, permit for sanitary septic disposal system and Well Test. The Complainant wanted to make sure a septic system could be installed and decided to do a perc test to make sure the property would perc in the location where the home would be built. In fact, an Amendment to the Purchase and Sale Agreement was submitted to extend the inspection period, so the Complainant could have a perc test conducted. The Respondent also immediately changed the comments on the MLS to remove the comment concerning the three septic tanks and three wells. At this point, the Complainant was fully aware there was not any kind of septic system or wells on the property and chose to go ahead and expend monies to have a soil scientist do a soil test. Also, the soil scientist did indicate there was one area of the property that was not tested for a septic system. There may have been an area on the property that would perk, however, it may have not been the desired building site.

There is no violation of the Tennessee Real Estate Broker License Act of 1973 (Tenn. Code Ann. § §§ 62-13- 101 et seq.).

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

5. 2020035791

Opened: 05/08/2020

First Licensed: 4/9/2012

Expires: 4/8/2022

Type of License: Real Estate Firm

History: 2018 Letter of Warning for refusing to return a payment

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed real estate firm.

The Complainant purchased a new home from the Respondent in July 2018 and reported to the Respondent there were significant issues with the concrete driveway prior to the completion of the purchase. The Respondent also installed a different furnace model, which was an inferior model. The Complainant was charged for the better furnace unit and did not receive it. The Respondent refused to remedy the safety violations and defective workmanship related to the product and the repeated requests by the Complainant or the warranty service.

The Complainant had issues with the following:

- Incorrect HVAC system was installed. An inferior system was improperly and unsafely installed. The HVAC is non-code complainant and has very little to no heat or cooling on the northern side of the building. The entry risers are non-compliant with the riser code.
- Cracks in the concrete that were caused by inadequately missing the concrete in addition to the poor workmanship. The Respondent has refused to honor the warranty

obligations related to the concrete repair/reconstruction.

- Defective cabinets were installed. The new cabinets have cracked.
- There is defective masonry work. The bricks and stones have popped out or fallen off the exterior and interior of the fireplace.
- Improper drainage on the property. The water pools in certain areas and there is standing water for excessive periods of time.
- Floor plan was altered without the approval of the Complainant and the Complainant was not provided a refund of those items that were changed or altered.

The Respondent provided a response and stated the Complainant has made duplicate complaints with the Board of Contractors and the Tennessee Real Estate Commission.

The Respondent stated the Complainant has made 54 warranty claims to the Respondent and each claim has been answered by the warranty team. Some of the claims were warrantable and required action and others were not warrantable. The Respondent responded to 100% of the claims and provided a response to the Complainant. The Complainant has also filed a lawsuit against the Respondent and has made the same allegations in the pending litigation. The Respondent provided all contract documents, warranty contract and the answer to the lawsuit filed against the Respondent.

This complaint was properly filed with the Tennessee Board for Licensing Contractors. The allegations do not indicate any violations of the Tennessee Real Estate Broker License Act of 1973 (Tenn. Code Ann. § §§ 62-13- 101 et seq.)

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

6. **2020033201**
Opened: 5/12/2020
First Licensed: 4/12/2016
Expires: 4/11/2020 – Expired Grace
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant went to view a property listed for sale and there was a potential buyer, pest control person and a technician from the local telephone company at the property. There was one individual on the roof of the home and one of the potential buyers was in the home. The key box was open and the key to the house was laying on the bench next to the door. The potential buyer's agent was not on the premises and the potential buyers were having the property sprayed for bees. The telephone technician was also at the property at the request of the potential buyers and the Complainant later learned Internet

services were being installed. The potential buyers were also cleaning the home. The Complainant alleges the potential buyers did not have permission to be on the premises of the home from the Complainant. The Complainant contacted the Complainant's agent and discovered the potential buyers had not contacted the Respondent to obtain permission to access the property. The Complainant alleges no individual was notified or contacted by the potential buyers to access the property. Another affiliate broker had provided the access code to the key box to the potential buyers. The Complainant also alleges the Respondent may have or will in the future provide other potential buyers access to the home by providing the key access code.

The Respondent provided a response and the potential buyers stated the inspection company gave them the access code and allowed the potential buyer to enter the premises. The Respondent did not provide access or authorization for the potential buyers to enter the premises. In this instance, one person owns the home and there is another authorized representative that was directing and handling the sale of the property. Also, the Respondent indicated the potential buyers obtained full permission from the owner(s) to complete the repairs prior to closing and the Buyers offered to help the Sellers move their items from the home. The affiliate broker indicated the Complainant wanted the help because the Complainant could not move items from the home. Also, other family members were coming to the home to pick-up items left in the will. The pest control technician was supposed to call the real estate firm's office, but instead just showed up and treated the exterior of the home. This individual was the same person the Complainant hired to perform the inspection.

The Complainant stated her husband did provide permission to the potential buyers to come assist and help them move personal property out of the home and would bring other members of their family to help assist. Due to the weather, the Complainant and the potential buyers were unable to remove everything from the home. There were some items left in the home that belonged to other individuals. The Complainant's husband also gave permission to have the repairs made earlier in the week and to allow the potential buyers to make the repairs, but the Complainant alleges permission was not given to access the inside of the home. The repairs in question were all outside of the home. According to the Complainant, the main issue was the potential buyers gained access to the inside of the home without permission and the key was removed from the lockbox without the Buyer's broker being on the premises.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

7. **2020026791**
Opened: 5/12/2020
First Licensed: 9/29/2009
Expires: 9/28/2021
Type of License: Real Estate Firm
History: None

Complainant is a Tennessee resident and purchaser of a time share from the Respondent. The Respondent is a Tennessee licensed real estate firm.

The Complainant purchased a timeshare on February 2019 and in May 2019, the Complainant's family started to experience serious health problems. The Complainant's husband had to have open heart surgery to replace his aortic heart valve and three bypasses. As a result, the Complainant has been unable to travel. The Complainant contacted the Respondent and were told the mortgage would have to be paid in full (\$9,000) in order to obtain assistance with the cancellation of the timeshare. The Complainants obtained a personal loan and paid off the mortgage on the timeshare. The Complainant again contacted the Respondent and was told there was nothing the Respondent could do to help the Complainant. The Complainant alleges the Respondent made misrepresentations to the Complainants. The Complainant also reviewed the contract with the Respondent and found the closing date was before the cancellation period and this was a breach of contract under Florida law. The Respondent stated the contract was not signed in Florida and this was not applicable. The Complainant would like a full refund and states they are on the verge of losing their home and they are over 70 years old.

The Respondent provided a response and stated the Complainant purchased a pre-paid vacation package to allow the Complainants to experience timeshare ownership on a trial basis in 2017. Later, the Complainants entered a separate transaction in February 2019 and purchased an annual timeshare interest. In December 6, 2019, the Complainant contacted the Respondent to request contractual relief and a full refund. The Respondent denied the request on the basis that (1) the rescission period had expired, (2) the documentation provided to the Owner at the time of the purchase is in order, executed and acknowledged by the Owner, and (3) the Owner received accurate information and all disclosures required concerning the terms and conditions of ownership. The Respondent also provided specific definitions of closing date for the purposes of the Florida statutes. Also, the documents specifically state the closing will not take place until the expiration of the Purchaser's cancellation period. The closing transpired in November 2019, after the Owner remitted full payment of the mortgage obligations, which date is well after the expiration of the rescission period. The Complainant was afforded the rescission period to rescind the contract but failed to do so within the statutory timeframe. The Complainant also contacted the Respondent in April 2019 about paying off the account and had requested payoff information. The Respondent does not offer resale services, but upon repayment of the mortgage the Company does offer Owners the ability to surrender ownership via warranty deed through a program. The Complainant was not interested in surrendering through warranty deed and there is no record of the Complainant selecting to surrender through the program or being denied surrender. Since the Complainant has fulfilled all mortgage obligations associated with ownership and is current on maintenance obligations, the Complainant is still eligible to surrender Ownership to the Respondent without a refund.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

8. **2020029031**
Opened: 5/12/2020
First Licensed: 10/14/1997
Expires: 4/11/2021
Type of License: Real Estate Firm
History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed real estate firm.

The Complainant alleges the Respondent failed to provide the duties owed to all parties in January 2019. The Respondent was made aware of pending divorce proceedings between the property owners and neglected to discontinue a relationship due to a conflict of interest. The Complainant also alleges the Respondent failed to exercise reasonable skill and care and the February 2019 and July 2019 rental payments were received by the property manager and erroneously direct deposited into the wrong account, not recovered and not corrected. The Complainant also alleges the property manager caused overdraft fees three times to the Complainant by trying to reverse payments made to the wrong account. The Respondent failed to provide the duties owed to the Complainant by removing the access to the owner portal for the properties owned by the Complainant in December 2019 and refused to provide access to the Complainant of relevant property information in the possession of the Respondent. The Respondent also renewed a tenant lease without the Complainant's consent and did not provide the Complainant an opportunity to negotiate any terms including the rental amount and commission rate. The Respondent failed to follow the instruction of the client and issue a thirty (30) day notice to vacate as was communicated verbally by the Complainant to the Respondent on January 9, 2020. The Respondent also failed to obey the instruction of the Complainant on January 29, 2020 when the Complainant instructed the Respondent to hold all prior and future gross receipts in a trust account. The Respondent failed to provide the Complainant with the inspection reports and damage reports needed to list the unit for sale. The Respondent also failed to respond to e-mail inquiries and requests from the Complainant and failed to provide the summary of income and expenses for the Complainant for 2019 on two occasions. The Respondent also failed to disburse the security deposit of the current tenants following the request made by the Complainant to the Respondent on January 29, 2020. Also, the Respondent failed to provide the balance details for the Complainant's escrow accounts, prepaid rent and security deposit. Also, the remaining funds were not disbursed to the Complainant. The Respondent failed to disburse earnest monies to the Complainant within the twenty-one (21) calendar days as required and failed to disburse the trust money in a proper manner following the January 29, 2020 request by the Complainant. The Respondent also failed to correct the erroneous amounts that were reported to the IRS on 1099 MISC income tax forms for both 2018 and 2019. The Complainant made the request multiple times by e-mail on April 15, 2020. The Respondent refused to stop managing property or voluntarily end the property management relationship following a phone conversation with the Complainant.

Respondent provided a response and stated it acquired the property management in January 2016 when they purchased another property management company. The current tenants have been leasing the property since December 2016. The Respondent received the Complainant's divorce decree in January 2020. The Respondent was not aware in January 2019, the Complainant owners were involved in divorce proceedings. In January 2019, one of the owners changed the bank account info to redirect rent proceeds to another account. The other owner later changed it to a different bank account. Since both were owners of the property, the Respondent did not question the changes and had no knowledge of the pending divorce proceedings. The Respondent does not have control over owner portals and the owners set up the portals themselves. The Respondent cannot lockout a property owner from the online portal. The lease for the property was renewed on April 1, 2020 by one of the property owners who provided the divorce decree wherein it stated the other property owner was responsible for the property.

The Respondent requested the Complainant property owner produce legal documents stating the property needed to be sold because the Respondent had a copy of the divorce decree and there was no reference or mention of selling the property. The Respondent also checked with the other property owner who instructed the Respondent not to provide a thirty (30) day notice to the tenants and to allow them to renew the lease. The other owner was solely responsible for paying the mortgage on the property. The Respondent was also advised by their attorney not to take the action given by the Complainant, since the divorce decree deemed the Complainant's ex-husband responsible for the property.

The Respondent did not owe a duty to the Complainant or breach any duty owed to the Complainant.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

9. 2020030141
Opened: 5/18/2020
First Licensed: 7/20/2009
Expires: 7/19/2021
Type of License: Affiliate Broker
History: None

The Complainants are Tennessee residents and the Respondent is a licensed Tennessee Affiliate Broker and Seller of the Property.

The Complainants went to view a home shortly after it had been listed for sale. The Complainants were advised by the Broker, the Sellers of the home had built a home next to the home on the 36 acres of land. Five (5) acres of the 26 acres would be sold with the home listed for sale. The Complainants made a full price offer with a Fannie Mae loan and requested three percent (3%) closing costs and a one-year warranty on April 18, 2020. The offer was to expire on April 20, 2020 at 2 pm. The Complainants' agent advised on April

19, 2020, the offer is clean and clear and should not be changed. The next morning the Complainants' broker advised the buyers, the owner sellers would respond by 6 pm because the owner sellers had promised another agent last week the opportunity to submit an offer. The owner sellers indicated to the Complainants' agent the offer was very good and there would be no need to change anything, however, the seller wanted to give the other party an opportunity to submit the offer because the other buyers were finalizing financing. The Complainants advised the broker the offer expired at 2 pm and would like a response to the offer submitted by the deadline. The Complainants later received a call from their broker at 3:40 pm, who stated the sellers had decided to go with the other buyers offer. The Complainants stated the buyer of the property was a neighbor or someone the sellers knew personally. The sellers were giving the buyers the time to get their financing straight and was going to go with the buyers offer. The Complainants' broker indicated the sellers would accept the Complainants offer as a back-up offer in case the deal did not work out. The Complainants believe the seller discriminated against them since meeting our family.

The Respondent provided a response and stated the Respondent received a second offer from another showing and they determined it was a better offer because it was a conventional loan, the buyers were going to pay their own closing cost and there was no request for a home warranty. The Respondent did not hide the fact there was a second offer to purchase the property. The Complainants had the opportunity to amend their offer and did not. Also, the Sellers did not have a duty to counteroffer either.

The allegations do not indicate any violations of the Tennessee Real Estate Broker License Act of 1973 (Tenn. Code Ann. § §§ 62-13- 101 et seq.) or any of the Rules and Regulations of the Tennessee Real Estate Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

10. 2020027021
Opened: 5/18/2020
First Licensed: 1/18/1978
Expires: 4/5/2021
Type of License: Principal Broker
History: None

The Complainant is a Tennessee resident and the Respondent is Tennessee licensed Principal Broker for the Complainant. The Complainant alleges the Principal Broker shared very confidential data and personal subjects, including an impending divorce and stated the Complainant owned the home with the Complainant's in-laws when showing the home to prospective buyers. The Complainant alleges the Principal Broker disclosed confidential information, which was false, inaccurate, and disturbing to the Complainant.

The Respondent provided a response and stated it is a fact the Complainant is a 25% owner in the property. The Complainant shares 50% of the ownership with her husband and the other 50% is owned by the Complainant's in-laws. The Complainant would like to void the Buyers' Listing Agreement, but the other three owners will not agree and are pleased with the representation being provided by the Respondent. The Complainant wants to transfer the listing to a friend for a lower commission rate of 4%. The Complainant was not forced into listing the home with the Respondent and agreed with the other owners to list the home with the Respondent. Also, any allegations and accusations by the Complainant concerning doors not being properly locked by the Respondent are false. The Respondent stated no outside doors have ever been unlocked or left open. Also, it was not the fault of the Respondent that one of the Complainant's cats urinated on an expensive carpet. The three litter boxes were placed in the half bath during the showing and not on a carpet in the bedroom.

The allegations do not indicate any violations of the Tennessee Real Estate Broker License Act of 1973 (Tenn. Code Ann. § §§ 62-13- 101 et seq.) or any of the Rules and Regulations of the Tennessee Real Estate Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

- 11. 2020030681**
Opened: 5/18/2020
First Licensed: 7/30/2002
Expires: 12/6/2021
Type of License: Principal Broker
History: None

The Complainant is a Tennessee resident and Buyer of the property in question and the Respondent is a Tennessee licensed Principal Broker and representing the Seller of the property.

The Complainant put an offer on a home in early March and within 24 hours the offer was accepted. The loan process had been completed and the new home was placed in escrow. The following day, the Complainant was told by a coworker that the road in front of the home the Complainant was purchasing was being widened. The following day, the Complainant decided to cancel the offer. Later, the broker advised the Complainant that the street in front of the home would not be widened and provided information about why the widening would not occur. As a result, the Complainant decided to put another offer on the home. There was another offer pending and the broker suggested the Complainant submit another best and final offer and the Complainant increased the offer amount by \$35,000 because the Complainant had been outbid two times. The Seller counteroffered and wanted a waiver of any repairs and an owner occupancy agreement for one week after the closing and using the Seller's preferred lender. The Complainant had already obtained

an approved high balance non-conforming loan, which was already accepted in the first transaction. The Complainant was selling a home in California and was putting a substantial down payment on the home. The Complainant accepted the counteroffer because the Complainant really wanted to purchase the home. The Respondent indicated to the Complainant that it was preferred to use a local lender rather than an out-of-state lender and the proposal was to use the recommended lender by the Seller. In fact, the Respondent recommended three lenders with excellent track records. The Complainant did become friendly with the Sellers and the Sellers indicated they did not require the use of a local lender and had no idea why that was included in the counteroffer and had no relationship with the local lender and suggested it must be something that was done by the Respondent.

The Respondent provided a response and stated after the contract was made the Complainant indicates the loan was finalized within 24 hours, however, this is not possible since because no notification was sent to him, his agent or lender concerning the offer and there was no appraisal performed. The Respondent stated the Complainant cancelled the contract four days later and stated the reason for termination was “. . . zoning for PUD to build on either side of the home as well as expansion of the road in front of the home to four lanes from two which would directly affect the privacy, noise and peace of mind of the residents. Garage conflicts with being able to put in a pool as initially perceived. Later found master bedroom could not be obtained on ground floor.” The Respondent spoke with the Complainant’s agent and the agent indicated this was the third or fourth contract the Complainant had backed out of using various excuses and, the agent indicated he did not have confidence in his lender. The Respondent investigated the street widening issue and found there were no plans to widen the street in front of the home. The Respondent found out from various contacts with city planning there were no plans to widen the road. The Respondent later received a call from the Complainant’s agent indicating the Complainant wanted to purchase the home and welcome another offer. The Respondent did advise the Complainant’s agent there was another offer pending and did not provide any details of the second offer or request the Complainant make their highest and best offer. The next day the Respondent received a substantially higher offer than the first offer from Complainant. Since the Seller was concerned about the Complainant cancelling the contract, the Respondent discussed both the contingencies and the concerns with using the out-of-state lender. The Seller asked to remove some of the contingencies and the use of the out-of-state lender. The counteroffer was sent to the Complainant and it was accepted by the Complainant. Following the closing, the Respondent learned the Complainant was not happy with the purchase of the home because the Complainant demolished the main floor of the house prior to the appraiser coming to inspect for the Home Equity Line of Credit (HELOC) and was unable to get the loan to pay for the renovations from both the local and out-of-state lender was because an appraisal was required and both requests for the loan were denied.

The allegations do not indicate any violations of the Tennessee Real Estate Broker License Act of 1973 (Tenn. Code Ann. § §§ 62-13- 101 et seq.) or any of the Rules and Regulations of the Tennessee Real Estate Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

12. 2020039431
Opened: 5/21/2020
First Licensed: 3/14/1991
Expires: 12/24/2020
Type of License: Principal Broker
History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent showed the Complainant's home to four individuals and the Complainant's front door video camera recorded the Respondent providing access to four clients and then returning to the Respondent's car. The Respondent did not accompany the four individuals into the home during the 20-25 minutes showing. When the Respondent's clients were finished, the Respondent walked to the front door and locked it. The Respondent should not have permitted the individuals to walk freely through the home. The Complainant immediately notified the Complainant's agent and the agent contacted the Respondent to discuss. The Respondent was rude to the Complainant's agent and defensive in the Respondent's responses. The Complainant was concerned with theft although, there was nothing missing. Also, during the COVID-19 pandemic, the Respondent failed to make sure the clients took the necessary precautions in the Complainant's home and should have made sure the individuals were using masks and hand sanitizer which the Complainant made sure to set out for use by individuals visiting the home and refrain from unnecessarily touching things in the home.

The Respondent stated the potential buyers viewing the home were the Respondent's adult grandson and his wife. Also, the Respondent's daughter and husband were with them. They were visiting from out-of-town. The Respondent made four appointments for them and did not accompany them into any of the homes. The Respondent did wear a mask when opening the doors to each of the properties and the individuals used gloves.

Recommendation: Close.

Board Decision: The Commission elected to issue a \$1,000.00 civil penalty for failure to exercise reasonable skill and care.

13. 2020031941
Opened: 5/26/2020
First Licensed: 8/16/2006
Expires: 8/15/2020
Type of License: Real Estate Firm

History: None

Complainant is a Tennessee resident and licensed Tennessee Affiliate Broker and Respondent is a Tennessee licensed real estate firm.

The Complainant received an advertising postcard from the Respondent by U.S. Postal Service and alleged the Respondent has violated the real estate advertising laws and rules. Additionally, the Complainant also alleges the Respondent failed to list the real estate firm's physical office address on the firm's website. The Complainant alleges this real estate firm is known to mass distribute across a huge area of the state and is intentionally deceiving customers by not providing the physical location of the firm.

The Respondent provided a response and provided proof of the screen shots for the website with the business address appearing on the website and the contact information on every page of the website. The rules of the Commission require Internet advertising specifically state the "firm name and the firm telephone number listed on file with the Commission shall conspicuously appear on each page of the website." Tenn. Comp. R. & Regs. 1260-02-.12(5)(a). The Respondent's website and printed advertisement are in full compliance with the Commission's advertising rules. The business address was not on the postcard distributed in the mail. The advertising rules do not require the licensee's physical address appear on any form of advertising. All the required information (name, firm name and phone number) pursuant to Tenn. Comp. R. & Regs. 1260-02-.12(3)(b), Tenn. Comp. R. & Regs. 1260-02-.12(3)(c) appears on the postcard.

There is no evidence of violations of the Tennessee Real Estate Broker License Act of 1974 and the Commission rules. There was no evidence of any "misleading and/or deceptive advertising." Tenn. Comp. R. & Regs. 1260-02-.12(3)(f).

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

14. 2020034761
Opened: 5/26/2020
First Licensed: 1/1/1980
Expires: 12/31/2007
Type of License: Time Share Registration
History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee registered time share company.

The Complainant alleges the Respondent made false representations in 1986 concerning the purchase of a timeshare property. The Complainant had several significant changes and life events and is unable to handle the expense of the timeshare property. Specifically, the Complainant alleges the Respondent told the Complainant the timeshare maintenance

fees do not change and end upon payment in full of the purchase price. According to the Complainant, these fees are still required and have increased. The fees are too burdensome. The Complainant stated her daughter committed suicide and she cannot leave this timeshare to her adult grandchildren and add further tragedy to their lives. Also, the Complainant's husband has Alzheimer's and has attempted to kill the Complainant and has subsequently been institutionalized. The Complainant has contacted the Respondent and told the Respondent is willing to make arrangements to try to rent the unit during the timeshare interval each year, however, there will be a charge for these services. The Complainant is not willing to pay these fees.

The Respondent provided a response and stated the sale of the timeshare occurred over 34 years ago and the Complainant was told about all aspects of timeshare ownership, provided all documents related to the timeshare purchase and given full disclosures concerning all costs and maintenance fees at the time of the purchase. The Respondent does not accept surrender of deeds in this situation. The Respondent will accept a surrender of the deed if none of the heirs of the estate want to retain ownership. Also, the Respondent has recommended the Complainant list the deeded week for sale and sell the interest in the timeshare week.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

- 15. 2020036451**
Opened: 5/26/2020
First Licensed: 1/25/2013
Expires: 1/24/2021
Type of License: Time Share Registration
History: None

The Complainant is a North Carolina resident and owner of a timeshare property. The Respondent is a Tennessee registered time share company.

The Complainant purchased the timeshare in July 1990 and has been unable to make a reservation for any week for the past 30 years of ownership. The Complainant alleges the Respondent has indicated every time the Complainant wanted to make a reservation that there was no availability, even if the Complainant has tried to book in advance. The Complainant alleges this timeshare is nothing more than a low-class, run-down hotel and not the resort originally promised. The Complainant alleges the Respondent promised they could go anywhere in the country, at any time. The Complainant first purchase a one-bedroom unit and later purchased a second was a 2-bedroom unit. The salespeople indicated there would be a broader range of resorts for bookings and the Complainant would be given priority booking, however, it was not true. The Complainant also alleges there are mandatory maintenance fees which are continuously rising.

The Respondent provided a response and stated the Complainant purchased a timeshare prior to 1999 with his wife. In 2010, the Complainant's wife passed away and the Respondent received a death certificate to remove the wife's name from the account, however, a new deed was never issued listing the new wife. The Complainant later purchased a second week in 2013 and the Respondent continued to be enrolled in the points program to enhance their travel options. The Complainants give the use of the week to the Respondent and the Complainant is provided with additional points to use at a variety of resorts. The reservations are initiated through another company that tracks the points and makes the reservations at various resorts. In order to cancel membership in the point system, the Complainant must contact the other company. This has been explained to the Complainant on many occasions. Also, both purchases are well beyond the rescission period allowed under Tennessee law and the terms of the contract. The Complainant has been told on numerous occasions the timeshare ownership can be sold. The Respondent does not accept the return of deeds on individual circumstances. The only exception is for estates where none of the heirs to the estate desire to retain ownership. The estate can transfer the deed back to the timeshare company.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

16. 2020036311

Opened: 5/26/2020

First Licensed: 2/28/2017

Expires: 2/27/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant was furloughed due to COVID-19 pandemic and was supposed to close on the sale of Complainant's home. The Complainant requested an extension on the closing date from the Respondent's client. The Seller declined to postpone the closing and Complainant alleges the Respondent demanded the Complainant move forward with the closing and strong-armed the Complainant to close on the property. The Complainant refused to leave the premises and close on the property. The Complainant later received a demand letter from the Respondent's attorneys requesting payment of the commission fees, attorney fees and other fees totaling over \$6,000. The Complainant is unemployed and unable to pay any amounts to the Respondent.

The Respondent provided a response to the complaint and stated the Complainant entered a binding non-contingent contract for the sale of the Complainant's home in April 2020 and unilaterally repudiated the contract and refused to make the Buyers whole. The Complainant breached the contract and is legally obligated to the Buyer, Respondent and

Respondent's firm. There were no contingencies concerning the Complainant's employment status or ability to close on the home. An amendment to the contract was received in May 2020 and Respondent did not respond by the deadline because the Respondent's client works odd hours in the medical field and the Respondent was unable to respond by the 5 pm deadline. This was communicated to the Complainant's broker. The Respondent did respond to the extension after the deadline and agreed to a modest extension of the deadline.

The Respondent did not make any threats against the Complainant and did not try to strong-arm the Complainant concerning the closing, breach of contract or the legal consequences. The Respondent did advise his client not to sign the TAR Mutual Release form because it could result in the Respondent giving up any right to damages from the Complainant for the breach of contract in the event of a lawsuit.

This is a contractual dispute and there are no violations of the Tennessee Real Estate Broker License Act of 1973,

Recommendation: Close.

Decision: The Commission elected to issue a \$1,000.00 civil penalty for the Unauthorized Practice of Law.

17. 2020039241

Opened: 5/26/2020

First Licensed: 4/30/2013

Expires: 3/11/2022

Type of License: Principal Broker

History: 2017 Consent Order for failure to return rental deposit; 2018 Consent Order for Failure to Exercise Reasonable Skill and Care

Complainant is a licensed Tennessee resident. Respondent is a licensed Tennessee Principal Broker.

The Complainant entered into an agreement with the Respondent. The Complainant requested to be released from the contract because the Respondent was not fulfilling the contract to sell and market the Complainant's property. The Complainant contacted the Respondent to take additional action to market the home and requested a reduction in the selling price and other changes to the property description. The Respondent reduced the price but did not properly amend the property description in accordance with the Complainant's instructions. The Complainant claims to be unable to work with the Respondent and stated there is animosity between the parties. The Complainant has been deployed to the Middle East until February 13, 2021.

The Respondent provided a response and stated the Complainant has been difficult to deal with during the entire process. The Respondent stated the Complainant has been extremely

demanding, inflammatory, insulting and rude. The Respondent has tried to remain respectful to the Complainant and has aggressively marketed the property to sell it. The Respondent has fulfilled all terms of the contract and has returned every call, text and e-mail from the Complainant.

The Respondent has not violated the Tennessee Real Estate Broker License Act of 1973.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

18. 2020029541
Opened: 6/1/2020
First Licensed: 5/18/2016
Expires: 5/17/2022
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker and an Agreed Citation was sent to the Respondent for an advertising violation. The Respondent did not respond.

The Complainant alleges there was an advertisement from the Respondent where the word "team" and states the "team" has a buyer ready to purchase the home of the recipient of the mailer. The Complainant does not understand how the advertisement could be issued as though the Respondent has a buyer waiting to purchase a property. Also, the Respondent is soliciting the home to be put on the market and is the Respondent going to represent the homeowner of the home being solicited. The language used by the Respondent in the advertisement states "I have a client ready to buy in your neighborhood. Allow us to help." The reverse side clearly mentions the team. The advertisement does not have an office address and has an incorrect font size.

All the required information (name, firm name and phone number) pursuant to Tenn. Comp. R. & Regs. 1260-02-.12(3)(b), Tenn. Comp. R. & Regs. 1260-02-.12(3)(c) appears on the postcard.

The Respondent failed to provide a response to the Agreed Citation and failed to provide a response to the complaint. Tenn. Code Ann. § 62-13-313(2).

There is evidence of any "misleading and/or deceptive advertising" pursuant to Tenn. Comp. R. & Regs. 1260-02-.12(3)(f). There are also violations of the Tennessee Real Estate Broker License Act of 1974. Specifically, Tenn. Code Ann. § 62-13-312(2) (Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep the promise); Tenn. Code Ann. § 62-13-312(3) (Pursuing a continued and flagrant course of misrepresentation or making false promises through affiliate brokers, other persons, any

medium of advertising or otherwise.)

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$1,000 for the above violations.

Decision: The Commission accepted counsel's recommendation.

19. 2020029571

Opened: 6/1/2020

First Licensed: 11/6/1980

Expires: 7/10/2020

Type of License: Principal Broker

History: 2019 Consent Order for failure to supervise an affiliate which resulted in suspension of affiliate's E&O insurance

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker. An Agreed Citation was sent to the Respondent for an advertising violation. The Respondent did not respond and did not provide a response to the complaint.

The Complainant alleges there was an advertisement from the Respondent's firm where the word "team" and states the "team" has a buyer ready to purchase the home of the recipient of the mailer. The Complainant does not understand how the advertisement could be issued as though the Respondent has a buyer waiting to purchase the property being solicited. Also, the Respondent is soliciting the home to be put on the market and is the Respondent going to represent the homeowner of the home being solicited. The language used by the Respondent in the advertisement states "I have a client ready to buy in your neighborhood. Allow us to help." The reverse side clearly mentions the team. The advertisement does not have an office address and has an incorrect font size.

The Respondent has violated the Tennessee Real Estate Broker License Act of 1974. Specifically, Tenn. Code Ann. § 62-13-312(2) (Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep the promise); Tenn. Code Ann. § 62-13-312(3) (Pursuing a continued and flagrant course of misrepresentation or making false promises through affiliate brokers, other persons, any medium of advertising or otherwise). Additionally, the Respondent has failed to exercise adequate supervision over the activities of any licensed affiliate brokers pursuant to Tenn. Code. Ann 62-13-312(15). There is evidence of a violation of the advertising rules. The Respondent's affiliates' flyer constitutes "misleading and/or deceptive advertising." Tenn. Comp. R. & Regs. 1260-02-.12(3)(f). Also, the Respondent did not provide a response in violation of Tenn. Code Ann. § 62-13-313(2).

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$4,500 for the above violations.

Decision: The Commission elected to issue a civil penalty in the amount of \$5,000.00 and to

require that Respondent complete the Principal Broker Core class within 180 days of the execution of the Consent Order. The Class will be over and above the CE required for licensure.

20. **2020039111**

Opened: 6/1/2020

First Licensed: 6/18/1990

Expires: 4/9/2021

Type of License: Principal Broker

History: 2014 Consent Order for earnest money violation (delay in disbursement)

The Complainant is a Tennessee resident. The Respondent is a licensed Tennessee Principal Broker

The Complainant alleges the Respondent entered into a listing agreement for the sale of a home in January 2020 with the Complainant and her husband. The Complainant's husband suddenly died in May 2020 and the Complainant is now a widow and does not want to sell the home due to a life changing event. The Complainant stated the home is paid and unencumbered and the Complainant will be unable to purchase a home. The Complainant wants to remain in the home because the Complainant has no other place to live. The Respondent refuses to cancel the listing agreement. The listing agreement expires in October 2020; however, the Complainant does not want the Respondent to show the home to any prospective buyers in the interim.

The Respondent provided a response and stated after the funeral of the Complainant's husband, the Complainant's daughter called the Respondent in May 2020 and asked to cancel the listing because the Complainant wanted to sell the property on her own. There was no mention by the Complainant's daughter about the Complainant not wanting to sell the home because the Complainant could not afford another home. The Respondent told the Complainant's daughter the Respondent would cancel the listing because an owner wanted to sell the home without a real estate agent. Prior to contacting the Respondent, the Complainant listed the home on Zillow as a for "Sale by Owner" property and it did not sell. The Respondent stated immediately after the Complainant filed the complaint with the Commission, the Respondent had been hospitalized for a major medical issue and could not physically sign or authorize the release of the property. The Respondent released the property the day after being discharged from the hospital. The Respondent has also withdrawn the MLS listing for the property.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

- 21. 2020037421**
Opened: 6/1/2020
First Licensed: 12/3/2013
Expires: 12/2/2021
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant was interested in purchasing a property shown by the Respondent which had been rezoned. According to the Complainant, the listing agent had indicated the property was changed from residential to commercial. As a result, the Complainant had a great deal of difficulty in obtaining a loan and communicated with the Respondent concerning the difficulties in obtaining a conventional loan. The Complainant also alleges the Respondent was not available to the Complainant and never interacted with the Complainant. The Complainant added the Respondent's Principal Broker was deceptive and misled the Complainant. The Complainant stated the Respondent failed to properly serve the Complainant and did not meet the fiduciary duty owed to the Complainant to protect the Complainant from a predatory seller. The Complainant alleges the deception concerning the classification of the property continued until there was a need to increase the loan amount from the Small Business Administration (SBA) a year later. The SBA did not realize the property was zoned residential and began to question the zoning of the property. At this point, the Complainant claims the Complainant learned of the deception by the listing agent. The Complainant indicated five months prior, a new developer of 80 acres of an adjacent property expressed interest in the Complainant's property and told the Complainant the possible valuation of the property in the \$1M to \$1.3M range. The Complainant believe the property was worth at least \$1.55M plus the \$200,000 spent on improvements to the land. The Complainant also had an appraisal from the previous year indicating a value of \$2.8M. Later, the Complainant stated the property was foreclosed upon before the Complainant could sell the land and no interest in the land.

The Respondent provided a response and stated the Complainant was a friend for over five years and would not jeopardize a relationship or the well-being of a client or friend. The Complainant entered a contract for the purchase of the property and a closing date was set for June 2020. The Complainant and the Respondent spoke daily and exchanged hundreds of text messages. Also, each time the Complainant and the Respondent spoke on the telephone and these phone calls lasted for a minimum of 10 minutes and usually at least for a half hour or more. The Respondent attached the phone records for review. The Respondent never abandoned the Complainant or was unavailable to the Complainant.

When the Respondent started working with the Complainant in 2015, the Complainant was interested in making some small lakefront property investments and possibly remodel and sell some homes in Middle Tennessee. The Respondent worked with the Complainant for several months and helped to locate distressed homes and even helped the Respondent find people to perform work on the properties because the Complainant was new to the area.

The Respondent helped the Complainant also find different lenders and inspectors. The Respondent assisted the Complainant in making several offers and even contracted on a few properties that fell through because the property was not in the best interest to the Complainant. In May 2016, the Complainant presented the Respondent with some new information on a property the Complainant wanted to purchase immediately. The Complainant had spoken with the listing agent and obtained a great deal of information, including surveys and development plans. The Complainant shared all the information with the Respondent and wanted to make an offer within a few days. The Respondent was not present for the initial meetings with the Complainant, but the Respondent kept in contact with the Complainant. Several times, the Complainant had meetings with the listing agent on his own and the Complainant was only informed about the meetings after the fact. The MLS listed the property as commercial/residential land and the tax records indicated the property was residential. The Respondent brought this to the attention of both the listing agent and the Complainant. The Respondent drafted the offer on a residential Purchase and Sale Agreement. There was a 4,500 sq. foot residence on the property, so this confirmed to the Complainant it was a residential property. According to the listing agent, the city had changed the entire corridor property to commercial. The listing agent assured the Complainant the status had been changed and the tax records did not reflect the change. The Respondent was aware the Complainant was having a great deal of difficulty with lenders and the types of loans available and it was difficult to qualify for these loans. During the process, the Complainant had several ideas to change the property to a luxury AirBNB, wedding venue, farm to table restaurant, a homestead, etc. The Complainant spent a great deal of time and money over the next year investing in the its accommodations, and never actually started any of the businesses. The Complainant had multiple agents assure the Complainant of the worth of the property and the appraisals confirmed the value. The Respondent realizes this was an unfortunate situation concerning the financial situation of the Complainant but was unrelated to any representations made by the Respondent. The Respondent and Respondent's Principal Broker were always honest and forthcoming concerning the property and the transactions. The Respondent kept all lines of communications open with the Complainant.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

22. 2020037391

Opened: 6/15/2020

First Licensed: 6/3/1991

Expires: 2/26/2021

Type of License: Principal Broker

History: 2019 Consent Order for failure to supervise an Affiliate's E&O insurance

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant was interested in purchasing a property shown by the Respondent's

Affiliate Broker which had been rezoned. According to the Complainant, the listing agent had indicated the property was changed from residential to commercial. As a result, the Complainant had a great deal of difficulty in obtaining a loan and communicated with the Respondent's Affiliate Broker concerning the difficulties in obtaining a conventional loan. The Complainant also alleges the Affiliate Broker was not available to the Complainant and never interacted with the Complainant. The Complainant stated the Respondent and the Affiliate Broker failed to properly serve the Complainant and did not meet the fiduciary duty owed to the Complainant to protect the Complainant from a predatory seller. The Complainant alleges the deception concerning the classification of the property continued until there was a need to increase the loan amount from the Small Business Administration (SBA) a year later. The SBA did not realize the property was zoned residential and began to question the zoning of the property. At this point, the Complainant claims the Complainant learned of the deception by the listing agent. The Complainant indicated five months prior, a new developer of 80 acres of an adjacent property expressed interest in the Complainant's property and told the Complainant the possible valuation of the property in the \$1M to \$1.3M range. The Complainant believe the property was worth at least \$1.55M plus the \$200,000 spent on improvements to the land. The Complainant also had an appraisal from the previous year indicating a value of \$2.8M. Later, the Complainant stated the property was foreclosed upon before the Complainant could sell the land and no interest in the land.

The Respondent provided a response and stated the Complainant entered a contract for the purchase of the property and a closing date was set for June 2020. The Complainant and the Affiliate Broker spoke regularly and exchanged text messages. The Respondent or the Affiliate Broker never abandoned the Complainant or was unavailable to the Complainant.

When the Respondent's Affiliate Broker started working with the Complainant in 2015 and assisted the Complainant in making various lakefront property investments and possibly remodel and sell some homes in Middle Tennessee. The Respondent worked with the Complainant for several months and helped to locate distressed home. In May 2016, the Complainant presented the Respondent's Affiliate Broker with some new information on a property the Complainant wanted to purchase immediately. The Complainant had spoken with the listing agent and obtained a great deal of information, including surveys and development plans. The Complainant shared all the information with the Respondent's Affiliate Broker and wanted to make an offer within a few days. The MLS listed the property as commercial/residential land and the tax records indicated the property was residential. The Respondent's Affiliate Broker drafted the offer on a residential Purchase and Sale Agreement. There was a 4,500 sq. foot residence on the property, so this confirmed to the Complainant it was a residential property. According to the listing agent, the city had changed the entire corridor property to commercial. The listing agent assured the Complainant the status had been changed and the tax records did not reflect the change. The Respondent was aware the Complainant was having a great deal of difficulty with lenders and the types of loans available and it was difficult to qualify for these loans. The Respondent stated the financial situation of the Complainant had nothing to do with this particular transaction. The Respondent confirms all lines of communications were kept open between the Affiliate Broker and the Complainant and there was no wrongdoing by

the Respondent or the Respondent's Affiliate Broker.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

23. 2020039031

Opened: 6/1/2020

First Licensed: 12/2/2005

Expires: 12/1/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and Tennessee lender for the Buyer in the transaction and the Respondent is a Tennessee licensed Affiliate Broker and listing agent for the property.

The Respondent contacted the Complainant requesting clarification on a pre-qualification letter provided for the buyer the previous day. The Complainant indicated to the Respondent the Complainant had just undergone surgery that morning and due to medication could not discuss the matter further until the Complainant was no longer medicated. The Respondent called the Complainant eight (8) more times the same day. After the parties entered a binding contract, the Respondent sent the Complainant an e-mail requesting the Complainant forward an itemized cost worksheet. The Complainant spoke with the Buyer's agent and discovered the Respondent had also contacted the Buyer and Buyer's agent several times concerning these items. The Complainant told the Respondent, the Complainant represented the Buyer and would not forward this information. The Complainant had already forwarded the pre-qualification letter and had signed and accepted the purchase and sale agreement. The Complainant advised the Respondent the appraisal would be ordered on time and the closing would occur on time. The Respondent also has continued to ask the Buyer for credit information, including such information as a FICO score, etc. The Complainant has no reason to communicate or forward such information to the Respondent. The Complainant alleges the Respondent's conduct was unacceptable and unprofessional.

The Respondent provided a response and admits to contacting the Complainant but does not recall calling the Complainant eight (8) times in one day. The Respondent did not ask the Buyer for a FICO score. The Respondent admits to asking the Respondent for a cost breakdown. The Respondent apologized to the Respondent for the telephone calls concerning the transaction.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

24. 2020039151
Opened: 6/1/2020
First Licensed: 3/16/2005
Expires: 4/13/2022
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee resident and an unrepresented, first-time home buyer and the Respondent is a licensed Tennessee Affiliate Broker representing the Seller in the transaction.

The Complainant alleges the Respondent enticed the Complainant to enter a contract under false pretenses and forged the Complainant's signature on a contract extension. The Complainant was advised the house had a brand-new heat pump and before the closing discovered there was not a new heat pump installed.

The Respondent provided a response and stated the Respondent was the listing agent and the heat/air unit needed to be repaired or replaced. The Seller ordered a unit and put it in the carport until the contractor could install the unit. However, the home was still being sold "AS IS." The Seller assured the Respondent the unit would be installed before closing. When the contractor came to install the unit, it was discovered it was not the correct unit. The Seller has a car repair business and the Complainant and Seller had spoken about the AC unit when the Complainant was getting the Seller to perform repairs to a vehicle. The parties had discussed the installation of the unit. In fact, there were several direct conversations between the Complainant and Seller. The appraiser of the property was not on schedule and the Respondent was waiting on final approval from the lender to proceed. As a result, the Respondent had to get an extension. The Respondent stated the Complainant came to the Respondent's office with his wife and baby daughter and signed the extension. In fact, the Respondent's assistant was present and witnesses the transaction. The appraisal required the hot water heater to have a pan and installation of a pressure relief valve. The Complainant offered to make both repairs. Following the appraisal, there were other small repairs necessary and the Seller agreed to do the small repairs but refused to install a fence up and down both sides of the creek running alongside the property. The Seller was selling the property "AS IS." The Respondent contacted the Complainant and the Complainant refused to pay for the fence. The Complainant refused to pay for anything and demanded a new roof and new AC unit installed before the closing. Both parties refused to do any repairs and the two weeks passed. On the day the extension expired, the Seller contacted the Respondent and stated the Seller was willing to pay the additional monies for the property. The Respondent tried to call the Buyer and the Buyer refused to do an extension and was cursing. At this point, the Seller was also unwilling to do an extension. The Buyer continued to text the Respondent and the Seller. At this point, the Seller asked the Respondent to withdraw the house from the market. The Buyer proceeded to obtain the Respondent's personal e-mail address and harassed the Respondent to release the Complainant from Buyer's Agreement, however, the Buyer had been unrepresented on all documents and it was not necessary for the Respondent. The Respondent did not cancel the contract and the contract extension expired.

The Respondent did not violate the Tennessee Real Estate Broker License Act of 1973 or any of the rules of the Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

25. 2020032531

Opened: 6/8/2020

First Licensed: 4/3/2014

Expires: 4/2/2021

Type of License: Time Share Registration

History: None

The Complainant is a Tennessee resident and the Respondent is a registered Tennessee time share company.

The Complainant purchased a time share in May 2010. Since the Complainant purchased the timeshare, the Complainant has encountered numerous issues with the timeshare company. During the presentation, the Complainant was promised many things that did not come to fruition. Additionally, the Complainant upgraded the timeshare and was never able to use the timeshare. The Complainant wants to cancel the contract and terminate the timeshare agreement immediately. The Complainant stated the Complainant is stuck paying for something the Complainant does not and cannot use because of medical issues and high medical bills.

The Respondent has already provided a response to this complaint to the Attorney General's Office and suggest this may be a duplicate complaint. The Respondent provided a response to the complaint and stated the Complainants purchased two weeks from the timeshare company. One week was purchased in 2010 and the other week was purchased in 2011 in order to enhance their travel options. In 2017, the Complainants wanted to cancel the timeshare memberships for both weeks. The Respondent could not accept the deeds based on the individual circumstances at that time and cannot accept the deeds at this time. The only exception is made when none of the heirs of the estate desire to own a timeshare. The Respondent has stated the Complainants could sell the timeshare, but the Complainants have elected not to sell it.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

26. 2020037401

Opened: 6/8/2020

First Licensed: 7/11/2017

Expires: 7/10/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainants' clients entered a contract for an MLS listing for a site-built home at the end of March 2020. The appraisal was to be completed, but abruptly cancelled. The listing agent was able to get the appraisal completed at the end of April and the report indicated the home was 40-50% manufactured (MFG) and the Complainants' client's lender refused to provide a loan. The Complainants' clients opted to find another home because they had already been approved for financing. The Respondent has failed to return the earnest money and an interpleader action was filed with the court. The listing was initially posted on March 12, 2020 as a site-built home and on March 21, 2020, it was changed to remove reference to a site-built home. The appraiser sent proof of the home being partly manufactured (MFG). On May 5, 2020, the listing was changed back to active MFG and on May 7, 2020, the listing was changed to "under contract (UC) not showing financing." On May 12, 2020, the listing was changed back to Active – Site Built. The listing agent and his client have refused to release the earnest money to the Complainant's client and has relisted the property as active and site built when it is clear it is a partially MFG home.

The Respondent provided a response and stated this listing was picked up by the Respondent as an expired listing. The Respondent was unaware this was not a site-built home. The Respondent acknowledges this was important for the appraisal for the bank because the appraisal form requires classification based on site built home or manufactured home. A portion of the home started as a manufactured home, but the appraiser noted it was also a site built home too and the appraisal submitted indicated it was a partial site-built home. The Complainant was aware there was steel frame construction on a part of the home and the Buyers' bank did turn down the loan because it was an unacceptable property, but it is not the Seller's obligation to ensure the bank approves the loan and the Buyer has every right to back out of the contract within the time frame of the contract. In this transaction, the Respondent stated an amendment had to be adopted to extend the closing date to May 1, 2020 and the Buyers failed to sign the "Release of Earnest Money" until May 2, 2020 when it was received by the Respondent. The Buyer was no longer under contract and the earnest money was forfeited. The Respondent went to the Seller's home on several occasions and spoke to them about returning the earnest money and the Seller declined to release the earnest money. The Respondent cannot force the client to sign a document to release the earnest money. Also, the Buyer was out of contract when the release was signed. The listing was taken off the market as "Under Contract Not Showing" on March 21, 2020 because it had went under contract with the Complainants' clients and on May 5, 2020 it was put back under an active listing status and after the Respondent consulted with the Respondent's Principal Broker, the Respondent changed the status to "Under Contract Showing" status. On May 12, 2020, the price was reduced to \$530,000 which was the appraisal amount and it was listed as an active listing. The property is listed online as site-built home and according to the most recent appraisal, the appraiser believe it was a site-built home. Also, during the contract, there were several times the Buyer's agent and the Buyers were out of contract and each time the Respondent assisted in getting the information needed to move forward with the sale. The Buyers had 14 days to provide the Seller with the documentation showing the hazard insurance had been obtained and the Respondent had to contact the Complainant to make sure the parties were within the guidelines of the contract. The contract

date was March 21, 2020, but the Buyers did not produce the proof of hazard insurance until April 13, 2019 and this was nine days out of contract. The Respondent had to work to keep the deal together on multiple occasions and never received the documentation timely. The Respondent also did not receive the documentation for payment of the appraisal in a timely manner and has still not received the information. The Pre-Approval letter from the lender came from the mortgage corporation, but the document showing the denial of the loan was from a home loan company. The contract financing stated the home appraised for \$530,000 and the appraiser of the property stated the home was site built and put the appraisal on a site-built form because it was a site-built home. A few of the cabinets may have come from a manufactured home, but it was completely trimmed out using custom trim and some of the cabinets were also from a big box home improvement store and there were additional custom modifications. The home appraised for the correct amount to satisfy the financing contingency and it was turned down by the bank because this bank did not allow this hybrid type of home for their loans.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

27. 2020039331

Opened: 6/8/2020

First Licensed: 6/5/2000

Expires: 2/28/2022

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant stated the Respondent has been managing the Complainant's property since May 2017 and in March 2020 advised the Respondent, the Complainant would be looking for an alternate management company because the Respondent had not been remitting payments of rents collected and not properly communicating with the Complainant. The Complainant stated the new management company would take over on May 1, 2020. The Respondent acknowledged the Complainant's communication and stated the tenant had paid \$450 and the Respondent would collect the rest of the March 2020 rent on Friday. On March 27, 2020, the Respondent indicated to the Complainant that all the rent had been collected and would forward the amounts to the bank. The Complainant also let the Respondent know the company that would be taking over the management and the company would be contacting him. To date, the Respondent has not made any deposit of monies for March or April 2020 rent payments. The new management company had spoken to the Respondent and expected everything to transfer smoothly, however, the Respondent will not release the ledger or provide the deposit of \$1,120 to the bank account. The Respondent has also kept the security deposit monies in the amount of \$650 and has not released any amounts to the new property management company.

The Respondent failed to provide a response; however, the Respondent's Principal Broker provided a response and stated the Respondent was not authorized to engage in property

management and was unaware the Respondent was engaging in property management activities. The Respondent's Principal Broker just learned about the property management activities of the Respondent when the Principal Broker received the notice of the Complaint.

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$3,000 for making a substantial and willful misrepresentation (Tenn. Code Ann. § 62-13-312(b)(1)), engaging in conduct that constitutes improper, fraudulent or dishonest dealing (Tenn. Code Ann. § 62-13-312(b)(20)) and failing to provide a response to the Commission on a pending complaint (Tenn. Code Ann. § 62-13-313(2)).

Decision: The Commission elected to accept counsel's recommendation of the \$3,000.00 civil penalty and also to suspend the Respondent's license for six months.

28. 2020039581

Opened: 6/8/2020

First Licensed: 10/12/1982

Expires: 7/9/2020

Type of License: Real Estate Firm

History: None

The Complainant is a Mississippi resident and the Respondent is a Florida time share company and a Tennessee licensed Real Estate Firm.

The Complainant purchased a timeshare from the Respondent in 2018 and applied for and was approved for a Mastercard. The credit card had an introductory rate of 0% interest rate for the first six billing cycles and allowed the Complainant to earn points for gift cards to be used for maintenance fees. The Complainant was under the impression the card would be 0% interest for a period of three years. Also, the Complainant believed the credit card would cover five (5) years of maintenance fees.

The Respondent provided a response. The Respondent stated the Complainant could have obtained another six-month period at 0% interest if the Complainant called and transferred the card balance onto another card. However, the Complainant did not want to apply for another credit card and transfer the balance. The terms of the credit card offer were clearly set forth in the terms of the credit card agreement initially signed by the Complainant. The Complainant qualified for elite rewards which entitled the Complainant to hedge against the maintenance fees, but it did not pay or waive the maintenance fees. The points could be redeemed for points for prepaid gift cards that could be used for maintenance fees. These terms were verbally explained to the Complainant and included in writing in the documents provided to the Complainant at the time of the purchase.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

29. 2020040611
Opened: 6/8/2020
First Licensed: 2/10/2016
Expires: 2/9/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and a first-time home buyer, and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant purchased a home with the help of the Respondent and the home has not lived up to what the Respondent told the Complainant. The Complainant paid for a home inspection and the home inspector failed to check the roof. The Complainant later found the roof needed to be replaced. The Complainant also found the Respondent's husband was responsible for handling the maintenance on the home and did not properly maintain the home. The Respondent's husband had been sending individuals to patch up the house and the repairs were being completed after the closing. The Complainant did not know at the time of the closing that all the repairs had not been done. The Complainant also alleges the home was dirty and the Respondent did not have the home cleaned before the Complainant moved into the home. The Complainant would like the home cleaned and fixed properly. Also, the Respondent failed to provide the Complainant with a final walk through of the property. The Complainant alleges the loan is an FHA loan and this loan would not have been approved if the lender knew of all these issues with the property. Also, there are still incomplete items that need to be repaired in the home.

The Respondent provided a response and stated the home passed inspection and appraisal twice and there were two appraisals done by two different companies. The appraiser came to the home on three different occasions and everything had been done correctly. All the mandatory repairs were completed. The Respondent did have a licensed roofer come to the home and inspect the roof and stated there was nothing wrong with the roof except sealing of the caps. The Respondent paid to have the caps sealed and it was completed. The Respondent did not steer the Complainant in the wrong direction and told the Respondent the Complainant was happy with the new home. The Respondent was unaware the Complainant was unhappy with the home. The Respondent's husband did come to the home on several occasions after the closing to fix minor items that came up and these items related to minor issues such as installing a dimmer light, knocking down a bird's nest, etc. The home was empty and clean when the Complainant moved into the home. The photographs and appraisal pictures show the home was clean. There Respondent stated this was an older home and it is not going to be perfect.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

30. 2020041481
Opened: 6/8/2020
First Licensed: 5/6/2009
Expires: 9/16/2021

Type of License: Principal Broker
History: None

The Complainant is a California resident and Tennessee property owner. The Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent listed one of the Complainant's rental properties without the Complainant's consent and also listed the property without an agreement.

The Respondent provided a response and stated the Respondent did not list any property with the consent of the Complainant. The Respondent was contacted through another real estate investor who the Respondent has worked with for several years. The Respondent and the real estate investor had worked together and requested the Respondent help the Complainant. The Complainant requested the Respondent list three properties and specified those properties in an e-mail to the Respondent. The Respondent had no knowledge about any other properties owned by the Respondent. One of the properties was a rental property. The Respondent stated the Complainant became irate with the Respondent because the Respondent had refused to release the Complainant from the Property Management Agreement for one of the properties executed on March 1, 2020 and expiring on March 31, 2021. Also, the Lease Agreement for the property was executed with the Respondent's real estate firm and the tenant. The lease was dated April 1, 2020 and would expire on April 30, 2021. The Complainant wanted the Respondent to execute the lease agreement between the Respondent's real estate firm and the tenant and because the Complainant did not want the tenants to know the Complainant's address and stated it was best for the Respondent to execute the lease under the real estate firm's name. Later, the Complainant began to threaten and try to manipulate the Respondent to try to force the Respondent to release the Complainant from the agreement and stated if the Respondent did not release the Complainant from the agreement, the Complainant would file a complaint with the Tennessee Real Estate Commission to take the Respondent's license. The Complainant also stated if the Respondent did not release the Complainant from the agreement, the Complainant would take the other two listings from the Respondent. At this point, the Respondent immediately withdrew the listings on May 28, 2020. The Complainant indicated to the Respondent; the Complainant wanted to go back to his friend's property management services. The Respondent had gone through the entire process of finding a good and reliable tenant for the Complainant's property and engaging in advertising, screening the tenants, running back and forth showing the property, etc. Prior to my involvement with the property, the Complainant had indicated the property was continually broken into and really wanted a suitable tenant. After the tenant moved into the property, there were repairs that needed to be made and the Respondent made sure all the repairs were done. Photographs were taken and sent to the Complainant. The Respondent provided extensive documentation showing authorization to list all the properties, e-mails from the Complainant and all signed listing and property agreements. The Respondent had the consent and authorization of the Complainant for all properties listed for sale and managed by the Respondent.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

31. 2020041521

Opened: 6/8/2020

First Licensed: 5/28/2014

Expires: 5/27/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent has advertised on social media and the advertisement constitutes a violation of the real estate laws and rules. According to the Complainant, a consumer will be misled by the flyer because the consumer will think the name of the agency is the Respondent's name. The Respondent does not have a real estate firm. At the bottom of the flyer, in three-point font, there is a name, address and phone number for the Respondent's real estate firm. According to the Tennessee Real Estate Commission's rules, the firm name should be the same size as the Affiliate Broker's name and the team name. The Complainant also alleges the Respondent has an expired license and has not done any hours of continuing education within the past two years.

The Respondent provided response and stated this is the second complaint filed by the Complainant against the Respondent and the Complainant has continued to harass the Respondent. The Respondent stated the Facebook post is not a flyer and it conforms to the advertising guidelines for an affiliate broker. The post states the Respondent is affiliated with a firm and clearly states the name of the firm, address and phone number and even states each office is independently owned and operated. The font is six point. The name of the team is under the firm name. The Facebook ad was not selling, giving away or offering any services and was just a post about the month of May 2020 being a great blessing for the Respondent and the teammate. The Respondent stated the same Complainant filed a complaint against the Respondent six months ago. The Respondent's affiliate broker license did expire, but it was under expired grace status and a check was mailed on May 18, 2020 to the Tennessee Real Estate Commission. The Respondent's license is current, and all CE has been completed. The Respondent was under the impression that the Real Estate Commission gave an extra two months to submit renewals because the COVID-19 pandemic and the Respondent had not sent in the renewal and payment. Also, the Respondent was in quarantine for a period of two months and had not conducted any real estate activity during that period. The Respondent's Principal Broker provided a response corroborating and supporting the Respondent's response.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

32. 2020037821
Opened: 6/8/2020
First Licensed: 10/24/2005
Expires: 10/23/2019
Type of License: Affiliate Broker – EXPIRED
History: None

Complainant is a North Carolina resident and purchaser of a timeshare and the Respondent has a retired Tennessee Affiliate Broker license.

The Complainant purchased a timeshare from the Respondent's firm in 1990 and has not been able to book a reservation in the past 30 years. The timeshare office has repeatedly advised there is nothing available even when the Complainant has tried to book in advance. The Complainant alleges the Respondent made several promises to the Complainants concerning the availability of reservations at the various timeshare resorts. Also, the Complainant was told they would be given priority booking, however, the Complainant has never been able to obtain a booking. The Complainant also states the Respondent told them their children could inherit the timeshare and the Complainant was not told the heirs would be burdened to pay mandatory maintenance fees that are continuously rising in perpetuity. The Complainant alleges if the Complainant had this knowledge, the Complainant never would have entered a contract to purchase the timeshare. The Complainant alleges the Respondent's firm is rude and has not provided the Complainant with any assistance over the years. The Complainant alleges the Respondent misrepresented the timeshare.

The Respondent provide a response and stated the Respondent does not sell timeshare properties and has never been in the timeshare business. This transaction occurred in 1990 and the Respondent was not licensed to sell real estate until 2005. The Respondent has only worked for one company in the Respondent's real estate career. The Respondent has retired the Respondent's real estate license.

This complaint was filed against the Respondent in error. The Complainant named this Respondent; however, it is not the correct Respondent.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

33. 2020032241
Opened: 6/15/2020
First Licensed: 3/29/2004
Expires: 7/20/2019
Type of License: Affiliate Broker
History: 2017 Consent Order for failure to remit

The Complainant is a California resident and Tennessee property owner. The Respondent holds an expired Tennessee Affiliate Broker license.

The Complainant entered into an agreement with the Respondent to manage a property purchased in September 2019. The Respondent had been assisting the listing agent that sold the Complainant the property and the Respondent was the property manager for the previous owner. The Complainant believed the Respondent was trustworthy and familiar with the job and could continue to provide property management services. The Respondent requested the Complainant wire the Respondent the amount of \$12,525 including \$2,600 for property reserves to install a new driveway, interior painting and other small items in need of repair on the property. The Complainant verified with the broker the driveway and exterior repairs were completed, but never received any pictures concerning interior work to the property. The Respondent had not completed the interior painting. The Complainant contacted the Respondent on several occasions and asked for the monthly statements and property accountability statements (expenses and income). The Complainant also texted and called the Respondent. The Respondent did not respond. The Respondent claimed to have rented one of the units in October and the other unit in November and collected the deposited for both units. The Complainant contacted the Respondent's business partner and asked for help in locating the Respondent. The business partner stated the Respondent was on vacation on a cruise and stated the Respondent would probably contact the Complainant after the Christmas holidays. At the end of December, the Complainant received an e-mail from the Respondent stating the Respondent wanted to terminate the agreement with 60 days' notice. The Complainant entered into a new agreement with another management company on January 2, 2020 and the new manager verified one unit was occupied, but the other was vacant and had never been occupied. Also, it appeared the hot water had been turned off for the one tenant and there was a past due balance due of \$1,027 due to the water company. The Complainant was under the impression the Respondent had been paying the utility bills for the property during this period. On January 16, 2020, the Complainant sent another letter to the Respondent to contact the Complainant and immediately return all monies and documents related to the property prior to the Complainant taking legal action against the Respondent. The Respondent responded on February 14, 2020 and stated the Respondent was waiting for the final utility bills from the water company before all the property reports could be completed and sent to the Complainant. The Complainant learned the Respondent had also failed to have any gardening services performed during this period. The Complainant has determined the Respondent owes the Complainant the total sum of \$11,408.29 if both units had been rented as the Respondent had indicated to the Complainant or \$8,158.29 if the unit downstairs had never been rented. The Respondent failed to provide a response to the complaint.

The Respondent's principal broker provided a response and stated the Respondent had no authority to engage in property management and signed an agreement with the Principal Broker stating the Respondent would not engage in property management. Further, the Respondent's Principal Broker released the Respondent in March 2020 after the Respondent failed to renew the Respondent's license.

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$3,000 for making a substantial and willful misrepresentation Tenn. Code Ann. § 62-13-312(b)(1), engaging in conduct that constitutes improper, fraudulent or dishonest dealing (Tenn. Code Ann. § 62-13-312(b)(20)) and failing to provide a response to the Commission on a pending complaint (Tenn. Code Ann. § 62-13-313(2)).

Decision: The Commission elected to issue a \$2,000.00 civil penalty for unlicensed activity.

34. 2020040191

Opened: 6/15/2020

First Licensed: 3/5/2008

Expires: 3/4/2022

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a license Tennessee Affiliate Broker.

The Complainant alleges the Respondent displayed a sign on a property in excess of one year with no listing attached to it. Also, there is no record of the property on the Multiple Listing Service (MLS) system. There is a large sign with the Respondent's name, firm name, cell phone and main office number

The Respondent provided a response and stated property involves high profile individuals and the property is in a gated community and the Sellers authorized the sign and have been fully aware of the sign on the property and pay to have the lot maintained. The Respondent provided a listing agreement for the property. The property was originally listed in 2015 and there were several extensions on the MLS. The Seller wanted the property to be sold and asked the Respondent to continue to try to sell the property, but to remove it from the MLS. The most recent offer was in May 2020 and due to the high-profile nature of the client, the Respondent and all parties have dealt with each other confidentially and privately through the parties' respective attorneys. The Respondent is not engaging in any fraudulent activity and requests the confidentiality of the Respondent's clients be maintained by the Commission concerning the sale of the parcel of land. The sign at the entry of the property conforms to the laws and rules of the Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

35. 2020040261

Opened: 6/15/2020

First Licensed: 7/9/2018

Expires: 7/8/2020

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker and the Seller's agent.

The Complainant made a full price offer that was accepted by the Seller. The Complainant was

aware there may be some structural issues because of a cracked foundation and contacted a structural engineer. The home had been under contract with two other buyers previously, but the issues were not disclosed. The structural engineer inspected the foundation and stated there were two rear corners of the home with vertical and horizontal cracks in the concrete block foundation wall. The structural engineer stated there was efflorescence visible in many areas of the foundation crawlspace. The structural engineer stated this was due to the soil condition in the supporting soils that supported the concrete footing. There were repairs necessary to reduce the settlement and reestablish the support to the concrete footings. The Complainant was also concerned with the strange deck alterations and what appeared to be an unstable structure. The structural engineer had opined that the deck along the left and rear side of the home appears to have recent renovations which included changing out the support system. The new 6X6 posts did not meet the recommendations described by the American Wood Council publication DCA06 concerning deck posts and the posts exceeded the maximum allowable heights and were placed too far apart. The supporting footings appeared to be undersized and the posts were not properly notched and attached to the deck. The repairs were necessary to the supporting structures of the deck to properly transfer the applied loads. The Complainant had been trying to solicit repair estimates for the work and the Respondent told the Complainant's agent, the Seller would remedy any structural or safety issue. The Respondent also made it clear to the Complainant's agent, the Seller would not address anything else. The Respondent had stated contractor estimates would not be very influential and the Seller would only believe the structural engineer. The Complainant scheduled the home inspection and the home inspector also detailed the five major safety concerns, including the damage in the crawlspace due to the lack of flashing, a twisted LVL beam in the garage/basement due to improper settling, and a rafter spread/rolled logs due to settling. There were also 25 other issues of moderate concern and 13 issues of minor concern. The Respondent reiterated the Seller would only address the structural and safety concerns according to the structural engineer report. The Complainant's agent tried to negotiate foundation repairs prior to closing because of the urgency and the Complainant stated they tried to be accommodating by stating they would take a credit and repair the deck. Also, the Complainants were aware the financing could be jeopardized if the Lender knew the significance of the structural issues with the home. The Complainant was trying to avoid entering a construction escrow with the Seller for the repairs. The Complainant would have preferred if the Sellers completed the repairs prior to the closing or to deduce the cost from the sale price. The Respondent approached the Complainant's agent with a "side deal" offer and requested if the Complainant would be willing to enter into a separate agreement with the Seller to pay the Complainant for the repairs, without disclosure to the lender. The Complainant refused to enter into a separate agreement. The Complainant was shocked the Respondent would even propose such an illegitimate deal because the Complainant believed it to be unethical behavior by a real estate agent. The Complainant proceeded in good faith and there were two consecutive week-long extensions by the Seller to obtain their own estimates and the Complainant tried to give the Sellers adequate time to resolve the issues. The Complainant used the time by again paying the structural engineer to evaluate the structural/safety issues revealed in the home inspection and relied on the Respondent stating the Seller would take care of all structural and safety issues. The structural engineer issued another report and stated the twisted LVL beam and the rafter spread/rolling logs would not be a problem. The structural engineer also reviewed the contractor proposal for the foundation stabilization work and determined the work would not satisfy the structural engineer's requirements and there would be a need to add two more push piers to the plans in order to properly stabilize the foundation. The

Complainant's agent advised the Respondent about the issue and the Respondent stated the Seller would not comply with the structural engineer's recommendation and the parties should enter into a Termination Agreement. The Complainant had not been issued a Termination Agreement and there were still two more days left in the current extension prior, but the Respondent put the home back on the market. The following day the Complainant issued a termination agreement and the Seller threatened not to sign because the Seller did not like the Complainant's agent and the wording used in the termination agreement stating the agreement was terminated due to foundation issues not being remedied and the deck not meeting code. The Complainant knew this was because the Seller and the Respondent did not plan to disclose the issues going forward despite being legally obligated to make such disclosures. The Complainant believe the Respondent and the Seller may have illegally withheld disclosures from the Complainant. The Complainant alleges the Respondent acted dishonestly and unethically and acted in bad faith when stating all the structural issues would be addressed. The structural engineer fees were in excess of \$1,000. Also, the Respondent put the property back on the real estate market before receiving or submitting a Termination Agreement.

The Respondent provided a response and stated the Sellers wanted to obtain specific quotes on the repairs needed to be made and decided to obtain their own engineers and inspectors to provide estimates. There were four companies that came and inspected the property and only two saw evidence of repairs needing to be made. The other companies believed the cracks were stress fractures and did not structurally compromise the home. The Respondent stated the Sellers were willing to move forward with the repair of the foundation issues and having the deck inspected. The Complainant and the Complainant's agent demanded the deck issues be brought up to current code and as per the Purchase and Sales Agreement, the Complainant did not have the right or authority to request the deck be brought up to current code unless instructed to do so by government authorities. The Complainant also threatened to get the county code inspector involved. The Respondent's client had already called them to ask them to inspect the home. The only way the county inspector would come to the home if it was a new construction project. The Complainant insisted the deck must be brought up to the code. After the Respondent's client received the work proposal from the contractor which was \$6,000 cheaper than the quote received by the Complainant's contractor and provided for a "lifetime" transferable warranty. The Complainant and the Respondent's client could not come to an agreement on the inspection and foundation issues and the Complainant opted to be released from the contract. The Respondent had waited for hours for the Complainant to sign the Release and the Respondent had to continue to call and text the Complainant's agent with little or no response. The Respondent finally remarketed the property to Active from "Pending – Continue to Show."

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

36. 2020041031
Opened: 6/15/2020
First Licensed: 11/2/2015
Expires: 11/1/2021
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant represented the property owner of a home listed for sale. The Respondent presented an offer on behalf of a buyer and it was countered by the Complainant's clients. The offer was accepted and bound, and closing date was set. There were multiple offers on the property. Prior to the closing, the Buyer's lender indicated to the Complainant about delays in the mortgage process and stated the buyers were local real estate agents. The Respondent failed to disclose to the Complainant or the Complainant's clients they were licensed real estate agents. The Complainant's clients were terribly upset and felt that this should have been disclosed and believed this was purposeful. The Seller believed the Seller was denied the ability to make an informed decision in the offer selection and negotiation due to the lack of disclosure.

The Respondent provided a response and stated the Respondent lived several 100 miles away and retained the services of a local real estate agent. The Respondent never acted in the capacity of a real estate agent and used the services of a licensed real estate agent. There was no need to disclose the Respondent was a real estate agent, as it had no bearing on the transaction or the offer process.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

37. 2020041051
Opened: 6/15/2020
First Licensed: 11/16/2017
Expires: 1/15/2021
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant represented the property owner of a home listed for sale. The Respondent presented an offer on behalf of a buyer and it was countered by the Complainant's clients. The offer was accepted and bound, and closing date was set. There were multiple offers on the property. Prior to the closing, the Buyer's lender indicated to the Complainant about delays in the mortgage process and stated the buyers were local real estate agents. The Respondent failed to

disclose to the Complainant or the Complainant's clients they were licensed real estate agents. The Complainant's clients were terribly upset and felt that this should have been disclosed and believed this was purposeful. The Seller believed the Seller was denied the ability to make an informed decision in the offer selection and negotiation due to the lack of disclosure.

The Respondent provided a response and stated the Respondent lived several 100 miles away and retained the services of a local real estate agent. The Respondent never acted in the capacity of a real estate agent and used the services of a licensed real estate agent. There was no need to disclose the Respondent was a real estate agent, as it had no bearing on the transaction or the offer process.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

38. 2020041061

Opened: 6/15/2020

First Licensed: 9/7/2005

Expires: 9/6/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker. The Complainant represented the property owner of a home listed for sale. The Respondent presented an offer on behalf of a buyer and it was countered by the Complainant's clients. The offer was accepted and bound, and closing date was set. There were multiple offers on the property. Prior to the closing, the Buyer's lender indicated to the Complainant about delays in the mortgage process and stated the buyers were local real estate agents. The Respondent failed to disclose to the Complainant or the Complainant's clients they were licensed real estate agents. The Complainant's clients were terribly upset and felt that this should have been disclosed and believed this was purposeful. The Seller believed the Seller was denied the ability to make an informed decision in the offer selection and negotiation due to the lack of disclosure.

The Respondent provided a response and stated the parties were represented as Buyers and it was immaterial the Buyers were real estate agents had nothing to do with the transaction. Also, the Buyers did not act in the capacity of real estate agents and were home buyers.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

39. 2020041611

Opened: 6/15/2020

First Licensed: 5/11/2016

Expires: 5/10/2022

Type of License: Principal Broker
History: None

The Complainant alleges the Respondent is operating an unlicensed real estate broker.

The Respondent has provided a response and stated the Respondent is within the grace period for renewing the license and because the local real estate board offices have been closed and not offering classes, the Respondent was in the process of taking the core courses required. The Respondent has properly renewed the license.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

40. 2020043181
Opened: 6/15/2020
First Licensed: 7/9/2003
Expires: 3/6/2021
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges there were several abnormal incidents that occurred during the purchase of a property. The Seller and the Tennessee Real Estate Commission need to be made aware how the Respondent conducts business. The offer was submitted to the Respondent on forms that are not customary. Also, the Respondent would only accept and submit paperwork on Friday. The Respondent required earnest money and proof of financing. The Complainant provided a letter from the bank showing proof of immediate funds available for the purchase of the property at the full asking price. The earnest money was given in cash to the Complainant's agent. The same day the Respondent returned the earnest money and the property was listed off the market the next day. The Complainant's agent did not know why it had not been changed to "pending." The Complainant's agent thought the Seller may have requested this change. After a couple of days, it was still listed as off the market. The Complainant contacted the Seller's agent and was told the Buyer was doing a home inspection and had twelve days to have it completed. The Buyer had offered \$20,000 more than the asking price and the property had been listed "AS IS."

The Respondent provided a response and stated the property was a VA foreclosure and handled by a foreclosure corporation. The Respondent stated there were six other competing offers for the property and the Complainant's offer was not the best offer. The Complainant's offer was not accepted, and the Complainant was upset the offer was rejected.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

41. 2020040141

Opened: 6/15/2020

First Licensed: 5/4/2000

Expires: 11/2/2020

Type of License: Real Estate Firm

History: None

The Complainant is an Arizona resident and purchaser of a rental location property and the Respondent is a licensed Tennessee Real Estate firm.

The Complainant booked a vacation rental through a listing website and was unable to determine the exact owner of the property. The booking was made online for rental location in Tennessee. The Complainant determined there were approximately 40 properties listed on the online rental site for the company with the Tennessee listings. After travel restrictions were imposed in mid-March 2020 due to the COVID-19 pandemic, the Complainant alleges upon contacting the Respondent on March 31, 2020 to reschedule the travel dates, the Respondent refused to reschedule the dates. The Respondent indicated the Complainant had missed the cancellation deadline and failed to purchase the travel insurance. Due to the Executive Orders issued by both Governors in Arizona and Tennessee, the Complainant stated travel was “illegal” since this was considered unnecessary travel. The Respondent indicated the Complainant had entered a binding contract for the booking of the rental property. The Complainant stated a refund was not requested but was merely a postponement of the booking.

The Respondent provided a lengthy response describing how the reservation was made by the Complainant. First, the Complainant was not the actual person making the booking and paying for the rental property, it was another party related to the Complainant. The purchase was done through VRBO for the total amount of \$1,886.08 through an Online Third-Party Agency (OTA). The online companies’ website allows consumers to book various travel related services directly through the Internet. The OTA is a point of sale transaction and the reservation(s) is made through the third-party OTA’s are purchased directly through those companies and are reflected on the purchaser’s receipt with the corresponding OTA. The OTA processes the customer funds when purchasing a reservation, the funds are processed, received and held by the OTA. The remaining funds are disbursed to Respondent five to seven days after the customers’ departure minus the OTA’s charges and commissions. The OTA provides the customer with all the transaction details and specifics for the purchase of the booking. The details of the charges, confirmation of payment and the cancellation policy are all provided on multiple occasion and stated boldly during the transaction. The OTA provides the customer full disclosure of the cancellation policy. When the Complainant purchased the reservation through the OTA, the pre-set cancellation policy was disclosed in the listing details. The customer questions concerning refunds and cancellations are to be directed to the OTA where the booking is purchased. The OTA processes all customer requests for a refund outside of the cancellation process according to the terms of the booking agreement. The booking agreement stated the Complainant was not eligible to qualify for a refund. The OTA is not connected to the Respondent and is not the Respondent’s employer. Other than being a platform to make the reservation, listing the rental location and collecting fees for those services, there is no relationship with the OTA. The Respondent presets all the pricing/booking agreement with the OTA and the cancellation policies are legally binding between the Complainant

and the OTA. The OTA can make suggestions concerning a customer's special requests or requests for concession, but they cannot mandate changes to the preexisting pricing, booking agreement or cancellation policies. The OTA does not offer access to customer account details. The Respondent does not have access to the customer details when the booking is made. The only account details the Respondent can obtain is what can be viewed in the owner portal. The booking dates were May 3 to May 10, 2020. The Complainant did make inquiries about what provisions are in place during the COVID-19 pandemic that could affect the Complainant's travels and there was an auto reply sent to the Complainant by the OTA. These were forwarded to the Respondent. The Complainant requested a follow-up of the request and there was a form letter sent to the Complainant. The Complainant asked for an alternative solution concerning the COVID-19 pandemic. An auto response outlining details for the COVID-19 policy by the OTA and the travel insurance was sent to the Complainant. Also, reminder was sent of the booking agreement/cancellation policy of the Respondent. The Complainant continued to ask for understanding considering the circumstances and some concession for the reservation. An auto reply was again sent to the Complainant. The auto form letter was sent to the Complainant again reminding the Complainant of the booking agreement and cancellation policy. At the end of March 2020, a letter was again sent directly to the Complainant reminding the Complainant to purchase the travel insurance and advising the cancellation policy still applies to the booking. Another notice was sent to the Complainant advising that there is no contractual provision allowing for a refund or credit. The Complainant was advised to have purchased the travel insurance. During the booking dates, there was no customer correspondence received by the Respondent. Post Booking, the Respondent received a request from the Complainant asking for a flexible stay credit for April 1, 2021 through March 31, 2021. The Respondent stated a letter was provided denying the request and stating the matter had been closed. The OTA did refund the commission (travel service fee) to the customer because of the confirmed pandemic during the Complainant's travel dates. The Respondent did not demand the Complainant violate or break any legal mandates issued by the respective states. The Respondent stated if the customer decided to travel, it was in their sole discretion. There was a financial obligation by the Complainant and in order to protect themselves in such situations, the Complainant should have purchased travel insurance to cover such unforeseen events of disaster/emergency such as, a pandemic, severe or inclement weather, forest fire, failed flight arrangement, illness of customer or family member and the customer failed to purchase sufficient insurance. The Respondent cannot provide a refund or credit. The OTA site clearly states customers are responsible for obtaining and purchasing insurance coverage to protect themselves and their trips. The Respondent performed its due diligence and engaged in fair and honest dealings. The notification was sent to the Complainants when the booking was made to purchase the travel insurance to protect themselves in the event of a travel emergency. Also, there was a manager's cancellation policy available that guaranteed a 100% refund if within 60 days prior to the arrival for any reason, whatsoever, the Complainant failed to submit the request in a timely manner.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

42. 2020040551
Opened: 6/15/2020
First Licensed: 7/23/2013
Expires: 7/22/2021
Type of License: Real Estate Firm
History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee real estate firm.

The Complainant made an offer for the purchase of property and it was accepted. The Complainant contacted the county and city officials to determine if the Complainant could build on the land and if there was city sewer. The Complainant discovered the land had been illegally split and it could not be built upon. A septic system will not be allowed on the land because the property is too small. The Complainant produced a letter from the county tax assessor, and it says on the tax records the land is unbuildable. The Complainant alleges the Respondent was dishonest and acted fraudulently.

The Respondent provided a response and stated this property was inherited by the Sellers who had no knowledge about the details of the property. The Sellers wanted to sell it and enlisted the help of the Respondent to list the property. In the listing, the Sellers were clear to all Buyers to perform all due diligence concerning the details of the property. The Complainant won the multiple offer situation for the lot. The Complainant had an agent representing the Complainant in the transaction. The Respondent's Sellers wanted to be sure all contingencies for septic approval and/or building permits were properly done. The offer included the purchase was contingent on the septic system and the building permit. The Respondent and the Sellers did not market the property as a buildable lot. The Respondent was not aware the property was unbuildable or categorized as such. The property was not sold under any false pretenses. The property was being sold "AS IS." The Respondent and the Seller were not trying to hide anything concerning the property. The Complainant timely received the return of all earnest money and the contract was cancelled.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

43. 2020040221
Opened: 6/15/2020
First Licensed: 4/9/2018
Expires:
Type of License: Time Share Registration
History: None

The Complainant is a Tennessee resident and the Respondent is a Florida timeshare corporation holding a licensed Tennessee timeshare registration.

The Complainant was contacted by the Respondent concerning two units that were available in

Las Vegas, Nevada for \$149,990 that were originally \$233,590. The Complainant initially declined to purchase the property. The Respondent indicated the deal was only valid for two days and it would give the Complainant an “Elite Plus” membership. Also, the offer was a “deal of the day.” After the Respondent kept calling for two days, the Complainant agree to purchase the property. The Complainant claims the Complainant is unable to use the property.

The Respondent failed to provide a response pursuant to Tenn. Code Ann. § 62-13-313(2).

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$1,000 for the above specified violation.

Decision: The Commission accepted counsel’s recommendation.

44. 2020038521

Opened: 6/22/2020

First Licensed: 2/13/2015

Expires: 2/12/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Florida resident and owner of property in Tennessee the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant stated the Respondent was to sell property “AS IS” and failed to include it in the listing. The Complainant had also indicated to the Respondent, the Complainant had existing surveys and title insurance on the property and the Respondent failed to obtain this information until right before the closing and it was too late and the Complainant had unnecessarily spend additional funds. Also, the Complainant stated the Respondent was also able to obtain a receipt from the septic tank company that had cleaned the Complainant’s septic tank in 2016 had conducted an inspection. There was also an invoice of \$450 included and the Complainant only discovered this document was in the possession of the Respondent on the date of closing because it was erroneously included in the closing documents. On the date of the closing, the Respondent texted the Complainant and indicated the Seller wanted the crawl space repaired. The Respondent stated the buyer did not have the additional funds to repair it and the only way to close on the property was for the Complainant to pay an additional \$10,057 for the repairs. The Complainant objected. The Complainant had already agreed to pay the Buyer’s closing costs up to \$9,000, but the actual cost was \$6,776.63 and there was a remaining balance available of \$2,223.37. The Complainant stated the Respondent insisted the Complainant use the money for the repairs and pay the remaining balance of \$7,833.63 and pay for the repairs to the crawl space. According to the Complainant, this was in direct conflict to the original contract terms which required the property to be sold “AS IS.” The Complainant also asked the Respondent to have bids be taken for the repairs, so the Complainant could obtain the best price for the repairs, but the Respondent insisted that a company had already been called and provided a “good” price over the phone. A full estimate had already been done and the monies were put into escrow in the closing statement signed by the Buyer. The estimate had been done by the Respondent weeks earlier without the Complainant’s knowledge. The Respondent also indicated this would not cause a delay and the

closing would still occur that afternoon and the papers would be signed. The Complainant alleges the Respondent also gave the Complainant the wrong address to the title company and the Complainant came to Tennessee and went to the wrong town for the closing and it resulted in the Complainant being late. The Respondent was supposed to meet the Complainant at the closing, but never showed up and never informed the Complainant. The Complainant stated it was clear the Respondent had no plans to attend the closing. The Complainant believes the Respondent coerced the Complainant to sign all the closing papers.

The Respondent provided a response and stated in May 2019, the Respondent met with the Complainant and her husband to list the home. The Complainant had been trying to sell the home for sale by owner for the past few months with no luck. The Respondent received a text a week later from the Complainant and the Complainant wanted to list the home with the Respondent. During the listing period, there had been one offer and the Complainant rejected the offer. The home did not sell and there was very little interest in the property. The listing agreement expired in December 2019. In March 2020, the Buyer that had made the original offer previously again contacted the Respondent and inquired about the property. The Respondent contacted the Complainant and asked if the Complainant wanted to sell the property. The Complainant indicated her husband had died in January 2020 and she was very serious about selling the property. The Respondent listed the home again for the Complainant and an offer was made on the property. The Complainant offered the surveys for the home and when the Respondent went to pick them up the Complainant claimed the Respondent could not have the originals and did not have a way to scan or send them to the Respondent. Later, the Respondent received a repair amendment from the Buyers and relayed the information to the Complainant. There were some major issues with the crawlspace and mold in the crawlspace. The following morning, the Respondent contacted the Complainant concerning the repair amendment and she was very upset and started to curse and yell at the Respondent. Subsequently, the Complainant was still upset and yelling at the Respondent during every phone call concerning the additional funds needed to make the repairs. Finally, the Respondent and the Principal Broker agreed to pay \$3,000 from the commission fees. At this point, the Complainant agreed to close on the property. Each time the Respondent spoke to the Complainant, the Complainant would yell and use expletives during the conversation. The Respondent acknowledges there was error made by including the septic receipt. It was in the Respondent failed to remove it from the closing documents and it should not have been included in the closing documents. The Respondent also made an honest mistake in sending the Complainant to the wrong office of the title company. The Respondent did not know there were two offices for the title company and accidentally sent the Complainant to the wrong office location. The Respondent stated the home was not to be sold "AS IS" and the listing agreement and contract documents do not indicate the home was being sold "AS IS."

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

45. 2020041411

Opened: 6/22/2020

First Licensed: 11/12/2008

Expires: 11/11/2020 (Retired)

Type of License: Affiliate Broker
History: None

The Complainant is a California resident and Tennessee property owner and the Respondent is a retired Tennessee Affiliate Broker.

The Respondent was the property manager for a property owned by an 83-year-old individual who lived out-of-state. In March 2020, the property owner wanted to sell the property and asked her son and daughter-in-law to assist in selling the property. They hired a broker to list the property. The Respondent never sent the necessary property management documents to the Complainant. The tenants had been making the rent payments to the Respondent in cash every month and were given rent receipts by the Respondent. The Complainant asked for copies and the Respondent claimed to have retired in 2019. After attempting to contact the Respondent on numerous occasions, the Complainant alleges the Respondent never responded and did not provide the property management documents. Also, it appeared the Respondent never had the necessary repairs performed on the property and one of the tenants was planning on moving. Also, the Complainant later learned the signatures on the lease were not the actual signatures of the tenants. The tenants stated they did not sign a lease agreement during the tenancy period. The January, February and March 2020 rent payments were never sent to the owner of the property. It appeared the Respondent had only sent one payment in the past three years in November 2019. On May 15, 2020, the Complainant sent a certified letter was sent to the Respondent requesting all documents for the past three years for all transactions related to the property. The Respondent provided a response claiming the documents were sent to the Complainant by Dropbox. The Respondent did not provide a complete response to the allegations in the complaint and stated the documents were sent by Dropbox, however, the Dropbox link did not work. The Respondent is in retired status.

The Respondent failed to respond to the complaint pursuant to Tenn. Code Ann. § 62-13-313(2) and there is proof of financial irresponsibility or insolvency pursuant to Tenn. Code Ann. § 62-25-107(b)(1).

Recommendation: Authorize formal charges and assessment of a civil penalty in - the amount of \$2,000 for the above specified violations.

Decision: The Commission elected to accept counsel's recommendation of a \$2,000.00 civil penalty but to also include a flag on Respondent's license to appear requiring that Respondent personally appear before the Commission prior to re-activating license out of "retirement" status.

46. 2020041581
Opened: 6/22/2020
First Licensed: 11/26/1997
Expires: 8/11/2021
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant asked the Respondent to view a property a second time prior to making an offer and noticed while walking the perimeter of the property there was a neighbor's fence that was encroaching on one of the three parcels of property. The fence following south to southwest corner of the parcel, the fence headed a southeastward direction and proceeded through the southeastern corner of the first parcel. The TN Geographic Information System ("GIS") maps indicated that it was marked off by approximately 1/2 an acre or more and the neighbor had fenced off the property. The Complainant contacted the Respondent to explain the situation and asked him to come and walk on the property with the Complainant. The Respondent came to the property and shrugged off the issue and stated the GIS maps are not accurate. The Complainant made an offer for the three parcels of land and the offer expired. The Respondent later contacted the Complainant's agent and indicated the Sellers were out of town and needed to get with the family member to make the decision on the offer. The Respondent later called back and stated another offer had been submitted and asked the Complainant to submit the top offer. The Complainant's agent asked for the Multiple Offer Notification form so the Complainant could make a decision. The Respondent indicated he was out-of-town and asked the Complainant to modify and resubmit the existing offer. The Respondent never produced the form. The Complainant submitted another offer and it was also rejected. The Complainant alleges the Respondent made willful misrepresentations to the Complainant, failed to furnish a copy of the listing, sale, lease or other contract relevant to the transaction to the Complainant and conduct that was improper, fraudulent or dishonest.

The Respondent provided a response and stated the Respondent reviewed the fence issue and sent all the information in the Respondent's possession, including the tax card and explained the points of reference for the corners. The Respondent stated the property was not misrepresented. Due to the Memorial Day weekend, it was difficult to communicate with the Sellers and there may have been a delay in getting back to the Complainant's broker. The Complainant did not obtain the winning offer on the property and was disappointed.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

47. 2020043321
Opened: 6/22/2020
First Licensed: 7/24/1972
Expires: 4/27/2017 (Expired)

Type of License: Real Estate Agent
History: None

The Complainant is a Tennessee resident and the Respondent is a retired Tennessee Real Estate Broker.

The Complainant alleges the Respondent has failed to return the security deposit of \$1,000 and alleges the Respondent engaged in discriminatory treatment towards the Complainant and is a member of the Klu Klux Klan.

The Respondent provided a response and stated the security deposit was not returned because the Complainant failed to vacate and remove the six vehicles, 46 bicycles and a shed full of old tires by the end of the tenancy period (end of the month). Respondent failed to maintain the property as required and did not cut the grass. The Respondent had to pay \$300 to have the tires and the other trash removed from the shed. The Respondent had to have someone come with bolt cutters to unlock the shed because the Complainant refused to come and open the shed. The Respondent also had to all the items left behind and find a charity to donate all the bicycles. The Respondent has never discriminated against the Complainant and has several other African American tenants. The Respondent does not belong to the Klu Klux Klan and has absolutely no involvement with the organization. The Complainant was also operating a used car lot from the front of the property and the Respondent received a letter from the city indicating the Complainant was violating the city code by selling vehicles from the property. The Respondent has sold the duplex and that was the reason it was necessary for the Complainant to vacate the premises.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

48. 2020043481
Opened: 6/22/2020
First Licensed: 11/21/2017
Expires: 11/20/2021
Type of License: Real Estate Agent
History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant entered into a rental agreement with the Respondent. The Complainant alleges the Respondent has ignored several landlord-tenant laws and there is an open non-working septic tank outside the property where sewage is leaking from the kitchen, bathroom sink, and bathtub. The weeds are coming through into the home, the windows were never sealed, there is runoff water coming into the house and other issues with property.

The Respondent provided a response and stated the Complainant has repeatedly made complaints

concerning the duplex property since March 2019. The Respondent has responded to all the complaints. The property owner also provided a response supporting the Respondent. The property owner also stated the Respondent did not do anything wrong and has been very responsive. The Respondent was asked by the property owner to provide updates on the tenant because there were concerns with the maintenance claims being made to the Respondent. The Complainant threatened the neighbor with a gun and the Respondent had to purchase two wireless cameras for the neighbor because the neighbor fears the Complainant.

The Complainant made repeated complaints to the Respondent concerning the property including various requests for items to be installed or replaced. The Complainant repeatedly claims there was raw sewage, however, the Respondent had it checked by a licensed plumber and there was no issue with sewage or the septic tank. The Complainant attempted to fix it and claims it was a non-working septic tank. The Complainant alleges there was a hole that needed to be filled in the yard because her chihuahua could fall into the hole. The Complainant has attempted to fill the hole and has not been successful. There was no smell, but after the temperature began to rise, the smell was more prevalent. The Complainant alleges the other unit is a stone duplex on the right side of the property and is kept in a much better condition. The Complainant indicated it took much longer to renovate the Complainant's side of the duplex because the damage was more extensive and the unit needed more work. The Complainant alleges dampness in the basement and a muddy pool of water. There are also an outside door to the basement where rodents have chewed out two inches from the ground and there is a gap and the Respondent has refused to fix it. The Complainant has stuffed the gap with towels to keep the air and critters out of the house and there are also weeds growing that are entering the unit from outside. There are many roaches and spiders and the Complainant has repeatedly asked the Respondent to have a pest control spray the unit. The Complainant could not use the washing machine and the oven at the same time because the electricity was maxed out in the unit. The Respondent put new gravel down on one side of the duplex but would not put gravel down on the Complainant's side of the duplex. The Complainant alleges the Respondent does not use licensed plumbers or contractors to fix things on the property. The Complainant alleges the Respondent refused to fix anything and later evicted the Complainant out of the unit.

The property owner stated the Respondent has always been responsive to the Complainant and did whatever was necessary to maintain the property and for the Complainant. All the issues related to sewage, pests and any other complaints or issues made by the Complainant were responded and attended to by the Respondent. A plumber was sent on multiple occasions and the unit has been sprayed for pests.

The Complainant provided a follow-up response and indicated the Complainant did not pull a gun on the neighbor, but a taser. This was a result of the neighbor hitting the Complainant's car and instigating an argument. The Complainant alleges the Complainant had to call the police and the neighbor got out of the car and threatened the Complainant. The Complainant had to pull a taser to protect herself. The Complainant also provided additional information and various text messages. The Complainant told the Respondent would be reported to the Real Estate Commission.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

49. 2020043551

Opened: 6/22/2020

First Licensed: 5/13/2004

Expires: 7/15/2021

Type of License: Real Estate Agent

History: None

The Complainant is a Tennessee resident and the Respondent is a Tennessee licensed Affiliate Broker.

The Complainant alleges the Complainant was the first to tour a home and submit an offer to the Respondent. The Respondent required a specific price to be met and the Complainant's agent submitted a follow-up offer and met the price demand. The Respondent continued to show the property and did not meet the offer deadline. The Respondent told the Complainant's agent a decision would be sent the following day, which was after the expiration of the offer. The Respondent failed to respond until the following afternoon and later advised the Complainant's agent, there were two higher offers. The Complainant alleges the Respondent used the offer made by the Complainant as leverage to bait higher offers from other buyers. The Complainant was not successful in purchasing the property because of the Respondent's actions.

The Respondent provided a response and stated there has been no violation of the real estate laws and rules. The Respondent did not require a specific price be met. There were multiple offers on the property and all agents were notified of the offers on the property. The Respondent presented all the offers received to the Complainant and the Sellers chose the best offer. The Respondent did not refuse to respond and contacted the Complainant's agent and let the agent know the offer had been rejected.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

50. 2020045961

Opened: 6/22/2020

First Licensed: 12/22/2014

Expires: 12/21/2020

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and the Respondent is a licenses Tennessee Affiliate Broker.

The Complainant received a phone call requesting a showing at 1:30 pm in June 2020 and the Complainant left the house at 1:15 pm. At 4:20 pm, the Complainant received a phone call from the Complainant's agent indicating the home had not been shown at 1:30 pm and wanted to show

the home at 5 pm. The Complainant never received notification the initial appointment had not been kept by the Respondent. The Complainant alleges this was unprofessional for the Respondent to not show the home at the original appointment time. In April 2020, the Respondent showed the home to another potential Buyer and told the Complainant's agent the Respondent did not know how the home was owner occupied. The Complainant does not understand how the Respondent could make this comment since on the day of the showing the Respondent had seen the Complainant and her family leave the home for the appointment for which the Respondent was one hour and 15 minutes late.

The Respondent provided a response and apologized for missing the appointment. It was an oversight. The Respondent had printed all the MLS sheets in order and the one sheet for the property in question somehow dropped between her car seats and the Respondent later discovered the missing sheet later. The Respondent did not mean to cause any inconvenience and on this day was showing 10 homes to one couple in the morning and 12 homes to show a different couple in the afternoon. The Respondent profusely apologized and acknowledged making a terrible mistake and inconveniencing the homeowner. The Respondent could not recall the April 2020 situation where Respondent had made a comment about the owner occupancy. The Respondent will try to do better to make sure all listing paperwork is in order and no future appointments are missed or skipped.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

51. 2020046491

Opened: 6/22/2020

First Licensed: 9/11/2014

Expires: 11/6/2021

Type of License: Principal Broker

History: None

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent withheld disclosure of a road extension project that would impact the purchase of the property by the Complainant. The Complainant asked for all information on the property and there was no mention of the extension project by the Respondent or in any property description. The Complainant's agent pulled the information from the MLS and at the time of the offer the only information consisted of an expired deed restriction, plat map, aerial map, topo map and listing package. After a viewing appointment was set up with the Respondent, the Complainant viewed the property in June 2020 and made an offer the following day. The same week, the Complainant's agent had a phone call with the Respondent and reviewed some name change information on the contract. The offer was signed by the Seller and bound on June 13, 2020. On the same day, the Complainant's husband went to view the property again and

a neighbor came and spoke with the Complainant's husband. The Complainant's husband indicated the Complainants were in the process of purchasing the property and during the conversation, a discussion began concerning the highway extension project which would impact the property being purchased by the Complainant. The neighbor also stated the Respondent was aware of the extension project and the neighbor had discussed it at length with the Respondent. Also, the Complainant found out from the neighbor that the soil sampling had already been conducted by the State of Tennessee. Later, the Complainant reviewed the Tennessee Department of Transportation (TDOT) plans for the project and the right of way covers the entire piece of property. The Complainant also contacted TDOT's project manager and confirmed the highway extension. The Respondent failed to disclose this information to the Complainants or the Complainants' agent. The Complainant's agent contacted the Respondent concerning the highway extension on June 14, 2020 and wanted to know all the information the Respondent had about the project. The Respondent attempted to contact the Complainants' agent on the afternoon of June 15, 2020. Before calling the Complainant's agent that afternoon, the Respondent changed the description on the Realtor.com listing to include a sentence about the project. The Zillow listing did not make mention of the highway project. The Complainant requested termination of the contract on June 15, 2020. The Respondent claims the information on the project was included in the Respondent's website listing of the property and it was communicated verbally to all prospective buyers. The Complainants insist this is incorrect and the Respondent never communicated this information to the Complainants.

The Respondent provided a response and stated the property is being sold by the son of the property owner who holds the Power of Attorney for his father. The father is very elderly and is in an assisted living facility in lock down due to the COVID-19 pandemic. The son is the Respondent's client pursuant to the POA. The son did not know much about the property but did recall he made mention of a possible road project, which was once a possibility, however, the client was not aware of any details. The Respondent did visit the property while it was being cleared and spoke with the neighbor who had recently purchased the property in the area and mentioned the road project and how it would possibly affect the Respondent's client. The neighbor stated there were several tracts that were sold at auction and some of them were going to be impacted by the highway road project. The Respondent contacted the county planning office to inquire about the project and see if the property would be impacted. The Senior Planner indicated the property was buildable and the Respondent would have to check with TDOT to find out more information about the road project. The Respondent contacted an individual who was a colleague of the Respondent who worked at TDOT and the colleague did not have any knowledge of the project. The Respondent tried to contact other individuals at TDOT over the next few days but was unable to reach anyone to get an answer because the staff was working from home due to the COVID-19 pandemic. The Respondent spoke with multiple individuals at TDOT and finally got an answer from someone who stated the property may indeed be impacted by the road project, however, this was preliminary determination and subject to change. The Respondent decided to change the disclosure on the first marketing listing on the Respondents' firm's website and mentioned it would be a possibility and not a certainty. The Respondent provided a copy of the change made to the website. The Respondent stated the property might be in the right of a way of a highway extension and TDOT will verify the final location at the end of 2020. Since there is such a fractured nature to online marketing services and with the use of several online marketing services, the Respondent also stated for individuals to contact the office for more information about the property. The marketing

was made public and the Respondent received many inquiries about the property by telephone and e-mail. The Respondent made the necessary disclosures to all individuals making inquiries about the property. On June 10, 2020, the Respondent received a text from the Complainant's agent asking if there were any offers on the property. The Respondent stated there had been interest, but no offers and offered to answer any questions about the property. The Respondent received another text later the same day about the property stating the Complainants would be submitting an offer. The Respondent did not have direct communication with the Complainant's agent except by text message and the Respondent did not verbally discuss the property with the Complainant's agent. The Respondent also had no knowledge of the Complainants' intent, intended uses or any other reasons for the Complainants offer on the property. After negotiating the terms of the offer, the Respondent's client accepted the offer and it was bound on June 13, 2020. The Respondent spoke with the Complainant's agent and discussed the contract terms. There was no inquiry about the highway project. The next day, the Complainant's agent stated the Complainants had learned about the road project and wanted to know what information the Respondent had concerning the road project. The Respondent reached out to the Complainant's agent to discuss the property and the road project and the agent did not answer. The following day, the Respondent followed up again with an e-mail. Shortly thereafter, the Respondent received the contract termination which the Respondent forwarded to the client. The Respondent has represented the property and has made every effort to be transparent and honest. The Respondent stated the Complainants' agent did not have any questions about the property and the Respondent assumed the Complainants' agent helped the Complainants gather all the necessary information on the property. The Respondent believes the marketing done by the Respondent was adequate in disclosing anything known about the property and invited anyone to request information on the property. The Respondent tries to provide as much information as possible concerning the property and the company website disclosing the road project would disclose this information. The Respondent acknowledges the MLS did not explicitly state the highway project. Later, the Respondent realized this information should probably be added to the verbiage of the MLS marketing information for the property. The Respondent stated it is rare for the Respondent to receive an offer with no in-person, phone or e-mail dialogue with a potential buyer or agent. The Respondent does not believe any mistake was made and did not purposefully misrepresent the property. The Respondent stated the Respondent could have shared all the information with the Complainants' agent, but believe it was the Complainant's agent should have gathered all the information and sent the information to the client before submitting the offer. Also, the Respondent stated the road project has not been finalized and still not certain. The property may not be affected by the project. There is nothing that indicates that the project will affect the property. The Respondent stated if there was anything done in error, it was by mistake and not intentional.

There appears to be violations of the Tennessee Real Estate Broker License Act of 1973 for making a substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(b)(1), engaging in conduct that constitutes improper, fraudulent or dishonest dealing (Tenn. Code Ann. § 62-13-312(b)(20)) and failing to disclose to each party to the transaction any adverse facts of which the licensee has actual notice of knowledge pursuant to Tenn. Code Ann. § § 62-13-403(2).

Recommendation: Authorize formal charges and assessment of a civil penalty in the amount of \$3,000 for the above specified violations.

Decision: The Commission elected to accept counsel's recommendation of \$3,000.00 civil penalty and to include the requirement that Respondent attend the Principal Broker Core class within 180 days of the execution of the Consent Order and that the class not be counted toward yearly CE requirements.

52. 2020038761

Opened: 6/22/2020

First Licensed: 11/29/2006

Expires: 11/28/2020

Type of License: Real Estate Firm

History: 2017 Consent Order for failure to exercise reasonable skill and care

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate firm.

The Complainant claims the Respondent sold the Complainant a timeshare vacation during a high-pressure sales presentation. The Respondent continued to lower the price and gave additional assurances to the Complainant and stated the Respondent would even buy back the timeshare for the full value. The Respondent also claimed there were low maintenance fees. The Complainant purchased the timeshare and after paying on it for over a year, the Complainant discovered the Respondent was dishonest. The Complainant had stated the corporate office has not resolved the issues. The Complainant contacted the corporate office and also sent a letter to the corporate office. The Complainant alleges the Respondent has cheated the Complainant out of the money and repeatedly been dishonest.

The Respondent provided a response and stated there was no misrepresentation by the Respondent and all necessary disclosures were made and all documents were properly explained and provided to the Complainant. The Respondent stated the sales documents also clearly describe the product and services. The Complainant could have cancelled the purchase during the cancellation period and did not cancel.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

53. 2020042791

Opened: 6/22/2020

First Licensed: 5/21/2009

Expires: 5/20/2021

Type of License: Real Estate Firm

History: None

The Complainant is a Tennessee resident and a tenant, and the Complainant is a licensed Tennessee Real Estate firm managing a property.

The Complainant had a disability and was moving out of a property managed by the Respondent.

The Complainant alleges the Respondent failed to accommodate the Complainant during the process of moving out of the home and did not return all funds due to the Complainant. The Respondent also did not prorate the last two days of the month because the Complainant moved out early. The Complainant still had excess furniture in the garage prior to moving everything from the home and the Respondent allowed the new tenants to move-in early before the new lease period began and during the Complainant's last two days of the tenancy period. The Complainant also alleges the Respondent failed to have the carpets cleaned during the COVID-19 pandemic and did not have the home professional cleaned prior to the new tenants moving into the home. The Complainant paid for these items in the Lease Agreement upon vacating the premises. Complainant was also upset the new tenants had already changed the responsible party name on the gas bill four days before the end of the month and during the Complainant's tenancy period.

The Respondent provided a response and stated the Complainant provided notice of moving out early and did not ask for the prorated amounts until the end when the new tenants were moving in early and the Complainant still had furniture on the property during the last two days of the tenancy period.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

54. 2020043331

Opened: 6/22/2020

First Licensed: 9/8/2014

Expires: 9/7/2020

Type of License: Real Estate Firm

History: None

Complainant is a licensed Tennessee Affiliate Broker and the Respondent is a licensed Tennessee Real Estate Firm.

The Complainant represented the buyer in a transaction for the purchase of a home in August 2018. The Complainant was conducting some research on a third-party corporation's website that obtains information another source. In June 2020, the Complainant found information indicating a home sold by the Complainant was listed by the website as being purchased with by a corporation on August 2018 and also listed the Complainant's name next to it. This was incorrect. The corporation had nothing to do with the purchase of the home. The Complainant alleges this is very misleading and incorrect to the public. The Complainant contacted the Respondent and explained the problem with the information posted on the Respondent's website and the Respondent responded by stating there may have been a violation to the standards of practice Rule 1260-2-.12 and Tenn. Code Ann. § 62-13-312(b).

The Respondent's Principal Broker in Tennessee provided a response and stated the Complainant contacted the corporation concerning the "bought with" reference used by the Respondent on its website for a particular property. The customer service team

acknowledged the Complainant's e-mail and the information on the website was immediately hidden the next day. The Respondent stated a feed from the other listing service listed the wrong selling agent for the property and when the Respondent listed the property on its website, it pulled the incorrect information. When the other listing service later reported the correct selling agent, it had not been corrected. The information was later updated by the other listing service to reflect the correct agent's name, however, the Respondent's website had not imported the data correctly and mismatched the agent name due to a bug in the computer system and it resulted in the Complainant's name being used on the Respondent's website instead of the Respondent Seller's name. The Respondent has corrected the bug in the system and corrected the error. The Respondent apologizes to the Complainant and the Commission for the error and for any inconvenience to the Complainant.

Recommendation: Close.

Decision: The Commission accepted counsel's recommendation.

55. 2020030081
Opened: 5/4/2020
Unlicensed:
History: None

The Complainant is a resident of Kansas City, Missouri. The Respondent is operating as a short-term rental company in Tennessee.

The Complainant booked a furnished accommodation through booking.com with the Respondent who provides vacation homes in Tennessee prior to the COVID-19 pandemic. After the first wave of stay-at-home orders issued by Tennessee, the Complainant requested a refund because the Complainant could not travel to Tennessee. Instead, the Respondent offered the Complainant the opportunity to reschedule the trip to April 2020, however, both Tennessee and Missouri extended the stay-at-home orders through the week of the scheduled visit and the Complainant requested the Respondent provide a refund.

The Respondent provided a response and stated the reservation was made in January 2020. In March 2020, the Complainant requested cancellation of the booking and a full refund, however, there was a cancellation fee and instead of being charged the fee, the Complainant decided to rebook the stay with the Respondent.

Recommendation: One Thousand dollar (\$1,000.00) civil penalty for unlicensed activity.

Decision: The Commission accepted counsel's recommendation.

56. 2020038711
Opened: 05/08/2020
Unlicensed – Applicant for Vacation Lodging Service

History: None

Complainant is an Alabama resident. The Respondent is a short-term rental company located in Tennessee.

The Complainant alleges the Respondent is advertising and managing two properties for other individuals in Tennessee and is an unlicensed vacation lodging service and does not hold a designated agents license.

The Respondent owns a short-term rental company formed in August 2019 and primarily manages the Respondent's own properties. The Respondent began assisting managing a property in Tennessee and the property is owned by a licensed Tennessee real estate agent. The Respondent was not aware of the state licensing requirement and submitted the form to the Tennessee Real Estate Commission the day before the complaint was filed. The Respondent is in the process of obtaining a Vacation Lodging Service license and the application is pending.

Recommendation: Letter of Instruction concerning licensure requirement.

Decision: The Commission elected to issue a One thousand dollar (\$1,000.00) civil penalty for unlicensed activity.

SHILINA BROWN

Cases to be Represented:

57. 2018073421

Opened: 10/16/2018

First Licensed: 2/15/2005

Expires: 3/31/2019

Type of License: Principal Broker

History: None

This complaint was opened administratively when Respondent, an actively licensed principal broker since 2005 notified the Commission of pleading guilty to preparing a false tax return. Respondent is currently serving out their sentence and will not be able to respond per the licensing division who opened this complaint. Respondent sent a letter dated 8/3/18 that they were sentenced that same day for a felony regarding a tax preparation business that they previously owned. Respondent provided a copy of the Judgment and explained they will have to leave the state to serve a 90-day sentence and will have no access to email or mail during that time but hopes to re-establish communication once the sentence is served. Respondent understands there are rules that pertain to maintaining a license after a criminal conviction and they will follow any requirements deemed necessary by the Commission. Respondent provides their phone number which they had access to until 9/7/18, and stated they would be released on 12/7/18, so they should be done with their sentence at this time. The Judgment was filed in federal court in Tennessee stating they

would be on supervised release for one year after serving their sentence which includes requiring Respondent to make restitution in the amount of \$379,540 to the IRS in one lump sum payment.

Counsel recommends discussion of assessing discipline by either offering Respondent a Consent Order downgrading their license to affiliate status after a lengthy suspension, or revocation if necessary. Additionally, the Commission could first require Respondent to make an Informal Appearance before them to discuss this matter before deciding on the discipline.

Recommendation: Discuss.

Decision: The Commission voted to revoke Respondent's license based on violation of Tenn. Code Ann. § §62-13-312(b)(12).

New Information: In August 2018 Respondent reached a plea deal with the IRS in which she plead guilty to one count of filing a false (erroneous) tax return in 2017 for the 2016 tax year; a return filed by a wholly separate business she previously owned which prepared tax returns. In August 2018 Respondent notified the commission of the sentencing Order. The Order was for 3 months imprisonment, restitution, and one year of supervised probation. She began her imprisonment on September 12, 2018 and was released in early December 2018. She finished her year of probation on December 10, 2019; and no longer reports to anyone. She has paid most of the restitution and is currently making payments on the balance.

At the point when she entered the plea and served her three-month jail sentence, she was Broker over her own real estate office. When first contacted by the attorney for the commission in the winter of 2019, she closed that office and voluntarily moved her license to be under the direct supervision and guidance of a Broker. The Respondent would like to continue to be a licensed real estate broker and the Respondent has not violated any Commission rule or state law concerning the sale or rental of real estate.

New Recommendation: Discuss. Counsel would recommend Respondent appear before the Commission for an Informal Conference to discuss this matter before deciding on whether discipline should be imposed.

New Decision: The Commission elected to summarily suspend the Respondent.

58. 2019096241

Opened: 11/25/2019

First Licensed: 5/11/2015

Expires: 10/7/2020

Type of License: Principal Broker

History: None

Complainant is a real estate licensee. Respondent is a licensed Principal Broker. Complainant alleges that Respondent stole money from their escrow account by writing checks to themselves that were to remain in the escrow account. Respondent attached supporting evidence which show checks in the amount of \$1,000 and \$2,790 signed by Respondent with information in the memo line stating that the check was for petty cash, commission, and labor.

Respondent filed a response stating that the Complainant filed this complaint in retaliation to a civil lawsuit that they filed against the Complainant in Chancery court. Respondent further states that all actions they took were made at the direction of Complainant. Respondent states that Complainant instructed them to withdraw funds to pay a for work that was performed.

Complainant filed a rebuttal stating that it is true that there is a civil lawsuit between them and Respondent; however, this lawsuit is a dispute over the division of net income in a limited liability company. Complainant states that Respondent was a paid contract labor vendor for Complainant's company and wrote a check out of Complainant's real estate escrow account to Respondent. Complainant states that it took a while for them to discover the withdrawals because Respondent acted as the bookkeeper and did not reconcile. After Respondent was fired, they hired a new accountant who discovered the issue.

Recommendation: \$1,000 civil penalty per violation for trust account violations for a total of \$3,000. Respondent provided no evidence to indicate that they acted under the direction of Complainant.

Decision: The Commission voted to accept counsel's recommendation, but to also add language in the consent order downgrading Respondent's license to Affiliate for the three (3) years and then Respondent will have to complete all requirements to become a Principal Broker.

New Information: The Respondent has requested reconsideration by the Commission. The Respondent stated the Judge refused to dismiss the case and the matter was sent to mediation from that hearing. The parties were not able to agree to a settlement in mediation and Complainant was supposed to provide documentation by a certain date and only some of the documentation was provided. The case is ongoing. The only thing to add here is that the Complainant continues to sell homes owned by the LLC and when the title company asks where to deposit the proceeds, the monies are being deposited into a Corporation with a very similar name. At this point, the Complainant has deposited over \$500,000 in sales proceeds from properties owned by another corporation into an account with the same name.

Also, it is important to note the checks sent to the Commission by the Complainant were not drawn on an escrow account. This was an error in the original complaint. The checks were from an operating account at the direction of the Complainant and not written by the Respondent.

In light of the error concerning the checks produced, Counsel recommends this matter be dismissed. The lawsuit between the parties is unrelated to the issue in the Complaint.

New Recommendation: Close.

New Decision: The Commission accepted counsel's recommendation.

59. 2019001581

Opened: 1/7/2019

First Licensed: 7/26/2012

Expires: 7/25/2018

Type of License: Affiliate Broker

History: None

Complainant, a property owner, contracted with a licensed real estate firm and property management company where Respondent was then-affiliated. Respondent is a licensee and it appears they are still technically affiliated with that firm, but they no longer work there, and their affiliate broker license expired in July 2018.

Complainant states that after reaching out to the firm, Respondent contacted them to let them know they would be taking photos and advertising the property. Not long after listing the property, Respondent contacted Complainant with two interested tenants. Complainant states they instructed Respondent that they did not want any renters with a criminal background, and, according to Complainant, Respondent informed them that the interested tenants had no negative rental or criminal history. The tenants were approved, and Complainant states Respondent stopped working at the firm shortly thereafter.

Eventually, after about three years of occupancy and three months of nonpayment of rent, Complainant filed a lawsuit against the tenants for property damage and breach of contract. The tenants failed to appear in court, and Complainant received a default judgment in the amount of \$14,000. Since then they have not been able to locate the tenants and discovered that they have other outstanding judgments against them, and that one of them already had a criminal record when they applied to rent the property. Complainant thereafter contacted the firm to ask for the original background checks. According to Complainant, they were advised that the tenants weren't qualified at the time of their application and they never should have been approved. The firm thereafter provided Complainant with a refund and, according to Complainant, encouraged them to take further action against Respondent.

Respondent states they no longer work as a real estate broker, but they intentionally left their license with their former firm until it expired so that they could be available to help as needed. Respondent states they no longer have access to the firm's transaction files and assisted on over three hundred leases, so they do not have a specific recollection of this transaction; however, they provided a summary of their standard routine.

Respondent states they performed a credit and criminal background check on every tenant who applied for one of their listed properties. Respondent states they screened the applicants and then would review those who were qualified with the property owner, who ultimately approved or disapproved the applicant. Respondent states there is no reason they would have done anything differently in this transaction and they never received any complaints regarding the other approximate 299 leases they worked on.

In rebuttal, Complainant states they never received or discussed the tenants' background or credit checks.

Since Complainant is no longer active in the real estate industry and their license has expired, Counsel recommends a letter of warning regarding a licensee's duties of reasonable skill and care should they ever seek to reinstate their license.

Recommendation: Letter of Warning.

Decision: The Commission authorized a Consent Order requiring Respondent to make an informal appearance in front of the Commission should Respondent reapply for licensure.

New Information: The Respondent was not involved with this incident. The e-mails and text messages were produced by the Respondent. This is a case where the wrong party was named and there was actually a different affiliate broker handling this transaction. The Respondent is no longer involved in the practice of real estate and does not want to maintain or reapply for licensure.

New Recommendation: Close and Flag.

New Decision: The Commission accepted counsel's recommendation.

60. 2018027421

Opened: 4/27/2018

First Licensed: 10/12/1982

Expires: 7/9/2020

Type of License: Real Estate Firm

History: None

Complainant is a timeshare owner. Respondent is a licensed real estate firm and timeshare developer.

Complainant executed a timeshare purchase agreement on April 9 while Complainant was vacationing at Respondent's resort and were staying at the resort. The Complainant was provided all proper documentation concerning the time-share purchase and all cancellation policies. Complainant states that upon returning home they decided to terminate the

purchase and mailed Respondent a rescission letter dated April 20 and postmarked on April 21. The Complainant stated the rescission was sent within the time period for cancellation and stated the Complainant's had fifteen days to rescind. Complainant received a phone call from a Respondent's principal broker on April 23, who informed Complainant that they failed to exercise their right to rescind the agreement within ten days, and therefore their contract would remain in effect.

Respondent states the Complainant entered the agreement while they were staying at the timeshare resort. Respondent maintains that Complainant had only ten days to terminate the agreement and states they will not accept a late request to terminate.

Recommendation: \$1,000 civil penalty for improper dealing pursuant to Tenn. Code. Ann. § § 66-32-121(f)(2)(H).

Decision: The Commission voted to accept Counsel's recommendation.

New Information: Upon further review, the additional documents show the rescission by the Complainant was to be done within 10 days and was not sent timely by the Complainant. The dates were confirmed by the documents provided by the Respondent and the Complainant rescinded after the 10-day time period.

New recommendation: Close.

New Decision: The Commission accepted counsel's recommendation.

**61. 2020040571
Opened: 05/26/2020
Unlicensed
History: None**

Complaint is a real estate licensee. Respondent is a real estate firm operating in Tennessee without a firm license.

A complaint was filed against a firm located in Tennessee alleging the Respondent firm is soliciting and attempting to purchase timeshares through an escrow company based in Maryland. The Complainant paid a "transfer fee" of 10% of the offer made to the Respondent to buy the timeshare. The Respondent told the Complainant the amount would be paid back to the Complainant upon the sale of the timeshare. The Complainant was to receive \$26,000 for the sale of the timeshare plus the "transfer fee" of \$2,600. The Complainant alleges this was a scam involving a third-party escrow company and when it was time to close the Respondent wanted another \$2,250 for closing costs from the Complainant. The Complainant did wire the initial "transfer fee" of 10% to a bank in Mexico and has been unable to get the money returned.

The Respondent did not provide a response. Respondent is holding itself out as a real estate firm on the website.

Recommendation: \$1,000 civil penalty for operating as an unlicensed real estate firm.

Decision: The Commission accepted counsel's recommendation.

New Information: This is a duplicate complaint. An existing complaint involving the same parties and the same facts is currently open. For some reason, this complaint was inadvertently sent to the Legal Division twice with two different complaint numbers.

New Recommendation: Close.

New Decision: The Commission accepted counsel's recommendation.

62. 2018041781

Opened: 6/25/2018

Type of License: Unlicensed

History: None

Complainant is the chief executive officer for a regional Realtors® association, writing on behalf of the association's Board of Directors. Respondent is an unlicensed limited liability company. It should be noted that Respondent is under common ownership with a licensed real estate firm, but the listing(s) which serve as the basis of this complaint are not listed through the licensed firm; rather, they are listed for sale by Respondent.

Complainant alleges Respondent is engaging in unlicensed real estate practice. Complainant states Respondent markets properties on a commercial MLS platform (also used by Complainant) and that Respondent is not a licensed real estate firm. In support, Complainant provided an example of a listing which identifies an employee of Respondent under "Property Contacts." Complainant also provided a deed for the property which identifies an entity other than Respondent as the owner. Counsel was unable to locate any listings made by Respondent on the MLS platform (insofar as it is visible to the public) but did find some listings on Respondent's website. Also attached to the complaint was an email written by one of the Directors for Complainant, alerting other members of the Board to Respondent's alleged unlicensed activity. The email was also copied to the owner of Respondent, who replied that they are acting within the exception provided to corporations under T.C.A. § 62-13-104.

Respondent answered the complaint through an attorney. Counsel for Respondent states Respondent is under common ownership with the entities that own all the properties listed by Respondent. They state that the individuals who are listed on marketing materials are all employees of Respondent, and that Respondent's employees do not receive any commissions in connection with marketing or leasing activities. Respondent's Counsel argues that it qualifies for the corporate licensing exemption under T.C.A. § 62-13-104(a)(1)(F).

Recommendation: \$1,000 civil penalty for unlicensed activity and language directing Respondent to cease and desist.

Decision: The Commission voted to authorize a Consent Order with a \$7,000 civil penalty (\$1,000 per violation of T.C.A. § 62-13-301) and language directing Respondent to cease and desist.

New Information: Upon review, this is a real estate marketing firm and does not deal with real estate transactions and does not operate a real estate firm. There are no MLS listings by the Respondent. Also, no commissions are received by personnel and all personnel are employees of the Respondent. Also, the Respondent is not engaged as an unlicensed real estate firm and has a licensed affiliate.

New Recommendation: Close.

New Decision: The Commission accepted counsel's recommendation.

**63. 2018074951
Opened: 10/23/2018
Type of License: Unlicensed
History: None**

Complainant, a renter, alleges Respondent failed to honor the terms of their rental agreement. Respondent is a corporation apparently engaged in rentals and property management.

After multiple failed attempts to deliver the complaint to Respondent at their purported business address, delivery was finally achieved at Respondent's registered agent's address (as reported to the Secretary of State). No response was received.

Counsel is unable to make a recommendation about Complainant's specific allegations; however, it appears that Respondent is engaged in unlicensed activity. Counsel recommends the Commission authorize a civil penalty.

Recommendation: \$1,000 civil penalty for unlicensed activity.

Decision: The Commission voted to accept Counsel's recommendation.

New Information: The Respondent does not operate as a real estate corporation. This rental was rented to the Complainant individually by the Respondent. The Complainant happened to know of the name of the real estate corporation the Respondent planning on creating. The original entity was created for the purpose of being involved as a real estate property management firm, but it was never engaged or been involved in operating as a property management firm, real estate firm or business. Also, the owner never received the original communications from the Commission because the registered agent had not been changed in the Secretary of

State's website and the documents were not forwarded to the Respondent. This matter was originally a landlord tenant matter. The Respondent directly rented the property to the Complainant. The Complaint was filed after the Respondent evicted the Complainant from the property.

New Recommendation: Close

New Decision: The Commission accepted counsel's recommendation.

ANNA MATLOCK

Cases to be Represented:

64. 2019065701
Opened: 8/1/2019
First Licensed: 4/30/2014
Expires: 4/29/2020
Type of License: Affiliate Broker
History: None

Complainant is a licensee. Respondent is a licensed affiliate broker who also provides short term property management services.

Complainant alleges Respondent is engaged in unlicensed activity because Respondent does not have a VLS firm license or VLS designated agent license.

Respondent stated they were not aware that they needed a separate license in addition to their affiliate broker license in order to provide short-term property management. Respondent states that the majority of the rentals they manage are for longer than fourteen nights (note VLS licenses are only required where the reservation is fourteen nights or less), but nevertheless they signed up for a class in September 2019 so they can begin the application process. Respondent provided an email confirming their enrollment in the class, but as of today they do not have a VLS license.

Recommendation: Consent Order directing Respondent to complete the VLS application process within ninety (90) days of signing or otherwise pay a civil penalty in the amount of five hundred dollars (\$500) for unlicensed VLS activity.

Decision: The Commission voted to issue a Consent Order directing Respondent to complete the VLS application process within thirty (30) days of signing or otherwise pay a civil penalty in the amount of five hundred dollars (\$500) for unlicensed VLS activity.

New Information: Counsel has sent Respondent multiple notifications for the Consent Order and requested additional information for Respondent's address. All of

Counsel's mail has come back returned and efforts to locate Respondent have been unsuccessful. Therefore, Counsel recommends this matter be closed and flagged.

New Recommendation: Close and flag.

New Decision: The Commission accepted counsel's recommendation.

65. 2019084271

Opened: 10/10/2019

Type of License: Unlicensed

History: None

Complainant is a licensed principal broker. Respondent is unlicensed. Complainant alleges Respondent is representing themselves as the owner of a property and representing the seller of the seller of the property without a license. Additionally, Complainant alleges Respondent has forged electronic signatures on disclosures in the seller's absence. Complainant states Respondent completed a Property Condition Disclosure in Respondent's name representing themselves as the owner, when the property record indicates otherwise. The electronic signatures have the same ID underneath them. Complainant also states the Confirmation of Agency form lists one of their agents as the seller and Respondent informed Complainant the agent was a friend of theirs and supposed to sell the house to Respondent. Complainant contacted the principal broker of the firm Respondent associated themselves with and has not heard any further correspondence. Complainant provides the copy of each document referenced as support.

A response was sent from the principal broker of the firm Respondent listed themselves with. The principal broker states Respondent is the personal assistant of the owner of the property and has been granted permission to sign documents to list the property on their behalf. The principal broker states the big discrepancy here is that their system sent out a seller's disclosure form but based on the fact the owner never lived in the property the owner is exempt from completing the form. The principal broker then states a new document was sent to the owner and contains a wet signature.

Based on the information provided, Counsel finds no evidence to support the principal broker's assertion that Respondent was permitted to act on behalf of the owner. According to the Confirmation of Agency form, the owner is listed as the seller and the principal broker is listed and signed as the listing licensee, yet the box is checked the seller is unrepresented. Additionally, the forms utilized contain the name of the principal broker at the bottom of the page. Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity.

Recommendation: One Thousand Dollar (\$1,000.00) for unlicensed activity.

Decision: The Commission voted to accept Counsel's recommendation.

New Information: Counsel has sent Respondent multiple notifications for the Consent Order and requested additional information for Respondent's address. All of Counsel's mail has come back returned and efforts to locate Respondent have been unsuccessful. Therefore, Counsel recommends this matter be closed and flagged.

New Recommendation: Close and flag.

New Decision: The Commission accepted counsel's recommendation.

**66. 2019017491
Opened: 3/5/2019
First Licensed: 8/21/2013
Expires: 8/26/2020
Type of License: Principal Broker
History: None**

Complainant is a licensee and listing agent. Respondent is a principal broker and prospective buyer. Complainant alleges that Respondent failed to disclose their true position as a buyer and instead misrepresented their position as the buyer's agent for an investment company.

On January 21, 2017, a Purchase and Sale Agreement ("Agreement") was entered into by Respondent's company for Complainant's property. Due to several issues with the title, conveyance did not take place by the closing date. Complainant alleges that Respondent was aware of the issues and failed to submit the TR Closing Date Extension Amendment which, under the Agreement, terminates the contract. A month later, Respondent inquired about the closing date and Complainant stated that their clients would not be closing, and that the property was off the market. A few weeks later, Complainant re-listed the property for sale at a higher price and informed Respondent that their company could place a new offer for consideration.

Respondent's company sued Complainant's clients for specific performance, breach of contract, and tort damages. Complainant states that they learned Respondent was an owner of the company at the court hearing and filed this complaint alleging willful misrepresentation and failure to disclose. Respondent states that no disclosure was needed because the sale was a commercial transaction which is exempt from the disclosure requirements. The case is currently active and is set for trial later this year. Therefore, due to pending litigation on the matter, Counsel recommends this matter be placed into litigation monitoring.

Recommendation: Litigation monitoring.

Decision: The Commission voted to accept Counsel's recommendation.

New Information: This matter is related to 2019017501. Counsel contacted Respondent's attorney for a status update. During that update, Respondent's attorney clarified that the litigation is not against Respondent individually, but Respondent filed a lawsuit as an owner in a limited liability company for damages arising from the non-performance of a land sale contract. The matter is still under advisement with the Court, but the dispositive matter related to specific performance and damages does not appear to fall within the jurisdiction of the Commission. Therefore, Counsel recommends this matter be dismissed.

New Recommendation: Dismiss.

New Decision: The Commission accepted counsel's recommendation.

67. **2019017501**
Opened: 3/5/2019
First Licensed: 8/22/2013
Expires: 8/21/2019
Type of License: Affiliate Broker
History: None

Respondent is the affiliate broker in the above related matter. Respondent states that they did not need to disclose their position with the company because the property was being purchased as a commercial venture. Respondent alleges that commercial transactions are exempted from the disclosure requirements of Tenn. Code Ann. § § 62-13-407(A) pursuant to Tenn. Code Ann. § § 62-13-405(e).

A civil case, as mentioned above, is currently active and set for trial later this year. Therefore, due to the pending litigation on the matter, Counsel recommends this matter be placed into litigation monitoring.

Recommendation: Litigation monitoring.

Decision: The Commission voted to accept Counsel's recommendation.

New Information: This matter is related to 2019017491. Counsel contacted Respondent's attorney for a status update. During that update, Respondent's attorney clarified that the litigation is not against Respondent individually, but Respondent filed a lawsuit as an owner in a limited liability company for damages arising from the non-performance of a land sale contract. The matter is still under advisement with the Court, but the dispositive matter related to specific performance and damages does not appear to fall within the jurisdiction of the Commission. Therefore, Counsel recommends this matter be dismissed.

New Recommendation: Dismiss.

New Decision: The Commission accepted counsel's recommendation.

ERICA SMITH

Cases to be Represented:

- 68. 2017010631**
Opened: 2/16/17
First Licensed: 5/16/96
Expiration: 2/12/18
Type of License: Affiliate Broker
History: 2003 Complaint

Respondent is the listing agent of a home that Complainant is trying to purchase. Complainant also has an agent representing her in this process. Complainant states that Respondent refuses to submit her offers to the seller and told Complainant she wasn't going to get the house. Complainant further states that Respondent hangs up on Complainant's agent when she tries to call him. Complainant requested documentation showing the offer was rejected and Respondent refused to provide it. Complainant states she has made 2 offers to purchase the home and Respondent flat out stated he would not submit the first offer. When Complainant confronted Respondent, he immediately listed the house as "pending," only to return it to an "active" listing a few days later. Complainant states she has text messages showing Respondent told her friend the house was available during the time he refused to submit offers. Complainant claims Respondent does not want to share profits from the sale of the home with another realtor. Complainant states she contacted Respondent's principal broker by email about the situation but did not receive a response.

Respondent states that he received an offer from Complainant's agent on January 31, 2017 and he presented the offer to the sellers on February 1, 2017. While Respondent was communicating the offer to the sellers, he received a text message from the Complainant's agent stating she was withdrawing the offer on behalf of Complainant. Respondent further states he sent a text to the Complainant's agent that same day inquiring whether Complainant was still interested in purchasing the property after he tried calling the agent many times without an answer. Respondent sent a second text to the agent asking if Complainant provided a reason, she withdrew the offer and there was no response from the agent. On February 8, 2017, Complainant's agent texted Respondent and asked if the property was still available, and subsequently received another text that Complainant was submitting an offer. Respondent received the offer which was \$30,000 less than her previous offer that was withdrawn for \$209,900. Respondent told Complainant's agent that he had 3 offers on the home and asked if she wanted to improve her offer as a result. Complainant's agent responded and stated Complainant's offer would not change. Several hours later, Complainant's agent sent a text asking if the seller had responded to the Complainant's offer and Respondent told the agent that the sellers didn't want to look at the offer. Respondent provided copies of the text messages to Complainant's agent to support these statements. Complainant's agent asked Respondent to provide a written rejection of the Complainant's offer and Respondent states he sent the rejection to the agent

by email. Respondent provided a copy of the rejection of Complainant's offer and Complainant admits to receiving the rejection but does not believe the sellers knew of the offer and feels Respondent rejected the offer on his own. Further, Respondent explained to the agent by email that the sellers were offended that the Complainant withdrew the first offer of \$209,900 before they could respond and were further offended when the second offer was so much lower. Respondent states he did have the contract "pending" because the seller had accepted another contingent offer at the time. The pending contract was eventually voided due to repair issues, so Respondent made the listing "active" again. Respondent denies all allegations made by the Complainant.

Counsel does not find any evidence that Respondent violated any statutes or laws with regards to the summary above.

Complainant then sent a rebuttal to Respondent's response to the complaint and made further allegations that led Counsel to investigate public tax records. Complainant stated that Respondent was the actual owner of the property he was purporting to be selling for the sellers, and provided screenshots of public records showing Respondent owned a certain LLC ("LLC"), and a tax assessment record showing Respondent was the owner of the property. Counsel went to the city tax assessor website and verified that the sellers who signed the contract with Complainant signed a quit claim deed and handed the property over to Respondent on October 8, 2016. The property was sold and transferred from Respondent to a seller via warranty deed on April 17, 2017. Evidence shows Respondent was the rightful owner of the property at the time Complainant made her offers but did not disclose such to Complainant and used the sellers' names on both documents where Complainant made an offer. The sellers also signed the rejection of the second offer, but Counsel does not have a copy of the rejection of the first offer with the sellers signatures, although their names are on the document as the "sellers" showing the first offer. Respondent's name is on all documents as the seller's agent.

Based on evidence obtained through internal research on public records websites, Counsel recommends multiple civil penalties and suggests the consideration of a suspension of Respondent's license for a time frame to be determined by the Commission if necessary. Counsel finds the Respondent's violations to be extremely egregious, misleading and unethical, and questions if Respondent is a danger to the public.

Recommendation: Discussion of suspension if appropriate. In the alternative, Consent Order assessing a Civil Penalty in the amount of \$1000 for violation of TCA § 62-13-312(b)(1) (substantial and willful misrepresentation); \$1000 for violation of TCA § 62-13-312(b)(3) (continued and flagrant course of misrepresentation); \$1000 for violation of TCA § 62-13-403(1)(reasonable skill and care); \$1000 for violation of TCA § 62-13-403(4)(honesty and good faith); and \$1000 for violation of TCA § 62-13-403(7)(A) (self-dealing).

Decision: The Commission voted to authorize a Consent Order assessing a Civil Penalty in the amount of \$1000 for violation of TCA § 62-13-312(b)(1) (substantial and willful misrepresentation); \$1000 for violation of TCA § 62-13-312(b)(3) (continued and flagrant

course of misrepresentation); \$1000 for violation of TCA § 62-13-403(1)(reasonable skill and care); \$1000 for violation of TCA § 62-13-403(4)(honesty and good faith); and \$1000 for violation of TCA § 62-13-403(7)(A) (self-dealing); and a suspension of the affiliate broker license for 180 days from the date of the Consent Order being entered.

New Information: After Counsel presented the Consent Order to Respondent and Respondent was provided with all the details surrounding the new allegations contained in the rebuttal, Respondent hired an attorney. After discussion with Respondent's attorney, it was made clear that Respondent was not consenting to any sort of discipline for something that seemed to be a misunderstanding. When preparing to file a Notice of Hearing and Charges and set a trial for this matter, Counsel again discussed this matter at length with Respondent's attorney, who promised to provide evidence to show that none of the above violations were committed. Counsel can confirm that Respondent's attorney ended up doing just that. Respondent's attorney obtained affidavits from key parties to this complaint and presented substantive evidence to show there was no intentional misconduct by Respondent, and further showed Complainant's allegations were misleading when presented as only one side of the story in Complainant's rebuttal. Complainant had provided evidence to show Respondent was the managing member of the LLC who bought the subject property which led Counsel to believe Respondent had an ownership interest in the property at the time of the complaint. However, Respondent's attorney provided proof that Respondent relinquished all their interest in the LLC on March 10, 2016. Complainant's rebuttal documentation just showed Respondent was the Chief Manager as of December 29, 2015, which turned out to be true but had nothing to do with this transaction as alleged by Complainant. The LLC did end up eventually purchasing the property from the sellers on a short sale, but Respondent had ceased to be the managing member by that time. Counsel also noted in their research into public records that the LLC had upwards of 58 real estate transactions in the past and questioned if Respondent had disclosed their personal interest in those transactions that Respondent was involved in. Respondent's attorney provided proof that Respondent disclosed their personal interests when they were involved in real estate transactions as an agent and as the holder of an ownership interest in the LLC, prior to relinquishing their interest in the LLC. For example, Respondent's attorney provided many personal disclosures as a sampling of those given in all transactions prior to March 10, 2016, representing transactions going back 3 years. Respondent argued that since Respondent did not have a personal interest in the LLC after March 10, 2016, no disclosures would be required after that date.

Respondent argues that nothing improper was done regarding the transaction at issue and has provided much more detail regarding the facts of what occurred. The sellers were in default with their first mortgage lender when the LLC contracted with them to acquire the property on a short sale. Respondent states short sale transactions are tedious, time consuming, and when approved, regulated by the lender, who scrutinize the transaction carefully. At the same time and when the LLC with Respondent's assistance was working on the short sale, the sellers were in a bankruptcy proceeding.

Respondent and the LLC did not know about this initially. Prior to the knowledge of the bankruptcy, the parties agreed that the sellers would convey their interest in the property to the LLC as it was the sellers' expectation that it would acquire the property on a short sale. Since the lender had not yet approved the short sale and there being a due on sale provision in the deed of trust, the parties did not record the deed right away, and it had not yet been recorded when the sellers signed the documents rejecting the offers of the Complainant. Also, prior to the deed being recorded, Respondent and the LLC learned of the bankruptcy and had concerns that the deed should not be filed until there was clearance from the bankruptcy and short sale approval. With all of this in mind, Respondent did not think the conveyance to the LLC was complete, and therefore, the transaction with the Complainant was between them and the sellers, not the LLC as the seller. Respondent provided an affidavit from the Chief Manager and managing member of the LLC (currently and at the time of the transaction with Complainant) which not only states that Respondent had no interest in the LLC, but also that they were having second thoughts about completing the short sale purchase. Once the lender did approve it, the LLC felt it was its obligation to complete the purchase and did so. The manager also noted that when the LLC ultimately sold the property to a third party, it lost money as the property required significant repairs and improvements. There was nothing to be gained by any party not having disclosed the LLC's involvement or ownership in the property. The lack of disclosure seems to have been a matter of judgment and nothing else. It was Respondent's mindset that the sellers were the real party in interest, and they should be signing the rejection rather than the LLC. Respondent's attorney has provided the following evidence:

1. Affidavit from sellers confirming that they did reject the offer from Complainant and Respondent did not know about bankruptcy and confirming details about the nature of the short sale – specifically that they thought the deed transfer on 10/8/16 would make the short sale occur more quickly but the timing of the deed ended up not helping because bankruptcy was an issue and they had to get cleared from the bankruptcy in order to convey the property properly. In addition, the deed to the LLC was done without getting approval of the lender who was foreclosing, and approval was needed because of a due on sale clause in the mortgage with the lender. It was issues like this that caused the sellers to believe that they would still be considered the owners of the property even though a deed was signed to the LLC in October 2016.

2. Affidavit from current managing member of the LLC confirming Respondent is not a member of the LLC and relinquished all interest in the LLC on March 10, 2016. It is also confirmed that Respondent used to act as an agent and member for the LLC and always disclosed their interest. The managing member further confirms the LLC got a deed from the sellers without paying any money but with the intent that the LLC would get a short sale approval and pay off the loan. The deed remained unrecorded until after the short sale was finalized, which occurred after the sellers signed the paperwork related to this complaint.

3. **Copy of official Resolution from specially called meeting for LLC where Respondent resigned as a member**
4. **Sellers' Bankruptcy proceeding documentation**
5. **Payoff agreement between sellers and lender**

Counsel notes that if any unintentional wrongdoing occurred here, it was by the sellers and/or the LLC, of which Respondent had no interest at the time of the events of this complaint. Therefore, Counsel recommends dismissal of this complaint.

New Recommendation: Dismiss

New Decision: The Commission accepted counsel's recommendation.

- 69. 2017010661**
Opened: 2/16/17
First Licensed: 7/6/89
Expiration: 3/25/19
Type of License: Principal Broker
History: None

Respondent is the principal broker for the affiliate broker mentioned in the complaint 2017010631 above. Respondent was contacted by the Complainant, and then by the Complainant's agent at Respondent's request, 5 days before the complaint was filed regarding Complainant's concerns. Respondent discussed the issues with Complainant's agent over the phone and subsequently found no evidence to support the Complainant's claim that the affiliate broker refused to submit Complainant's offers to the seller. Respondent also discussed the complaint with the affiliate broker, and the affiliate broker provided a timeline of events regarding this issue. Respondent believes there was a breakdown in communication at some point, but the evidence supports the affiliate broker's timeline. Respondent does not understand why this complaint was filed based on his review of the matter and all documentation available, unless the Complainant's agent did not communicate the affiliate broker's responses from the seller to the Complainant.

Counsel finds that there is evidence of a failure to supervise the affiliate broker based on the lack of knowledge regarding the violations of the affiliate broker by the Respondent, and thus recommends a civil penalty against Respondent.

Recommendation: Consent Order assessing a Civil Penalty in the amount of \$1000 for failure to supervise.

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

New Information: Based on all new information provided, there is no evidence that Respondent, as the principal broker of the affiliate broker in the complaint represented above, committed any violations or failed to supervise the affiliate broker. Counsel recommends dismissal.

New Recommendation: Dismiss

New Decision: The Commission accepted counsel's recommendation.

**70. 2018011111
Opened: 2/21/2018
Type of License: Unlicensed
History: None**

This complaint was opened as a result of the [following complaint]:

2017056741
Opened: 8/24/2017
First Licensed: 2/15/2018
Expires: 2/14/2020
Type of License: Affiliate Broker
History: None

The following information was presented at the February 2018 meeting: Complainant is a licensee who provides screenshots of postings made on Facebook by Respondent where he identifies himself in his profile as a "property manager for [company]," the manager of a real estate portfolio of long and short term commercial and residential properties and thus, it appears Complainant is conducting activities without the required license. Another post provided states Respondent is headed to a city in Tennessee to "check out 14 homes and multi-units that his employer just put under contract, as well as stating "I have a client that's looking to rent a 1bd/1 bath in [city] for a month. Does anyone have something ready to move in today for less than \$1,000?" Another statement reads "about to network with some epic people to see how I can help add value to them in real estate" and another asks if anyone can help him step up his company's "game" regarding Airbnb rentals. There are a few more posts that confirm the allegations made in the complaint as far as the statements Respondent is making on Facebook and the way he is holding himself out to be to the public.

Respondent states he is currently an independent contractor who is only employed to do strictly clerical work for a real estate company. Further, he states he has never received any commission, negotiated any real estate transaction for the company or any other person. Respondent also states he just started working for the company in July and was excited about the job, and although his English may not be good, he did not intend to misrepresent himself or his employer in an unlawful way and he will make sure not to come across in a way that may lead the public to think he is engaged in unlicensed real estate activity in the future.

Counsel finds clear evidence that Respondent is holding himself out to be a property manager for a real estate company that he does work for and is engaged in unlicensed activity, therefore recommends a civil penalty.

Recommendation: Consent Order with \$1,000 civil penalty for unlicensed activity and a cease and desist statement

Decision: Consent Order with \$3,000 civil penalty and open complaint against Respondent's employer

The following information was presented at the April 2018 meeting:

New Information: Counsel met with Respondent on March 6, 2018 and discussed the complaint in detail. Respondent provided new information that is pertinent to the issues in the complaint. Respondent has since obtained his license on February 15, 2018 and he had immediately put in his 2 weeks' notice with his previous employer right after receiving this complaint. Respondent was told by his employer to act like he did not work for the employer, that he didn't know the employer or anyone that worked at the company and to lie in his response. Respondent did not follow his employer's instructions and answered truthfully in his response to this complaint summarized above. Respondent was hired by his previous employer when he was 19 and had recently moved here from Egypt just last year. Respondent asked his employer if he needed a license to perform the job duties he was hired for and was told he did not, and was also told it was ok to post the things he posted summarized in the original presentation of this complaint in February 2018. Respondent provided copies of text messages between himself and his employer where Respondent had sent screenshots of the posts before he posted them, asking his employer if it was ok to post them, and his employer told him it was ok to post them. Respondent was only paid \$5.00 an hour, worked 80 hours a week for 5 months, and always had to beg to receive a paycheck and his 1099. Respondent also alleges his 1099 has been falsified by his employer and that the employer told him he was an independent contractor but was a full-time employee. It is clear to Counsel that Respondent was misguided, misled and was taken advantage of by his previous employer. Respondent has provide much documentation showing he consulted with his employer before posting the posts at issue and was told there was no problem with posting them, and he relied on his employer's knowledge and experience in the real estate business to his detriment. The Commission asked that we open a complaint against the Respondent's previous employer for unlicensed activity and that matter will be presented to the Commission soon.

Counsel considers the fact that there is an open complaint against Respondent's previous employer for unlicensed activity, considers all documentation provided by Respondent and recommends reducing the civil penalty assessed against Respondent from \$3,000 to \$1,000 or less.

New Recommendation: Revise Consent Order to assess a civil penalty of \$1,000 or less instead of \$3,000

New Decision: The Commission voted to reconsider this matter at the same meeting the complaint against the former employer will be heard.

New Information: Counsel has no new information to present regarding this complaint and refers the Commission to the complaint below against Respondent's previous employer. Counsel notes the Commission requested this matter be deferred until the complaint above was presented so the previous employer's response could be considered. Counsel feels very strongly that Respondent was misguided and misled by their previous employer and notes that Respondent has obtained his license and is working for a reputable firm. Counsel feels it would be unfair to Respondent to punish them so severely for posts that they made on their personal social media accounts when Respondent first sent screenshots of the posts to the previous employer to obtain their approval before posting, as Respondent is new to this country, very young, and relied on the employer to guide them regarding whether they were engaging in unlicensed activity. Respondent was told they could post the posts at issue and Counsel opines it was Respondent's best and only option to ask their employer, as Respondent was not licensed at the time and had not taken the courses that may have taught them about why the posts constitute unlicensed activity. Respondent has since taken all required courses to obtain their license and Counsel is confident this will not happen again, as Respondent has stayed in contact with Counsel throughout this ordeal and provided much documentation to support their statements, as well as met with Counsel in person to discuss this issue because Respondent wanted to make sure he was doing the right things going forward.

New Recommendation: Revise Consent Order to assess a civil penalty of \$1,000 or less instead of \$3,000.

New Decision: The Commission voted to issue a letter of warning.

Respondent's attorney responded on their behalf. Respondent states they were first notified around August 28, 2017 that the Respondent above ("employee") was being investigated by TREC due to a complaint. Respondent states the posts were made within the employee's first month of employment. Respondent states they were unaware of the posts to the employee's personal social media account prior to them being turned over. Respondent denies authorizing the posts and was instructed to delete them immediately and advised not to make any such claims on behalf of Respondent again on any medium. Respondent's understanding is that the employee adhered to the instructions for the remainder of their employment. Respondent did a thorough review to make sure all posts or any reference to Respondent have been removed and deleted. Respondent states they are aware of the definitions outlined in Tenn. Code Ann. § §62-13-302 as well as the brokerage requirements thereof. Considering this matter, Respondent has taken additional steps to ensure that future employees, if there ever will be any, are held to a social media policy and properly adhere to the limitations of their job. Respondent states they consider this matter closed as the employee no longer works for them.

Counsel reviewed Respondent's website. When Counsel clicked on "Apply Now," another screen appeared with the Respondent's name and "Property Management" beside it, however that reference is not included in their business name as provided to our office. There is an application with a processing and an application fee, and a note to the applicant from Respondent stating, "We're looking forward to helping you find your new home." There is a tab for a tenant to pay rent online and there seems to be a tenant portal, as well as contact information for Respondent, but there is no other information on the site. Respondent refers to themselves as a property management company and seems to be engaging in unlicensed activity, therefore Counsel recommends assessing a civil penalty of \$1,000 for the violation.

Prior Recommendation: Counsel recommends assessing a civil penalty of \$1,000 for unlicensed activity.

Decision: The Commission voted to authorize a consent order assessing a \$1,000 civil penalty for unlicensed activity, and a cease and desist letter.

New Information: Since Respondent received the Consent Order, Respondent's attorney has provided additional information to Counsel regarding the allegations of unlicensed activity based on what Counsel found on a website. Additionally, Respondent's attorney has since listened to the original presentation and discussion of this matter by the Board and Counsel, and appropriately addressed our concerns with Counsel. Originally, Respondent only addressed the issues about the complaint against their employee and the violations that occurred by that employee. Moreover, at the time the complaint originated, the employee was helping Respondent with their business because their newborn daughter was going through life-threatening medical issues keeping them in the NICU for 10 months. These issues led to permanent incapacitation of the baby who now needs full time nurse assistance and a machine to live at the Respondent's home. These issues also led Respondent to be distracted from keeping track of the employee as well as they should have. The employee's case was closed with a Letter of Warning. Respondent also immediately addressed the issues and corrected them once the complaint was filed. Most importantly, Respondent's attorney has further provided proof that Respondent owned all rental properties that were listed on the website Counsel found, which had been out of use since the time the complaint was filed but was unknown at the time Counsel originally presented this matter. Respondent explained that if someone from our department had not contacted them through the website, it would have remained a forgotten artifact. Respondent's attorney has also provided information to show that Respondent manages and has always managed their properties within the letter of the law. Respondent uses licensed brokers, including their own spouse, when necessary. Based on this new information and the further investigation into this matter, Counsel recommends dismissal of this complaint.

New Recommendation: Dismiss

New Decision: The Commission elected to defer this matter to the next meeting to allow counsel enough time to get more information regarding the ownership of the properties.

Chairman John Griess adjourned the meeting at 12:25 P.M.