



**STATE OF TENNESSEE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243
615-741-2273**

<https://www.tn.gov/commerce/regboards/trec.html>

MINUTES

The Tennessee Real Estate Commission held a meeting on August 11, 2021, at 8:30 a.m. CDT at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243. In addition, the meeting was streamed virtually via Cisco WebEx meeting platform. John Griess called the meeting to order and welcomed everyone to the Board meeting. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission Members were present: Commissioner Joe Begley, Commissioner Geoff Diaz, Commissioner Stacie Torbett, Commissioner DJ Farris, Commissioner Steve Guinn, Commissioner Joan Smith, Commissioner Jon Moffett, Vice-Chair Marcia Franks & Chairman John Griess. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Associate General Counsel Anna D. Matlock, Associate General Counsel Pamela Vawter, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The August 11, 2021 board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

Minutes for the July 07, 2021 board meeting were submitted for approval.

Motion to approve the July 07, 2021 minutes was made by Vice-Chair Franks and seconded by Commissioner Smith. Motion passed unanimously.

INFORMAL CANDIDATE APPEARANCE

Ryan Herbst and Principal Broker Sue Acee appeared before the commission to obtain approval for Mr. Herbst's timeshare salesperson license.

Motion to approve Mr. Herbst was made by Commissioner Begley and seconded by Vice-Chair Franks. Motion passed unanimously.

Daniel Bickley and Principal Broker Johnny Daniels appeared before the Commission to obtain approval for Mr. Bickley's Affiliate Broker license.

Motion to deny Mr. Bickley was made by Vice-Chair Franks and seconded by Commissioner Moffett. Motion passed unanimously.

Associate General Counsel Anna D. Matlock read the fresh start act to the Commission. The Commission discussed each factor of the fresh start act.

WAIVER REQUEST

Director Maxwell presented Ryan Clark to the Commission seeking an E&O medical waiver request. Motion to grant Mr. Clark's E&O waiver request was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

Director Maxwell presented Chris Barnes to the Commission seeking a renewal waiver request. Motion to grant Mr. Barnes's waiver request was made by Vice-Chair Franks and seconded by Commissioner Farris. Motion passed 8-0 with Chairman Griess recusing himself.

Director Maxwell presented Maurice Johnson to the commission seeking a waiver of the E&O penalty. Motion to grant Ms. Johnson E&O waiver request was made by Commissioner Torbett and seconded by Vice-Chair Franks. Motion passed unanimously.

Director Maxwell presented Janice Boucek to the commission seeking waiver of the E&O penalty. Motion to grant Ms. Boucek's penalty waiver request was made by Commissioner Torbett and seconded by Vice-Chair Franks. Motion passed unanimously.

EDUCATION REPORT

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

Motion to approve courses A1-A17 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the topics below.

- **October East Tennessee Meeting:** Director Maxwell advised the meeting will be one (1) day with no formal hearing. The meeting will be held in Johnson City/Kingsport. The meeting will be Thursday, October 14, 2021.
- **ARELLO:** Director Maxwell advised that one additional position was open for the annual ARELLO meeting. The meeting will be held September 15-19th in Orlando, Florida.
- **MISCELLANEOUS:** Director Maxwell presented the CORE Public Search tool to the commission.

LEGAL:

Legal counsel addressed the commission on Errors and Omissions Group Policy. As licensee's names are not always presented on a group policy. Commission discussed the matter further, and legal advised they would further research. The matter would be addressed at the next meeting.

RULE CHANGE UPDATE:

Additionally, Associate General Counsel Anna Matlock presented the commission with an update regarding the criminal conviction rules that were to be implemented at the end of August. Associate General Counsel Anna D. Matlock explained the rules were withdrawn due a recent statutory change in the "Fresh Start Act" make the rules unnecessary. The commission will be updated of any future changes.

CONSENT AGENDA:

The following cases were presented to the commission via a Consent Agenda. All cases were reviewed by legal and were recommended for either dismissal or discipline.

A motion was made to accept counsel's recommendation for cases 1-59 with exception of the following cases, which were pulled for further discussion: **2021045841, 2021038271, 2021049531, 2021042881, 2021025251, 2021044091, 2021045821, 2021047731, 2021048681, 2021051911**. This motion was made by Commissioner Guinn and seconded by Commissioner Torbett. Motion passed unanimously. Commissioner Begley recused himself on cases: **2021043821 & 2021043831**.

After further discussion by the Commission on complaint 2021045841, Commissioner Diaz made the motion **to authorize a contested case proceeding and issue a Consent Order with a \$1000.00 civil penalty for failure to disburse earnest money**. The motion was seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021038271, Commissioner Diaz made the motion **to accept counsel's recommendation and to open a complaint against the Principal Broker**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021049531, Vice-Chair Franks made the motion **to authorize a contested case proceeding the authority to settle by Consent Order with a \$1000.00 civil penalty and to open a complaint against the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2021042881, Commissioner Diaz made the motion **to defer this matter to the next Commission meeting in order for counsel to review the documents from the Complainant**. The motion was seconded by Commissioner Begley. Motion passed unanimously.

After further discussion by the Commission on complaint 2021025251, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Smith. Motion passed unanimously.

After further discussion by the Commission on complaint 2021044091, Commissioner Diaz made the motion **to accept counsel's recommendation for the Consent Order and voted to open a complaint against the Principal Broker in this matter.** The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021045821, Commissioner Torbett made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Diaz. Motion passed 8-1 with Chairman Griess voting against.

After further discussion by the Commission on complaint 2021047731, Commissioner Diaz made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Guinn. Motion passed unanimously.

After further discussion by the Commission on complaint 2021048681, Commissioner Diaz made the motion **to accept the recommended \$500.00 civil penalty amount for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) and increase civil penalty amount for violation of Tenn. Comp. R. & Regs. 1260-02-.12(7)(b) from \$500.00 to \$1,000.00.** The Commission authorized a contested case proceeding with authority to settle via consent order for the above civil penalty amounts totaling **\$1,500.00.** The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021051911, Commissioner Diaz made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Torbett. Motion passed unanimously.

NEW MATTERS
DENNIS GREGORY

- 1. 2021016531**
Opened: 3/3/2021
First Licensed: 5/11/2016
Expires: 5/10/2022
Type of License: Principal Broker
History: None

The Respondent purchased a residence from the Complainant in what appears to be a purely private matter and not involving the Respondent's actions as a broker. The Complainant is now living with the Respondent's former spouse so there is a good deal going on behind the scenes.

The Complainant did a seller-financed transaction with the Respondent and the Respondent later failed to increase the insurance, prompting the Respondent to call the loan due. The Complainant alleges the Respondent stole appliances from the home after the Complainant foreclosed on the property and reclaimed possession. The Complainant takes the position that the appliances, furniture, etc. were not the Respondent's personal property and had to stay with the house. The original sales contract states that certain personal property will remain in the house "at no additional cost to buyer." The items were various interior furniture pieces, tv's, washer/dryer, and mattresses. Absent some specific language (which does not exist), the contract suggests those items became the Respondent's property after she took possession at closing. Furthermore, the nature of the items are not such that they would be considered fixtures. The Complainant also wants to highlight that the Respondent filed for bankruptcy at some point, and that the Respondent's current or former boyfriend (who lived at the house for a period of time) is a convicted felon.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 2. 2021028291**
Opened: 4/27/2021
First Licensed: 1/11/2018
Expires: 1/10/2022
Type of License: Affiliate Broker

History: None

The Complainant alleges the Respondent (listing agent) advertised a property without the appropriate information on the signage; did not provide contracts and counteroffers in a timely fashion; did not disclose a potential conflict of interest; and did not accurately list a property in terms of square footage. The Complainant does not identify as another licensee. There is very little context to the complaint and there is no accompanying documentary support.

The Respondent, along with an attorney for the property owner, responded to the complaint. The attorney seems to suggest that one of the partners that owns the property made this complaint. He states that “I/we know of no action warranting a complaint *by the partnerships* concerning his services.”

The Respondent goes into a bit more detail. The Respondent is a 20% partner in an ownership group. According to the Respondent, the ownership group owns 100% of the subject property. The other equal partners, which includes the Complainant, are aware of the Respondent’s ownership interest while acting as the listing agent. He says the Complainant has presented a number of ideas to the ownership group that have received no support from anyone in the group except the Respondent’s family member. Consequently, he says the Complainant has made this complaint in an attempt to gain some kind of leverage. The Respondent addressed all of the allegations, and without going into extreme detail, explains they are part of the Complainant’s animosity toward the other partners in the ownership group.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

3. 2021029641

Opened: 4/27/2021

First Licensed: 8/24/2011

Expires: 4/2/2022

Type of License: Principal Broker

History: 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate’s E&O insurance

This complaint is lodged by another TREC licensee. They allege the Respondent’s affiliate broker wrote an offer for a listing “of one of my

agents.” They allege the affiliate broker’s license was expired at the time of the listing.

The principal broker explains that the affiliate broker’s license was expired. He adds that it was an oversight due to an office manager’s departure and challenges arising from Covid. The problem has been addressed.

Recommendation: Authorize a contested case proceeding with authority to informally settle by Consent Order and payment of a \$1,000 civil penalty for failure to supervise pursuant to Tenn. Code Ann. § 62-13-312(b)(15).

Commission Decision: The Commission accepted counsel’s recommendation.

4. **2021026701**
Opened: 4/27/2021
First Licensed: 6/20/2014
Expires: 6/19/2022
Type of License: Affiliate Broker
History: None

This complaint is made by another TREC licensee (Complainant) against the seller’s agent (Respondent). It appears the subject property was used as an investment and was purchased by the Complainant as an investment. The Complainant alleges the Respondent knowingly failed to disclose a current easement that runs under the subject property. The Complainant goes on to say that the “property condition disclosure” stated there was no sinkhole or “collapse” of the back yard. After speaking to the city, they informed the Complainant that no fence or deck can be built on top of the easement.

The Respondent says the existence of a utility or drainage easement is the responsibility of the buyer’s agent. She says the existing fence is connected to neighboring fences along the property lines along with the deck that covers the “sinking” portion of the yard. The buyer had a home inspection and approved of repairs. The Respondent goes on to say that she had no personal knowledge of any sinkhole. Apparently, there is no visible evidence or otherwise of any sinkhole on the property. As to the repair of the yard, the city controls the easement so they can fix the same. There seems to be no

evidence that the Respondent or seller was aware of any condition that should have been made known to the Complainant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

5. **2021018961**
Opened: 4/27/2021
First Licensed: 1/24/2006
Expires: 5/15/2011
Type of License: Affiliate Broker
History: None

The Complainants are the buyers and the Respondent is the seller. The Complainants purchased a tract of land in June 2020 working with their broker. The Complainants say they were interested in the land on one condition: the ability to raise chickens on the property. The Respondent claimed to have told them he would check with the HOA regarding some kind of exception or variance. The Complainants claim the Respondent never broached the topic with the HOA. If he did, it was only for "household chickens" and not outdoor chickens. Regardless, the Complainants bought the property and now want the Respondent to buy back the property. The Complainants did not provide any documents supporting their contention.

The Respondent did not respond to the complaint.

Recommendation: Authorize a contested case proceeding and assessment of a civil penalty in the amount of \$1,000 for failure to provide a response in violation of Tenn. Code Ann. § 62-13-313(2) [a licensee shall within 10 days to file an answer to the complaint].

Commission Decision: The Commission accepted counsel's recommendation.

6. **2021040141**
Opened: 5/17/2021
First Licensed: 2/20/2015
Expires: 3/15/2022
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed Tennessee Principal Broker. This complaint was administratively opened by the Commission at the May 2021 Commission meeting following a review of a complaint filed against the Respondent's Affiliate Broker.

The Complainant alleges the Respondent's billboard is not in compliance with the Commission's advertising rules. The agent's name is very large on the billboard and larger than all other information on the billboard. The agent's photograph and name are the focal point of the billboard.

The Respondent provided a response and stated this was a billboard won at a silent auction and it was a mistake by the Respondent and the graphic designer of the billboard. The billboard is being corrected. The Respondent indicates this was an honest mistake and unintentional error.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$1,000 civil penalty for the advertising violation of the Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that "[a]ll 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 the licensee or the name of any team, group, or similar entity." Also, the Respondent failed to supervise the affiliate broker pursuant to Tenn. Code Ann. § 62-13-312(b)(15), which allows disciplinary action to be brought against a principal broker who fails to exercise adequate supervision over the activities of a licensed affiliate broker.

Commission Decision: The Commission accepted counsel's recommendation.

7. **2021025131**
Opened: 6/22/2021
First Licensed: 10/3/2017
Expires: 10/2/2021
Type of License: Affiliate Broker
History: None

The Complainant is the buyer and the Respondent is the buyer's broker. The Complainant hired the Respondent in February 2019 to find a home in Tennessee due to a relocation from another state.

Shortly after, the Complainant made an offer on a roughly 40-year old home. A general home inspection was done a few days later that revealed some items in need of repair. The Respondent explained to the Complainant that an older home may take a good deal of repairs. A Repair/Replacement amendment to the contract was executed in order to repair a list of items identified prior to closing. Later, the purchase price was also reduced after some structural damage was found near the chimney. The Repair/Replacement amendment did not include the chimney area or the replacement of a water heater.

The closing occurred on March 22, 2019 without the Complainant attending or doing a final walk-through. The Respondent claims to have conducted a visual walk-through to determine that the property was in the same condition as when the Complainant viewed it. As far as the Respondent could discern, the property was in the same condition and the repairs listed in the Repair/Replacement amendment were completed. The Respondent claims that he did not tell the Complainant that he would personally determine if the repairs had been made.

The Complainant moved into the home roughly 10 weeks later. In June 2020, the Complainant then sold the property. The house sold for \$64,000 more than what the Complainant paid. In November 2020, the Complainant hired an attorney and made a demand on the Respondent for \$90,256.79 which represented the amount the Complainant spent to repair the property conditions before she sold it. The Complainant alleges the Respondent conspired with the seller, the seller's broker, and the home inspector in order to have the Complainant purchase the home that needed extensive repairs.

There is no evidence of such collusion. The Respondent was not qualified to determine, with 100% certainty, that the repairs were done at the time of the final walk-through prior to closing. There is also some discrepancy about what items were on the Repair/Replacement amendment and what items the Complainant demanded payment for. As mentioned earlier, the chimney area and the water heater were not part of the amendment. The Complainant may have a cause of action against the seller or the home inspector; however, the Respondent did not breach his duty to the Complainant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

8. **2021037981**
Opened: 6/22/2021
First Licensed: 5/23/2003
Expires: 10/15/2021
Type of License: Affiliate Broker
History: None

The Complainant is not a TREC licensee. The Respondent is a TREC licensee whom the Complainant alleges posted "a slander and character of defamation campaign on facebook when she wanted 6% instead of the 3% she had put on the agreed upon listing agreement." There is little context to this complaint and only indicates it arose over some dispute related to a commission that ended up on social media.

The Respondent did not respond to the complaint.

Recommendation: Authorize a contested case proceeding and assessment of a civil penalty in the amount of \$1,000 for failure to provide a response in violation of Tenn. Code Ann. § 62-13-313(2) [a licensee shall within 10 days to file an answer to the complaint].

Commission Decision: The Commission accepted counsel's recommendation.

9. **2021040741**
Opened: 6/22/2021
First Licensed: 5/12/1987
Expires: 9/9/2021
Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee who, apparently, used to work for the Respondent before attaining a license. The Respondent is also a TREC licensee who is the seller's agent in this complaint. The Complainant says the Respondent breached her fiduciary duty to her client by "disclosing the lowest purchase price" to an interested buyer. Additionally, the Complainant claims the Respondent paid an unlicensed individual for bringing a buyer to a deal. It is not clear if the Complainant was the buyer's agent in this complaint or if she only has first-hand knowledge through some means.

The Respondent's attorney says the disclosure was via text and was only a response that the buyer needed to make an offer at a certain amount in order for the seller to accept the offer. As to the unlicensed individual, the attorney says another broker presented the Respondent with a contract in order for the unlicensed individual to receive a "finder's fee." After realizing what was taking place, the Respondent supposedly informed all parties that sharing in the commission was a violation. Further, the attorney says that the Respondent has now filed a lawsuit against the other broker and the "finder" to have the "finder's fee" voided.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

10. **2021044661**
Opened: 6/22/2021
First Licensed: 4/18/2012
Expires: 4/17/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer who is not a TREC licensee, although they are a licensed broker in Nevada. The Complainant was handling the sale of his own home in Nevada. The Respondent is the buyer's agent. The Complainant alleges the Respondent told the seller's agent that the Respondent had his home (in Nevada) listed "too high." The Complainant takes the position that this communication with the seller's agent constituted improper communication with the other side.

The Respondent says that once the transaction was contingent on the Complainant's home in Nevada selling, the seller's agent contacted the Respondent to get a status. The conversation, according to the Respondent, was merely a discussion about the fast-moving market and was not intended to sway the Complainant to lower his asking price on the Nevada home. Ultimately, the Complainant could not get his home in Nevada sold in time and so he exercised his right to terminate the contract.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

11. **2021045841**
Opened: 6/22/2021
First Licensed: 4/4/1996
Expires: 12/14/2022
Type of License: Principal Broker
History: None

The Complainant is the buyer and not a TREC licensee. The Respondent is the seller's agent. The Complainant alleges he disclosed to the Respondent that the Complainant was developing the adjacent marina property. After that point, the Complainant says the Respondent "offered for sale a business utilizing a real estate contract at an inflated price, three times higher than market value." The Complainant goes on to state that the Respondent expected "complainant to purchase said business at the inflated price in order to facilitate what the complainant would describe as a bribe to make the development of the marina easier with her assistance." The Complainant then jumps to the Respondent not returning the \$1,000 earnest money.

The Respondent says the Complainant called to inquire about a 46-acre listing. The Respondent says the Complainant told her that he owned a marina nearby. The Complainant then supposedly called the Respondent back and asked the Respondent to write an offer on the subject 46 acres. The Respondent says she “acted as a Transaction Broker/Facilitator, not an agent for either party.” In any event, a contract was signed and the Complainant was to bring \$1,000 in earnest money on May 5, 2021. On May 21, 2021, the Complainant finally brought the \$1,000 earnest money. The Respondent says she told the Complainant there was no guarantee the seller would accept it because it was “too late.” The seller refused to enter into a new agreement with the Complainant. The earnest money was retained after the local sheriff’s office advised the Respondent not to return the money as the Complainant was under investigation for other unrelated matters.

Apparently, the Complainant and Respondent had another unrelated dealing during the same time period in which the Respondent and her business partner offered to sell a different property to the Complainant for \$1,000,000. The Complainant never paid the earnest money so the sale never occurred.

The complaint may have been lodged in an effort to muddy the water a bit between the parties as a result of the latter transaction. There appear to be no violations of statutes or rules.

Recommendation: Close.

Commission Decision: The Commission voted to authorize a contested case proceeding and issue a Consent Order with a \$1000.00 civil penalty for failure to disburse earnest money.

12. **2021046051**
Opened: 6/22/2021
First Licensed: 2/12/2021
Expires: 2/11/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyer and the Respondent is the buyers' agent. The Complainants worked with the Respondent to find a new home as part of a relocation from California to Tennessee. The Respondent wrote two offers that fell through as the Complainants' say they "did not wish to raise our price or lower our standards." Without using the Respondent, the Complainants say they found a listing on their own and then asked the Respondent to write up an offer. The Complainants admit they wanted to make an offer without asking for an inspection. The Complainants then changed their mind and decided they wanted an inspection. This, ultimately, set in motion all the problems. The Respondent, allegedly, told the Complainants they were already locked in.

The Respondent largely says the Complainants were hard to deal with as they ventured out on their own. He says he tried to tell the Complainants they could not just walk away from a contract and also had to explain how earnest money works. The Respondent says he showed the Complainants three properties in two days in an effort to find the right place.

Admittedly, much of what transpired was in a bit of a rush with the Respondents only in the area for a set amount of time and heading back to California. Despite this, the Respondent did not breach his duty to the Complainants.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

13. **2021047511**
Opened: 6/22/2021
First Licensed: 10/27/1998
Expires: 8/6/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyers and the Respondent is the seller's broker. The Complainants say they submitted an offer on June 6, 2021 with a time suspense of 12pm June 7. The Complainants say they did not receive a response from the Respondent until June 8. The Complainants then countered back and did not hear back. Apparently, the property sold to

another interested buyer that the Respondent had not informed the Complainants or their broker about. The Complainants take the view the Respondent should have told their broker they needed to bring their “best and highest offer.”

The Respondent says they received an offer from the Complainants’ broker in the amount of \$450,000 with a fixed closing date and contingent on the sale of the Complainants’ home by July 26. The sellers then countered the offer at \$495,000. The Complainants then countered again at \$475,000, keeping the same closing date, and moving up the sale of their home. The next day after the final counter, the sellers rejected the Complainants’ offer. The Respondent closes the response by saying the Complainants’ broker was aware that other buyers were looking at the subject home.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

14. **2021038271**
Opened: 6/28/2021
First Licensed: 4/28/2006
Expires: 4/27/2022
Type of License: Real Estate Firm
History: None

The Complainant may be a TN TREC licensee; however, they did not state so in the complaint. The Respondent is the listing agency (not an individual broker). The Complainant included a photo of a home with a realtor’s sign in the yard. The Complainant says the home is listed as a “fixer upper” but is actually a condemned property. They also say the property is connected to city sewer but, in fact, it is not. They go on to say that the listing agent has advertised the property as either the owner or related to the owner. The Complainant’s concern is that they just want the house represented accurately so it will not “continue to be a problem in the future.”

The Respondent did not respond to the complaint. The certified mail was not signed for; however, the complaint was emailed to an address that did not return as “undeliverable.”

Recommendation: Authorize a contested case proceeding and assessment of a civil penalty in the amount of \$1,000 for failure to provide a response in violation of Tenn. Code Ann. § 62-13-313(2) [a licensee shall within 10 days to file an answer to the complaint].

Commission Decision: The Commission voted to accept counsel's recommendation and to open a complaint against the Principal Broker.

15. **2021046021**
Opened: 6/28/2021
First Licensed: 1/1/1901
Expires: 3/31/2023
Type of License: Real Estate Firm
History: None

The Complainants are the buyers and the Respondent is a firm that employed the Complainants' broker. The Complainants live out of state and were searching for property in Tennessee. The Complainants' broker found a lot the Complainants liked and eventually they made an offer. The next day, the Complainants checked with the broker about the status of the offer. They claim the broker told them the sellers went with another offer. The Complainants later allege that they received a text from an "unverified" number claiming to be an agent with the Respondent's firm. The text was, essentially, a few statements that the Complainants' offer was too low along with a few other condescending remarks. The Complainants' broker is adamant he did not send the texts.

The Respondent says that no one in his office sent the texts. He goes on to say that no one by that name even works in his office. He states that some of his agents have gotten phone calls from a similar number that shows up as the local police department. The police, however, have confirmed they did not call the Respondent. The Respondent believes they may have been hacked and are looking into the matter.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 16. 2021037511**
Opened: 6/28/2021
Unlicensed
History: None

The Complainant is a consumer who attempted to rent an Air B&B and the Respondent is an unlicensed individual. The Complainant says they found a rental property through a “VRBO” (Vacation home rental service) referral. The Respondent took two payments from the Complainant for \$1,500. The Complainant says the Respondent told her that she had accidentally double-booked the property and advised her she could find another property in the area. After checking out the substitute property, the Complainant says she told the Respondent to just refund the money. The Respondent told them she could not as it was past the cancellation period.

The Respondent says the double-booking occurred due to the Complainant’s changing schedule. The Respondent says the \$1,500 was refunded. Regardless, it appears the Respondent falls under the license exemption in TCA 62-13-104.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

- 17. 2021040721**
Opened: 7/6/2021
First Licensed: 10/17/2016
Expires: 10/16/2022
Type of License: Affiliate Broker
History: None

The Complainant is a licensed real estate broker in Nevada and the seller. The Respondent is the seller’s broker. The Complainant hired the Respondent to list her nephew’s home in Tennessee. She claims she has a power-of-attorney from the nephew and is a part owner of the subject property. The crux of the complaint appears to be the Complainant’s belief

that the Respondent was not putting enough effort into getting the home sold. The Complainant says the listing got some offers, but no one committed. Apparently, there was talk about taking the home off the market, but then the Respondent told the Complainant he could “adjust the numbers where [the Complainant] could make \$2,000.00.” The Complainant asked for a termination of the brokerage agreement, which she claims to not have as of the filing of the complaint.

The Respondent says there was constant back and forth with the Respondent. According to the Respondent, the Complainant was even considering giving the house back to the bank. In any event, the termination of the brokerage agreement was provided to the Complainant. The matter appears resolved now.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

- 18. 2021049531**
Opened: 7/6/2021
First Licensed: 3/4/2004
Expires: 7/7/2022
Type of License: Affiliate Broker
History: None

This is an anonymous complaint. The Respondent is the seller’s broker. The Complainant alleges that the name of the selling agent is much larger than the name of the real estate company displayed on a sign showing a property for rent. There was no picture of the sign included with the complaint.

The Respondent says the problem has been remedied to comply with Tenn. Comp. Rules 1260-02-.12(3)(b) (Advertising). A picture of the sign was included with response and does now appear to be in compliance.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that “[a]ll 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 the licensee or the name of any team, group, or similar entity.”

Commission Decision: The Commission voted to authorize a contested case proceeding the authority to settle by Consent Order with a \$1000.00 civil penalty and to open a complaint against the Principal Broker.

19. **2021051211**
Opened: 7/6/2021
First Licensed: 9/30/1989
Expires: 6/22/2023
Type of License: Principal Broker
History: 2009 Final Order

The Complainant is a resident in a homeowner’s association. The Respondent is the association property manager. In short, the Complainant makes a number of allegations against the Respondent that all seem to deal with the Respondent’s competency as an HOA property manager. As one example, the Complainant says that a water leak in the complex was ignored, costing over \$60,000 in “accumulated water and sewer bills.” There is also the allegation that the Respondent has not adequately collected HOA dues. Finally, the Complainant points out that the Respondent’s TREC license was suspended in 2010 but was not disclosed to the HOA residents.

The Respondent and the HOA President say this complaint is part of an ongoing dispute with this particular resident. The Respondent says the Complainant made this complaint after certain HOA documents were not delivered to the Complainant on a date the Complainant set. According to the HOA President, the relevant documents have been delivered. As to the Respondent’s 2010 suspension, the Respondent does not deny this; however,

the basis of the suspension is not mentioned. Furthermore, there appears to be no duty to disclose this to the residents of the HOA.

This complaint is an internal dispute between select residents of the HOA and the HOA Board.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2021051481

Opened: 7/6/2021

First Licensed: 11/27/2006

Expires: 11/26/2022

Type of License: Principal Broker

History: None

This is an anonymous complaint made by an individual who does not appear to be a TREC licensee. The Respondent is the broker listing the subject property for rent. The Complainant says the Respondent's comments on the listing under "Public Remarks" is a violation of "Fair Housing and defamatory." The comments describe the square footage and amenities of the home and includes the statement that the property is "[n]ot one of your trashy units-made for a Professional!"

The Respondent claims not to know the identity of the Complainant. He does say the property is his listing; however, disagrees that anything in the listing violates the Fair Housing Act. He also goes on to explain in rather lengthy detail about an incident that occurred with a neighbor near this property. In any event, the listing description does not violate the Fair Housing Act as there is no reference to race, color, religion, sex, disability or national origin.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

21. 2021051561
Opened: 7/6/2021
First Licensed: 2/1/1995
Expires: 4/3/2023
Type of License: Real Estate Broker
History: None

**#21 and #22 are two separate licensees; however, the facts in each are identical. Respondent #1 is the licensee in #22 and Respondent #2 is the licensee in #21*

The Complainant is the buyer who is not a licensee. The complaint is directed against two Respondents (Respondent #1 and Respondent #2) serving as co-listing agents for the seller. The Complainant lives out of state and was working with a broker to make an offer on a property in June 2021. The Complainant says the Respondents “willfully and intentionally held off” on the Complainant’s offer and lied to her broker.

The Complainant states the original offer was sent on June 9 with a deadline of June 10. Respondent #1 informed the Complainant’s broker that the executor of the estate (seller) was still out of the country on vacation and requested a new deadline of June 16. A second offer was then sent on June 9 with a new deadline of June 16. Respondent #1 then told the Complainant’s broker the seller was staying on vacation until June 19, so a new deadline was requested of June 21. On June 21, Respondent #1 informed the Complainant’s broker that the offer was rejected in favor of another offer. The Complainant is convinced the Respondents were aware of other offers and intentionally did not inform her broker.

Respondent #2 says the seller was adamant about not accepting the Complainant’s low offer. It was his understanding that Respondent #1 texted the Complainant’s broker “to let her know that there were two other offers on the table.” Later that same day, Respondent #1 informed the Complainant’s broker that another offer had been accepted. A rejection letter was then provided to the Complainant’s broker.

Respondent #1 says there were no other offers as of June 16. She told the buyer’s broker that there were no other offers “at that time.” On June 16, apparently, the property was not being shown and the Complainant’s offer

was exclusive-this information was not made known to the Complainant's broker. Respondent #1 claims, however, to have told the Complainant's broker that her client's offer was too low.

On June 20 (the day before the Complainant's offer expired) another buyer called Respondent #2 interested in the property and wanting to make an offer. Both offers were communicated to the seller. Respondent #1 then informed the Complainant's broker that another offer had been submitted that day and that the seller would decide by that afternoon. She does say, however, that she failed to call the Complainant's broker before the 5pm deadline on June 21 as she became extremely busy. No counteroffer was made.

The information provided suggests that Respondent #1 was largely responsible for the communications with the Complainant's broker rather than Respondent #2. The facts as they are presented, do not support a violation of the Respondents' duty owed to all parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2021052161
Opened: 7/6/2021
First Licensed: 3/8/2018
Expires: 3/7/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer who is not a licensee. The complaint is directed against two Respondents (Respondent #1 and Respondent #2) serving as co-listing agents for the seller. The Complainant lives out of state and was working with a broker to make an offer on a property in June 2021. The Complainant says the Respondents "willfully and intentionally held off" on the Complainant's offer and lied to her broker.

The Complainant says the original offer was sent on June 9 with a deadline of June 10. Respondent #1 informed the Complainant's broker that the

executor of the estate (seller) was still out of the country on vacation and requested a new deadline of June 16. A second offer was then sent on June 9 with a new deadline of June 16. Respondent #1 then told the Complainant's broker the seller was staying on vacation until June 19, so a new deadline was requested of June 21. On June 21, Respondent #1 informed the Complainant's broker that the offer was rejected in favor of another offer. The Complainant is convinced the Respondents were aware of other offers and intentionally did not inform her broker.

Respondent #2 says the seller was adamant about not accepting the Complainant's low offer. It was his understanding that Respondent #1 texted the Complainant's broker "to let her know that there were two other offers on the table." Later that same day, Respondent #1 informed the Complainant's broker that another offer had been accepted. A rejection letter was then provided to the Complainant's broker.

Respondent #1 says there were no other offers as of June 16. She told the buyer's broker that there were no other offers "at that time." On June 16, apparently, the property was not being shown and the Complainant's offer was exclusive-this information was not made known to the Complainant's broker. Respondent #1 claims, however, to have told the Complainant's broker that her client's offer was too low.

On June 20 (the day before the Complainant's offer expired) another buyer called Respondent #2 interested in the property and wanting to make an offer. Both offers were communicated to the seller. Respondent #1 then informed the Complainant's broker that another offer had been submitted that day and that the seller would decide by that afternoon. She does say, however, that she failed to call the Complainant's broker before the 5pm deadline on June 21 as she became extremely busy. No counteroffer was made.

The information provided suggests that Respondent #1 was largely responsible for the communications with the Complainant's broker rather than Respondent #2. The facts as they are presented, do not support a violation of the Respondents' duty owed to all parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

23. 2021042881

Opened: 6/28/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration Time Share Exempt

History: None

The Complainants are timeshare owners dating back to 2014. The Respondent is a timeshare organization. The Complainants were at their timeshare in September 2020 when they were asked to attend a an "owners update." After a long discussion with the Respondent's salespeople, the Complainants did not agree to any additional rewards points. After returning home, the Complainants claim to have received two credit cards that they did not sign up for.

The Respondent says, in short, that the Complainants did sign up for a "Vacation Club Credit" account that is an open-end credit plan issued by the subject credit card company. The Respondent says the Complainants would have received "terms and conditions" at the meeting they attended and should have been contacted by the credit card company.

There is a good deal of back and forth between the Complainants and the Respondent's conflict resolution department. In order to know what the Complainants agreed to, it would be necessary to view whatever documents the Complainants were given.

Recommendation: Close.

Commission Decision: The Commission voted to defer this matter to the next Commission meeting in order for counsel to review the documents from the Complainant.

24. 2021043971
Opened: 6/28/2021
First Licensed: 8/23/2017
Expires: N/A
Type of License: Time Share Registration Time Share Exempt
History: None

The Complainants are timeshare owners. The Respondent is a timeshare organization. The Complainants say they went to a 90-minute presentation put on by the Respondent while at one of the Respondent's properties. The explanation from the Respondent's representatives was that the Complainants would be able to rent their points in order to get out of paying any fees. The Complainants eventually agreed to whatever the Respondent was pitching in order to get back to their vacation. The Complainants now want out of their time share contract.

The Respondent says the Complainants agreed to purchase a membership interest (aside from their current one) which includes the right to participate in the Respondent's vacation ownership plan with the right to use and occupy club accommodations. The subject contracts were provided with the Complainants' signatures.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

NEW MATTERS
PAMELA VAWTER

25. 2021015521
Opened: 3/16/2021
First Licensed: 5/13/2019
Expires: 5/12/2023

Type of License: Affiliate Broker

History: None

Complainant and Respondent are both licensed real estate agents. Respondent is an affiliate broker.

During the course of a sale transaction involving Complainant and Respondent as agents, Complainant contends Respondent sent a form that Complainant believed was generated by Respondent's phone. Complainant contends Respondent had her clients, who were VA buyers, sign the form and then Respondent emailed it to Complainant for the sellers' signatures. Complainant responded that her clients would not sign the form because it was not an official VA form. Complainant is concerned that it was not an official VA or TAR form. She has requested an investigation through Department of Veteran Affairs.

Respondent submitted a response stating that the form was provided to her by the lender, who requesting the parties to sign. She received the form in an email from the lender, and Respondent forwarded the form to the buyers for their signature and then to Complainant as listing agent for the sellers' signatures. Respondent states the form met the guidelines of the VA Amendatory form. Respondent provided copies of the referenced emails between Respondent, the lender, and Complainant concerning the form.

Based on the information provided, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

26. **2021025251**
Opened: 5/24/2021
Unlicensed
History: None

Complainant is a Tennessee resident. Respondent serves as a property manager for a real estate development company that owns and manages an apartment complex.

Complainant contends that her daughter paid a \$150 online application fee for a rental unit at an apartment complex. The next day she received an email from Respondent stating that the available apartment would be renovated and would ultimately rent for an additional \$200 once fully renovated. In the ensuing email exchanges, Respondent offered to refund the reservation fee or lease to the daughter at the renovation rate. Complainant believes Respondent should have been required to rent the apartment for a lower rate. Respondent did not submit a response to the Complaint.

The issue of whether the apartment complex was bound at a certain rental rate is a contractual issue in a landlord/tenant matter. Respondent, however, does not appear from the information available to be licensed. Counsel reviewed emails attached to the complaint from Respondent in which she was involved in the activity of leasing the apartment and negotiating the rent with Complainant. Respondent's email signature states she is the property manager. Therefore, counsel recommends a civil penalty in the amount of \$1,000.00 for engaging in unlicensed activity in violation of Tenn. Code Ann. § 62-13-301.

Recommendation: Authorize a \$1,000.00 civil penalty for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2021044091
Opened: 6/8/2021
First Licensed: 6/3/2008
Expires: 6/2/2022
Type of License: Real Estate Firm
History: None

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

Complainant purchased 77 acres of land listed by Respondent. The MLS listing noted “Utilities: Electric.” Complainant closed on the property on April 22, 2021. On April 28, 2021, Respondent contacted the local utility authorities to secure utilities and was told the closest source of electricity was approximately 700 miles away. Complainant was advised he would need to obtain permission from several adjacent property owners for easements for the utility company to cross their property or trim trees to facilitate new electric lines. Complainant states he purchased the property believing that electric services were already adjacent, but now he will be out for additional costs to service the building site. Complainant states it would have changed his offer had he known the MLS listing was incorrect in this regard.

The principal broker submitted a response on behalf of Respondent stating that he was aware there was some sort of issue with the power at one point but was under the impression the seller had worked it out with the neighbor. The principal broker states he did not follow up on the issue because he did not recall it being a big deal to the seller. The principal broker states that information in the MLS listing is not guaranteed, and that he never spoke with the buyer’s agent.

Upon review of the MLS listing at issue, Counsel followed up with the principal broker with additional questions concerning what information was obtained and relied upon for the listing and what actions were taken to confirm. The principal broker has not responded to the request for additional information

Therefore, based on the information that has been provided, Counsel recommends the Commission authorize a \$1,000.00 penalty for failure to diligently exercise reasonable skill and care in obtaining and/or confirming information provided for the listing.

Recommendation: Authorize a penalty in the amount of \$1,000.00 for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted counsel’s recommendation for the Consent Order and also voted to open a complaint against the Principal Broker in this matter.

28. 2021038371
Opened: 5/24/2021
First Licensed: 1/1/1991
Expires: 6/2/2021
Type of License: Real Estate Firm
History: None

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

Respondent was appointed by the court to sell a property owned jointly by Complainant and his wife pursuant to a court's order in a divorce proceeding. Complainant alleges that various written offers were presented to the Respondent beginning on April 19, 2021, that were not communicated to him. Complainant alleges that they confronted Respondent about not communicating offers from potential buyers or providing copies of paperwork, and Respondent stated he would only communicate the information through the parties' attorneys.

Respondent filed a response stating that they were appointed by the court to sell or auction the property, and they were planning on auctioning it. Respondent stated they were ordered to get the most money possible for the property so they were having soil analyses done to see if the land can be divided into multiple tracts. Respondent states that the soil scientists are delayed in setting appointments and it is taking longer to sell the property. Respondent further alleges that the Complainant put up FOR SALE on the property, notwithstanding the court order, which has caused a problem for the Respondent because the property is not ready to be sold. Respondent states since this is a court ordered sale the best way to communicate is through the Complainant's attorney.

The court order at issue provides as follows: "The real property as located upon [] as owned by the parties shall be listed for sale. Upon entry of this Order, the same shall be communicated to real estate agents [with Respondent's firm] and with [Respondent] for determination as to the best means and method for sale (i.e., a private listing or auction sale with or without a reserve). The parties shall be equally responsible for one-half of the cost associated with any sale preparations as directed by the agents with

[Respondent]." Accordingly, Respondent and its agents named in the order are directed to determine the best means and method for sale. Respondent and its agents are required to comply with the court's order notwithstanding Complainant's directives or approval. Therefore, Counsel does not find that Respondent is in violation of the Commission's rules and statutes. If Complainant believes Respondent handling of the sale is in violation of the court's directive, he and his attorney would need to seek redress from the court issuing the order.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

29. 2021041741
Opened: 6/1/2021
First Licensed: 5/7//1999
Expires: 8/7/2021
Type of License: Affiliate Broker
History: None

The matter is related to Case No. 2021038371 above. Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Respondent is an agent specifically appointed by the court to sell a property owned jointly by Complainant and his wife pursuant to a court's order in a divorce proceeding. Complainant alleges that various written offers were presented to the Respondent beginning on April 19, 2021, that were not communicated to him. Complainant alleges that they confronted Respondent about not communicating offers from potential buyers or providing copies of paperwork, and Respondent stated he would only communicate the information through the parties' attorneys.

Respondent filed a response stating that they were appointed by the court to sell or auction the property, and they were planning on auctioning it. Respondent stated they were ordered to get the most money possible for the property so they were having soil analyses done to see if the land can be divided into multiple tracts. Respondent states that the soil scientists are

delayed in setting appointments and it is taking longer to sell the property. Respondent further alleges that the Complainant put up FOR SALE on the property, notwithstanding the court order, which has caused a problem for the Respondent because the property is not ready to be sold. Respondent states since this is a court ordered sale the best way to communicate is through the Complainant's attorney.

The court order at issue provides as follows: "The real property as located upon [] as owned by the parties shall be listed for sale. Upon entry of this Order, the same shall be communicated to real estate agents [including Respondent] and with [Respondent's firm] for determination as to the best means and method for sale (i.e., a private listing or auction sale with or without a reserve). The parties shall be equally responsible for one-half of the cost associated with any sale preparations as directed by the agents with [Respondent's firm]." Accordingly, Respondent and its agents named in the order are directed to determine the best means and method for sale. Respondent and its agents are required to comply with the court's order notwithstanding Complainant's directives or approval. Therefore, Counsel does not find that Respondent is in violation of the Commission's rules and statutes. If Complainant believes Respondent handling of the sale is in violation of the court's directive, he and his attorney would need to seek redress from the court issuing the order

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

30. 2021041791
Opened: 6/1/2021
First Licensed: 1/13/1996
Expires: 2/25/2023
Type of License: Principal Broker
History: None

The matter is related to Case Nos. 2021038371 and 2021041741 above. Complainant is a Tennessee resident. Respondent is a licensed a licensed principal broker.

Respondent is the principal broker of a real estate firm appointed by the court to sell a property owned jointly by Complainant and his wife pursuant to a court's order in a divorce proceeding. Complainant alleges that various written offers were presented to the Respondent's firm beginning on April 19, 2021, that were not communicated to him. Complainant alleges that they confronted Respondent's firm about not communicating offers from potential buyers or providing copies of paperwork, and Respondent's agent stated he would only communicate the information through the parties' attorneys.

Respondent filed a response stating that the firm was appointed by the court to sell or auction the property and they were planning on auctioning it. Respondent stated they were ordered to get the most money possible for the property so they were having soil analyses done to see if the land can be divided into multiple tracts. Respondent states that the soil scientists are delayed in setting appointments and it is taking longer to sell the property. Respondent further alleges that the Complainant put up FOR SALE on the property, notwithstanding the court order, which has caused a problem for the Respondent because the property is not ready to be sold.

The court order at issue provides as follows: "The real property as located upon [] as owned by the parties shall be listed for sale. Upon entry of this Order, the same shall be communicated to real estate agents [with Respondent's firm] and with [Respondent's firm] for determination as to the best means and method for sale (i.e., a private listing or auction sale with or without a reserve). The parties shall be equally responsible for one-half of the cost associated with any sale preparations as directed by the agents with [Respondent's firm]." Accordingly, Respondent's firm and its agents named in the order are directed to determine the best means and method for sale. Respondent and its agents are required to comply with the court's order notwithstanding Complainant's directives or approval. Therefore, Counsel does not find that Respondent is in violation of the Commission's rules and statutes. If Complainant believes Respondent's firm's handling of the sale is in violation of the court's directive, he and his attorney would need to seek redress from the court issuing the order

Recommendation: **Close**

Commission Decision: The Commission accepted counsel's recommendation.

- 31. 2021030961**
Opened: 6/1/2021
First Licensed: 5/2/2019
Expires: 5/1/2021
Type of License: Affiliate Broker
History: None

Complainants are out-of-state residents. Respondent is a licensed affiliate broker.

Complainants worked with Respondent to find land to purchase in Tennessee. On June 18, 2020, Complainants made an offer on a property that was accepted on June 19, 2020. The closing was scheduled with title company for August 24, 2020. When Complainants arrived at the closing, the title company representative asked Complainants for the final closing funds. Complainants stated they had wired the closing funds (\$62,850.00) on August 14, 2020, after receiving wiring instructions via email from a person stating they were an employee with the title company. At that point, Complainants became aware that the instructions were not sent from the title company, and that the title company did not have any funds transferred to them. Complainants state their email was not hacked and allege that the title company and their agent (Respondent) failed to use reasonable skill and care in safeguarding their money.

Respondent submitted a response via her attorney stating that she did not send any emails to Complainants about wiring money and/or wiring instructions. Respondent has confirmed that her email was not hacked. It appears from the complaint that the title company employee who was impersonated in the email may have been hacked. Respondent states that at the time the email was sent, Respondent was not even in possession of the closing numbers, as it was ten days prior to closing. Respondent did not see the closing statement until the day of the closing. Respondent states she warned Complainants about wire fraud on more than one occasion and advised them to be very careful. Respondent walked them through the purchase and sale agreement when she wrote the offer, which included a section relating to wire fraud that specifically warned Complainants about

emails with fake wiring instructions and to never wire money without independently confirming instructions in person or via a telephone call to a trusted or verified number.

Based on the information provided, Respondent has not violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

32. **2021036081**
Opened: 6/1/2021
First Licensed: 11/27/2019
Expires: 11/26/2021
Type of License: Affiliate Broker
History: None

Complainant is a licensed broker. Respondent is a licensed affiliate broker.

Complainant is the owner of an auction company. On April 10, 2021, Complainant's company conducted an auction that offered 1% broker participation to any licensed Tennessee real estate agent who had a buyer, if they completed an online form. Complainant contends the form stated commission was to be 1% of the purchase price. Respondent was one of the agents. Respondent and her husband purchased the property at the auction. Complainant alleges that Respondent questioned whether the commission was supposed to be 2% instead of 1%. Complainant says he double checked and found the 1% referral form. Respondent had additional concerns about the form, and discussions ensued. Complainant alleges that Respondent impeded the closing process because of a baseless issue.

Respondent's attorney submitted a response on Respondent's behalf, stating that Respondent did not engage in any unlawful conduct. Respondent did not delay or impede the seller receiving funds nor order the title company to hold any funds. Respondent had the impression, based on conversations with a number of other agents at the auction, that the commission was going to be

2%, not the 1% reflected in the online paperwork. Respondent had experienced discriminatory conduct during the bidding process and had simply inquired about what she was told regarding the percentage because she wanted to ensure that she and her husband were not being treated differently due to their middle eastern ethnicity. Respondent properly disclosed her personal interest in the transaction to Complainant. After the discussions, the transaction closed.

Based on the information provided, it does not appear that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

33. 2021038411

Opened: 6/1/2021

First Licensed: 4/18/2012

Expires: 6/23/2023

Type of License: Real Estate Broker

History: None

Complainant is a licensed principal broker. Respondent is a licensed affiliate broker.

The parties in this matter have been engaged in filing a barrage of complainants against one another for the past year, all of which appear to have been closed or closed and flagged. The majority of the complaints were filed by Complainant against Respondent after she left Complainant's firm.

In the case at bar, Complainant alleges that Respondent has not corrected her marketing information on her Google business page platform. Complainant had filed a previous complaint this year concerning this issue, and it was closed and flagged. Complainant had alleged in the prior complaint that there was mixed content on a Google search for Respondent in which Complainant's firm name or office address still appeared. Complainant now alleges that Respondent has taken no corrective action since the prior complaint brought the matter to her attention.

Respondent submitted a response stating that she did, in fact, change her Google business page information and previously submitted a photo of the submitted changes in her response to the prior complaint. Respondent states that she was not aware she would need to go back with a pin number from Google to verify the changes. Because she did not verify the changes with a pin, it reverted back to the former business address and did not accept the change. Respondent has submitted the changed again, now with the pin number from Google, and this has taken care of the issue. Respondent states the Google page has not been visited since she left Complainant's office. She states that their business model was to take down the competition one at agent at a time and keep them busy dealing with complaints so that they don't have time to focus on their business. She states that is one of the reasons she left.

Respondent states that, in addition to filing complaints against her, Complainant and her husband have sent numerous threatening text messages to Respondent and her husband, which she attaches. Respondent states there are a number of agents who left her former office that still have the old office information on their profile, and Complainant has not filed any complaints against them.

Based on the information provided, it appears that Respondent did take corrective action regarding her Google business page and has further resolved any remaining issue regarding her Google page.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

34. **2021039101**
Opened: 6/8/2021
First Licensed: 5/24/2006
Expires: 5/23/2022
Type of License: Affiliate Broker
History: None

Complainant is an out-of-state resident. Respondent is a licensed affiliate broker.

Complainant entered into a contract on or about January 28, 2021, to purchase a new-build home. Respondent was a facilitator in the transaction. Respondent happens to share the same first name and a very similar (but different) last name as one of the sellers/developer partners. Although the complaint was opened against Respondent, the text of the complaint refers to the last name of the seller/developer.

Complainant contends that the seller cancelled the contract because of problems developing the subdivision. Complainant does not believe the reason was credible and contends that the seller/developer breached the contract.

Respondent submitted a response clarifying the confusion about the names/roles of the persons involved in the transaction. Respondent states that he is not the builder or owner of the lots and did not enter into any purchase and sale agreement with Complainant.

This appears to be a contract dispute matter between the Complainant and the seller/developer. Based on the information provided, Counsel does not find evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

35. 2021044121
Opened: 6/8/2021
First Licensed: 5/12/2015
Expires: 5/11/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant contends that a listing by Respondent contains two photos depicting a nature path to a creek. Complainant contends the photos would have to have been taken from her property based on the angle. Complainant alleges that she sent a text message on May 26, 2021, requesting the photos be removed but received a response stating they would not be removed.

Respondent submitted a response stating that she received a phone call from her firm's management team on May 28, 2021, at 10:00 a.m. regarding an email from the next-door neighbor of the home. During the call, Respondent was asked about two photos on the listing that were taken by a photographer. Respondent states there is a creek that runs behind all of the homes on that part of the street, and the photos showed a view of a pathway leading down to the creek, and the clearing at the creek. Upon being informed of the neighbor's claim that the photos were taken on their property and their request to take the photos down, Respondent immediately removed them.

Respondent states the text message Complainant attached from May 26, 2021, was not sent to her but was a text to her husband's business phone. The response on the text is an automated text reply that expressly states it is from a lawn maintenance office team. Respondent states it does not reflect what her response would have been had Complainant contacted her. Respondent immediately removed the photos as soon as the issue was brought to her attention. She was not in the state when the property was photographed. She states the home went under contract on May 31, 2021. The photos were removed from MLS before the home went active on May 29, 2021.

Based on the information provided, Counsel does not find that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

Opened: 6/8/2021
First Licensed: 10/28/2020
Expires: 10/27/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant submitted a complaint that states as follows “Realtors are not supposed to offer gifts without giving specific information of what they are giving and how to receive it. She was not specific as to whether this is limited to just gift cards, left it open to allow people to believe money could also be given among other things.” The complaint does not provide any documentation or further information.

Respondent submitted a response stating she has no idea what the complaint is talking about and requests that Complainant send a photo of what he’s referring to so that she can respond. Complainant did not submit the rebuttal information or documents. Respondent states that she does not know Complainant.

Based on the information provided, there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

37. 2021040431
Opened: 6/14/2021
First Licensed: 8/1/2012
Expires: 7/13/2022
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker.

Respondent's firm handled the sale of Complainant's property. Both the buyer and seller had exclusive agreements with Respondent's firm. The listing agreement provided that seller authorized the managing broker to appoint a designated agent for the seller. The buyer's representation agreement provided that the managing broker would appoint a designated agent for the buyer.

Complainant's home went under contract, but the transaction later fell through when the buyer lost his financing. On April 30, 2021, notification was sent from buyer's agent to seller's agent advising that the buyer was unable to obtain financing and requesting release of the \$2,000 earnest money deposit. The seller's agent also submitted a release requesting the earnest money. The title company was the holder of the earnest money. Complainant alleges that Respondent sent an email stating that she would be working with the title company on the disbursement because they are the holder. Complainant contends that Respondent had a conflict of interest in deciding earnest money distribution because her firm represented both parties. Complainant states she is entitled to receive the earnest money. Complainant believes her agent should decide about the distribution, but that it is being delayed. Complainant wants advocate for changing Tennessee law regarding dual agents.

Respondent submitted a response via her attorney and provided copies of the executed contract, listing agreement, and buyer's representation agreement. Respondent states that she is not a dual agent, pursuant to Tenn. Code Ann. § 62-13-406(a), and that Complainant's belief that she had a conflict of interest is not based in contract or law. Respondent states that the contract provided for the earnest money to be paid to the title company, who was responsible for disbursement decisions pursuant to the contract. Respondent states she never held nor had authority to disburse any funds. Respondent submitted a copy of an email sent from her to all agents involved in which she had stated that she had no authority over how to disburse the trust money, and that it was within the authority of the title company as holder. The email advised that buyer and seller would have to get their own lawyer or intermediary if they cannot come to an agreement. Respondent also provided an email from the title company that was sent to the seller, buyer, and all agents acknowledging there is a dispute about the earnest money and stating they would not release the funds until they receive a release signed by all parties or a mediated decision was made.

Based on the information provided, it does not appear that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

38. 2021043821

Opened: 6/14/2021

First Licensed: 3/9/1997

Expires: 12/10/2022

Type of License: Principal Broker

History: 2014 Consent Order for Advertising Violation

Complainant is an out-of-state resident. Respondent is a licensed principal broker.

Respondent is the principal broker of an agent who represented Complainant in a purchase transaction. Complainant contends that Respondent's license was suspended at the time, and that he was engaged in unlicensed activity. Complainant further contends that Respondent failed to release earnest money owed to him when Complainant's loan was declined. Complainant contends that he informed his agent and Respondent on May 14, 2021, that his lender verbally indicated they would be declining the loan. On May 21, 2021, Complainant sent a release to Respondent for the earnest money. Complainant states Respondent indicated at 12:21 p.m. that he would wire the money but that Complainant needed to send the inspection report. Complainant states Respondent responded again at 1:00 p.m. stating that he would not be releasing the money because his attorney had advised filing an interpleader action.

Respondent submitted a response stating he told Complainant on May 21, 2021, that he could send his earnest money back if he could not get financed but Complainant needed to provide a denial letter. Respondent states Complainant sent a denial letter that was unsigned and the reason checked was "inadequate collateral discrepancy". Respondent asked Complainant for a copy of a signed denial letter and inquired about the meaning of

“inadequate collateral discrepancy” as checked in the letter. Complainant sent a second letter that was signed, but the denial reason now checked was for “unacceptable property.” When Respondent inquired about the meaning, Complainant stated it meant they would not loan the money because of the home inspection. Respondent states there was no inspection contingency in the contract. Respondent called to consult his attorney for guidance before releasing the funds, and the attorney recommended an interpleader. Respondent told Complainant, who became upset about the decision. Respondent released the funds to the attorney for interpleader on June 1, 2021. Respondent provided copies of the above correspondence with Complainant.

Respondent acknowledges that his license was suspended because of a lapse in E&O insurance. Respondent states he did not become aware of the suspension until May 27, 2021, but then promptly took care of renewal and license reinstatement.

Counsel finds there is insufficient evidence that Respondent violated any rules or statutes of the Commission as it pertains to handling of the earnest money. Based on the information provided, however, Respondent was engaged in brokerage activity during the time period referenced above while his license was inactive. Respondent’s license was suspended from January 29, 2021, and remained inactive until June 3, 2021. Therefore, Counsel recommends a civil penalty in the amount of \$1,000.00 for engaging in unlicensed activity in violation of Tenn. Code Ann. § 62-13-301.

Recommendation: Authorize a \$1,000.00 civil penalty for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301.

Commission Decision: The Commission accepted counsel’s recommendation.

39. **2021043831**
Opened: 6/14/2021
First Licensed: 8/12/2015
Expires: 8/11/2021
Type of License: Affiliate Broker
History: None

Complainant is an out-of-state resident. Respondent is a licensed affiliate broker. This matter is related to Case No. 2021043821 above.

Complainant alleges Respondent represented him as the buyer and also represented the seller in the transaction. Respondent showed Complainant the home on April 2, 2021. Complainant asked for a property condition report on April 2, but Respondent did not have the report or a listing agreement at that time. Complainant states the property condition report was later provided but backdated to April 1, 2021, with no issues listed regarding the driveway or foundation. Complainant states he had concerns about the foundation and drainage. Complainant alleges an inspection performed on April 21, 2021, found significant horizontal cracking that caused the loan to be declined. Complainant states he never received a dual agency agreement from Complainant.

Respondent submitted a response stating that Complainant reached out to him on March 28, 2021, about listings in the area. At that time, Respondent did not have a listing agreement with the seller. The seller agreed to a one-time showing for Complainant, and afterward Complainant asked Respondent to fill out a purchase and sale agreement so he could make an offer on the house. There was no listing agreement yet with the seller. Respondent states he was instructed by Complainant to waive all inspections in the contract, even when Respondent recommended them. Complainant executed the purchase and sale agreement waiving all inspections.

Respondent states the seller stands by the property condition report and denies any issues with the foundation. Seller hired an engineer to assess the foundation structure, and it was deemed structurally safe. Respondent states he did not provide Complainant with a dual agency agreement but did advise both parties that he would be a facilitator in the transaction. Respondent states the dual agency agreement was overlooked because he had already filled it out for the seller and forgot to change the boxes to indicate that he was a facilitator. The confirmation of agency agreement provided to Complainant states Respondent is designated agent for the buyer and the seller.

Based on the information provided, it appears Respondent acted for more than one party in the transaction but failed to obtain consent in writing of all

parties. Therefore, counsel recommends a penalty of \$1,000.00 for violation of Tenn. Code Ann. § 62-13-312(b)(7).

Recommendation: Authorize a \$1,000.00 civil penalty for acting for more than one party without obtaining written consent of all parties in violation of Tenn. Code Ann. § 62-13-312(b)(7).

Commission Decision: The Commission accepted counsel's recommendation.

40. 2021044541

Opened: 6/14/2021

First Licensed: 11/1/2002

Expires: 8/2/2022

Type of License: Principal Broker

History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker.

Complainant alleges he signed an amended purchase and sale agreement on April 2, 2020[sic] for the purchase of a new-construction town home. Respondent was the seller's agent. The closing was scheduled for May 29, 2021. Complainant contends the agreement was contingent on the sale of his home. Complainant states his home went under contract on May 21, 2021, and was set to close on May 30, 2021. Complainant states this required him to request an extension on the closing date. Complainant contends Respondent had previously told him that the seller would work with him if his home went under contract before May 21.

On May 22, 2021, Complainant asked his agent to inquire with the seller if he would agree to extend the closing for one month. The seller declined to work with him on extending the closing. Complainant contends he had given the seller over \$7,000 for interior upgrades on April 3. He is upset that the seller would be entitled to keep the upgrades but would not work with him to extend the closing date. Complainant believes Respondent and seller conspired to allow the seller to keep the upgrades.

Respondent submitted a response stating that Complainant submitted an offer on his listing which was accepted on March 22, 2021. Complainant was offered the opportunity to make choices for his townhome regarding flooring, tile, fixtures, etc., based on the builder's choices or upgrade to more expensive materials. Complainant opted for more expensive materials for several items that totaled \$8,220.12. Respondent was contacted by Complainant's agent on April 1, 2021, who advised Complainant was concerned about purchasing the townhome and paying for upgrades without a contingency on the sale of his home. The seller agreed to sign an amendment on April 2, 2021, making the purchase contingent on the sale of Complainant's home on or before the closing date, which was May 28, 2021. Complainant's agent assured Respondent that Complainant understood there would not be a refund for the upgrades.

Complainant's agent contacted Respondent on May 21, 2021, with a request to extend the closing date to June 30, 2021. The seller declined because he was concerned about extending the closing date for another six weeks. The property had already been off the market for two months. Respondent states neither he nor the seller ever represented that the seller would work with Complainant if his home went under prior to May 21, 2021. Rather, the seller was willing work with Complainant until May 28, 2021, to complete the deal.

Based on the information provided, there is insufficient evidence that Respondent has violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

41. **2021045621**
Opened: 6/14/2021
First Licensed: 3/3/2020
Expires: 3/2/2022
Type of License: Real Estate Firm
History: None

Complainant appears to have provided a fictitious name and address. Respondent is a licensed real estate firm.

Complainant contends that Respondent's principal broker is married to a loan originator at a bank. Complainant alleges that contracts with the wife's name are switched to another real estate agent at Respondent's office, and the agent pays Respondent \$2,000.00 in return for using her name and keeps the rest of the commission. Complainant alleges Respondent pays 1% of the sales price as a kickback. Complainant contends Respondent falsifies buyer's paychecks under false business names to help get their loans approved. Complainant alleges this is a well-known practice among Arabic speaking communities. Complainant does not provide any documentation supporting the allegations. Upon research it appears the contact information provided is fictitious.

The principal broker submitted a response on behalf of Respondent denying all allegations in the complaint. Principal broker states he has never been involved in any transactions and does not know anyone with the name provided by Complainant. He states the allegations about his wife are untrue and unfounded. He states that on certain real estate transactions he pays or splits commissions with an affiliate broker in the office. He states he does not pay 1% of the sales price as a kickback, and there is no falsification of any paychecks. He states his wife is a loan originator, but Respondent firm is not in the lending business and does not handle customer paychecks or paycheck information. Respondent believes Complainant is a competitor who is filing false and frivolous complaint under a fake identity.

Based on the information provided, Counsel does not find sufficient evidence to establish that Respondent has violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

**42. 2021039661
Opened: 6/22/2021
Unlicensed**

History: None

Complainant is anonymous. Respondent is an unlicensed real estate firm.

Complainant contends that the Respondent firm was operating without a license or principal broker. Complainant provides the name of a real estate firm where the agent/owner of the Respondent firm is currently affiliated. Complainant attached online marketing and contact information for Respondent. Respondent did not respond to the complaint.

It is unclear from information available at the Tennessee Secretary of State website whether Respondent firm remains a going concern. A licensed affiliate broker is listed as Respondent's agent for service of process. The Respondent firm address is the same as the affiliate's address according to the Commission's records.

Based on the information provided and Counsel's research, Counsel recommends authorizing a \$1,000.00 penalty for unlicensed activity against the Respondent firm. Counsel recommends opening a complaint against the affiliate broker operating the Respondent firm for violations of Tenn. Code Ann. § 63-13-309(a)(1)(A) and Tenn. Comp. R. & Regs. 1260-02-.01(1).

Recommendation: Authorize a \$1,000.00 civil penalty for unlicensed activity and open a complaint against the affiliate broker operating Respondent firm for violations of Tenn. Code Ann. § 63-13-309(a)(1)(A).

Commission Decision: The Commission accepted counsel's recommendation.

43. 2021045421

Opened: 6/22/2021

First Licensed: 1/9/2008

Expires: 1/8/2022

Type of License: Real Estate Firm

History: 2017 Consent Order for failing, within a reasonable time, to account for or remit any moneys coming into the licensee's possession that belong to others

Complainant is an out-of-state resident. Respondent is a licensed real estate firm engaged in property management services.

Complainant contends that Respondent failed to return a pro-rated rent check for the month of April. Complainant contends Respondent informed him that payment would be sent by May 14, but Respondent was contractually bound to return the funds sooner. Complainant states Respondent informed him that they were waiting to get funds back from the owners to pay him. Complainant alleges Respondent should be disciplined for sending funds to the owners that Complainant believes should be held in a separate account for reimbursement purposes.

Respondent submitted a response stating that funds for rent are not held in a separate account for reimbursement purposes. Rent is held in an operating account and sent to owners between the 7th and 10th of each month. Respondent believes Complainant is confusing security deposit funds and normal operating/rental funds, which are held in two separate accounts. Respondent states Complainant broke their lease and owed April rent. New tenants took possession on April 16, which did create a credit owed back to them. Respondent began the process of issuing a refund and had to request a return of the funds from the owner of prorated rent that was paid out in April distribution. The owners were entitled to April's rent as the tenants had broken their lease and were responsible for paying rent until the home was rented out. Respondent followed proper protocol. As an act of good faith, Respondent sent Complainant a refund check on June 4, 2021, although they still had not received the funds from the owner.

This appears to be a landlord/tenant contractual dispute. Based on the information provided, it does not appear that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

44. 2021041341

Opened: 6/28/2021

First Licensed: 1/18/2008

Expires: 7/1/2023
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker.

Complainant owns unimproved property in a certain development area. Respondent was the original developer and sold the property to previous owners. Complainant complains that he requested HOA records and have not received them. Complainant claims Respondent is an HOA owner who does not abide by the bylaws he enacted. Complainant contends that Respondent's RV is blocking access to their property.

Respondent submitted a response denying the allegations in the complaint. Respondent states that the allegations against him have nothing to do with his real estate license. Respondent was not the agent who sold the property to Complainant, nor has he ever been involved in any real estate activity with them.

Based on the information provided, Respondent has not violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

45. 2021044871
Opened: 6/28/2021
First Licensed: 10/4/2000
Expires: 9/15/2021
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant contends that Respondent created a conflict of interest by allowing Complainant's next-door neighbor to show their home. Complainant contends this allowed the neighbor to screen buyers and scare people off. Complainant alleges doorbell videos recorded the neighbor making inappropriate comments to buyers. Complainant alleges that out of 30 showings, the neighbor showed up to 12 and Respondent only 3.

Respondent submitted a response stating that she did not have the neighbor assist because she was a neighbor, but because she had worked with the person as her assistant in years past. As the market became busy, Respondent was again in need of assistance and had asked the neighbor to work with her again. The neighbor's role was limited solely to unlocking the property. The neighbor is in the process of working toward a real estate license. Respondent stated the neighbor was not screening anyone or being inappropriate. When Complainant let Respondent know he did not want the neighbor to unlock the property, Respondent never asked her to go back. Respondent states that she was personally present for at least 12 showings. The showings were successful, and the price for which she sold Complainant's house was the highest in her firm's history.

Based on the information provided, there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

46. 2021045821
Opened: 6/28/2021
First Licensed: 8/29/2016
Expires: 8/28/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant contends that Respondent incorrectly listed a home on MLS on April 29, 2021, as a three bedroom. Complainant alleges she made three offers on 4/29, 5/1, and 5/2 with no knowledge that the septic permit was limited to 2 bedrooms. Complainant states she asked Respondent about it on May 2, 2021, when she saw the septic limit. Complainant alleges Respondent had already completed the MLS document when she discovered the septic limit and chose to include a private MLS comment rather than changing the listing to a two-bedroom home. Complainant believes advertising the home as three-bedroom caused the price inflation.

Respondent submitted a response stating that all permits and information about the two-bedroom septic permit were readily available to see on MLS. The home had 15 offers in one weekend. The offers, including Complainant's, were submitted with a signed septic disclosure. All offers were list price or higher. Complainant knew the house was permitted for two bedrooms and negotiated with the sellers on her own to get furniture in lieu of any septic costs she thought she might incur.

Respondent sent Complainant the septic disclosure, property condition disclosure before sending the contract for Complainant to review. Complainant understood it was a three-bedroom home with a two-bedroom permit when she decided to make an offer on the home. Once Complainant raised concerns about the permit, seller gave Complainant an opportunity to walk away, but Complainant decided to ask for furniture instead.

Respondent states the sellers bought the home as a three-bedroom in 2018, and it was previously listed as a three-bedroom home in 2001 and 2002.

Based on the information provided, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

**47. 2021046031
Opened: 6/28/2021**

First Licensed: 12/16/2016

Expires: 12/15/2022

Type of License: Affiliate Broker

History: 2020 Consent Order for Advertising Violation

Complainant is a licensed real estate agent. Respondent is a licensed affiliate broker.

Complainant alleges Respondent's name in his sign is larger than the firm name and number. Complainant does not believe Respondent has permission to post the sign where it is located, which Complainant contends violates a city ordinance. Complainant submitted a photo of the sign taken at an up-close angle looking down on the sign. Counsel was not able to discern if there is any appreciable difference in the font size based on the photo. Complainant did not provide any measurements. Respondent's name merely appears in the photo to have more space in between the letters.

Respondent submitted a response via his attorney. Respondent states he has made every effort to comply with Tenn. Comp. R. & Regs. 1260-02-.12, and he does not believe that the signs in question are a violation in any way. Respondent states the firm name appears to be same size as Respondent's name, but he is prepared to remedy any flaws the Commission finds. Respondent states that he complied with both the Commission's advertising rules and his firm's guidelines for the sign. Respondent states his firm has put into place more strenuous guidelines than required by the Commission's rules in order to be compliant in two states. Respondent has never received any citation or warnings from the city code enforcement and have been instructed by City code enforcement that the signs do not violate any city ordinances.

Respondent submitted a photo of the sign taken at a straight angle looking directly ahead. At this angle, the firm name appears to be the same size as Respondent's name.

Based on the information provided, it does not appear that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

48. 2021046351
Opened: 6/28/2021
First Licensed: 11/4/1987
Expires: 3/5/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant contends that Respondent listed a property on behalf of an elderly homeowner. Complainant contends she made a cash offer of \$335,000.00 on April 15, 2021, but Respondent insisted the offer be submitted to him and not the elderly homeowner. Complainant states Respondent subsequently declined the offer based on a home inspection contingency. Complainant states Respondent purchased the home for \$280,000.00. Complainant believes the homeowner had early onset dementia and is concerned Respondent exploited the woman.

Respondent and his principal broker submitted responses stating that the property at issue was not owned by the elderly lady, but rather a family trust which consisted of the lady and her three adult sons. Respondent had previous dealings with the family, and they contacted him about selling the property. The family was hesitant about listing the property and having multiple showings with potential COVID exposure for the elderly mother and the burden on her of keeping the property in a showable condition on top of packing up a home she had lived in for 54 years. After the discussions with the family about not wanting to list the property, Respondent made a verbal offer to buy the property for \$270,000.00 cash. The family countered with a price of \$280,000.00 cash, which Respondent accepted. The home went under contract on March 25, 2021. The family understood that Respondent would attempt to resell the home for a profit, and they agreed to allow Respondent two open house dates to show the property to potential buyers.

Prior to and after signing the purchase and sale agreement, Respondent repeatedly told the family that if the property were listed on MLS, it would mostly likely bring in multiple offers which would exceed \$280,000.00. Respondent states the family was firm that they did not want the property listed on MLS and wanted the cash sale and their preferred closing date of May 10, 2021, so she could have the cash to go forward expediently with moving out of state. Respondent discussed matters with his principal broker throughout the transaction and advised that he had encouraged the family to allow him to list the property to maximize their profits, but that was not their wish. Respondent submitted the purchase and sale agreement and personal interest disclosure form.

Respondent states Complainant submitted an offer on or about April 15, 2021, but it was submitted listing the mother as the seller and not the family trust or Respondent. The trust was already in a bound contract with Respondent at that time. Complainant's agent made no attempt to resubmit the offer. Respondent's broker states Respondent has been licensed for 34 years and conducts his real estate business in an ethical and transparent manner in accordance with the Commission's rules and statutes.

Based on the information provided, there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

49. 2021047731
Opened: 6/28/2021
First Licensed: 9/23/2014
Expires: 9/22/2020
Type of License: Real Estate Broker
History: None

This complaint is submitted by anonymous Complainant under the fictitious name "John Broker." Respondent is a former licensed real estate agent whose Tennessee license has expired. He has relocated and is currently practicing real estate in a different state and is actively licensed there.

Complainant contends that Respondent is practicing real estate under an expired license. Complainant alleges Respondent is advertising his services in an online directory for real estate agents who specialize in foreclosure homes. Complainant provided a copy of a printout from a national website for foreclosure specialists which indicates Respondent is “[I]icensed in [another state] in 2005, Brokers License in Tennessee in 2014.” Complainant contends that the company Respondent is with is not licensed in Tennessee.

Respondent submitted a response stating that he is not practicing real estate in Tennessee. He states the webpage submitted by Complainant is from a non-publicly accessible website for members of an association of professionals offering foreclosure services to banks and loan servicers. Respondent states he joined the website at the height of the foreclosure crisis in 2008 and had not updated it since approximately 2015. In May of 2019, Respondent relocated back to another state where he has been practicing real estate exclusively. He states that foreclosure real estate became a nearly nonexistent specialty over the last 8 years, and he did not think about old portals or websites from the recession period. Respondent states Complainant made false and misleading statements in the complaint. Respondent’s company is licensed in the state where he currently resides and practices.

Respondent does not hold an active license in Tennessee. He has relocated and engages in real estate activity exclusively in another jurisdiction where he is actively licensed. Respondent is not engaged in broker activity or advertisement in Tennessee. The documentation Complainant provided is from a national non-public paid website. Therefore, based on the information provided, Counsel recommends issuing a letter of warning to Respondent to remove or update his information in the old portals submitted by Complainant to eliminate any potentially misleading reference about his former Tennessee business.

Recommendation: Letter of warning concerning the Commission’s rules on internet advertising.

Commission Decision: The Commission accepted counsel’s recommendation.

50. 2021048681
Opened: 6/28/2021
First Licensed: 8/1/2018
Expires: 7/31/2022
Type of License: Affiliate Broker
History: None

Complainant is a licensed real estate agent. Respondent is a licensed affiliate broker.

Complainant alleges Respondent is sending postcards in the mail and advertising “save 2% on commissions.” Complainant alleges this would suggest a standard commission rate in the marketing area and, therefore is illegal. Complainant also contends that Respondent’s name on the postcard is larger than the company name. Finally, Complainant alleges Respondent is unlicensed.

Respondent submitted a response stating that her advertisements do not reference or imply a prevailing commission in the community. She simply states that “Save 2% on Commission,” which Respondent states reflects a percentage off her own commission rate, whatever it might be for the listing. She states she offers a discount by listing by their home as a certified pre-owned home or by dropping down and becoming a facilitator. Respondent states the customer must set up an appointment to get the information as to what that “save 2% commission” is.

Respondent denies that her company’s logo is smaller than her name in the advertisements. Respondent provided a copy of the mailers and advertisements.

Counsel confirmed that Complainant’s allegation regarding Respondent’s license status was incorrect. Upon review of the mailers, the firm name appears twice. It does appear that Respondent’s name is larger than all except the first word of the firm in one of the two locations where the firm name is written. With regard to the “save 2% commission” claims, the advertisements contain words below the claim that state “per certified home,” and “facilitator.” acknowledges that customers must set up an appointment to obtain pertinent details. Therefore, based on the information

provided, Counsel recommends a total \$1,000.00 civil penalty for advertising violations as follows:

Recommendation: Authorize civil penalties totaling \$1,000.00 for the following advertising violations: (1) \$500.00 civil penalty for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) (“[F]irm name must appear in letters the same size or larger than those spelling out the name of the licensee.”); and (2) \$500.00 penalty for violation of Tenn. Comp. R. & Regs. 1260-02-.12(7)(b) (“Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement”).

Commission Decision: The Commission voted to accept the recommended \$500.00 civil penalty amount for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) and increase civil penalty amount for violation of Tenn. Comp. R. & Regs. 1260-02-.12(7)(b) from \$500.00 to \$1,000.00. The Commission authorized a contested case proceeding with authority to settle via consent order for the above civil penalty amounts totaling \$1,500.00.

51. **2021048721**
Opened: 6/28/2021
First Licensed: 7/27/2020
Expires: 7/26/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant contends he drove by a farm that his family leases and saw something taped to a mailbox. Complainant states he discovered it was Respondent’s business card. Complainant called and confronted Respondent. Respondent stated he was interested in selling the property. Complainant alleges he told Respondent he was breaking the law by tampering with a mailbox. Complainant contends Respondent had heard there was a death in the area and was trying to help sell the property. Respondent submitted a photo of Respondent’s business card on a mailbox.

Respondent submitted a response stating he drives by the area every day and placed his business card on a mailbox. Respondent had his eye on the property for his brother and had noticed there was not any activity and left a card hoping they would call. Respondent knew the family that owned the property and had no knowledge of Complainant's family leasing the farm. Respondent had no interest in Complainant's family's farm and had no intention of contacting them for any reason. Complainant called Respondent's principal broker, who tried to talk to Complainant but eventually had to hang up when Complainant would not talk reasonably and screamed that their company was a bunch of vultures.

Based on the information provided, it does not appear that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

52. 2021049551
Opened: 6/28/2021
First Licensed: 11/19/2018
Expires: 11/18/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant alleges she submitted an offer to purchase certain property on April 4, 2021, and the offer was contingent on selling her home. Respondent represented the sellers. The offer was accepted. Buyer's home went under contract and was scheduled to close on April 20, 2021. Complainant contends she received a call from her agent about two weeks before the closing date informing Complainant that the person who had signed the contract as the seller was not the owner of the home and did not have power of attorney to sell the home. After complainant completed the earnest money disbursement form, the home was placed back on the market. Complainant

contends that Respondent mistakenly listed the property to sell without have power of attorney documentation, and that the error caused Complainant to have to make last-minute living arrangements after their home was sold.

Respondent submitted a response stating that he was advised by his client that she had power attorney over her sister's affairs. Another broker had contacted Respondent regarding a possible referral on a listing agreement. Respondent attempted to contact the owner on March 5, 2021, with no response, but ended up talking with the owner's son. The owner's son told Respondent that his mother had been in intensive care for months, and his aunt was handling the affairs. A few minutes later the client called Respondent. Respondent told the client that he would need a copy of the power of attorney, and the client stated she would provide it. Respondent made preparations for the listing. On March 29, 2021, the client signed a designated agency form. On April 2, 2021, Respondent advised the client that the listing was going online, and he still needed a copy of the power of the attorney. The client stated again she would provide it. Complainant's offer was made on April 4, 2021, which the client accepted and signed via Authentisign. On April 9, 2021, the client called and stated she would have to get power of attorney for the owner's daughter to proceed with the sale because the client was going out of the country.

On April 15, 2021, Respondent received a call from an unknown party stating he had a contract to purchase the property that was signed by the owner on March 15, 2021. The caller said the owner had then "ghosted" him. When the owner did not show up at the closing, the person discovered Respondent's listing in MLS. Respondent received a call from the title company stating they were supposed to close with the owner, and when she disappeared and did not show up at the closing, they recorded a lien on the property. Respondent and his broker obtained an audit train of the transaction to figure out what happened. On April 19, 2021, Respondent spoke with the client, who was now in Africa, and she advised she did not have the power of attorney for her sister. Respondent then notified Complainant's agent of the developing circumstances. As soon as Respondent discovered that his client was not being truthful, the contract was voided.

Based on the information provided, Respondent entered into a listing agreement with the owner's sister without obtaining a copy of a power or attorney or otherwise verifying same. Therefore, Counsel recommends

Counsel recommends that the Commission authorize a \$1,000.00 penalty for failure to diligently exercise reasonable skill and care.

Recommendation: Authorize a penalty in the amount of \$1,000.00 for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted counsel's recommendation.

53. 2021051871

Opened: 7/6/2021

First Licensed: 9/3/1998

Expires: 1/29/2022

Type of License: Affiliate Broker

History: 2011 Final Order

Complainant is an out-of-state resident. Respondent is a licensed affiliate broker.

Complainant alleges she and her family rented a vacation cabin that is owned by the Respondent. Complainant states that she was awakened by police officers at 3:00 a.m. stating they had been called to assist with eviction and removal. Complainant states she pleaded with Respondent's husband to allow them to remain onsite. Complainants gathered their belongings for an hour and were escorted off the property at 5:00 a.m. Complainant believes the decision to evict them was racially motivated.

Respondent submitted a response confirming that she and her husband own the cabin. Respondent contends that Complainant was aware of the occupancy limit for rental and the requirement to keep the security door locked for safety purposes due to wildlife in the area. Complainant kept the doors opened for hours, causing security alerts. Respondent finally reached them at 9:34 p.m. via text, and they shut the door. At 12:14 a.m., Respondent began receiving multiple security camera alerts due to extensive motion activity outside the property. Respondent checked the security cameras and discovered more guests arriving carrying in luggage and boxes. Respondent

contends Complainant breached the occupancy rules and rental agreement, and Respondent cancelled the reservation.

Based on the information provided, Respondent owned the property in the transaction at issue. Therefore, the transaction is exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(A).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

54. 2021051911

Opened: 7/6/2021

First Licensed: 9/20/2001

Expires: 3/13/2022

Type of License: Principal Broker

History: None

This is an anonymous complaint submitted under the fictitious name "Bob Broker." Respondent is a licensed affiliate broker.

Complainant alleges that Respondent is holding herself out to the public as owning four offices, but she only has one licensed office. Complainant attached a copy of a page from non-public, paid website content listing Respondent's office address. The page also shows a thumbnail map that can be clicked on for directions. There are also thumbnail maps for three locations designated by the map as "work from home." Those addresses are not listed on the page.

Respondent submitted a complaint denying that she has unlicensed offices or that she advertised unlicensed offices. Nowhere on the page submitted by Complainant does Respondent advertise four unlicensed office addresses. Locations in the thumbnail maps state they are "work from home."

Based on the information provided, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

55. 2021051921
Opened: 7/6/2021
First Licensed: 7/5/2006
Expires: 7/4/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker.

Complainant alleges that she made an offer on land and never heard back from him. She alleges she called Respondent ten times a day, and he threatened that if she called again, it would not be a good situation. Complainant contends Respondent posted a photo on his Facebook page of a laundry basket full of mismatched socks, and a sticky note on the front saying: "Dear Home Shoppers: The family that matches the most pair of socks will have your offer put at the top of the stack. Please put your name on pile of matches. Good luck!" Complainant contends the post is unprofessional and unethical.

Respondent submitted a response denying having received 10 calls a day from Complainant or having purposely failed to return a call from her. Respondent does not ever recall having a listing in the area where Complainant contends she made an offer. Respondent believes Complainant is mistaking him for someone else. Respondent states the Facebook post was a humorous post that was being shared around on real estate pages. Respondent was not the author of the post, and it was not meant to be taken seriously. Respondent states he would never place emphasis over one offer over another when presenting offers to clients.

Based on the information provided, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

56. 2021049601
Opened: 7/6/2021
First Licensed: 4/9/2012
Expires: 4/8/2022
Type of License: Real Estate Firm
History: 2019 Letter of Warning

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

Complainant contends when they purchased a home in 2018, they were assured the HVAC unit was of good quality. In spring of 2019, Complainant started experiencing problems with the unit. Complainant states he was told this summer by an HVAC specialist that the unit is undersized for the home. Complainant alleges Respondent will not honor a warranty with documented proof the unit is undersized.

Respondent's attorney submitted a response on Respondent's behalf stating that Respondent is a home builder. The complaint does not address any rule applicable the real estate licensing or concern any broker activity. Complainant is alleging fault with the build and breach of warranty. Respondent states that the home was built to code. An engineering firm provided HVAC calculations and recommendations on unit capacity.

The complaint concerns a building construction and warranty issue. Based on the information, there is no evidence Respondent violated any rules or statutes of this Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

57. **2021038541**
Opened: 6/14/2021
First Licensed: 4/20/1999
Expires: 12/31/2021
Type of License: Time Share Registration
History: None

Complainants are out-of-state residents. Respondent is a timeshare organization.

Complainants allege they purchased a time share on September 27, 2018. The sales agent assured them it was a good investment, and they could make substantial rental income and travel the world without exchange fees. Complainant contends these were lies and misrepresentations. Complainants state they were not given an opportunity to have the sale documents explained by a real estate professional or attorney of their own choosing. They felt pressured because the offer would not be available at a later date. Complainants want to be released from the contract.

Respondent submitted a response denying any improper actions or wrongdoing. Respondent provided a copy of an Acknowledgment of Representations which Complainants signed affirming their understanding no representations have been made as to investment or resale potential and the purchase is primarily for personal use. Respondent states Complainants were not required to stay and purchase a time share and could have left at any time. Complainant freely and voluntarily purchased a timeshare interest with full and fair disclosure by Respondent of all the terms and conditions associated with their purchase, as evidenced by the fully-executed Purchase Contract. Respondent states the purchase contract is valid and legally binding. Complainants did not seek to cancel in according with the terms of the rescission period disclosed in the purchase contract.

Based on the information provided, there is insufficient evidence that Respondent violated any of the laws and rules of the Commission. This is a contract dispute matter. The rescission/cancellation period for the contract has expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

58. 2021048371

Opened: 7/6/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

Complainants are out-of-state residents. Respondent is a timeshare organization.

Complainants purchased a timeshare in 2018. They contend they were pressured into the purchase because Respondent's agent said they would never be able to make the purchase again. Complainants contend they were on vacation in Las Vegas and drinking at the time. The timeshare they purchased was located in Florida. Complainant contends Respondent's agents misled them into believing the timeshare could be profitable, and they felt they had no choice but to agree. Complainants purchased another timeshare from Respondent in 2020. This one is located in Tennessee. Complainants complain that Respondent exaggerated and over inflated information and provided them copies of the transaction documents on a cd-rom instead of physical copies. They seek cancellation of their contracts with Respondent.

Respondent submitted a response denying the allegations and provided copies of the contract and sale documents executed by Complainants. Complainants signed an acknowledgement affirming their understanding that no representations have been made as to investment or resale potential. Complainant freely and voluntarily purchased a timeshare interest with disclosure by Respondent of all the terms and conditions associated with their purchase. Complainants did not seek to cancel in according with the terms of the rescission period disclosed in the purchase contract.

Based on the information provided, the timeshare purchase Complainant references in 2018 is outside the Commission's jurisdiction. There is

insufficient evidence that Respondent violated any of the laws and rules of the Commission pertaining to the 2020 timeshare transaction, and the rescission/cancellation period for the contract has expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

59. 2021047351

Opened: 7/6/2021

First Licensed: 12/5/1995

Expires: 12/31/2008

Type of License: Time Share Registration

History: None

Complainant is a Tennessee resident. Respondent is a timeshare resort.

Complainant purchased a timeshare in 2019. Complainant alleges Respondent's agents made a guarantee that she could go back to her bank and refinance her loan for a lower rate. Complainant was unable to refinance for a lower interest rate. Complainant believes the doctrine documents she signed are not binding because she did not read her contract at the time. She states she did not receive a copy of the contract in time. She alleges the rescission period was never discussed. Complainant felt pressured that she could not leave. She states she asked to leave and "was refused." Complainant seeks to be released from her contract.

Respondent submitted a response stating Complainant purchased a timeshare on September 11, 2018, then made an additional purchase on October 15, 2019. Respondent denies that any product Complainant purchased was misrepresented to her. Respondent states the sales documents were provided to Complainant at the time of each purchase and adequately describe the products and services she was purchasing and the opportunity to cancel each purchase. Complainant was provided copies of the contract documents on the date of the purchase. Respondent states Complainant was under no obligation to make any purchase and could have walked away at any time without purchasing or used the cancellation period provided. Complainant

defaulted on her mortgage payment for the October 15, 2019 purchase, and her ownership was terminated on or about May 24, 2021. Complainant's 2018 purchase remains active.

Based on the information provided, there is insufficient evidence that Respondent violated any of the laws and rules of the Commission. The rescission/cancellation period for the contracts have expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

Chairman John Griess adjourned the meeting at 11:50 A.M. CDT