



STATE OF TENNESSEE¹⁰²
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 February 16, 2021 at 8:30 a.m. CST via the WebEx meeting platform based at the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, TN 37243. The meeting was called to order by Chairman John Griess. Chairman Griess welcomed everyone to the Board meeting.

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

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

The “Statement of Necessity” was adopted and passed by unanimous roll call vote.

The February 16, 2021 board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Diaz and seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

Minutes for the January 13, 2021 board meeting were submitted for approval.

Motion to approve the January 13, 2021 minutes was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

INFORMAL CANDIDATE APPEARANCES:

Casey Cunningham, and Principal Broker Meredith Freeman appeared before the commission to obtain approval of Mr. Cunningham’s Affiliate Broker license.

Motion to approve Mr. Cunningham was made by Commissioner Diaz and seconded by

Commissioner Guinn. Motion passed unanimously by roll call vote.

Doris Teresa Ard, and Principal Broker Meredith Freeman appeared before the commission to obtain approval of Ms. Ard's Affiliate Broker license.

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

WAVIER REQUEST

Director Maxwell presented Lisa Wilson to the commission for a Waiver Request of \$50

Motion to approve Waiver Request was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

Director Maxwell presented Philip Burke to the commission for Waiver Request of \$900. After discussion a Motion to approve Waiver Request in the amount of \$600 was made by Commissioner Guinn and seconded by Commissioner Moffett. Motion passed 7-1 with Commissioner Diaz voting no.

EDUCATION REPORT

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

Motion to approve courses F1-F24 was made by Vice-Chair Franks and seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

Education Director Ross White presented Instructor's Bios to the commission.

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

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the following topics below.

- **ARELLO EDUCATION UPDATE:** Director Maxwell advised that ARELLO is rolling out their synchronous plan. TREC will work with provider's giving them until April to provide the ARELLO synchronous certificate.
- **MISCELLANEOUS:** Director Maxwell advised that we processed E&O suspensions.

The rules allow 30 days without penalty. Commission will start penalty phase on March 1, 2021. This will cause an uptick in complaints as Principal Brokers are served a penalty.

RULE MAKING HEARING:

Associate General Counsel Anna Matlock conducted the hearing concerning “Criminal Convictions.” This rule was previously presented for hearing in November 2020. However, the rules were since revised, and a new hearing was conducted.

Motion to accept the rule change was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

COMMISSION DISCUSSION:

Vice-Chair Franks made the announcement regarding the mid-year ARELLO conference to be held in San Antonio, Texas June 29th-July 3rd 2021

ATTORNEY GENERAL OPINION’S RESPONSE:

The Commission recently requested an opinion from the Office of the Attorney General regarding interpretation of Tenn. Code Ann. § 62-13-312(b)(11). Please see the excerpt below for reference:

Tenn. Code Ann. § 62-13-312 (b)(11) provides, in pertinent part, that:

(b) The commission shall have the power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(11) Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom the licensee is affiliated;

Two questions were presented for clarification and interpretation:

1. If Tenn. Code Ann. § 62-13-312(b)(11) allows for any person or entity other than an affiliate broker who is affiliated with a licensed principal broker to disburse a commission, or any valuable consideration for the performance of the acts specified in the *Tennessee Real Estate Broker License Act*?
2. Does an agency relationship created by Tenn. Code Ann. § 62-13-401, or by common contractual or agency allow for a licensed principal broker to contractually delegate the

broker's duty to disburse a commission, or any valuable consideration, for the performance of the acts specified in the *Tennessee Real Estate Broker License Act*?

The Office of the Attorney General replied "yes" to both questions. This means that the *Tennessee Real Estate Broker License Act* does not prohibit a licensed principal broker from delegating to a title company or other party the authority to disburse commissions, or any valuable consideration. Specifically, the principal broker's duty to disburse a commission, or any valuable consideration, can be contractually delegated. Plainly, if they so choose, principal brokers may contract with a third party to disburse commissions or any valuable consideration. However, and importantly, principal brokers are still responsible or liable for the actions of the third party relating to the disbursement of commissions, and or valuable consideration. This opinion will only impact licensees who choose to incorporate this as a business practice. Principal brokers may still personally disburse commissions, or valuable consideration, to affiliate brokers. Principal brokers that desire to pursue using a third party for disbursement of commissions, or valuable consideration may benefit from consulting with an attorney on how best to incorporate this practice with their business model and properly within the confines of the Commission's rules and statutes.

The full opinion can be found at this link:

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2021/op21-01.pdf>

CONSENT AGENDA:

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

A motion to accept counsel's recommendation for cases 1-126 with exception of the following cases which were pulled for further discussion: 2020077111, 2020077951, 2020079281, 2020082991, 2020081591, 2020082771, 2021004741, 2020076851, 2020075681, 2020078141, 2020074381, 2020071791, 2020085411, 2020089001, 2020086731, 2018084951, 2020063421, 2020025231, 2020092531, 2020097861 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

*** Deputy Chief Counsel, Mark Green, requested that case 2018061831 be pulled from this report and not be considered for purposes of this month's Commission meeting, however, it will be reviewed and added to next month's meeting as a represented case.**

After further discussion by the Commission on complaint 2020077111, Vice-Chair Franks made the motion **to issue a Letter of Warning to Respondent regarding reasonable skill and care.** The motion was seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020077951, Commissioner Guinn made the motion **to dismiss this matter.** The motion was seconded by Commissioner Farris.

Motion passed 5-3 with Vice Chair Franks, Commissioner Diaz, and Chairman Griess voting against the motion.

After further discussion by the Commission on complaint 2020079281, Vice Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020082991, Vice-Chair Franks made the motion to **dismiss**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020081591, Vice-Chair Franks made the motion to **dismiss**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020082771, Vice-Chair Franks made the motion to **dismiss**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2021004741, Vice-Chair Franks made the motion **to dismiss**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020076851, Commissioner Farris made the motion **to dismiss**. The motion was seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020075681, Vice-Chair Franks made the motion **to close this matter without a referral to the local real estate association**. The motion was seconded by Chairman Griess. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020078141, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020074381, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020071791, Vice-Chair Franks made the motion **to issue a Consent Order with a \$2000.00 civil penalty for the advertising violation and for failure to respond to a complaint and to require the Respondent to take the Principal Broker Core Class within 180 days of the execution of the Consent Order with the class not counting toward the required Continuing Education for licensure**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020085411, Vice-Chair Franks made

the motion **to authorize a civil penalty in the amount of \$1000.00 for violation of Tenn. Code Ann. §62-13-302(b)**. The motion was seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020089001, Commissioner Diaz made the motion **to defer this matter until the next meeting and requested that counsel obtain a copy of the advertisement at issue in the complaint**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020086731, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2018084951, Vice-Chair Franks made the motion **to issue a \$1000.00 civil penalty for failure to respond to a complaint**. The motion was seconded by Commissioner Guinn. Motion passed 6-2 with Commissioner Farris and Commissioner Moffett voting against the motion.

After further discussion by the Commission on complaint 2020063421, Vice-Chair Franks made the motion **to authorize a \$2000.00 civil penalty for the advertising violation and for failure to respond to a complaint**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020025231, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020092531, Commissioner Begley made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020097861, Commissioner Diaz made the motion **to accept counsel's recommendation and to add the Principal Broker Core Class to be completed within 180 days of the execution of the Consent Order and to not count toward continuing education required for licensure**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

SHILINA BROWN:

**1. 2020074881
Opened: 10/6/2020**

First Licensed: 5/24/2006
Expires: 5/23/2022
Type of License: Affiliate Broker
History: None

The Complainant is a Tennessee Affiliate Broker representing the Buyer in a transaction and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant's client entered into a contract for the purchase of real property with a binding agreement date of December 10, 2019. On September 8, 2020, the Complainant received an amendment that due to COVID-19 pandemic indicating the cost of lumber skyrocketed in price and as such, the Seller would be increasing the price of the home by \$5,000. The Buyer refused to sign the contract amendment. The home was placed back on the MLS as active on September 11, 2020. On September 17, 2020, a letter was sent to the Respondent and the Respondent provided a response on September 19, 2020 indicating it had been resold at the request of the builder.

The Respondent was the designated agent for the Seller in the transaction. The Seller spoke to his attorney and was advised that due to lumber price increases from the pandemic that the sales price could be amended to offset the lumber increase. The Respondent was instructed to issue the amendment and the Buyer refused to sign. The builder issued a notification the Buyer would be released since the Buyer did not agree with the price increase. The Buyer's attorney issued a letter demanding the Seller close on September 30, 2020. The Seller refused and refused to sign a contract extension. The Respondent had nothing to do with the decisions of the Seller. The Respondent only represented the Seller in the real estate transaction. The Buyer released the Seller two days after the complaint was received by the Seller.

The Complainant provided a rebuttal response to the Respondent and stated the Buyer did not agree to the contract amendment and would not sign it because the Seller could not increase the price after execution of the Purchase and Sale Agreement. The home was placed back on the MLS as active on September 11, 2020 and back under contract on the sale day and this was before the mutual release was signed. On September 19, 2020, the Complainant was informed by the Buyer's lender the home had been resold.

This is a contractual dispute between the parties concerning a breach of contract. There is no evidence indicating the Respondent has violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

2. **2020075341**
Opened: 10/6/2020

First Licensed: 6/13/2017

Expires: 6/12/2021

Type of License: Affiliate Broker

History: None

The Complainant is a real estate firm and the Respondent is a Tennessee Affiliate Broker.

The Complainant alleges the Respondent was an agent affiliated with a firm. The Complainant firm had an agreement with a real estate company which provided leads to the real estate agents. Once the transaction is closed, the Respondent was responsible for paying the other real estate company for the leads. The Respondent had closed three other transactions from leads that were supplied by the real estate firm up until July 2020 and the Complainant firm wanted payment. The Complainant contacted the Respondent to resolve the matter, but the Respondent failed to pay the commissions. The real estate firm turned off all lead generation for the entire real estate firm agents and this is hindering the Complainant's other agents from using the lead generation source to produce closed sales and commissions. All commissions that are owed to the Complainant to the firm need to be paid so the parties can resume the business relationship with the firm.

The Respondent provided a response and stated there was no agreement signed and denies there was an arrangement to pay a commission to the Complainant.

The Complainant alleges the Respondent was aware of the arrangement and had made previous payments to the real estate firm after the Respondent became an agent at the other brokerage firm. The Respondent even responded to a text message from the Complainant which stated the Respondent as tired of paying the commission s for the leads the Respondent received. The Respondent even apologized for putting the Complainant in the position.

This is a contractual dispute between the parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

3. 2020081191

Opened: 10/26/2020

First Licensed: 3/20/2017

Expires: 3/19/2021

Type of License: Affiliate Broker

History: 2020 Consent Order

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

The Complainant met the Respondent at the Respondent's property which was within the

Complainant's price range and the Respondent indicated the cabinets would be installed and the Complainant could come to see the home. The Complainant was willing to wait for the installation because the Complainant was waiting for a higher amount to be approved for the second lender preapproval process. The Respondent continued to tell the Complainant the price of the house was \$172,000. The Complainant had some concerns with the home and the Respondent assured the Complainant the items would be addressed. The Complainant made an offer of \$159,900 with the Respondent paying all closing costs and fixing the issues with the home. The Respondent agreed to the price only if the Complainant would not get a home inspection. The Respondent agreed to fix anything found wrong with the home. The parties entered a contract on August 20, 2019. The Respondent later told the Complainant the house was going to be staged, so professional pictures of the home could be taken for the Respondent to use for his portfolio and for marketing purposes. A few days later the Complainant was told the home had been listed on Facebook for sale. After the contract was signed, the Respondent made very few repairs to the home.

The Respondent provided a response and stated the property was sold to the Complainant "AS IS" for \$159,000. The Respondent did not tell the Complainant not to have a home inspection. The Complainant even told the Respondent he was very handy and could fix anything. The Respondent fixed the items he was supposed to fix and replaced the bad plumbing pipes and a brand-new HVAC unit was installed. The Respondent even installed new custom backsplash and a new refrigerator. The Respondent did not inspect the roof or check the plumbing. The Respondent hired the necessary people to fix the home and trusted it had been completed properly. The Respondent spent over \$55,000 in renovation costs for the home. The Respondent even included a clause in the agreement that the Complainant had five days to conduct a walk through after signing the binding agreement to inspect and the Complainant could terminate the contract within those five days if the Complainant found the property unacceptable. The Complainant also had the right to conduct a walk through within three days of the closing to make sure all items to be completed were done to the Complainant's satisfaction. The Respondent stated the home was sold "AS IS" except for the few items listed above that needed to be completed to finish the home. The Respondent even told the Complainant if they wanted to get a home inspection, the Complainant should have one done and the Respondent would honor the contingency and return the earnest money back. The only thing the Respondent did state was that the Respondent would not agree to the normal inspection and resolution phase written into the contract. The Respondent even added subway tiles to the guest bath and crown molding in the kitchen. The appraisal was rescheduled three times because each time the appraiser came to the home the lights or water had been turned off. The Respondent admits this was an error and admits it was his fault. It was an honest mistake made by the Respondent since the utilities are auto drafted and there was an ACH that the Respondent canceled for payment of these utilities. The Respondent paid the extra appraiser fees for the rescheduling from his error. The Respondent did place a cap of \$5,820 for the closing costs because this was the amount provided by the lender and this was the amount entered into by the parties in the contract. The Respondent stated this amount was the negotiated amount. The Respondent did send a plumber to fix the water issues when the Complainant notified the Respondent. Also, an HVAC person was sent out and a new unit was installed. The lender did not require a termite inspection and therefore, there was no termite inspection performed. During the closing, the Respondent even had a contractor do some last-minute items at the house such as levelling the refrigerator. The Respondent also contacted the Complainants 30-days after the closing to check on the Complainant and the house and see if there were any issues. The

Complainant never returned the Respondent's call. The Respondent stated the FHA Appraiser went to the home and checked all electrical outlets and there were no issues with the outlets, and they all passed. The Respondent completed the items required for the sale of the home and the Respondent accepts responsibility if there was anything that was incomplete and is willing to return to the home and fix anything that needs to be repaired. The Respondent will also agree to have an inspector go back to the home to have the work reinspected. The Respondent marketed the property while under contract and this is permissible under the laws and rules of the TREC and the Respondent could have taken back up offers. The Respondent did not hide anything concerning the home or the transaction. The Respondent sold the home below full market value and negotiated the closing fees. The Complainant wanted this home and told the Respondent it was the perfect home for them and had been looking for this type of home for over one year.

There was no violation by the Respondent of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

4. 2020075961

Opened: 10/6/2020

First Licensed: 7/10/2006

Expires: 7/9/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent provided assistance in entering to a contract for the sale of property company and failed to obtain the signatures of all parties. The Respondent failed to do a title search and discover if there were any liens or any other person listed on the title of the property. The Complainant is an owner of the property along with the property company. The Respondent failed to obtain the Complainant's consent or signature to sell or list the property. The Complainant alleges the Respondent engaged in fraud.

The Respondent provided a response and stated the Complainant was aware of the listing, pricing, and the sale of the property. The Respondent learned the Complainant was on the deed to the property two days before the closing. On July 25, 2020, the Respondent was contacted by the co-owner to look at a property and list it for sale. The home had been completely remodeled and the Seller wanted the Respondent's opinion on pricing, costs, estimated time for the home to be sold. The Respondent reviewed all documents and contacted the Seller with the details. On July 29, 2020, the Respondent spoke with the Seller and the Complainant to discuss pricing and there was a discussion about the pricing. On August 3, 2020, there was an in-person meeting and to sign the listing agreement documents. The Respondent met with one of the Sellers on August 5, 2020 to go over the pricing and was aware the Seller wanted to list the home for \$289,900. The Respondent

asked who the owners of the property were and the owners of record to make sure all parties signed the agreement and the Seller advised he was the owner and the Complainant was his girlfriend. The Seller signed all the listing agreements. On August 17, 2020, there was an offer and advised the Seller of the offer. The Respondent met with the Seller the following day and discussed it. On August 18, 2020, the Respondent met the Seller to go over the contract and the Seller agreed to the offer and signed it. On August 25, 2020, the Respondent contacted the Seller to go over the repair request and the Respondent heard the Complainant in the background. The Complainant was responding in the background to the items the Buyer was requesting be repaired and which items the Complainant would agree to repair. On August 31, 2020, the Respondent met the Seller and the Complainant at the home to discuss the items that needed to be repaired. The Seller signed the document for the repairs. The Complainant asked the Respondent if the closing date could be moved to an earlier date. The closing was supposed to occur on September 28, 2020 and the Respondent needed to check if the repairs could be completed earlier. It was clear the Complainant was aware the home had been listed for sale, knew the price it was being sold and there was a contract that had been signed for the sale of the property. The Complainant was present when the repair negotiations were being discussed with the other Seller. The Complainant never asked to see any documents, never asked to sign or whether it was necessary for the Complainant to sign as a co-owner of the property. The Respondent was advised on September 11, 2020, the parties could close early. On September 21, 2020, the Respondent received a call from the closing attorney indicating the Complainant was also on the deed. The attorneys indicated an amendment would be drafted to add the Complainant as an owner and both parties would sign, and the Complainant would receive half the proceeds from the sale. The Respondent then learned the Seller and the Complainant were separating and both had attorneys to handle the separation of personal property and each of the party's attorneys advised all parties had to sign to receive the funds from the sale. On September 23, 2020, the parties each received their funds. On September 28, 2020, the Respondent learned that the closing attorneys had learned the Complainant was on the deed shortly after the binding contract was signed in August 2020 and never advised the Respondent that the contract did not match the deed. The Complainant indicted when the home was purchased the original Seller put down the name of a corporation and the name of the Complainant. This was how the Complainant ended up on the deed. The only way this was found was when the title search was completed, and the parties were under contract. The Complainant did sign all the closing documents for the sale of the home and did receive half of the proceeds from the sale of the home. The Complainant or the Seller never stated she was on the deed during the entire process for the sale of the property.

There is insufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

5. 2020076391
Opened: 10/6/2020
First Licensed: 8/26/2020
Expires: 8/25/2022
Type of License: Affiliate Broker
History: None

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

The Complainant alleges the Respondent is engaging in online advertising as a team and offering a \$500 referral fee to anyone who refers buyers or sellers to buy or sell a home.

The Respondent provided a response and stated the advertisement was not created by the Respondent. The Respondent stated her husband created the ad and the Respondent had no knowledge of the advertisement until the Respondent was contacted by her Broker. The Respondent immediately spoke to her husband and told him to remove the advertisement. The Respondent's husband created the ad to help the Respondent jump start her new real estate career. The Respondent's husband provided a letter stating he was excited about his wife's new career and wanted to help her obtain clients. The Respondent's husband did not know this was against the rules of the Commission and when the Respondent was told he could not post such ads, he immediately removed the advertisement.

Recommendation: Authorize a contested case hearing and the assessment of a \$500 civil penalty with authority to settle by Consent Order for violations of the advertising rules of the Commission. Tenn. Comp. Rules & Regs. 1260-02-.12(7)(b) Guarantees, Claims and Offers. Any offer, guaranty, warranty, or the like made to induce an individual to enter 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 accepted counsel's recommendation.

6. 2020070131
Opened: 10/6/2020
First Licensed: 11/29/2006
Expires: 11/28/2022
Type of License: Real Estate Firm
History: 2017 Consent Order

The Complainant is a Tennessee resident and Buyer of a timeshare. The Respondent is a licensed Tennessee Real Estate Firm and a Florida corporation.

The Complainant purchased a timeshare in November 2018. The Complainant alleges the Respondent misled the Complainant to purchase a timeshare. The Complainant was told a certain number of points would be available to book vacations, however, the Complainant has less than

the amount originally promised. The Complainant wants a refund of all monies paid to the Respondent. The Complainant alleges the Respondent lied about several things concerning the timeshare property and made several misrepresentations. The Complainants has been unable to book any vacations at the Respondent's property.

The Respondent provided a response and stated the timeshare was purchased by the Complainant on November 23, 2018 while in Myrtle Beach, South Carolina. The Respondent stated the timeshare was not misrepresented to the Complainant. The Complainant purchased a certain amount of vacation points that best suited their vacation needs and the Respondent advised them of the type, location and use of the timeshare being purchased. The Respondent obtained the necessary disclosures and the Complainant was advised of all terms and conditions governing the membership and its usage. The Respondent advised the Complainant all vacations had to be booked in advance and had full knowledge about the point-based system of their timeshare purchase. The Complainant was advised the reservations are subject to availability and the more popular destinations would require significant advance reservations, especially those during holidays or peak vacation times. The Complainant was read the Owner Confirmation Interview and the Complainant understood the terms and conditions concerning availability and reservations. The Respondent did not mislead the Complainant regarding the amount of vacation points purchased. The Complainant was advised at the time of the purchase the Complainant would earn 6,000 points biennially with the purchase and were told the vacation points are deposited into their account every other year and expire at the end of the second year. The Complainant initialed the provision after it was read aloud to them and acknowledged their understanding and agreement. The Complainant was able to use the vacation points in September 2019 and made a five-night reservation in South Carolina in June 2020. The Complainant was given additional points as a courtesy to assist with the booking of the reservation. The Complainant is billed for maintenance fees annually and at the time of the purchase, the Complainant was advised of their obligation to pay the club dues and maintenance fees. The Complainant was read aloud this obligation and initialed a document with this information that clearly set forth the details. The Respondent stated all the sale documents adequately describe the product and services purchased and the Complainant had an opportunity to cancel the purchase. The Complainant was not under any obligation to purchase or sign any documents and could have walked away without purchasing a timeshare. The Complainant never indicated a desire to cancel the purchase immediately following the purchase. The Respondent stated the Complainant is not entitled to a cancellation of the contract or a refund. The Respondent values the Complainant as owners of the timeshare and would like to arrange for a specialist of the Respondent to directly assist the Complainant to fully utilize all the benefits of the timeshare/vacation club and address any issues of concern. The Complainant is free to contact the Respondent for assistance.

The contractual rescission period and the statutory rescission period has expired. The purchase was in 2018. There is no evidence of violations of the laws and rules of the Tennessee Time Share Act of 1981.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

7. 2020070851
Opened: 10/6/2020
First Licensed: 5/20/2011
Expires: 5/19/2021
Type of License: Real Estate Firm
History: None

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

The Complainant alleges an advertisement listed the Respondent as a real estate firm without listing the telephone number of the firm and was not in compliance with Tennessee law. There is no contact information provided for the Respondent.

The Respondent provided a response and stated the one page was part of a multi-page offering and all the contact information was listed for the firm.

Recommendation: Authorize a contested case hearing and the assessment of a \$500 civil penalty with authority to settle by Consent Order for violations of the advertising rules of the Commission. Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) states: All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number on file with the Commission.

Commission Decision: The Commission accepted counsel's recommendation.

8. 2020081711
Opened: 11/30/2020
First Licensed: 5/15/2002
Expires: 1/21/2022
Type of License: Principal Broker
History: 2019 Consent Order

The Complainant is a Tennessee Affiliate Broker and a former employee of the Respondent. The Respondent is a licensed Principal Broker.

The Complainant alleges the Respondent made defamatory statements against the Respondent and engaged in unethical behavior. The Complainant alleges the Respondent failed to supervise an affiliate broker and stop the actions of an affiliate broker. The Complainant alleges the actions by the Respondent have harmed buyers, listing clients and others. This has caused the Complainant enormous costs of being forced out of the brokerage. The Respondent was warned several times about the actions of the affiliate broker and defended the actions of the affiliate brokers. The Complainant alleges the Respondent and the affiliate broker schemed to take a contract from the Complainant's active client and violated a team agreement the Complainant had with the affiliate broker. The Respondent breached the contract with the brokerage and the duty owed to the Complainant. The Complainant alleges the Respondent misled the client, breached the duty to the client to protect their best interest. The Complainant alleges the Respondent and the affiliate broker made deceitful claims against the Complainant to take over the contract. The Complainant

alleges the Respondent's Affiliate Broker had many complaints filed with the Tennessee Real Estate Commission. The Complainant alleges the Respondent attempted to take the Complainant's client. The Complainant alleges the Respondent made defamatory statements against the Respondent to colleagues and business partners to harm the Complainant's reputation and created future harm to the Complainant's business. The Complainant alleges the Respondent told various individuals the Complainant was fired from the real estate firm. The Complainant provided 109 pages of attachments including a multitude of text message screenshots concerning the interaction with the Respondent and others.

The Respondent provided a response. There is no written proof of any claims of illegal and unethical actions or any unethical and/or illegal activities were never brought to the firm's attention and later an internal investigation was conducted by the firm. The Respondent engages in the full management and operation of the firm and actively supervises all affiliate brokers.

The Respondent has not engaged in any false, misleading, or defamatory acts directed towards the Complainant or the Complainant's team and there has never been any interference with a business relationship. All parties involved in the matter are involved in the real estate business in the area and any potential clients of the Complainant could possibly be potential clients of the Respondent.

There is insufficient evidence to show there were any violations of the laws and rules of the Tennessee Real Estate Commissions. The issue of defamation and libel are issues that would be a private cause of action by the Complainant and would be for a court of competent jurisdiction to determine. Based on a review of the material submitted, there is insufficient evidence of defamatory statements made by the Respondent under the legal definition of defamation. The defamation must result in an injury to the person's character and reputation and there must be damages from the false or inaccurate statements. This means actual damage that can be proved and not just presumed. As to any libelous statements by the Respondent, there is insufficient proof of libel by the Respondent. Libel does not occur because the statements are annoying, offensive, or embarrassing. The words must lead to a public hatred, contempt or ridicule and there must be an element of disgrace by the Complainant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

9. 2020073331

Opened: 10/12/2020

First Licensed: 4/9/2015

Expires: 4/8/2021

Type of License: Affiliate Broker

History: None

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

The Complainant stated the Respondent was asked over a month ago to move the license from the Complainant's brokerage firm. The Complainant did not believe the Respondent was a good match for the Complainant's business model. The Respondent responded on August 27th and stated she was working on it and would get it done. In the meantime, the Complainant received a text from the Respondent concerning a real estate deal and the Complainant again advised the Respondent the Complainant would not engage in any transaction with the Respondent and needed the Respondent to move the license from the Complainant's firm. The Respondent indicated it was being done, however, there was a problem. The Complainant became suspicious and found the Respondent's license was in suspended status on September 11, 2020. The Complainant immediately contacted the Respondent and advised her of the situation with her license and advised her not to engage in any real estate transaction and not be involved in any real estate activity. The following day the Complainant discovered the Respondent had written the contract and the Complainant again advised the Respondent not to engage in the transaction or discuss any real estate matter with any individual.

The Respondent provided a response and stated the Respondent was in the process of moving the license and was not aware the license had been suspended. The Respondent is apologetic for this oversight and immediately corrected the issue when it was discovered. The Respondent submitted the change to TREC on September 23, 2020. The Respondent stated upon contacting the TREC offices, the Respondent learned it was suspended due to an E&O insurance lapse and the Respondent immediately provided the information needed to the TREC administrative offices. As of October 9, 2020, the Respondent is associated with a Tennessee firm and no longer is affiliated with the prior firm.

The matter has been resolved and the Respondent has removed herself from the Complainant's brokerage firm.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

10. 2020076351

Opened: 10/12/2020

First Licensed: 10/12/2016

Expires: 10/11/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent made several misrepresentations during the entire buying process and was also the Seller's real estate agent for the new construction. The Complainant alleges the floors were damaged and the home was in much need of repairs and replacement issues. The Respondent repeatedly told the Complainant the hardwood was distressed and later the Complainant discovered the flooring was purchased at a liquidation sale was Cabin grade flooring.

The flooring had not been professionally installed and had not been inspected by an independent inspector. The entire house had many issues and the Complainant was repeatedly told by the Respondent that all the issues would be resolved, and they were not.

The Respondent provided a response and has worked with the builder for the past four years and the builder has installed flooring in 33 homes. The Complainant purchased a home and the closing occurred in July 2020. The flooring was installed prior to the property being listed for sale. The Complainant indicated some areas of the floor needed repair and it appeared there was a saw cut, but it was the design of the flooring. The Respondent spoke to the builder and he stated he would look at the floor. The flooring had a rustic finish. If there was a problem, the builder agreed to make the necessary repairs but would not replace the floors. The builder asked the Complainant to put tape on the areas that the Complainant wanted repaired and the builder would repair those areas. In the pre-final inspection, the Complainant discovered a few more areas in the flooring and the builder repaired the flooring. There is also a warranty for the home and if these were not the floors the Complainant wanted, the Complainant should not have purchased the home. After the home was closed, the builder was honoring the warranty and did not have an obligation for the flooring at this time. The Respondent stated this was not the first instance where the Complainant has bought a home and has had problems with the flooring. The Respondent did not mislead the Complainant and prides herself on being honest and has integrity and has not committed any type of fraud. The Respondent added this is a beautiful home in a great neighborhood

There is no evidence of any violations of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2020077931

Opened: 10/12/2020

First Licensed: 8/27/2018

Expires: 8/26/2022

Type of License: Affiliate Broker

History: None

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

The Complainant resided in a residence until October 1, 2020 and the home is the heir property of the Complainant's deceased grandparents. The Complainant moved into the home in 2012 prior to the death of her grandmother. On August 21, 2020, the Respondent secured the property and engaged in a fraudulent sale of the property. The Respondent is the daughter of the Complainant's mother's boyfriend. The Complainant's mother shared some information with the Respondent concerning the financial problems the Complainant's mother was having with the property the Complainant was residing in. The property was in risk of foreclosure. The Respondent contacted the Complainant's mother and offered a solution to save the home from foreclosure. The

Complainant stated her mother was desperate and trusted the Respondent to help her. The Complainant claims her mother did not understand what resulted from the help provided by the Respondent. The Respondent purchased two homes at a cost of \$60,604 to cover the bank balances for the two homes. The Complainant's mother received no funds for the homes, although the estimated value of both homes was more than \$200,000. The Complainant alleges her mother was not in a sound state of mind to make the decision to sell both homes and it was done under duress by the Respondent. On August 21, 2020, the Respondent instructed the Complainant's mother to go to the title company and sign numerous documents that the Complainant's mother did not know or understand what was being signed. The closing statement was provided to the Complainant's mother and it indicated an appraisal was done on the home, however, the Complainant's mother never received the appraisal. On September 6, 2020, the sales were listed in the newspaper, however, the Seller was listed as someone who was deceased and the Complainant's mother. The Complainant alleges the Respondent fraudulently obtained the homes and used her relationship and role as a real estate agent to mislead and defraud the Complainant's mother.

The Respondent provided a response and stated she has known the Complainant and the family for over 20 years and the Complainant's mother was a very close family friend. When the Respondent learned the Complainant's mother was a few days away from foreclosure and would lose both homes, the Respondent felt as though something needed to be done to help her and the Complainant. The Respondent was shocked to learn the Complainant had filed a complaint against the Respondent. The Complainant's mother and the Respondent's father are not dating and are just friends. The Respondent's father did contact the Respondent and stated the Complainant's mother may need some help concerning the two homes. The Complainant's mother only had 14 days to pay the bank over \$60,000 for both houses to be paid in full. The Complainant's mother was not able to pay these sums. The Complainant had not paid any rent over the years and was not in a financial position to help her mother. The Respondent offered to purchase both the homes and allow the Complainant's mother to stay in the home for the same rate as the mortgage of the home, \$550 which is hundreds below the fair market rental value. The Respondent also made the same offer to the Complainant and asked her to sign a lease and she refused and vacated the premises. The Complainant's mother had several days to think about what she wanted to do and what was the best thing and decided to sell the properties to the Complainant. Once the properties closed, the Complainant's mother asked that the sale be kept confidential and not let the Complainant know the Respondent had purchased the homes. After the closing, the Complainant's mother gave the go ahead to the Respondent to approach the Complainant about the rental and signing a lease. The Complainant refused to sign a lease. The Respondent's husband visited the Complainant and tried to get her to sign a letter stating that the Respondent owed the property and they would return with a lease. The letter stated the Respondent did not want the Complainant to leave and wanted her to continue to live in the home. The Respondent even indicated that the Respondent wanted to make some improvements and do some updates to the home. The Complainant could stay in the home for another month after the Respondent purchased it and was not asked to pay any rent during that period and did not pay any rent during that period. The Respondent was allowing the Complainant ample opportunity to decide on whether the Complainant would remain in the home and did not want the Complainant to feel pressured to move out the home right away. The Respondent even tried to assist in finding helping the Complainant find suitable housing when she decided she would be moving out of the home. The Complainant's mother and the Respondent had decided to waive the appraisal of the property

because it was a foreclosure purchase and the Respondent was purchasing the home as is. The lender did a bank evaluation and both properties were not \$200,000. The Respondent also provided statements from the lender and the title company about the transaction and it was all conducted above board and done correctly.

The Respondent provided full disclosure to the Complainant and the Complainant's mother. The Complainant was not a party to the transaction. The Complainant's mother voluntarily entered the contract and was aware of the Respondent's position as a real estate agent. All necessary disclosures were provided to the Seller of the two properties. There is no evidence of a violation of the Tennessee Real Estate License Act and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

12. 2020078261

Opened: 10/12/2020

First Licensed: 10/17/2001

Expires: 3/23/2022

Type of License: Affiliate Broker

History: None

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

The Complainant entered a sales contract. The Respondent was the Seller's real estate agent. On September 29, 2020, the Respondent terminated the contract with the Complainant which was the day after the Complainant was scheduled to close. The Respondent has misled potential customers and the Sellers with false information. The Respondent also had an unprofessional conversation with the Complainant's agent when an appraisal was returned for \$37,000 under the amount of the contract. The bank financing the loan advised it was still willing to lend a certain amount over the appraisal and the Sellers accepted the amount. The Complainant stated the Respondent was nasty and started advising the home would still be shown despite the contract and the Respondent did not use a professional tone after the appraisal report was issued. The Respondent did not attend the appraisal ordered by the Complainant Buyer. The contract was terminated the day after the closing date after there was a valid contract for the property. The Complainant advised the Respondent the lender needed more time to process the loan because of the pandemic. The Complainant alleges the Respondent is trying to sell the home at a higher price and uses comparable outside the parameters of comparable for the subject property. The Complainant alleges the Respondent took away the ability of the Complainant to purchase their forever home with malice and the intent to fool the Sellers without factual proof. The Respondent has a contract for the same price and shaming the type of loan the Complainant had which was a VA loan. The Complainant alleges the Respondent has violated ethics rules. The allegations by the Complainant against the Respondent are as follows: Respondent pursued a continued an flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, or any medium of advertising or otherwise; inducing any party to a contract, sale or lease to break a

contract for the purchase of substitution in lieu of a new contract where such substitution in lieu thereof a new contract, where such substitution is malicious or is motivated by the personal gain of the licensee; violating any provision of the law, any rule of the Commission or the terms of any lawful order entered by the Commission; any conduct, whether of the same or a different character from that specified which constitutes improper, fraudulent or dishonest dealing; or making any willful misrepresentation.

The Respondent provided a response and provided a timeline of events for the transaction. The Respondent did not have any contact with the Complainant Buyers and was courteous to all parties. The Respondent as not unprofessional and the agents were both working together to produce better comps for the lender at their request. The Respondent was extremely professional with all concerned and ceased contact with the Complainant's agent as soon as the request for the return of the earnest money was made from the Seller. The Seller refused to proceed after the last extension which expired on September 28, 2020 based on untruthful information provided and the Buyer's lender had given the clearance to close on September 28, 2020. On September 25, 2020, the Respondent received a text saying the Buyers file is still with the origination partners. The transaction was not completed because the contract expired.

The Respondent's Principal Broker provided a response and stated the file had two extensions after the closing date of September 10, 2020. The final closing date was September 28, 3030 when the Complainant Buyer did not consummate the transaction. The Respondent issued an Earnest Money Release form on September 29, 2020 and the Buyers refused to sign it. On October 1 ,2020, the Buyer's real estate agent submitted a denial letter dated September 11, 2020. This is improper since the denial should have come before September 10, 2020; however, a closing extension was granted on September 10, 2020 for September 18, 2020 and another issued on September 22, 2020 to September 28, 2020. An agent cannot submit a back-dated denial letter or issue a contract extension after a denial letter. The earnest money should be forfeited by the Complainant Buyer.

This is a contractual dispute between the parties. The Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

13. 2020077921

Opened: 10/12/2020

First Licensed: 7/19/2019

Expires: 7/18/2021

Type of License: Real Estate Firm

History: None

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

The Complainant contacted the real estate agent about replacing the gutters and the agent stated the roof had quite a bit of damage and the Complainant needed to call the insurance company to

discuss the roof damage. The Complainant believed the agent because there was visible mold in the bedroom ceiling. The agent stated there was probably more upstairs in the kid's rooms. The Complainant contacted the insurance company and argued with them and the insurance company finally paid \$7,000, however, this was not sufficient to make the repairs. The Complainant asked the agent if there was an investor that would be interested in the property. A few days later, some individuals wanted to come to see the home. The agent stated there would be an appraiser coming to see the home and eight individuals came to the home. The Complainant began to have second thoughts and realized the Complainant would have to move to another school district and further from her work. The Complainant did find an organization that helped seniors to repair homes for seniors with low income. The agent brought an occupancy letter and the Complainant did not have anyone to look at the document. The agent told the Complainant the closing would be on November 1, 2020 and the Complainant had 90 days to move. The Complainant needed more time. The Complainant's income had been cut in half. The Complainant has an apartment and has help for utilities. The Complainant stated the buyer of her property was the agent and the closing date had been September 29, 2020 and this date had been added after the Complainant had signed the document. The Complainant had been pressured and lied to by the Respondent's real estate agent. The Complainant did not receive any money or copies of any documents. The Complainant does not want to lose her home.

The Respondent provided a response and stated the agent in question is not affiliated with the Respondent in any capacity. The agent is not a licensed affiliate of the firm and is not represented by any of the brokerage licensees. The Complainant is also not represented by any of the brokerage's licensees related to this transaction. None of the parties listed have any agency or client relationship with the firm. The Respondent was not a party to the transaction. The Respondent provided breakdown of the facts that the Respondent has been able to gather about the property after receiving the complaint. The agent entered a contract to purchase a property from the Complainant on September 6, 2020. The agent then assigned the contract rights to another company, which was an institutional home buyer, and represented by another acquisition company on purchases and resales of homes. There was no agency representation in the transaction. The company that was assigned the rights to the contract worked directly with the real estate agent and the transaction had been assigned by the real estate agent to the acquisition company on September 8, 2020. The Complainant later stopped working in good faith with the title company to provide the mortgage payoff info in their attempt to cure title, and the company took the necessary steps to protect their position in the transaction by recording an Affidavit of Title with the county. This is the extent of the knowledge the Respondent has with the transaction and the complaint against the Respondent was filed in error. The Respondent has no connection or agency relationship with formal or otherwise with any party to the transaction. The documentation obtained from the company related to the assignment of a contract shows that the transaction contracted was originally between the Complainant and the real estate agent and was later assigned to the company that had an interest in the property and the transaction.

This complaint was incorrectly filed against the Respondent and the Respondent is not a party to the transaction or involved in the transaction.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

14. 2020071521

Opened: 10/12/2020

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration/Time Share Exempt

History: None

Complainant is a Missouri resident and a purchaser of a timeshare and the Respondent is a Time Share Registrant and Florida Corporation.

The Complainant purchased a timeshare on September 15, 2015 after attending a sales presentation held by the Respondent. The Complainant initially declined to purchase the timeshare alleges the Respondent stated the timeshare could be tried out and could be credited to a future purchase. On January 19, 2016, the Complainant attended a sales presentation held by the Respondent in Florida and discussed a purchase of a timeshare in Florida. The Complainant alleges the Respondent was advised that if the Complainant did not purchase the Florida timeshare, they would lose the amount invested in the initial timeshare purchase in 2015. The Respondent repeatedly advised the Complainant the timeshare could be used anytime and anywhere. The Complainant purchased 105,000 points with a bonus of 195,000 points and Club Plus VIP status. This would also include enrollment in the vacation club and Perks membership for one year free of charge. The Complainant did not make a decision the same day and decided to call back the salesperson on January 23, 2016 and the salesperson was not available to meet with the Complainant, however, another salesperson would contact them after reviewing what had been presented to the Complainant. The Complainant agreed to purchase the 105,000 points and there was a credit from the prior purchase. The Complainant later tried to make reservations to travel and the Complainant never had enough points after the bonus points had expired. The Complainant was repeatedly told it would be necessary to purchase additional points. After realizing that it would be impossible to make a reservation at "first choice" resort, the Complainant wanted to cancel the contract.

The Respondent provided a response and stated the content and format of the complaint filed and the supporting documentation indicates the Complainant has been dealing with an individual or company that assists timeshare owners in the cancellation of contracts, regardless of the validity. The Respondent takes all complaints seriously, reviews all complaints submitted and thoroughly investigates the allegations made in a complaint. Due to the time that has passed, it is often difficult to determine the validity of the allegations made by the Complainant. Also, often these types of complaints contain inaccurate information and do not contain enough information to further determine what had happened during the purchase. Often it appears a timeshare owner is experiencing a period of financial hardship unrelated to the sales presentation or initial purchase. Often in the absence of verifiable details, the complaint allegations cannot be corroborated or substantiated. On September 10, 2015, while in Missouri, the Complainants purchased a timeshare for 400,000 points. This timeshare allows the flexibility of ownership to allow the timeshare owner to use the points at various locations throughout the United States. In January 2016, the Complainants purchased another timeshare and used the previously purchased timeshare as equity to purchase another timeshare interest in a Florida condominium at a resort and an annual

allocation of 105,00 points and a one-time bonus of 195,000 points for use by July 31, 2018. In September 2016, the Complainants traded the contract again to the purchase of a membership interest with an annual location of 210,000 perpetual points and other benefits. On September 9, 2016, the consumer finance department received a cancellation request and their contract was rescinded and their traded contract was reinstated. The contract documents signed and received fully disclose the agreement between the parties. The *Buyer's Acknowledgement* and *Ownership Review*, which they also received at the time of purchase, are documents used to assist a purchaser in avoiding misunderstandings and to aid them in understanding the product they are purchasing. There are also specific written disclosures concerning ownership, discount, trade equity, down payment, monthly assessment and loan payments, programs, resale assistance, rental income, investment, and tax benefit. Additionally, purchasers are given rescission rights that provide them the opportunity to carefully review and reconsider all provisions in the contract. After the rescission period, however, the contract becomes legally binding. The Complainant has no record of history of complaints and used their membership until January 14, 2020. A Power of Attorney was received from a third-party company to act as Attorney in Fact for the purposes of securing a cancellation, termination of transfer of their contract. At this point, the Complainant's account is in a delinquent status and the Complainant is in breach of their contract. The Respondent has denied the cancellation request.

The Complainant did not cancel the contract within the rescission period in the contract. The Complainant is unable to pursue a private right of action since the statutory period for filing a civil lawsuit has expired. This is a contractual dispute between the parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2020075731

Opened: 10/19/2020

First Licensed: 10/30/2017

Expires: 10/29/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges on September 27, 2020, a real estate agent and man entered the Complainant's residence. The Complainant rented the residence and was changing clothes. The Complainant was not given notice and did not consent to the real estate agent and man entering the premises. On Friday, September 25, 2020 at 6 pm the Complainant received a request for showing which the Complainant did not allow. The landlord called the Complainant to argue with the Complainant about the showing. The Complainant agreed to another time of 11 am on September 26, 2020. On September 26, 2020, an agent and prospective Buyer came to the residence and another text was sent at 12:30 pm from the landlord to tell the tenant that there would be another showing scheduled for 1:30 pm that same day. This was with less than two-hours'

notice to the Complainant. Without permission from the tenant, the agent scheduled the showing. The Complainant returned to the home on September 15, 2020 at 8:30 pm to the Respondent attempting to enter the residence. Originally, the Complainant was not provided any notice the unit had been put on the market to be sold by the landlord. The Complainant's lease term ended on November 30, 2020. The Respondent assured the Complainant that the showings would be done with notice and there would be an option for the Complainant to accept or decline with a 24-hour notice period via text. However, the owner changed the phone number after the first incident and gave the Complainant no power to accept or decline a showing and put the Complainant in an unsafe position. The Respondent refuses to answer any contact from the Complainant directly and thereby eliminates the possibility of clarifying the issue and compromises the decency and integrity of the Respondent as a real estate agent. The Complainant alleges the Respondent engaged in gross negligence as a real estate agent. The Complainant alleges the landlord is in violation of the statute and is acting as a real estate agent in violation of state law.

The Respondent provided a response and had been working with the landlord on changing the showing time from 2:30 to 4 pm on Sunday, September 27, 2020. The Respondent reached out to the real estate agent and asked if the time could be changed. The last message received from the agent by the Respondent was that he was checking with his client. That was the last the Respondent had heard. The Respondent also proposed a new time for the 4 pm showing and there was no response received. The Respondent is not involved in scheduling the showings. The Respondent provides a platform for showings times for the landlord and it can either be accepted or declined. The Complainant seems to have a problem with the landlord's handling of the showings for the property and has filed a complaint against the Respondent who is not involved in the landlord's showings. The Respondent put the key in the lockbox on September 15, 2020 since the unit was being listed for sale the next day and the Respondent did not enter the unit. The Complainant was not aware the unit was being listed for sale and the Respondent apologized to the Complainant for having to be the one to inform her the unit was being sold by the landlord. The Respondent urged the Complainant to contact the landlord directly. The Respondent's duties are to the client and landlords can list their properties at any time, even during a lease term. The Respondent did not tell the Complainant there would be 24-hour notice for all showings. The landlord agreed to keep the tenant in the accept/deny position via the Showing Time platform. The tenant denied the first showing and this caused the landlord to remove the Complainant from the showing time contact list and provided the tenant with actual notice by the landlord when a showing was scheduled. The Respondent had nothing to do with any showing. The Respondent has complied with the listing agreement and the Respondent has acted on behalf of the client lawfully and in good faith. The Respondent has withdrawn this listing since the Respondent did not want to keep listing a property where the tenant intended to make it difficult to show the property. The Complainant even intentionally placed the Respondent's lockbox inside the locked property when the Respondent went to pick up the lockbox.

This is a landlord tenant issue between the Complainant and the landlord. The Respondent was not involved in the rental agreement between the Complainant and the Respondent and was not involved in scheduling the showings. The Respondent has not engaged in any wrongdoing in violation of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

16. 2020076931
Opened: 10/19/2020
First Licensed: 11/14/2012

Expires: 7/9/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent arrived at every scheduled video home showing late. At the time, the Complainant lived out of state and relied on the Respondent for the video showing of homes. The first showing did not meet the Complainant's requirements because the Complainant needed a 3-bedroom, 2-bathroom home. The Respondent indicated the Complainant could finish the basement and convert half of the living room into a bedroom. The Respondent was aware the Complainant would probably make an offer based on the advertised square footage and unfinished basement. During one of the video tours, the Complainant's bank sent an evaluator over to take pictures of the property. Suddenly, the Respondent abruptly ended the video tour because the Respondent had an emergency with another client and later told the Complainant she needed to leave to attend a closing to provide moral support for a client and did not really have to attend. On September 23, 2020, the Complainant made an offer on the home through the Respondent and the Sellers made a counteroffer on September 24, 2020 and the Complainant accepted. On September 28, 2020, the home evaluation and tax document from the lender was received and showed the home at 1,200 square feet and there is no walkout basement. The Complainant attempted to terminate the purchase and was told to pay for the inspection to get out of the purchase agreement. The Complainant alleges the Respondent intentionally deceived the Complainant and attempted to sell a property that was falsely advertised and would not be sufficient to meet the needs of the Complainant. The Respondent refused to send the termination of the contract.

The Respondent provided a response and stated the Respondent was not late to every viewing. When the Complainant contacted the Respondent, the Complainant told the Respondent that the Respondent was the third agent contacted. The other agents eventually were not interested in continuing to show the Complainant residential properties. The Respondent explained it was a very busy time and asked the Complainant to be flexible because the Respondent's schedule was full and would do the best to conduct the video showings because they required a little more work than a normal showing. The home in question was 1,536 square feet and was a two-bedroom home. It was suggested to the Complainant because of the possibility that there could easily be a third bedroom added to the home. The Complainant wanted a three-bedroom home plus an extra room to be an art room. The Respondent conducted at least three video tours with the Complainant. There were times when the Respondent would have a weak signal during the video tour. After conducting the last video tour, the Respondent was told there was a bank reviewer coming to the home and the Respondent stated she had another appointment and would stay as long as the Respondent could. The Respondent did not abruptly end the call to leave, but went to contact the bank and the next appointment to advise that the Respondent would be late in order to accommodate the Complainant for the bank appraiser that would be coming to the property. The Respondent waited for 15 minutes to let the appraiser arrive at the property. The appraiser took the necessary pictures. The Respondent did tour the home with the Complainant and pointed out the two areas that could be finished. It was a basement and a crawl space. The unfinished basement had an exterior door and window and the crawl space was high enough for a person to stand and had an exterior door. The Complainant stated the basement area could be used for the art area and the living room could be the Complainant's bedroom until it is divided and finished out into another room. The Respondent did not tell the Complainant to pay the inspector to cancel the contract. The Respondent did not deceive or intentionally deceive the Complainant and the Respondent did not advise the Complainant to purchase a property that was falsely advertised. The Respondent was not aware of any false advertising of the property. The Respondent alleges the Complainant exhibited erratic behavior throughout the various interactions with the Respondent. As a result, the Respondent decided to release the Complainant as a client upon the termination of the contract on the property.

The Respondent has not engaged in any conduct or activity that would constitute a violation of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

17. 2020077111
Opened: 10/20/2020

First Licensed: 9/17/2010

Expires: 9/16/2022

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent engaged in fraud and misrepresentation. The Complainant stated the Respondent listed a property with 1,536 square feet and an unfinished walkout basement with the intent to deceive the public for the Respondent's own personal gain. The Complainant alleges the property only has one small dirt crawlspace and only 1,200 square feet. The Complainant cancelled the purchase agreement and this property is still being marketed and advertised by the Respondent. The Complainant alleges the Respondent's partner lives in the home and is aware that the home does not have the correct square footage listed on MLS and those interested in the home have to pay for an inspection an appraisal to learn they are being deceived by the Respondent. The Complainant states that many individuals like the Complainant who are unable to see the home because of being immunocompromised and cannot fly due to COVID-19 and there are unethical agents listing properties and misrepresenting those properties. The Complainant alleges the Respondent engaged in "blatant deceit" and should be held accountable along with the Buyer's agent.

The Respondent provided a response and stated the real estate agent provided all the necessary disclosures and advised the Complainant to hire a licensed appraiser to determine the actual square footage of the property. There were no measurements taken by the real estate agent and the real estate agent relied on the representations made by the Sellers of the property. There are many ways of measuring the square footage and the MLS states that the information is reliable and not a guarantee. The Respondent did not engage in any misrepresentation of any information concerning the property to the Complainant.

There is no evidence to indicate the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission elected to issue a Letter of Warning to Respondent regarding reasonable skill and care in disclosure of square footage in a home.

18. 2020071361
Opened: 10/19/2020
First Licensed: 3/11/2019
Expires: 3/10/2021
Type of License: Time Share Registration
History: None

The Complainant is a Missouri resident and timeshare owner. The Respondent is a Tennessee Timeshare Registrant.

The Complainant purchased a timeshare property and upgraded multiple times over several years. The Complainant is unable to take the number of vacation promised by the Respondent. The Complainant stated each time a vacation was scheduled at the resort, the Complainant was required to have a meeting to see what was new with the resort and each time the Complainant would be sold something by the Respondent to upgrade the timeshare. The Complainant advised the Respondent the Complainant was interested in selling the condo timeshare back to the Respondent or deed it back to them and the Respondent told the Complainant that this was not possible. The Respondent did tell the Complainant that if the Complainant purchased another condo and became annual members with both timeshare contracts the following year, the Respondent could "buyback" the property. The Complainant stated later the Complainant checked on this claim and found it was a sales tactic and now the Complainant was stuck with multiple units and cannot cancel the contracts. The Complainant alleges the Respondent engaged in fraud because of the way they portrayed the timeshare property to the Complainant. The Complainant alleges the Respondent stated the Complainant could stay at any resort, however, this was untrue. The Complainant stated that due to the health of the Complainant's husband, the Complainant is unable to use the timeshare and the Complainant's income has also been reduced. The Complainant is having difficulty with the upkeep of the property and the Complainant is seeking a cancellation of the contract.

The Respondent provided a response and stated the Complainant is an owner of 287 annual points in the vacation interest and purchased the vacation interest on April 23, 2018 and member beneficiaries of 161 annual Expos on June 11, 2018. The Respondent denies the allegations of sales misrepresentation, utilization issues, and the request to terminate. The Respondent cannot review the sales transaction as it occurred and must rely on the documents signed by the Complainant at the point of purchase, including the Purchase Agreement and Purchase Acknowledgment. The Respondent conducted a thorough review and found the Complainant agreed to all the terms and conditions in the document and signed the document and received all appropriate disclosures. The Complainant initialed several provisions concerning the terms of the Purchase Agreement. The Complainants were also informed the Respondent does not engage in any resale of any timeshare on behalf of owners and all owners should secure an independent real estate broker for resales or handle any such transaction themselves. Owners are always invited to attend an owner update meeting when using the vacation interests at a resort. These owner updates are not required, and attendees often receive some gift to attend the presentation. The Complainant was provided a copy of the Multisite Timeshare Public Offering Statement and all exhibits related to the multisite plan. Members do not have to pay an exchange fee when booking with the Respondent at all the resorts worldwide and are based on availability. The Respondent does offer

payment plans if the Complainant is experiencing financial difficulty concerning the monthly payments and the Complainant can contact the Financial Services Department.

The Respondent has not violated any of the laws and rules of the Tennessee Timeshare Act of 1981.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

19. 2020074141

Opened: 10/20/2020

First Licensed: 7/13/2016

Expires: 7/12/2022

Type of License: Affiliate Broker

History: None

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

The Complainant stated the listing agent was negligent in representing the Complainant's property. The Complainant alleges the Respondent did not act in a professional manner and misrepresented the property by entering false information about the property. The Complainant alleges the Respondent misled the public by advertising the physical address as being a bankruptcy property which is a false and deceptive statement. The Complainant alleges the Respondent was reckless and continued to advertise the property as being in bankruptcy and this has caused the Complainant to lose showings from other agents and has now created a stigma that has been attached to the property. This negative publicity has caused the Complainant to lose sales and there has been little interest in the property viewed through MLS even though the listing has been expired. The Respondent has portrayed the Complainant as not being honest and trustworthy and has caused the Complainant to have issues with marketing with various companies that would like to assume the Complainant's mortgage. There has never been a mortgage against the Complainant's property. The Complainant stated this is an inexcusable mistake by the Respondent and has caused the Complainant significant stress and anxiety.

The Respondent provided a response and stated the Respondent took over the listing of this home one year after the property had been on the market. The Respondent made recommendations to the Complainant for the list price and the Complainant decided on a higher price for the home. The Complainant also wanted to make sure they were present in the home during all showings of the property and the Respondent advised against being present, however, the Complainant remained present during all showings. During the initial meeting, the Respondent asked the Complainant what should be put on the MLS listing and the MLS brief was prepared by the

Respondent. There is no mention concerning the property being in bankruptcy. The of the listing information on third-party websites contains any information about the property being in bankruptcy. If this information was included, it is not visible to the public. On October 15, 2019, the Complainant executed an Amendment to the Listing Agreement to change the price to \$445,500 and the total commission rate of 6% of the total sales price to have \$5,000 removed by agent to help Sellers reduce the price and attract more potential buyers. The Respondent had discussed this with the Complainant and stated that they needed to decrease the listing price. The Complainants refused to reduce the price. When the Respondent offered to reduce the commission amount to decrease the listing price, the Complainant agreed to the reduction. The Complainant also extended the listing period to January 16, 2020. There were approximately five to nine showings during the period the Respondent listed the property. The feedback from the showings was the price was too high and most did not like the layout of the home and several indicated they were uncomfortable with the Sellers being present during the showing. Most the Respondent communications with the Complainants were by telephone during the listing period and the Complainant never expressed any complainants or concerns about the Respondent during the listing period. There was never any discussion concerning the Complainant or the listing being in bankruptcy. After the listing expired, the Complainant contacted the Respondent for assistance and advise in selling the property by owner and the Respondent provided free advice. Also, the Complainant contacted the Respondent to draft a contract for a potential buyer who made a verbal offer to buy the property for \$425,000 and the Complainant's husband had verbally accepted the offer. The Respondent offered a 1% of the purchase price as the transaction fee to assist to facilitate the transaction. The Complainant stated the Buyer would pay the fee and the Respondent did not want to be involved in a fee dispute and later the Complainant never contacted the Respondent. The next time the Respondent heard from the Complainant was the filing of the complaint by the Complainant.

There is no evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2020084191

Opened: 12/7/2020

First Licensed: 11/01/1973

Expires: 10/30/2022

Type of License: Principal Broker

History: None

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

The Complainant alleges on October 22, 2020, an individual made an offer on a property for \$2,500 over the list price. The Respondent who was the listing agent called and asked if the individual wanted to "improve" the offer because there were multiple offers and one of those offers was \$100 more. The individual that made the offer was also told that an offer would be accepted

the following morning by 11 am. The negotiations with the Respondent was going on through the afternoon and there were no actual counteroffers made by any individual. The individual was frustrated with the handling of the transaction and gave the “best and final” offer. After another call from the Respondent, the individual decided to rescind the offer due to expire on October 26, 2020 at 5 pm. The Respondent never obtained the offer in writing. As of October 24, 2020, the home was pending with an offer of \$23,780. The Complainant alleges the Respondent engages in many “shady” deals and needs to be investigated more closely by the Tennessee Real Estate Commission. The Complainant wanted to make an offer on a property and the Respondent’s real estate agent advised the Complainant to not get involved with the listing because the Respondent was the listing agent for the property. The Complainant’s real estate agent did not want to deal with the Respondent. The Respondent would not communicate with the Complainant’s real estate agent and left the Complainant with no communication as to the standing of the pending offer.

The Respondent provided a response and stated the Complainant made an offer that was rejected by the Seller. There were several offers for the property. Two of the offers were rejected by the Seller and all were advised of the multiple offer situation and were welcome to submit the highest and best offer. The Respondent acted in good faith throughout the transaction. All offers were timely presented to the Seller. The Respondent did not engage in any wrongdoing.

The Respondent did not violate any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

21. 2020075301

Opened: 10/20/2020

First Licensed: 4/20/2017

Expires: 4/19/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent took advance commissions on July 29, 2019. The Respondent borrowed money from the company and committed to paying it back on the next commission sale. The Respondent failed to pay the balance owed on the commission advances and as a result a judgment for the amount due has been filed in the amount of \$3,360 against the Respondent’s real estate firm. The Respondent no longer works at the real estate firm. When the Complainant reached out to the Respondent, the Respondent did not provide a response. The

Complainant is requesting the balance be paid by the agent so the records can be updated, and it does not have a negative credit impact on the real estate firm.

The Respondent provided a response and stated the Respondent was aware of the commission advance and at the time, the Respondent was experiencing financial hardships and was facing eviction from the Respondent's home. The commission advance was supposed to be repaid from the close of a contract and the transaction did not close. The expected commission was approximately \$7,200 and this amount would have repaid the advance in full. The Respondent experienced financial challenges for two to three months after the loan was made until the Respondent was able to close the next contract. After dealing with several months of unpaid debt, the Respondent forgot about the obligation to repay the advance. The Respondent is not with the other real estate firm and was notified of the complaint by the Respondent's broker and the letter from the Commission. The Respondent will immediately resolve the issue and pay the amount by December 31, 2020. The Respondent was to pay half of the amount now and the balance by December 31, 2020.

The Complainant also provided a follow-up stating as of February 3, 2021, the Respondent has not made any recent efforts to pay-off the outstanding balance with the firm. The original contract was signed on July 30, 2019 and she submitted a substitute contract on September 10, 2019 and never signed this contract. These were not paid back and caused the account to go into default after the grace period date. The Complainant has tried to resolve this issue with the Respondent. The original advance was for \$3,000 plus the advance fee of \$360, UCC filing fees \$319, and extension fees of \$4,012.00. The total owed is \$7,691. The Respondent has stopped accruing fees as of September 23, 2020.

This is a contractual dispute between the parties and there is not sufficient evidence of a violation of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2020076071

Opened: 10/20/2020

First Licensed: 1/17/2006

Expires: 1/16/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges there was an aggressive neighbor and the neighbor was not evicted for threatening to shoot the Complainant. During the week of September 24, 2020, two individuals entered the Complainant's apartment with a key that had been given to them. The Complainant has asked to be made whole and feel safe. The Complainant has been denied any apology or compensation. The Complainant has made repeated calls and texts to the landlord's office, cell phone and by text message. Finally, the Complainant obtained a phone number to call someone. When the Complainant contacted the Respondent, the Respondent denied any wrongdoing and did not offer an apology. The Complainant claims he was threatened with being shot and individuals have entered the Complainant's apartment without permission. The Complainant alleges the Respondent has violated the lease terms.

The Respondent provided a response and stated the Complainant contacted the Respondent at 10:48 pm concerning an issue with entry by some tenants that were moving into the property. The tenant that was moving into the unit accidentally placed the key in the lock of the wrong unit and was able to open the unit of the Complainant. The Respondent immediately contacted the locksmith to have the keys changed and a rekeying. When the locksmith tech arrived, the Complainant was confrontational with the locksmith and used profane language and was belligerent with the locksmith. The lock was also replaced for the Complainant in an abundance of caution. The Complainant was provided with new keys. On September 25, 2020, the Complainant requested the September rent which was past due be pushed to the end of the lease and the late fee be waived. The Complainant claimed this was a reasonable request and if granted the whole incident could be put behind all of them. The Complainant also told the Respondent he had tons of time and is super angry and motivated and there will be paperwork, phone calls, lawyers, court appearances all during the holiday season and the Respondent's company would not be able to evict the Respondent until the end of December. As to the incident concerning the neighbor that threatened the Complainant, this was addressed by the Respondent and the tenant was sent a notice concerning the incident. The Complainant did not file a police report concerning the incident and there was no further action the Respondent could take against the neighbor. The Respondent is willing to release the Complainant from the lease agreement if the Complainant does not feel safe or feels threatened.

The Respondent has not engaged in any acts or conduct that would constitute a violation of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

23. 2020077551
Opened: 10/20/2020

First Licensed: 2/23/2015

Expires: 2/22/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent is the seller and real estate agent of the home the Complainant purchased on September 19, 2020. The parties agreed on the items that needed to be repaired reported on the inspection report. The Respondent stated a repair addendum was supposed to be drafted for the Complainant to sign and it would list all items that needed to be completed on or before September 20, 2020. As of October 2, 2020, there were several repair items that still had not been completed. The Complainant alleges the Respondent did not respond to the requests to make the necessary required repairs and was aware that there were repair items that still need to be completed.

The Respondent provided a response and stated the Complainant never conducted a home inspection and did not provide an inspection repair amendment during the contract timeline. The Respondent gave the Complainant a pre-close occupancy agreement that began around September 18, 2020. The Complainant did a walk through on September 15, 2020 and provided an e-mail from Complainant on the items that the Complainant wanted to be completed/repaired. The items were all repaired prior to the September 30, 2020 and was not even part of the contract. The Respondent graciously allowed them to move into the home prior to the closing date on September 24, 2020 to avoid temporary homelessness. The Complainants then decided to create a new list of items to be repaired and these items were not negotiated or included in the contract. On the closing date, the Respondent went to visit the home again and the Complainant again gave an additional list of items to be repaired. The Complainant also complained about many cosmetic items that were not completed to the Complainant's satisfaction like the quality of the paint used and blemishes in the drywall of the home which had been built in 1975. The Respondent agreed to repair the items but there was no timeline agreed to by the parties. The Complainant's agent wrote an amendment of the remaining repair items and it was signed by the parties. The Respondent also wrote down an amendment for the remaining items and signed it and the Complainant did not sign it. The Respondent was not required to do the repairs but offered to do the repairs. The goal of completing the additional repair items was by September 20, 2020. All those repairs were completed except for a trim piece. This was repaired on October 9, 2020. The Complainant asked for additional repairs on October 7, 2020 for the electrical panel and the Respondent completed those repairs on October 9, 2020. There was an item had been requested on October 7, 2020 with reference to a fire hazard in the initial complaint. The suggested repair was requested by the Complainant in an e-mail and referenced in an attachment of recommendation from the HVAC

company hired by the Complainant. The repair was done as designated by the HVAC company. As of October 15, 2020, all items were completed. The Respondent also adds the complaint was not filed by the Buyer in the transaction but by another individual who is not a party to the transaction. The Seller was an LLC and the Respondent had an interest in the LLC and a personal interest disclosure was fully executed with the contract.

The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

24. 2020077951
Opened: 10/20/2020
First Licensed: 8/23/2000
Expires: 2/17/2022
Type of License: Principal Broker
History: None

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

The Complainant alleges the Respondent purchased a property based on the description stating a dock could be added and all that was required was an application to obtain a dock permit. After the Complainant purchased the property and had it cleared and surveyed, the Complainant met with an independent builder who stated the dock permits had not been approved in the area for over 10-12 years. The Complainant contacted the real estate agent and followed up with the Corp of Engineers and they confirmed that dock permits are no longer approved for the location. The real estate agent contacted the Seller who was also the real estate agent and the Respondent stated that it had been allowed 19 years ago when the Respondent purchased the property. The Complainant asked the Respondent to buy back the property or refund the list price since it was clearly marketed differently based on the comps in the area. The Complainant claims the Respondent was aware that the Complainant intended to build a home with a dock and knew the land was going to be cleared and surveyed and the Complainant would need to recover these costs. The Respondent returned with an offer of \$90,000. This was \$35,000 less than the amount the Complainant paid for the property and with the expenses to survey and clear the area for the building would be a \$45,000 loss. The Complainant stated this home was supposed to be their forever dream home for retirement. The Complainant did find a new buyer, however, there was still a \$5,000 loss. The Complainant alleges the Respondent showed a lack of good faith, the listing was clearly misleading and due to the comps in the area and the Complainant feels as though they were a victim of scam. The Complainant alleges the Respondent and his father (also a partial owner in the property) clearly profited from misleading the Complainant. The Complainant alleges the Respondent acted with gross negligence and lack of integrity for someone who has an established real estate business in the area for the past 19 years.

The Respondent provided a response and stated the sale of the property was contingent upon an

appraisal and the transaction was not contingent upon a dock being built or a dock application being submitted. The listing did state a dock application would be applied for, however, it clearly stated there was no dock available. The Seller stated that if there was the possibility of a building a dock on the property, an additional \$200,000 would be added to the price. There is was no mention of a dock or dock permit in the general information section, but the “public remarks” area stated “apply for a dock permit. . .” The Respondent never met the Complainant and only dealt with the Complainant’s real estate agent. The Complainant was represented by the real estate agent throughout the entire transaction. The complaint stated that they submitted a lower than asking price offer of \$115,000 and the Respondent countered with the original list price of \$125,000. The Respondent did state the lot in question which was a full acre flat lot on a lake, however, if it had been approved for a dock it would be over \$200,000. The contract for the property was bound on October 14, 2019 for \$125,000 and the closing occurred on November 8, 2019. The Complainant also had a 10-day feasibility study conducted and there were no special stipulations of any kind. The Complainant also signed a TREC Disclaimer form as part of the contract. After six months, the Complainant’s real estate agent contacted the Respondent and asked if the Respondent had any supporting information that would help the Complainant concerning the dock issue. Th Respondent stated that he would look what he could find from the 2001 auction sale when the Respondent’s father acquired the property. The Respondent indicated to the real estate agent and could not find anything in writing and reminded the real estate agent that the lot was sold without a dock or dock approval. The Respondent heard from the Complainant’s real estate agent on September 11, 2020 at 3:30 pm by text. The real estate agent told the Respondent that the Complainant had decided to sell the lot. The real estate agent inquired whether the Respondent’s father was interested in reacquiring the property. The Respondent checked with his father and discovered the lot right beside the lot in question was listed for \$90,000. The Respondent and his father were unable to offer more than \$90,000. We were expecting to close on another sale, but the Respondent was only expecting to net around \$75,000 from the future sale and the Respondent would have had to add an additional \$15K to reacquire the property from the Complainant. The Respondent states in 20 years the Respondent has not had a single complaint filed against him or any allegations of impropriety. The Complainant was able to sell the property for 10K more than paid to another Buyer on September 29, 2020.

Recommendation: Authorize a contested case hearing against the Respondent and assess a \$1,000 civil penalty with authority to settle the matter by Consent Order for violations of Tenn. Code Ann. § 62-13-312(b)(1) (Making any substantial and willful misrepresentation).

Commission Decision: The Commission voted to dismiss this matter.

**25. 2020079281
Opened: 10/20/2020**

Unlicensed

History: None

Complainant is an anonymous real estate agent. The Respondent is an unlicensed Tennessee real estate agent.

The Complainant received a text message on October 6, 2020 from an individual stating there was a property available for sale and provided the address. The Respondent advised the Complainant to bring a client to view the property the next day at 5:30 pm pending the Seller's permission. The Respondent stated the Complainant could add any commission to the asking price. The Complainant asked the Respondent to disclose the identity of the individual and asked the name of the Respondent's firm. The Respondent responded "me, myself and I." The Complainant googled the telephone number and it provided the name of the Respondent and the Complainant looked up the Respondent and found very little activity. The Respondent did have another home for sale on Facebook in November 2019. The tax record for the property offered to the Complainant did not list the Respondent as the owner of the property. The Complainant asked the Respondent why the property was not listed in the MLS and the Respondent stated some owners do not want to list their property on the MLS because square footage was added to the property with the necessary permits and permissions. The Respondent asked what areas the Complainant sells homes so the Respondent could add the Complainant to the list of agents on the Respondent's distribution list because the Respondent sells properties "wholesale."

This matter was sent to the Investigations Division for a complete investigation. The Investigator attempted to contact the Respondent at the telephone number provided by the Complainant. The Investigator left a message and requested the Respondent call back. The Investigator received a call back the same day and the Respondent advised he works in Florida and deals in "assignable contracts." The Respondent engages in these types of contracts because he does not need a real estate license and the title company handles all the paperwork. The Respondent advised he obtains all his contacts from direct mail, click ads, etc. The Respondent advised when he is contacted by a Seller, the Respondent will reach out to agents in the area to ask if they have clients looking for a particular type of home in a particular area. The Respondent advised most of the Buyers submit cash offers on the properties for sale. The Respondent indicated he only provides leads to the real estate agents.

There was no evidence found by the Investigator indicating unlicensed real estate activity in Tennessee by the Respondent and the home in question has not been sold. There is no other documentation provided by the anonymous Complainant to show there was a real estate transaction or the Respondent was acting in the capacity of a real estate agent. There

was no evidence the Respondent is holding himself out as a real estate agent in Tennessee. As such, there is insufficient evidence to show the Respondent is engaged in unlicensed real estate activity in Tennessee. Respondent does not reside in the State of Tennessee and is a Florida resident.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

26. 2020078421

Opened: 10/20/2020

First Licensed: 8/14/2017

Expires: 8/13/2021

Type of License: Real Estate Firm

History: None

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

The Complainant and the Respondent owned the real estate firm and the Respondent was the Principal Broker. The Complainant and the Respondent parted ways on September 2, 2020 and Respondent took the firm name and the agents with the license. The Complainant opened a new firm at the same location; however, the Respondent is still using the old address of the firm. The Complainant alleges the Respondent has failed to change the address and has had sufficient time to make the change.

The Respondent provided a response and stated the change of address was submitted on TREC Form 2 on September 1, 2020 with a check for \$50 and the Department returned the payment and stated there was no charge for the service and the change has been made by TREC.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2020077101

Opened: 10/20/2020

First Licensed: 4/4/2018

Expires: N/A

Type of License: Time Share Registration (Time Share Exempt)

History: 2016 Consent Order

The Complainant is a Louisiana resident and a timeshare owner. The Respondent is licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare in the summer of 2016 and got a discount for a family vacation if the Complainant attended a 90-minute sales presentation. With attendance, the Complainant would receive a refund of the discounted amount of the stay, free accommodations and show tickets. The Complainant's father-in-law died unexpectedly during this period of December 2016 when the Complainant anticipated taking the trip and the Complainant's wife was deeply depressed and had overwhelming anxiety and was prescribed several psychiatric medications that resulted in a quick decline in health and this warranted a trip to "getaway" with the family. On April 16, 2017, the family decided to take advantage of the discounted stay and attended a sales presentation for over 5 hours with high pressure sales tactics by the sales representative. The Complainant's wife explained the death of her father caused a delay in attending the presentation and this trip was intended to give the Complainant's wife a break from the stress and allow her to heal. The Complainant's wife had a deep regret in not vacationing with her father when she was younger. She wanted it to be different for her kids, so she planned on using the small inheritance she received to vacation more with them. The Complainant alleges the Respondent took advantage of this revelation by his wife. During the presentation, the Complainant's wife would begin to cry because there were certain things the Respondent's sales representatives would say related to vacationing with family and fathers. The sales personnel even resorted to telling her it was a sign from her father to purchase the timeshare and it would be what he would want her to do with her inheritance. The Complainant finally agreed to purchase the timeshare after the five-hour presentation and

quickly rushed to sign the documents because everyone was tired, and their children were hungry. The following day, the Complainant returned to the Respondent's office and told them the purchase was not conducive to their lifestyle and wanted to cancel the contract. The Respondent provided more incentives to not cancel such as another free vacation in Missouri and even was willing to extend the stay at the cabins for a few more days. The Complainant agreed to all the offers from the Respondent. The following day, the Complainant received a call from the sales personnel and asked the Complainant to return to the office before leaving because there were errors in the contract and the Complainant needed to sign corrected documents. The Complainant returned to the office again on April 21, 2017 and requested to cancel the contract because the Complainant would not be able to afford it. The Respondent advised the Complainant that the three-day cancellation period in the contract had expired. The contract and the statutory cancellation period were 10 days and the Respondent lied to the Complainant. On April 24, 2017, the Complainant attempted to book a vacation and could not because the points had not been credited to their account and were informed the points would not be awarded until January 2018. As a result of all this stress, the Complainant's wife had to be rushed to the emergency room and it was determined the stress and anxiety created physical manifestations to her health and required six hospital stays in the next several months. This also resulted in the Complainant's wife having to have surgery and additional depression and more anxiety. The Complainant had planned a vacation in February 2018 after receiving a call for a workshop for owners to learn how to better use their timeshare. The Complainant attended the workshop on February 18, 2018 to determine how to best use the timeshare, instead the Complainant ended exchanging the current timeshare for a timeshare with more points so they could rent out the condo, better booking power, write off as an expense, lower interest rate, etc. The Complainant alleges the Respondent defrauded them and misrepresented material facts and required disclosures and engaged in fraudulent conduct. The Complainant alleges the Respondent has put the Complainant's and the family's well-being and financial security at great risk. The Complainant alleges the Respondent has put the Complainant's emotional and mental instability to coerce their agreement and endangered their children by leaving them unsupervised without the Complainant's consent during a sales presentation held by the Respondent. The Complainant has attempted to rescind the contract three times within the statutory rescission period and the Respondent would not allow them to rescind. The Complainant would like an immediate cancellation of the ownership and full refund of all payments made to the Respondent.

The Respondent provided a response and stated the Complainant purchased a timeshare from the Respondent on April 16, 2017, and the timeshare interests purchased on this occasion were for Club component site. The family's second Club Plan purchase took place on February 12, 2018, and the timeshare interests purchased on this occasion were

for Resort and Condominium in Branson, Missouri. With that being said, the company cancelled several delinquent accounts that met certain criteria and the family's account landed in the category of those default accounts that were to be cancelled. The Complainant did attend a Sales Presentation. It is customary within the industry for timeshare developers to offer gifts or other items of value in exchange for a consumer's agreement to attend a timeshare presentation. Attendance is voluntary, and owners and guests have the right to decline the invitation. Sales presentations are approximately 90-120 minutes, which is clearly disclosed in the invitation. The Respondent denies the Complainant and his family were taken advantage of and the Complainant voluntarily executed the agreements for the purchase of the timeshare. The Complainant signed a Purchaser/Member Beneficiary Acknowledgment form, expressly representing that they were not pressured into making this purchase. Purchaser(s) acknowledge that they are of legal age to enter into the Purchase Agreement, that the Purchase Agreement did not constitute an undue hardship or financial burden on purchaser(s) and that purchaser(s) are otherwise competent and legally capable to enter into the Agreement. The Complainant alleges that they were not informed of the rescission period during their purchase; however, this was not true. Each purchase agreement contains a cancellation provision which grants the purchaser the right and opportunity to cancel their contract within the statutory rescission period contained therein, which is determined pursuant to the law of the state where the contract was executed. This statutory rescission provision grants the purchaser a "cooling off" period, which provides them with additional time to review their contracts and the terms contained therein. The statutory rescission period in Tennessee, is for a period of ten (10) days from the date of purchase. This cancellation and rescission language were included in the Purchase Agreement in bold text and large font, was clear and conspicuous, and the Complainant signed directly below this provision. The Respondent stated the Complainant has claimed they can no longer afford to keep their timeshare interests due to financial hardship and request that their contract be cancelled with a refund. However, the Respondent has denied this request. The Respondent does offer a Deed Back program to assist owners who are paid in full, who are current and willing to pay the Voluntary Surrender Fee of additional Club Dues, Facility Fees and Common Assessment Fees, and who are willing to pay a Transfer Fee. CV will release those owners that wish to participate from any future contract obligations. Unfortunately, the Complainant is not eligible for this program, as they are not paid in full and are not current on all Club Dues, Facility Fees and Common Assessment Fees. The Complainant entered two (2) legally binding contracts with the Respondent and execute the contracts and did not exercise their cancellation right within the statutory rescission period. The Respondent has cancelled the account due to default.

The contractual and statutory period for cancellation has expired and the Complainant did not exercise the right to cancel within the period. The Respondent has cancelled the account and the contract due to default.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

**28. 2020079351
Opened: 10/20/2020**

First Licensed: 4/4/2018

Expires: N/A

Type of License: Time Share Registration (Time Share Exempt)

History: 2016 Consent Order

Complainant is a Tennessee resident and purchased a time share. The Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased a time share from the Respondent in December 2016. In April 2018, the Complainant allowed a guest to use the timeshare property. The Respondent requires a certain number of points to book a vacation and since the Complainant has a low number of points, there is a limited number of possible bookings at the resort. Also, to visit other resort locations, the Complainant must purchase additional points. The Complainant also alleges the Respondent failed to properly explain the terms of the purchase to the Complainant. The Complainant stated the Respondent promised them twelve (12) free weeks per year and the Complainant did not receive twelve (12) weeks. The Complainant is paying \$3,300 in mortgage payments per year plus an additional \$1,000 minimum for maintenance fees, not to mention other fees to the vacation at the resort. The Complainant seeks to be free from the timeshare and the debt. The Complainant alleges the Respondent has not lived up to the promises made in the sales presentation about the availability, use of points, free weeks for booking and the rising maintenance fees. The Complainant stated due to poor health and advanced age and the pandemic, the Complainant can no longer travel. Also, due to an increase in medical expenses and change in health conditions, the Complainant cannot financially afford the timeshare. The Complainant alleges that the

timeshare company has misled the Complainant and pressured the Complainant to purchase the timeshare and knowingly misrepresented timeshare ownership to them and the Respondent has lied to them.

The timeshare was purchased in 2016 and the period for cancellation of the contract has expired under the contract and Tennessee statute. This is a contractual dispute between the parties. The Complainant's four-year statutory period to bring a private cause of action has also expired. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2020071031

Opened: 10/26/2020

First Licensed: 12/5/2003

Expires: 10/3/2021

Type of License: Principal Broker

History: None

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

The Complainant alleges neither the Seller nor the Respondent Seller's agent disclosed on either the MLS or the property disclosure that there was an existing HOA for a property and there were restrictions and an HOA fee. The Complainant discovered this information after the contract was signed and when it was close to the closing date. The Respondent Seller's agent approved the termite treatment without the Seller's prior approval and then refused to pay the termite contractor. The termite contractor notified the Complainant Buyer's agent about the outstanding payment due to the termite contractor. The Respondent's Agent approved the treatment and later requested the Complainant Buyer pay for the treatment. An extension of the home warranty was signed by both parties and was supposed to be paid prior to closing. At closing, the Respondent's agent stated the warranty company would not allow the Seller to make the payment. To date, the home warranty has not been paid by the Seller after numerous requests by the Complainant's agent and the Complainant. The contract was written to provide possession of the property at the closing, however, the Respondent Seller's agent notified the Complainant after the closing that the Seller had not completely vacated the property and needed additional time

to vacate the premises and would not allow the Complainant to have the keys, security system info, garage door openers or possession of the property. The Complainant Buyer's agent and Complainant were present while the Seller continued to move out of the home after the closing and the Seller left an enormous amount of garbage on the sidewalk. The Seller left without giving the Buyer the keys, access codes or garage door openers. The Seller's agent was contacted numerous times by the Complainant's agent and Complainant's Principal Broker; however, the Seller's agent did not resolve the issue. To date, the Seller has failed to provide the access codes for the garage and the security system. The Respondent or the Seller failed to disclose flood issue on the property disclosure forms. The Respondent was not forthcoming in the MLS listing. As a result, this caused a delay for the Buyer to move, scheduling a cleaning crew, access to the home. These are all violations of the contract.

The Respondent has not provided a response to the complaint. The Respondent was contacted to provide a response.

Recommendation: Authorize a contested case hearing and assess a civil penalty of \$1,000 with authority to settle by Consent Order for failure to respond pursuant to Tenn. Code Ann. § 62-13-313(2).

Commission Decision: The Commission accepted counsel's recommendation.

30. 2020075611

Opened: 10/26/2020

First Licensed: 7/22/2004

Expires: 8/4/2021

Type of License: Affiliate Broker

History: None

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

The Complainant went to home showing on September 14, 2020. The Respondent had listed the home as For Sale by Owner. The Respondent did not disclose he was a real estate agent. After the Complainant expressed interest in the home, the Respondent indicated the home was not owned completely by the Respondent and had entered a contract to purchase the home and would sell it to the Complainant under an assigned contract. The Respondent indicated he needed a copy of the Complainant's bank statement and driver's license to verify the Complainant had the funds to purchase the property. The Respondent sent the Complainant a copy of the Assignment of Contract and the Complainant signed the document. It was sent to the title company and arrangements were made to proceed with the closing and title searches. On the date of the closing, the title company

contacted the Complainant stating it was not possible to close because the Seller's title company did not have the necessary information to go forward with the transaction. The title company was working with the bank because it was a foreclosure property, so the Complainant contacted the bank. The bank contacted the Respondent because they were not aware that the home was being sold on an assignment. The Respondent texted the Complainant and asked if the Complainant had contacted the bank. The Respondent told the Complainant if the Complainant did not stay out of the way of the title company, the sale would not happen. The Complainant called the Respondent and the Respondent questioned the Complainant about what was told to the Seller's title company and the Respondent stated he would not sell the property to the Complainant and the Complainant stop contacting the Respondent and the Respondent would not sell the home to someone who could not be trusted. The Complainant asked the title company to contact the Respondent to determine what had happened and the title company did not respond to the Complainant. The Complainant was later told by the title company that the Seller had called and stated not to continue the sale with the Complainant. The Complainant alleges the Respondent had never intended to sell the property to the Complainant. The Respondent had obtained the property at an auction and had to pay for it. The Complainant also alleges the Respondent used the Complainant to satisfy the payment obligation to the auction and get more time to make the payment.

The Respondent and the Respondent's Principal Broker provided a response and stated the closing was not delayed or thwarted by the Respondent and had to do with the Seller's title agent refusing to process the transaction because of a title issue. The Principal Broker later got involved and approached the Complainant again concerning the sale of the property. The parties are working to proceed with the sale to the Complainant. The Respondent will purchase the property and there will be a separate transaction with the Respondent selling the property to the Complainant.

The parties have resolved the issues concerning the complaint.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

31. 2020082991

Opened: 11/10/2020

First Licensed: 8/25/2014

Expires: 8/24/2022

Type of License: Principal Broker

History: None

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

The Complainant was interviewed by the Respondent for a position with the Respondent's firm and later declined to accept the position. A few months later, the Respondent contacted the Complainant and asked the Complainant to allow her to practice interview skills on the

Complainant because the Respondent purchased the firm. The Complainant was excited about the firm and decided to join the Respondent's firm. The Complainant knew the Respondent's new firm affiliation had an excellent training program and it would benefit the area. After the Complainant joined the Respondent's firm, the Complainant discovered the Respondent was not operating the office in a professional manner and the Respondent was bullying the real estate agents in the office. The Respondent also began to verbally attack the Complainant's previous broker and even accused the Complainant's former broker of stealing files from the transaction desk. Later, it was discovered that files are transferred automatically when an agent transfers from one office to another. The Respondent claimed it was a glitch in the system and it would be addressed. The Respondent continued to make accusations that the Complainant's former broker was stealing files. This was not true. The Respondent even sent a letter to the Complainant's former broker and stated there was an investigation by the local police department. The Respondent often filed anonymous complaints with professional organizations against agents and other brokers. The Respondent often complained about other agents in the office and would ridicule the new agents in front of other agents. The Respondent would not mentor the new agents or provide them with any guidance. The Respondent would often state to office staff that new agents require too much attention. The Respondent even questioned the Complainant about one of the agent's sexual orientation. The Respondent even told the Complainant one agent was seeking therapy in the same building as the Respondent's office. The Respondent would often gossip about agents that left the firm. The Complainant has been a real estate agent for 22 years and has never been exposed or subjected to such behavior by a Principal Broker. Each time the Complainant was in the office, the Respondent would ramble and complain about the other agents in the office and the Complainant could not get any work completed. The Respondent also told the Complainant she would file false complaints against real estate agents and the Respondent loved to file the complaints and it excited the Respondent. The Respondent even filed a complaint against the Complainant after the Complainant left the Respondent's firm. The Respondent would often engage in name calling of other real estate agents and rant about other real estate agents. The Respondent would use another employee's e-mail account and send rude e-mails to bully the agents. The Respondent made false accusations in a text accusing the Complainant of theft and hacking. The Complainant stated the Respondent was defamed the Complainant, made false accusations, and publicly humiliated the Complainant. The Complainant stated the Respondent even tried to have the Complainant arrested. The Respondent engaged in actions to discredit the Complainant and even tried to encourage the Complainant's current broker to release the Complainant. The Complainant alleges the Respondent is attempting to discredit the Complainant by making false and baseless accusations. The Complainant also states the Respondent claims to have fired the Complainant when in fact, the Complainant resigned from the position. The Respondent also told former coworkers at the real estate firm; the Complainant was fired for putting earnest money in the Complainant's personal account. The Respondent also told the other employees the reason why some of the real estate agents left the firm was because the Complainant engaged in bullying. The Complainant stated the Respondent often referred to agents by disparaging names and often advised the Complainant to treat team members like "minions" and use them for free labor. The Complainant sent the Respondent a cease and desist letter on September 12, 2020 to stop making slanderous and libelous statements to the President of the Complainant's new firm. The Complainant also had to issue another cease and desist on September 29, 2020 because the Respondent used pictures of the Complainant's home on her website and the Complainant had requested the Respondent remove the picture from the website. The Respondent

has now filed a complaint against the Complainant with the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission voted to close and flag this matter.

32. 2020081591

Opened: 11/2/2020

First Licensed: 8/25/2014

Expires: 8/24/2022

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent is engaged in the unauthorized practice of law. The Complainant suggested to the Respondent there be proper IT in place at the real estate firm. The Complainant alleges the Respondent pulled a pending transaction from the title company that resulted in a one-week delay in the funding of the Complainant's client's proceeds. The Respondent required the Complainant's client sign a statement that the client would not file a lawsuit over the ordeal. The Respondent failed to consult the Complainant, the client, the client's attorney, or the purchaser's attorney handling the closing. The Respondent is not licensed as an attorney and does not have the authority to require a party to the transaction to sign a form or a release in the matter. The Respondent knowingly did this in a clandestine manner without engaging or consulting with both parties' attorneys. The Respondent placed the Complainant's client in a position of duress to sign the release document to release the sale proceeds. This is a pattern of behavior exhibited by the Respondent on multiple occasions.

This complaint is related to the previous complaint and involves a dispute between the parties. There is not sufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close

Commission Decision: The Commission voted to close and flag this matter.

33. 2020082771

Opened: 11/2/2020

First Licensed: 8/25/2014

Expires: 8/24/2022

Type of License: Principal Broker

History: None

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

The Complainant left the employment of the Respondent in May 2020 and had no further contact

with the Respondent except for closings that were completed shortly after the Complainant's departure from the real estate firm. The Complainant alleges the Respondent is attempting to slander the Complainant. The Complainant alleges the Respondent called the Complainant a "whore" after the Complainant submitted a TREC 1 form to the Respondent earlier in the day and was also writing an offer. The Respondent sent an e-mail to the Complainant's new broker that the Complainant had been committing fraud in the Respondent's office and the Respondent would be filing a police report because of the matter and further stated to be aware and leery of the Complainant's actions. The Complainant sent the Respondent a cease and desist order to instruct her to stop sending emails to the Complainant's current broker and to the corporate offices.

This complaint is related to the previous complaint and involves a dispute between the parties. There is not sufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission voted to close and flag this matter.

34. 2021004741

Opened: 2/1/2021

First Licensed: 8/25/2014

Expires: 8/24/2022

Type of License: Principal Broker

History: None

The Complainant is an anonymous complainant and the Respondent is a licensed Principal Broker.

The Complainant alleges the Respondent is wanted to mortgage fraud in Washington. The Respondent moved to Tennessee from California and reciprocated the license and is a wanted fugitive in Washington.

The Respondent did not provide a response to the Complaint.

This complaint is related to the previous complaint and involves a dispute between the parties. There is not sufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Authorize a contested case proceeding and assess a civil penalty for \$1,000 for failure to respond to the complaint with authority to settle by Consent Order.

Commission Decision: The Commission voted to close and flag this matter.

35. 2020076851

Opened: 11/10/2020

First Licensed: 4/18/2012

Expires: 4/17/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent made a complaint to the local real estate board about a Google business page and picture. The Respondent did provide the submitted listing material and authority to include the property.

The Complainant stated that on July 8, 2019, the Complainant received a complaint that had been filed against the Respondent for posing as a “stand alone firm.” The Complainant alleges the Respondent is still engaged in this activity. The Complainant stated that when the Respondent left the Complainant’s firm, she requested the Respondent change the Google Business Page. The Respondent did not make any changes. There is still mixed content on the Google search regarding the Respondent acting as a “stand alone” firm. The Complainant alleges the Respondent is using the Complainant’s firm name and office address and is marketing as the Complainant’s firm. The Complainant has sent several ceases and desist E-mails to the Respondent; however, the Respondent still has marketing materials and is posing as the Complainant’s firm.

This complaint is related to the previous complaint and involves a dispute between the parties. The parties are engaged in filing a barrage of complainants against one another and there is no evidence of any violations of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission voted to close and flag this matter.

36. 2020088331

Opened: 11/30/2020

First Licensed: 4/18/2012

Expires: 4/17/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent made a complaint to the local real estate board about a Google business page and picture. The Respondent did provide the submitted listing material and authority to include the property.

The Complainant stated that on July 8, 2019, the Complainant received a complaint that had been filed against the Respondent for posing as a “stand alone firm.” The Complainant alleges the Respondent is still engaged in this activity. The Complainant stated that when the Respondent left the Complainant’s firm, she requested the Respondent change the Google Business Page. The Respondent has not made any changes. There is still mixed content on the Google search regarding the Respondent acting as a “stand alone” firm. The Complainant alleges the Respondent is using the Complainant’s firm name and office address and is marketing as the Complainant’s firm. The Complainant has sent several cease and desist E-mails to the Respondent, however, the Complainant is still acting as an aggressor and still has marketing materials and is posing as the Complainant’s firm.

This is a duplicate complaint filed twice by the Complainant against the Respondent. This complaint is related to the previous complaint and involves a dispute between the parties. The parties are engaged in filing a barrage of complainants against one another and there is no evidence of any violations of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

37. 2020075681

Opened: 10/26/2020

First Licensed: 9/18/1986

Expires: 1/27/2023

Type of License: Principal Broker

History: None

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

The Complainant would like the Board to address the Respondent Real Estate agent’s social media comments in response to individuals shooting protesters out of a window. The Respondent commented “Black Lives Do Not Matter.” When a member of the public attempted to have a dialogue with the Respondent by direct message, the Respondent again condoned violence and defended the Respondent’s position. The Complainant alleges the actions by the Respondent are “absolutely disgusting” and the Respondent has harmed many individuals. The Complainant has also written to the Respondent’s employer and has not received a response. The Respondent has blocked anyone who is critical of the Respondent’s Facebook posts and it is clear the Respondent has an internal bias against Black people. The Complainant states the conduct of the Respondent is unacceptable and offensive and the Respondent should not be making such posts and comments and should be treating all clients equally, especially because the Respondent has recently completed real estate continuing education courses in ethics and diversity. The Complainant also alleges the Respondent is engaging in the practice of “redlining” (excluding minorities from certain neighborhoods is well-established in the United States) and alleges these comments of this real estate agent exacerbate the problem.

Recommendation: Close. Lack of jurisdiction and refer to the local real estate association to review the alleged ethical violations by the Respondent.

Commission Decision: The Commission elected to close this matter without a referral to the local real estate association.

38. 2020078141

Opened: 10/26/2020

First Licensed: 1/14/2000

Expires: 8/31/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent listed a home for sale as FHA loan approved and it was not. There were many FHA violations that did not qualify the home for FHA through HUD requirements. The agent failed to make sure that all items listed in the selling contract were completed by the Seller. Also, the Seller signed a disclaimer that there was no major damage, however, the home is now inhabitable. There were also multiple code violations. The home did not have active working smoke detectors, water tank was installed directly below the electrical box, crawl space opening 13 inches less than 18 inches from the ground to the bottom of the floor joist, no floor insulation, no HVAC, no GFI plugs, major water leaks, mildew smell, cracked foundational bricks, rotten outer band joists, studs and windows and no moisture barrier.

The Complainant alleges there was major structural and foundational issues which made the home inhabitable. The Respondent also listed the property with a \$2,000 flooring allowance. The Complainant has filed a complaint with FHA and the loan is in the process of being returned to the lender. FHA is resending the backing on the loan. The house should not have been approved for an FHA loan. There should not have been a flooring allowance and the Respondent deceptively listed the flooring allowance in the MLS listing to get the full asking price for the home. FHA does not approve these repairable incentives. The Complainant requests the Commission revoke the Respondent's license. The Complainant has requested a meeting with the Principal Broker and to date, has not heard back from the Respondent's Principal Broker. The Complainant has also requested the Respondent insurance information to file a claim. The Complainant alleges the Respondent had a duty to ensure the contract was correct and upheld and cannot misrepresent a

property. To date, the Complainant has expended \$28,730 in repairs and there are many more major repairs that need to be done to the home.

The Respondent was sent another follow-up request by Legal Counsel and the Respondent has still failed to provide a response.

Recommendation: Authorize a contested case proceed and assess a \$1,000 civil penalty with authority to settle by Consent Order for violations of Tenn. Code Ann. § 62-13-313(a)(2).

Commission Decision: The Commission accepted counsel's recommendation.

39. 2020079671

Opened: 10/26/2020

First Licensed: 11/27/2001

Expires: 4/17/2022

Type of License: Principal Broker

History: None

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

The Complainant was a first-time home buyer and dealt with the Respondent who was the listing agent and Principal Broker of the property the Complainant wanted to purchase. The Complainant made several attempts to reach the Respondent to schedule a showing. After several days of not receiving a response, the Complainant requested the real estate agent reach out to the Respondent's Principal Broker to obtain assistance in scheduling a showing. After nine days of not being able to reach the Respondent, the Respondent finally responded and stated there would not be any showings over the holiday weekend. The Respondent was asked whether there were any issues and the Complainant specifically asked about the HVAC system. The Respondent stated there was nothing wrong with the home and everything worked. The Respondent indicated the Seller would not accept anything less than the list price and the tenant had to stay for another six (6) months. After the holiday weekend, the Complainant attempted to schedule a showing of the home and the Complainant was again denied for all showings requested. The Respondent later advised the Complainant was ineligible for a showing without a formal offer with the intent to purchase. The Respondent did not provide sufficient answers and information concerning the reasons for the tenant having to stay for six months from the closing date. The answers the Respondent provided were not sufficient or factual. The Complainant submitted a full price offer of \$199,900 and submitted the offer via DocuSign on September 16, 2020. The following day the Respondent requested a pre-approval letter which the Complainant submitted. The Complainant did not hear back from the Respondent. The next day, the Respondent texted the Complainant's agent and stating the owner rejected the offer. The Respondent indicated there were some legal issues that had to be cleared up and was not able to sell the property. The Complainant never received a signed rejection offer. Also, as of the date of the filing of the complaint the listing for the property was

still active. The Complainant alleges the Respondent does not convey the standard of practice or handle the code of ethics.

The Respondent provided a response and stated the Respondent uses a service for showings to make all appointments for all the Respondent's listings. The homeowner declined all the showings. The Respondent first spoke with the assistant of the Respondent regarding a showing and the Seller was not willing to show the property. The Respondent stated the Seller rejected the offer because the Complainant asked for the Seller to pay a 3% closing cost and a \$685 home warranty. After this offer, the Seller decided not to sell the home. The property was also occupied by a tenant. The owner later moved back into the property. The Seller was hoping another property would be refinanced or sold that the Seller could purchase another home. Since that did not occur, the Seller decided not to sell. The Seller wanted a full price offer in cash with no contingencies.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

40. 2020081581

Opened: 10/26/2020

First Licensed: 5/2/2016

Expires: 5/1/2022

Type of License: Affiliate Broker

History: None

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

The Complainant is a first-time home buyer and was interested in purchasing a home, however, the process was taking longer than expected and COVID was causing delays in the financing approval process. The Respondent was the Complainant's real estate agent and helped write a contract on a property on September 5, 2020. The Complainant was not aware the contract expired on September 30, 2020. The Complainant alleges the Respondent misrepresented the buying process throughout and has now refused to refund the \$900 the Complainant paid in earnest money. The earnest money is not a damage deposit and merely shows the Seller the Buyer is making a good faith effort to enter the contract to purchase property. The Complainant was never advised that if the Complainant was unable to complete the terms of the contract, the Complainant would lose the earnest money.

The Respondent provided a response and stated the timeline was specifically provided to the Complainant and the Respondent was aware the date the contract would expire. The appraisal had not been ordered until September 28, 2020 and it was not known when the appraiser would be able to come to appraise the property. As a result, the contract lapsed. The Complainant later indicated the Complainant was no longer interested in a purchasing a home because the Complainant was on the road quite a bit and purchasing a home at this time would not be a good idea. The contract expiring had no bearing on the Complainant's ability to close on the loan. The transaction was moving forward and would honor the contract. The Complainant was told after the contract expired the monies would go the Seller. The Complainant refused to sign the mutual release. The Respondent stated even though the Complainant was a first-time homebuyer, the Complainant was well-informed on how to proceed in the purchase of a home and how to execute a contract. The Complainant did not fulfill his role in the purchase of the home and was unable to close the transaction despite the willingness of all parties to honor the contract.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2020082461

Opened: 10/26/2020

First Licensed: 7/3/2018

Expires: 7/2/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent entered the property on October 17, 2020 and began a showing of the residence. The Respondent placed his tablet on many surfaces in the home and even sat down at the dining table of the home. This is not acceptable and unprofessional behavior because the furniture is not for use by the Respondent. The Respondent showed a wanton disregard and disrespect for the Complainants personal property, health, and safety during the COVID-19 virus pandemic. The Respondent had a wanton disregard for the increased spread when a group of three individuals entered the residence for the showing. Within a few minutes of entering the residence, one of the clients went in the family room and sat down in a chair. Another person sat down on the soft. Both individuals sat on the furniture for over 10 minutes and even placed a foot on

the sofa while sitting. The Respondent did not say anything or discourage this behavior. The Respondent did not clean or disinfect any surfaces that were touched before leaving the home. The Respondent was contacted by the Selling agent about the matter and the Respondent disregarded the matter and did not offer to provide cleaning for the unnecessary exposure to and dirt put on the furniture. The Complainant alleges the Respondent failed to show a disregard for the health and safety of the Complainant's family.

The Respondent provided a response and stated the clients were medical professionals who are active in the medical community and have the highest regard and concern about the COVID-19 risks. The showing instructions stated that masks needed to be worn and shoes needed to be covered or taken off when walking through the home. Those were the only instructions for the showing. The Respondent had not been told not to sit on the furniture or not touch any surfaces. The Respondent carries hand sanitizer in his car and the Respondent sanitized his hands before entering the property and after leaving the property. When the listing agent contacted the Respondent, the first thing the Respondent was asked about whether the Respondent's clients were interested in purchasing the property. Later, the listing agent texted the Respondent and stated that the Seller was upset about individuals sitting on the furniture. After the Respondent's showing, the listing agent changed the showing instructions to add updated instructions to not sit on the furniture and to avoid touching surfaces in the home. The Respondent would have gladly paid to have the home cleaned if the Respondent had known the Complainant was expecting a solution or resolution to the issue. The Respondent stated the Respondent and his clients were not in violation of CDC and health guidelines. The Respondent and the clients were wearing masks, used shoe coverings, and used hand sanitizer before the showing.

Recommendation: Letter of Warning concerning taking proper precautions during the COVID-19 pandemic.

Commission Decision: The Commission accepted counsel's recommendation.

42. 2020074381

Opened: 10/26/2020

Unlicensed

History: None

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

The Complainant alleges the Respondent took \$25,000 of the Complainant's earnest money. The Complainant's agent took the \$25,000 directly to the Respondent at their office in March 2020. The Complainant is a 70-year old woman and was attempting to purchase a home and the Respondents stole the Complainant's money.

The Respondent provided a response ad stated the Respondent was the Seller of the property. The Respondent stated the Complainant breached the contract by failing to close on the property by the date in the contract and the Respondent was entitled to \$10,000 in liquidated damages for the Complainant's default and breach of contract, plus all costs and expenses, including attorneys' fees. A letter was sent to the Complainant's attorney and the Complainant and neither responded concerning the breach or the liquidated damages and expenses.

The Respondent stated the Complainant entered into a contract to purchase the property and the initial portion of the earnest money was picked up by the Respondent and delivered to the listing agent and the balance was mailed directly by the Complainant. The Builder was difficult to work with on the project and was slow in making the necessary repairs. At the time, the Complainant was getting a grant from the housing fund. The grant had not been approved before the closing date on the home and the Respondent requested an extension. The Builder refused to do an extension, so the Respondent sent the listing agent an earnest money release form with eth loan denial letter. The Builder refused to release the funds or return the earnest money, but instead sent an attorney demand letter. The Respondent reached out to the Seller/Builder's title company attorney to review the letter and contract and based on her findings the attorney determined the Complainant was only responsible for \$25.00. After some negotiation with the Builder's attorney, the Builder was still demanding \$10,000 due to the breach of contract clam or to keep \$2,500. The Respondent later reached out to another attorney and called him to discuss the matter and the attorney agreed to handle the case. An e-mail was sent to the listing agent and the Principal Broker asking for the Builder's direct contact information and for help in getting these funds from the listing agent the principal broker. The principal broker indicated she did not work with the Builder and it was out of her hands and to get an attorney since the Builder as holding the earnest money. The Respondent attempted to put the Complainant in touch with the attorney that was willing to handle the matter and helped to get the funds from the listing Agent and the Broker. The Broker indicated she does not work with the Builder directly and it was out of her hands and recommended an attorney get involved since the Builder was holding the earnest monies. The Builder had done this because the

listing agent stated it would be the last transaction the listing agent would handle for the Builder. The Respondent did whatever could be done in this situation but was not holding the earnest money and could not help the Complainant.

The Respondent was not holding the earnest monies and did not engage in any conduct that would constitute a violation of the Tennessee Real Estate License Act or the Rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

43. 2020074661

Opened: 10/26/2020

Unlicensed

History: None

Complainant is a Tennessee resident. Respondent is a Tennessee investment group.

Complainant alleges that Complainant's neighbor was suffering economic hardship due to the Covid-19 pandemic and was having trouble in making monthly mortgage payments.

Complainant alleges that Respondent took advantage of Complainant's neighbor by offering to sign Complainant's neighbor up for a "program" that would allow them to convert to a lease to own agreement to save money and that Complainant's neighbor would have the option to repurchase the home in the spring of 2021. Complainant alleges that this neighbor was not paid proper market value for the home.

Complainant alleges that the lease payments are more than double what the mortgage payment was and that they are unable to make the payments.

Respondent provided a response to the complaint and states that they explained in detail that Respondent would be the new owner of the home and that Complainant's neighbor would be leasing the home from them. Respondent also states that Complainant's neighbor would be eligible to repurchase the home after the one-year lease period.

Respondent further states that Complainant's neighbor has been late with rent payments more than three times since the lease period began.

Complainant provided a rebuttal and states that Complainant's neighbor did not seek out Respondent but was instead solicited by Respondent and then duped. Complainant states that Complainant's neighbor did not realize that the home was being sold to Respondent.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

44. 2020073771

Opened: 10/26/2020

First Licensed: N/A

Expires: N/A

Type of License: Time Share Registration

History: None

Complainants are Tennessee residents and Respondent is a Florida based time share company.

Complainants allege that they contacted by Respondent and offered a free stay at Respondent's resort. Complainants accepted and scheduled the stay. Upon arrival, Complainants were told that there was an error and that they were there on the incorrect day and that the stay would be rescheduled at their expense unless they attended a brief meeting. Complainants allege they were told if they did not attend this meeting that they would be charged full price for the free stay.

Complainants attended the meeting and reluctantly purchased a timeshare. Complainants allege that they were told that they would be unable to access their account online for at least twenty-one (21) days because it would take that amount of time for them to be recognized as members. Complainants further allege that they were given this timeframe for the time to lapse for them to be able to cancel this transaction.

Respondent has not provided a response to this complaint.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

45. 2020078591

Opened: 10/26/2020

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration

History: None

Complainant is a Tennessee resident and Respondent is a licensed Timeshare company

Complainant alleges that Respondent refused to provide a parking pass during a stay at

Respondent's resort in 2014 until Complainant agreed to attend a meeting. During that meeting, Complainant alleges that Respondent used high pressure sales tactics to force Complainants to sign a new contract and issued credit cards that were expensive and caused Complainant to have to take out an unsecured loan to pay off.

Respondent provided a response and states that they have canceled the 2014 contract and reinstated the original contract signed in 2000 but advised that Complainant's loan is currently delinquent, and Respondent considers Complainant to be in breach of contract.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

46. 2020073561

Opened: 11/2/2020

First Licensed: 8/18/1995

Expires: 1/3/2022

Type of License: Affiliate Broker

History: None

Complainant is a Georgia resident and Respondent is a licensed Tennessee Real Estate agent.

Complainant alleges that Complainant and Complainant's buyer's agent accepted a counteroffer on a property and that Respondent rejected that acceptance and took the property off the market.

Respondent responded to the complaint and states that the seller rejected Complainant's offer to purchase based on the special stipulations included in the offer.

Respondent states that the seller has temporarily taken the property off the market to address some issues with the property.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

47. 2020078561

Opened: 11/2/2020

First Licensed: 1/17/2020

Expires: 1/16/2022

Type of License: Affiliate Broker (Retired)

History: None

Complainant is a Tennessee resident a licensed Tennessee Real Estate agent and Respondent is a licensed Tennessee Real Estate agent.

Complainant alleges that Respondent is engaging in conversations with local business owners that

are defaming Complainant's character and reputation.

Respondent provided a response to the complaint and states that the Complainant is a former acquaintance and is disgruntled due to the end of the relationship and denies all allegations of defamation.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

48. 2020078681

Opened: 11/2/2020

First Licensed: 7/16/2002

Expires: 1/4/2022

Type of License: Principal Broker

History: None

Complainant is a Tennessee company and Respondent is a licensed Tennessee Real Estate agent.

Complainant alleges that Respondent used confidential information in the form of customer contact lists, contracts, and service rates while still an active employee of Complainant and under an agency agreement.

Respondent provided a response to the complaint and states that Complainant was not informing clients that the company was under new management and Respondent states that out of an obligation to transparency Respondent informed the clients of the company regarding the management change.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

49. 2020080571

Opened: 11/2/2020

First Licensed: 4/30/2014

Expires: 4/29/2022

Type of License: Affiliate Broker

History: 2020 Consent Order

Complainant is a Tennessee resident and Respondent is a licensed Tennessee Real Estate agent.

Complainant alleges that Respondent misrepresented the flooring in a listing as being hardwood or engineered hardwood when it was in fact laminate flooring.

Respondent provided a response to the complaint and states that there was no intention to mislead the Complainant buyer and the Complainant's agent. Respondent provided a copy of the MLS listing which states, "Information is deemed reliable but not guaranteed. Buyer should verify any

information of concern, including but not limited to schools and square footage”. Respondent states that the Complainant and the Complainant’s agent toured the property at least two times and that the home was completely vacant with no furniture each of those times. Respondent was never asked to clarify the type of flooring and believed they were engineered plank.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

50. 2020082091

Opened: 11/2/2020

First Licensed: 7/10/2019

Expires: 7/9/2021

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and Respondent is a licensed Tennessee Real Estate agent.

Complainant is a property owner and engaged the services of the Respondent to rent out a home. The Complainant alleges the lease agreement was executed and entered into with the Respondent and the Complainant was not given a chance to review the lease terms or modify lease the terms or have any input on the terms or add any additional terms. Complainant further alleges a copy of the lease was not provided to Complainant and a copy was finally provided forty (40) days after it was executed. Complainant alleges the security deposit was not collected when the lease was signed with the tenant and the Complainant was not made aware of this until after the tenant moved in after the planned move-in date. The tenant moved in a few weeks later than the move-in date and the Complainant learned the full amount of the security deposit was never collected.

Respondent’s attorney provided a response to the complaint and states that Respondent was hindered from conducting its usual rental and daily business activities, including collecting security deposits and enforcement of the Lease Agreement because of the precautions taken by all due to the Covid-19 pandemic.

Recommendation: Letter of Warning concerning duty owed to client to exercise reasonable skill and care in providing services, disclosure of any adverse facts and providing documents to clients in a timely manner.

Commission Decision: The Commission accepted counsel’s recommendation.

51. 2020082601

Opened: 11/2/2020

First Licensed: 3/6/2012

Expires: 3/5/2022

Type of License: Affiliate Broker

History: None

Complainant is a Florida resident and Respondent is a licensed Tennessee Real Estate agent.

Complainant alleges that Complainant purchased a lot in Tennessee from Respondent that was marketed on the MLS as a buildable lot. After entering a binding contract to purchase the property, Complainant attempted to obtain a septic tank permit only to be told by the County that a soil scientist report would be required along with a land survey. After paying for these services to be conducted, Complainant learned that the property was considered too steep for septic tank approval. Complainant then asked Respondent to be reimbursed for these costs.

Complainant further alleges that the Respondent has since relisted the property and added the narrative that “the owner is pursuing approval for a septic permit”. Complainant states that if that information had been in the listing prior, then Complainant would not have purchased the property.

Respondent provided a response to the complaint and states that the seller contacted the health department and obtained a local attorney to research this issue to find a way to have the property permitted. Respondent further states that while the lot in question is steep, there are built on either side of it that are on an identical slope. Respondent has spoken with the owner who is 88-years old and has owned the property for many years and asked that the Complainant be reimbursed for the cost of the survey. Respondent states that the owner refused because the owner feels the survey was too costly and could have been done at a more reasonable cost.

This matter is a contractual dispute between the parties. There is insufficient evidence to indicate a violation of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

52. 2020083581

Opened: 11/2/2020

First Licensed: 11/17/2017

Expires: 11/16/2021

Type of License: Affiliate Broker

History: None

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

The Buyers contracted with a home builder to build a home on June 12, 2020 and purchased the lot through the Respondent. When the Respondent discovered the identity of the builder, the Complainant alleges the Respondent began a smear campaign through text, e-mails and verbally to steer the Buyer’s from the builder to build the home. The Respondent

was actively steering the Buyer's from using the preferred builder. Despite the negative comments made by the Respondent, the Buyers still agreed to move forward with the building process but due to the COVID-19 pandemic, the closing date on the lot would have to be extended. The Respondent convinced the Sellers of the lot to withdraw the lot from the market. After losing the lot, the Buyer's decided not to pursue building a home with the builder in question and began to search for other properties. The Buyers purchased a lot directly from the Respondent's sellers and contracted with another builder to build a home.

The Respondent's Principal Broker provided response and stated the Sellers listed two lots for sale with the Respondent and at one point during the course of the contract began to have the driveway installed on one of the lots when the land on the contract had not closed. This caused a great deal of concern for both the Sellers and the Buyers. The Respondent did mention the Buyers may want to consider another builder due to these problems. The Sellers did not want to extend the contract and were in the process of purchasing another 89 acres that joined the lots the Sellers already owned. This land appraised for more than what was needed for down payment, so the Sellers decided to withdraw the lots for sale and wanted to install a driveway because the other lots the Sellers owned would be too steep for a driveway. The Sellers withdrew both lots for sale. The contract was void because the Sellers did not sign the extension. The Respondent did happen to meet the Buyers later when they were looking for a lot. The lot was later purchased by another Buyer who was also a builder. A driveway had been put on one of the lots and the new Buyers were interested in the lots and an arrangement was made between the new Seller and the Buyers to purchase one of the lots. The new Seller, who was also a builder agreed to build a home for the original Buyers of the property. The Respondent was not involved in this transaction and was not aware that this had happened.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

53. 2020084171

Opened: 11/2/2020

First Licensed: 7/21/2014

Expires: 7/20/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent put the Complainant and the Complainant's teenage daughter in danger by telling various individuals that the Complainant paid \$300,000 for a home. As a result, the Complainant believed she was in danger and had to get an alarm system. The Respondent has also implied to many individuals that the Complainant was involved in illegal activity. The Complainant alleges the Respondent gossips and slandered the Complainant to many individuals in the community. The Respondent also put the Complainant's teenage daughter to work when the Complainant was meeting with the Respondent by having her daughter help the Respondent's son and other friends to bring down Christmas boxes from the attic and had them put up the Respondent's Christmas tree. The Complainant indicated the Complainant's daughter was very upset. The Complainant will bring a lawsuit against the Respondent for engaging in defamation of character, false light, and intentional infliction of emotional distress. The Complainant alleges the Respondent has damaged the Complainant's reputation.

The Respondent provided a response and stated the Respondent has no business dealings with Complainant and has not dealt with the Complainant to provide real estate services. The Respondent filed a defamation and slander lawsuit against the Respondent and there is no merit to any of the allegations. The Complainant's daughter is dating the Respondent's son and is not pleased the daughter is dating the Respondent's son and has engaged in various misrepresentations concerning the Respondent. The Respondent has never represented the Complainant in a real estate transaction. The Respondent contacted the police because the Complainant's daughter indicated to the Respondent the Complainant was going to harm herself. The Respondent called the police to take emergency action on behalf of the Complainant's daughter and provided information about the Respondent to the local authorities.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

54. 2020073601

Opened: 11/2/2020

First Licensed: 10/28/2010

Expires: 10/27/2022

Type of License: Real Estate Firm

History: None

Complainant is a Mississippi resident and timeshare owner and the Respondent is a licensed Tennessee Real Estate firm, timeshare company and a Florida Corporation.

The Complainant has been attempting to resolve this matter with the Respondent and has been unsuccessful. The Complainant seeks the Commission's assistance to cancel the timeshare contract. The Complainant alleges the Respondent's salesperson misled the Complainant when the timeshare was purchased in March 2019 and told the Complainant there would be no additional fees. The Complainant has attempted to make a reservation and all bookings require additional fees. When the Complainant did make a booking, the Complainant had to pay additional fees in the amount of \$4,700 for the booking. There have been several issues with the Respondent over the years. The Complainant stated the salesperson repeatedly misrepresented the terms of the timeshare. Several of the incentives were never provided to the Complainant. The Complainant alleges the Respondent misrepresented and "conned" the Complainant. The Complainant has never been able to use the unit and wants to cancel the contract with the Respondent.

The Respondent provided a response and stated the Complainant has previously requested a cancellation of the contract directly from the Respondent. The Respondent refused to cancel the contract. However, due to the delinquency on the Complainant's account, the Respondent has cancelled the contract due to the Complainant's default. There will be no refund issued and the Complainant will no longer have any further contractual obligations. The Complainant can review the terms of the Contract for Purchase and Sale concerning the details of default and that no monies will be refunded because they serve as liquidated damages under the terms of the contract.

The Complainant's contract has been cancelled due to a breach of contract and default of the mortgage by the Complainant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

55. 2020076601

Opened: 11/2/2020

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

The Complainant is an Ohio resident and timeshare owner and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant alleges the Respondent made several misrepresentations during the sales presentation of the timeshare property. The Complainant requests a rescission of the contract and a refund of all monies paid to the Respondent.

The Respondent provided a response and stated the Complainant purchased the timeshare in June 2015. The Complainant has submitted the same request to the Respondent and the Respondent has refused to cancel the contract or refund any monies. The Respondent's position remains unchanged and the Respondent cannot cancel the contract or refund any monies paid by the Complainant.

The contractual and statutory rescission period has expired. Also, the Complainant can no longer bring a private right of action for rescission of the contract against the Respondent because the Complainant entered into the contract over four (4) years ago and this exceeds the statute of limitations period to bring a private right of action pursuant to Tenn. Code Ann. § 66-32-119.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

56. 2020076831

Opened: 11/2/2020

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

Complainant is an Illinois resident and timeshare owner and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant has been attempting to have the timeshare contract cancelled by the Respondent

since the purchase on June 19, 2019. The Complainant has sent multiple requests to the Respondent to cancel the contract.

The Respondent provided a response and stated the Complainant has attempted to return the property to the Respondent, however, the Respondent has refused to accept the return. The Respondent did not engage in any improper actions or wrongdoing during the sale of the timeshare. The Respondent's records indicate the Complainant has been disputing the purchase since purchasing the timeshare, however, did not cancel within the contractual and statutory rescission period. Also, the Complainant never sent a request directly to the Respondent's Legacy Program for timeshare owner assistance. Since the Complainant has paid the mortgage in full and is current on maintenance and taxes, the Complainant can contact the Respondent's Legacy Program on deeding the property back to the Respondent. This does not guarantee that the Complainant will be able to deed the property back to the Respondent, however, the Respondent has previously recommended the Complainant contact the representatives of the Legacy Program to find out if this is a viable option for the Complainant.

The parties are attempting to resolve this matter and the Respondent is willing to have the Complainant deed back the property through the Respondent's "Legacy Program."

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

57. 2020071791

Opened: 11/10/2020

First Licensed: 6/27/2014

Expires: 1/21/2021

Type of License: Principal Broker

History: None

The complaint was administratively opened against the Respondent due to an advertising violation by an Affiliate Broker. The Respondent is a licensed Tennessee Principal Broker.

The Respondent was issued an agreed citation for an advertising violation concerning the Respondent failing to properly supervise an Affiliate Broker concerning an advertisement.

The Respondent failed to respond to the Agreed Citation and failed to respond to the complaint.

Recommendation: Authorize a contested case proceeding and assess a civil penalty of \$1,500 for failure to respond to the complaint pursuant to Tenn. Code Ann. § 62-13-313(2) and the advertising violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b).

Commission Decision: The Commission voted to issue a Consent Order with a \$2000.00

civil penalty for the advertising violation and for failure to respond to a complaint and to require the Respondent to take the Principal Broker Core Class within 180 days of the execution of the Consent Order with the class not counting toward required Continuing Education for licensure.

58. 2020081211

Opened: 11/10/2020

First Licensed: 1/13/2020

Expires: 1/12/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee licensed real estate broker for timeshare sales. Respondent is a Tennessee licensed affiliate broker.

Complainant alleges the Respondent defamed the Complainant after the Complainant left the employment of the Complainant's company.

Respondent provided a response to the complaint and states that Respondent is in the process of retiring Respondent's real estate license and has filed an Order of Protection against Complainant due to harassment.

This is a dispute between the parties and there is no evidence the Respondent has violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

59. 2020082821

Opened: 11/10/2020

First Licensed: 8/20/2018

Expires: 8/19/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent and her late husband entered into a Purchase and Sale Agreement for the purchase of the property on June 24, 2020 and the closing date was set for August 7, 2020. The Complainant had a different agent, but predominantly dealt with the Respondent who showed all the homes and answered all the questions concerning the properties. The Complainant's agent would attend some of the showings and the Complainant was not always clear about each of their roles since the Respondent was the Complainant's primary contact. The transaction was stressful, frustrating, confusing, and unprofessional. The Complainant's real estate

agent did all the paperwork and provided the Purchase and Sale Agreement to the Complainant. The Complainant had to communicate with two people. The Sellers breached the Purchase and Sale Agreement. The contract provided that all window treatments and hardware to remain as part of the property. The Seller removed all the downstairs window treatments (eight windows and one door). The Complainant asked to be compensated by the Seller, but the Complainant's agent and the Respondent did not take any action. The Respondent stated that the Complainant to refuse to close but then the Complainant probably would not receive the return of the earnest money. The Respondent allowed the Sellers to breach the contract. The Respondent was asked several times for a copy of the termite bond on the property and never provided the information to the Complainant. The Complainant's agent and the Respondent brought a plumber to quote on running a gas line to the fireplace. The plumber was contacted five times by voicemail and text to schedule the work, but never responded. The quote was received from other plumbers and they were significantly higher. The Complainant stated this was very suspicious. At the final walk through, the Complainant discovered that the showerhead in the master bathroom was leaking. The Respondent agreed on that day to have the plumber make the repair even if it was on the closing date. The last text from the Complainant was on August 24, 2020, but the Respondent never provided a response and never had the plumbing issue fixed.

The Respondent provided a response to the complaint. All the window treatments were not removed and the blinds on the large window in the front of the home were present during the final walkthrough. The window treatments were removed by the Seller to paint the interior of the home after the Complainant's first showing and were not reinstalled. The window treatments were not present during any of the Complainant's subsequent showings. The Respondent could not have done anything to prevent the removal of the window treatments and could not have forced the Sellers to remedy the situation. The Complainant's request to replace or purchase window treatments was made to the Sellers by the Respondent and his partner, the Complainant's original agent. The request was denied by the Seller. The Respondent did not advise the Complainant that the Complainant would lose the earnest money if the Complainant refused to close on the property. The Respondent did state it was possible. This was due to the issue being addressed by the Complainant only days before the closing. The whether the blinds were present when the contract was written was not certain. The Complainant decided to move forward with the purchase of the home. The Complainant's agent requested the Respondent to verify there was a previous termite contract on the property. There was a misunderstanding when the Buyer requested an actual written copy of the previous owner's contract, which is not required to be presented. There was also a misunderstanding by the Complainant that the previous owner's termite contract would negate the current termite inspection and clear letter that was performed and received before the Complainant purchased the home. The Respondent did recommend a licensed plumber and obtained two additional quotes from other companies for comparison purposes, however, there was nothing nefarious about one of the plumbers not providing a quote. There was no interest by the Respondent in the plumber's employment and the Respondent did not provide any false statements regarding any of the plumbers' estimates. The Respondent and the Complainant's original real estate agent did not have any connection to any of the plumbers or the plumbing companies. The Respondent advised the Complainant during the final walk through that the issue concerning the leak in the master bedroom shower head would be fixed prior to the closing. If the Respondent planned on insisting this issue be fixed by the Seller prior to closing, it would have resulted in a delay in the closing. The Respondent did offer to arrange for a licensed plumber to

meet the Complainant at the property after the scheduled closing and did not insist on personally having the repairs done.

There is not sufficient evidence to indicate the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

60. 2020082791

Opened: 11/2/2020

First Licensed: 3/9/2016

Expires: 3/8/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and Respondent is a licensed Tennessee Real Estate agent.

This complaint is related to the previous complaint. The Complainant alleges that Respondent was unprofessional and assigned many showings and other details to another agent. The Respondent had been the Complainant's original real estate agent. As a result, the Complainant believed the other agent was the Complainant's actual real estate agent. Complainant also alleges that the Seller could breach the Purchase and Sales Agreement by removing the window treatments and some of the hardware from the property and the Respondent did not take any action. Complainant further alleges that Complainant was never provided with a copy of the termite letter for the property though it was requested many times. Complainant found out two weeks after closing that there was a termite contract for the property.

Respondent provided a response to the complaint and the Seller had removed the window treatments following the first showing to paint the home and they were not replaced. Respondent further states that it would have been impossible for Respondent to prevent the window treatments and hardware from being removed.

Respondent further states Respondent verified that there was a current termite contract on the property and the Seller is not obligated to provide a copy of that contract. Respondent states this was likely a misunderstanding by the Complainant that the Seller's previous termite contract does not negate the current termite inspection and clear letter.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

61. 2020082851

Opened: 11/10/2020

First Licensed: 10/10/2005

Expires: 10/9/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent texted the Complainant's teammate on October 14, 2020 to show a property that was "Coming Soon." The teammate informed the Respondent it was against the Clear Cooperation Rule to show a listing that is in "Coming Soon" status. The Respondent indicated there would be an offer sight unseen, with a contingency to see the property after a binding contract was formed, however there was no further response. On October 15, 2020, the Respondent arrived at the property in question with two other women and told the handyman working on the property that the Respondent had spoken with the Complainant and the Complainant had provided permission to enter the premises and view the property. The Respondent also questioned the handyman about what type of work was being done on the property. The handyman did not know the property could not be shown and allowed the Respondent to tour the property. To verify the Respondent as the woman that visited the property on October 15, 2020, the Complainant showed the handyman a picture of the Respondent and the handyman stated this was the individual that stated she had permission to enter the premises and tour the home. On October 16, 2020, the Respondent texted the Complainant and stated her clients were no longer interested in the home. The Complainant alleges the Respondent has engaged in unethical behavior.

The Respondent provided a response and stated the Respondent did text the Complainant on October 14, 2020 to ask about the property and was told it could not be shown until all the work to the home was completed. The Respondent mentioned submitting an offer contingent upon the Respondent's client viewing the property. On October 15, 2020, the Respondent, her partner, and the client drove by the property to see it from the outside and determine the location of the unit within the complex. The handyman and his wife were leaving the property and the Respondent asked if the work was done and he advised the work had been completed and invited the Respondent to come see the unit and the work that had been completed. The Respondent never stated the Complainant had given the Respondent permission to enter and see the property. The Respondent was not aware the Clear Cooperation Rule had been put into place for the property. The Respondent has been a licensed real estate agent for the past 34 years and has never had a complaint filed against her.

There is not sufficient evidence to indicate the Respondent has violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

62. 2020083441 (E-213826)

Opened: 11/10/2020

First Licensed: 5/21/1987

Expires: 9/7/2022

Type of License: Real Estate Broker

History: None

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

The Complainant stated there was a contract to close on their home on September 18, 2020 and the communications with the Respondent were unprofessional and limited during the entire transaction. The Complainant had to request information from the Respondent on several occasions because the information was pertinent to the closing. The Respondent did not stay in contact with the Buyer's real estate agent and this resulted in the inability to close the transaction. Two official extensions were filed beyond the September 18, 2020 closing date with no indication from the Respondent or the Buyer's agent that the transaction would not close. Both agents assured the Complainant multiple times that the transaction would close. The Complainant asked the Respondent multiple times for updates on the transaction and the closing and the Respondent indicated that he had heard nothing and later in the day he would check with the Buyer's agent. The Complainant had loaded all their possessions on a moving truck on September 17, 2020 and all their items remained on the moving truck until September 29, 2020 when the parties decided they had enough of the situation and indicated to both parties the Complainant was no longer interested in closing because there was no longer an official contract extension in place to assure the Complainant with a definite closing date. The Respondent was not doing his due diligence to ensure that the transaction would close in a timely manner. When the Complainant asked for information regarding the earnest money because the parties were out of contract and the property did not close. The Respondent refused to provide the information. Also, during this period, the Respondent had left the real estate firm. The Complainant had to contact the Principal Broker and the Principal Broker was able to assist with the earnest monies. The Respondent caused the Complainant to lose the transaction and waste \$1,000 in moving costs, clothing expenses, food, etc. The house the Complainant was supposed to purchase was almost lost and although the Complainant was able to salvage the deal in the end, the purchase price had been increased by \$12,000. The Complainant's mother died in the middle of the transaction and this caused added stress for the Complainant. After the contract had expired, the Complainant hired a different real estate agent they trusted who was able to sell the Complainant's home in two days. The Respondent had listed the home for almost two months with only a few serious inquiries. At one point, the Respondent was frustrated with possibly losing his commission on the sale and sent a text to the Complainant in response to a prior text from the Complainant and stated "whatever" to the Complainant and accused the Complainant's husband of bullying the Respondent when the Complainant's husband was merely asking questions and requesting information.

The Respondent provided a response and stated the closing was subject to financing. The Respondent met all Seller deadlines and received the clearance to close. The Complainant gave a five-star rating on the Respondent's survey and stated in writing they would recommend the Respondent. The Respondent's role as the listing agent had been properly and appropriately

completed and the only item remaining was a COVID-19 letter requested by the lender. The Respondent was in constant communication with the Complainant and communicated by both e-mail, texts, and telephone. There were thirty-five showings in 30 days and there was a contract within three days from the listing date. The Complainant contacted the title company and the Buyer's agent directly on multiple occasions. The Complainant threatened to contact the HR department of the Buyer's employer to obtain the COVID-19 letter. The Complainant wanted the Respondent to contact the Buyer's loan officer for pertinent information on the Buyer's file. The Respondent was in constant contact with the Buyer's agent and communicated throughout the transaction regarding the missing COVID-19 letter. There were two official extensions filed beyond September 18, 2020 with no indication that the property would not close. The Complainant called everyone possible and accused them of not acting in good faith in the transaction. The Respondent was in touch with the Buyer's agent and the loan officer by e-mail requesting feedback on behalf of the Complainant. There were numerous texts and e-mails. The Complainant demanded the loan officer or the Respondent to pay a financial penalty to cover the costs of moving out of the house early. The last extension given was through September 24, 2020 and the Complainant demanded a financial settlement in lieu of closing the loan. The parties were assured the transaction would close. The Respondent communicated with the Buyer's agent regularly and were hoping for a quick closing once the lender received the required COVID-19 form. On September 24, 2020, the letter from the HR department was received by the underwriter and parties had hoped to close on that Friday. The Complainant expressed that the parties only had until 5 pm for loan approval or the Complainants would withdraw the contract. The Respondent asked the lender for updates on multiple occasions and the lender indicated they had heard nothing. The Respondent conducted all necessary due diligence. Both homes closing documents were prepared and ready to be closed. The Buyer's agent failed to have all the proper documentation to close in a timely manner. The Complainant did not ask about earnest money. Instead, the Complainants repeatedly asked for a financial penalty to close on September 25, 2020. The Complainant stated they would close only if they received a \$300 per day penalty plus a one-time fee of \$400 to cover expenses. The final decision was needed by 5 pm or they would cancel the contract. The Respondent had always advised the Complainants that the earnest money disbursements were made by the Respondent's Principal Broker. The Complainant never advised the Respondent of the cancellation of contract and contacted the Buyer's agent, lender, and title company to inform them of the cancellation of the contract. The Respondent did not leave the firm until after the expiration of the contract. The reason for the \$12,000 increase in price for the home the Complainant was purchasing was due to the COVID-19 delays and lumber costs increasing by 70% since March 2020. The Respondent was also frustrated with the transaction and there was constant pressure for all parties. The Respondent was upset the Complainant's showed total disrespect to all parties throughout the entire process. There was no consideration by the Complainants for all the time the Respondent spent on this transaction. The earnest money was released to the Complainant in a timely manner.

This matter is a dispute between the parties and there is no evidence the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

63. 2020083811

Opened: 11/10/2020

First Licensed: 11/17/2006

Expires: 11/16/2022

Type of License: Affiliate Broker

History: None

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

The Complainant filed a complaint against the Respondent because the Respondent used a real estate license to advertise long term leases on Realtracs® and secured two leases with long term tenants for rental properties that the Complainant owned until October 5, 2020. The Complainant alleges the Respondent failed to account for and remit the trust monies, within a reasonable time, in the Respondent's possession from the long-term leases which were paid by tenants and belonged to the Complainant. The Respondent was accepting a management fee on the long-term rental income directly from the client and not passing this through the Respondent's broker. When the Complainant terminated the contract for management service, the Respondent did not obey the Complainant's instructions and continued to collect and accept rents/trust money without authorization from the Complainant. The Complainant alleges the Respondent failed to uphold the duty of loyalty to the client and continues to withhold \$14,190 in trust money collected on behalf of the Complainant for rents. This amount exceeds the entire management fee of the lease agreements. The Respondent's conduct constitutes improper and dishonest dealings with the Complainant. The Complainant had entered into an exclusive management agreement with the Respondent and another individual who were a registered vacation lodging service in Tennessee for the sole purpose of acting as a short-term rental agent. In March 2020, when the short-term rental market evaporated, the Respondent and partner began to pitch these long-term rentals to clients. The Respondent began to list units for lease on multiple sites including Realtracs® in April and May 2020. The Respondent obtained two long term tenants for the Complainant's property with move in dates of August 2020 to May and early June 2021. The lease agreements were signed between the tenants and the Complainant. The terms of the new management company for long-term rentals they were to collect \$8,495 total in rent each month from the tenants, which would be deducted at 10% per month before remitting the remaining amounts to the Complainant. If the management services had not been terminated due to the sale of the properties, the remaining compensation for October 5, 2020 to the lease expiration would be \$7,641. The Respondent is still withholding the monies owed to the Complainant for the entire month of September. On September 14, 2020, the Complainant notified the Respondent the property as being sold on October 5, 2020 and the management agreement was being terminated on September 30, 2020. The Complainant told the Respondent not to collect any more rent from the tenants because the Complainant would collect the October rent to give a pro-rated rent to the Buyer at closing. Despite the Complainant's instructions, the Respondent collected \$5,695.02 from some of the tenants for their October rent. The Complainant has still not received any of the collected rent money from the Respondent. The Complainant has contacted the Respondent on more than three occasions requesting payment of the net rental income for September and the October rent, but the Respondent has not remitted any amounts to the Complainant. The

Respondent has not responded in any manner by way of an e-mail or return phone call. The Complainant also contacted the broker to explain the situation, however, the broker has not returned the Complainant's telephone call.

The Respondent provided a response and stated there is a dispute over fees earned in the short-term rental. The Respondent claims the Complainant has filed a false complaint to use as leverage to force the Respondent to settle and forgive the fees earned and owed by the Respondent. The Respondent was hired to manage rentals and traditionally represented clients in obtaining short-term renters. During the pandemic, short-term rentals came to a sudden stop. The Respondent approached the Complainant about possibly renting the two units as long-term rentals. The two units were listed on Realtracs® after being asked to do so by the Respondent's wife. The units were also listed on over 90 additional rental websites. The Respondent was instructed to procure only 12-month rentals for both units. The Respondent's wife approved the tenants and confirmed the rent and deposit would be paid to the Respondent's firm. In early September 2020, the Respondent's wife advised the units were under contract to be sold and a closing date had been confirmed. The Respondent's wife also asked for an itemized statement of the amounts owed to the Respondent. After the itemized statement was provide to the Complainant, the Complainant's wife responded and stated they did not agree to the amount owed to the Respondent and made a counteroffer. The Respondent disputed the amount with the Complainant and his wife. The next letter received by the Respondent was from the Complainant's attorney stating the Complainants disputed the offer of amounts owed and offered only half of what the original offer by the Complainant. Thereafter, the Respondent also retained an attorney to represent the Respondent. The Respondent has released the deposit monies to the Complainant through the closing attorney and the Respondent has been instructed to hold all other funds pending a settlement and the Respondent has retained all funds pending settlement. The Respondent has been a licensed real estate agent for over 14 years and never had a complaint filed with the Commission. The Respondent is a co-founder of the vacation lodging service. The Respondent is an owner and employee of the vacation lodging service and this matter has nothing to do with the Respondent's real estate license.

The Complainant and the Respondent provided a follow-up communication indicating the parties have resolved all the issues.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

64. 2020083821

Opened: 11/10/2020

First Licensed: 4/19/2007

Expires: 4/18/2021

Type of License: Affiliate Broker

History: None

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

This complaint is related to the previous complaint and involves identical allegations. The Complainant filed a complaint against the Respondent because the Respondent used a real estate license to advertise long term leases on Realtracs® and secured two leases with long term tenants for rental properties that the Complainant owned until October 5, 2020. The Respondent failed to account within a reasonable time for and remit the trust monies in the Respondent's possession from the long-term leases which were paid by tenants and belong to the Complainant. The Respondent was accepting a management fee on the long-term rental income directly from the client and not passing this through the Respondent's broker. When the Complainant terminated the contract for management service, the Respondent did not obey the Complainant's instructions and continued to collect and accept rents/trust money without authorization from the Complainant. The Complainant alleges the Respondent failed to uphold the duty of loyalty to the client and continues to do so by continuing to withhold \$14,190 in trust money collected on behalf of the Complainant for tenant rents. This amount exceeds the entire management fee of the lease agreements. The Respondent's conduct constitutes improper and dishonest dealings with the Complainant. The Complainant had entered into an exclusive management agreement with the Respondent and another individual who were a registered vacation lodging service in Tennessee for the sole purpose of acting as a short-term rental agent. In March 2020, when the short-term rental market evaporated, the Respondent and partner began to pitch long-term rentals to clients. The Respondent began to list units for lease on multiple sites including Realtracs® in April and May 2020. The Respondent obtained two long term tenants for the Complainant's property with move in dates of August 2020 to May and early June 2021. The lease agreements were signed between the tenants and the Complainant. The terms of the new management company for long-term rentals they were to collect \$8,495 total in rent each month from the tenants, which would be deducted at 10% per month before remitting the remaining amounts to the Complainant. If the management services had not been terminated due to the sale of the properties, the remaining compensation for October 5, 2020 to the lease expiration would be \$7,641. The Respondent is still withholding the monies owed to the Complainant for the entire month of September. On September 14, 2020, the Complainant notified the Respondent the property as being sold on October 5, 2020 and the management agreement was being terminated on September 30, 2020. The Complainant told the Respondent not to collect any more rent from the tenants because the Complainant would collect the October rent to give a pro-rated rent to the Buyer at closing. Despite the Complainant's instructions, the Respondent collected \$5,695.02 from some of the tenants for their October rent. The Complainant has still not received any of the collected rent money from the Respondent. The Complainant has contacted the Respondent on more than three occasions requesting payment of the net rental income for September and the October rent, but the Respondent has not remitted any amounts to the Complainant. The Respondent has not responded in any manner by way of an e-mail or return phone call. The Complainant also contacted the broker to explain the situation, however, the broker has not returned the Complainant's telephone call.

The Respondent provided a response and stated there is a dispute over fees earned in the short-term rental. The Respondent claims the Complainant has filed a false complaint to use as leverage to force the Respondent to settle and forgive the fees earned and owed by the Respondent. The Respondent was hired to manage rentals and traditionally represented clients in obtaining short-term rentals. During the pandemic, short-term rentals came to a sudden stop. The Respondent approached the Complainant about possibly renting the two units as long-term rentals. The two

units were listed on Realtracs® after being asked to do so by the Respondent's wife. The units were also listed on over 90 additional rental websites. The Respondent was instructed to procure only 12-month rentals for both units. The Respondent's wife approved the tenants and confirmed the rent and deposit would be paid to the Respondent's firm. In early September 2020, the Respondent's wife advised the units were under contract to be sold and a closing date had been confirmed. The Respondent's wife also asked for an itemized statement of the amounts owed to the Respondent. After the itemized statement was provide to the Complainant, the Complainant's wife responded and stated they did not agree to the amount owed to the Respondent and made a counteroffer. The Respondent disputed the amount with the Complainant and his wife. The next letter received by the Respondent was from the Complainant's attorney stating the Complainants disputed the offer of amounts owed and offered only half of what the original offer by the Complainant. Thereafter, the Respondent also retained an attorney to represent the Respondent. The Respondent has released the deposit monies to the Complainant through the closing attorney and the Respondent has been instructed to hold all other funds pending a settlement and the Respondent has retained all funds pending settlement. The Respondent has been a licensed real estate agent for over 14 years and never had a complaint filed with the Commission. The Respondent is a co-founder of the vacation lodging service. The Respondent is an owner and employee of the vacation lodging service and this matter has nothing to do with the Respondent's real estate license.

This complaint is related to the previous complaint. The Complainant and the Respondent provided a follow-up communication indicating the parties have resolved all the issues.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

65. 2020084151

Opened: 11/10/2020

First Licensed: 12/7/2007

Expires: 12/5/2021

Type of License: Affiliate Broker

History: None

The Complainant is a Florida resident and the Respondent is a Tennessee Affiliate Broker. The Complainant alleges the Respondent refused to sell a home to the Complainant. The Complainant alleges the Respondent initially made them feel welcome when they met and later the Complainant discovered the Respondent had "background checked" the Complainant without consent and later refused to sell the property to the Complainant. The Complainant was going to pay for the home by wire transfer and the only thing the Respondent should have been concerned about was whether the wire transfer cleared.

The Respondent provided a response and stated the Complainant contacted them about a property listed by the Respondent. The Respondent advised the property was under contract and would happy to help to find another property. The Complainant thanked the Respondent. A week letter the Complainant contacted the Respondent and meeting was arranged for show several properties. The Complainant met with the Respondent and requested to look at several properties in the

\$800,000 to \$3,000,0000 range. The Complainant indicated to the Respondent the Complainant had a large inheritance from the Complainant's grandfather. The Complainant also told the Respondent that on the way to the appointment with the Respondent, the Complainant had stopped at a bank machine and the bank machine "ate" the ATM card and the Complainant had no money. Also, the Complainant contacted some family or friends and none of them could send any money. The Complainant indicated he may not have enough gas to meet the Respondent at the next showing. The Respondent followed the Complainant to get gas and took the Complainant and his partner to dinner. The Complainant also asked the Respondent to send him cash through CashApp. The Respondent refused. The Respondent became suspicious and did a quick Internet search on the Complainant and found out the Complainant had been charged with fraud in another state. The Respondent discontinued any further contact with the Complainant and notified the authorities of what had transpired because the Respondent was concerned about the welfare of the property owners of the last property shown to the Complainant and his partner. The Respondent never did a background check on the Complainant.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

66. 2020085811

Opened: 11/10/2020

First Licensed: 8/9/2017

Expires: 8/8/2021

Type of License: Affiliate Broker

History: None

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

This complaint is related to the previous complaint and involves identical allegations. The Complainant came to Tennessee to purchase a home and refused to sell the property to the Complainant.

The Respondent provided a response and stated the Complainant contacted them about a property listed by the Respondent. The Respondent advised the property was under contract and would happy to help to find another property. The Complainant thanked the Respondent. A week later the Complainant met with the Respondent and requested to look at several properties in the \$800,000 to \$3,000,0000 range. The Complainant indicated to the Respondent there was a large

inheritance from the Complainant's grandfather. The Complainant indicated to the Respondent that the bank machine ate the ATM card and the Complainant had no money. None of the Complainant's family or friends could send any money. The Complainant indicated he may not have enough gas to get to the next showing. The Respondent followed the Complainant to get gas and also took the Complainant and his partner to dinner. The Complainant asked the Respondent to send him cash through CashApp. The Respondent refused. The Respondent became suspicious and did a quick Internet search on the Complainant and found out the Complainant had been charged with fraud. The Respondent discontinued any further contact with the Complainant and notified the authorities of what had transpired because the Respondent was concerned about the welfare of the property owners of the last property that had been shown to the Complainant and his partner. The Respondent did not do a background check on the Complainant.

This complaint is a duplicate complaint as the previous complaint. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

67. 2020085351

Opened: 11/10/2020

First Licensed: 10/27/2015

Expires: 10/26/2021

Type of License: Affiliate Broker

History: None

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

The Complainant went to a showing on October 16, 2020. The home had been listed the same morning. The Complainant was advised there was already an offer on the property, so the Complainant decided to make an offer above the asking price. The asking price was \$795,000 and the Complainant offered \$805,000. The Complainant's real estate agent relayed the offer. The Sellers declined the Complainant's offer. The Complainant was told the Sellers had accepted a different offer. The Complainant was not provided a counteroffer. The other offer had been the highest offer of \$825,000 and the Complainant was not even given an opportunity to give another offer.

The Respondent provided a response and stated there was another offer submitted. The Respondent presented both offers to the Respondent's client and the Sellers accepted the higher offer. Also, the Complainant filing the complaint was not the offeree or a party to the contract and the contract is solely in the name of the fiancé.

There is no evidence the Respondent violated the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

68. 2020085411

Opened: 11/10/2020

First Licensed: 7/17/2020

Expires: 7/16/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent is offering a \$300 gift card to any individual who buys, sells or builds a home with the Respondent in a certain area in Tennessee. The Respondent's ad states the gift will be given at the closing table and will be an At Home or an Amazon gift card.

The Respondent provided a response and stated the Respondent has correctly used the Gifts and Prizes Rule 1260-02-.33. The Respondent has not violated any TREC law or any of the NAR Code of Ethics or RESPA. The Respondent's Principal Broker also provided a response and stated the Respondent is correctly providing a gift under the TREC rules and obtained the Principal Broker's permission to run the advertisement.

The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission voted to authorize a contested case hearing and issue a Consent Order with a civil penalty in the amount of \$1000.00 for violation of Tenn. Code Ann. §62-13-302(b).

69. 2020085681

Opened: 11/10/2020

First Licensed: 1/3/2004

Expires: 9/24/2021

Type of License: Principal Broker

History: None

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

The Complainant closed on her first home on July 20, 2020. The Complainant's boyfriend's mother was the Complainant's real estate agent. Once the Complainant signed all the documents at the closing, the Complainant's boyfriend's mother asked the title agent to get another form for

the Complainant to sign, but the Complainant was not sure what form the Complainant was signing. The title agent stated the Complainant was the only one on the loan so there was no need for the form, but the agent insisted and pressured the Complainant to sign the document which was a quit claim deed. The Complainant was not aware that the Complainant should have retained an attorney. The Complainant trusted the real estate agent. Now, the Complainant has been locked out of her house and there are security alarms and cameras that were installed around the home. The Complainant also no longer has access to the home. The Complainant's ex-boyfriend was just released from jail and had managed tricked the Complainant out of the home because the quitclaim deed also lists the boyfriend on the deed.

The Respondent provided a response and stated the Complainant is the disgruntled ex-girlfriend of her son after a break-up following a six-year relationship with her son. The Complainant is not correctly recounting the facts in the complaint. Both the Respondent's son and the Complainant were supposed to be listed on the title because both parties were on the Purchase and Sale Agreement. The Complainant was never pressured or forced to sign any document. The attorney at the closing drew up the document to correct the title and explained to the Complainant the quit claim deed would add the Respondent's son to the title as stated in the contract. The attorney was present throughout the closing and explained all paperwork to the Complainant and the Respondent's son. Both parties have ownership of the home and the Respondent's son no longer lives in the home. The Respondent's son has agreed to allow the Complainant to keep the home and the Complainant will have to buy out the son's ownership interest to remove his name from the deed and keep the home. The Respondent's son agrees to either allow her to refinance the loan and buy his interest out or sell the home and proceeds will be divided accordingly. The Respondent's son has agreed to allow the Complainant to refinance and buy out his interest or sell the home and the proceeds can be divided accordingly. The Complainant has refused. Also, the Complainant has not paid the mortgage on the home and is unable to live in the home.

This is a contractual dispute between the parties. There is no evidence the Respondent has violated the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

70. 2020082201

Opened: 11/10/2020

First Licensed: 8/23/2011

Expires: 8/22/2021

Type of License: Real Estate Firm

History: None

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

The Complainant alleges the tenants reported a leak to the property management company three years ago. The leak was from the upstairs bathroom and had been leaking through the ceiling to

the downstairs. A plumber was sent out to the property who advised the tub and the toilet were leaking and even cut a hole in the ceiling downstairs to inspect and said the leak is due to the tenants not using the shower curtain properly. The property management company never had the water damage repaired or the hole in the ceiling patched and never attempted to make a claim on the homeowner's insurance policy. Now, the subflooring upstairs has rotted and per the contract the property managers were to be supervising repairs to maintain the home. Per the lease, the tenants were neglectful and should be responsible for these repairs. The property management company did not enforce the lease as agreed upon in the contract with the Complainant. The Complainant alleges the costs were all charged to the Complainant for the repairs. There has been no inspection on the Complainant's home since March 2017 and it states in the lease that the property manager were to conduct inspections every six months and now the insurance coverage will not cover the cost because it is no longer incidental damage. The Complainant met with the property manager and sorted it all out and offered to split the cost three ways between the Complainant, the tenant, and the property management company. The leak occurred three years ago, and the Complainant wanted to attempt to file an insurance claim. The property management company is also allowing the tenants to smoke in the Complainant's garage and the lease does not permit smoking in the home and the property manager is not enforcing the terms of the lease.

The Respondent provided a response and stated all reports of water damage were addressed by the Respondent. The Respondent was no negligent in addressing what was reported concerning water. The owner was also notified when the management team had stopped doing six-month inspections. The repair being mentioned could not be seen by a simple walk through of the property. The damage was only noticed when the tenant made a complaint and the tile was removed. The Complainant has threatened police involvement and contacting an attorney. The Respondent did not treat the Complainant with disrespect. The Respondent only involved their attorney when the Complainant threatened legal action.

This is a contractual dispute between the parties. There is insufficient evidence the Respondent has violated the laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

71. 2020083121

Opened: 11/10/2020

First Licensed: 12/7/1993

Expires: 11/22/2020

Type of License: Real Estate Firm

History: None

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

Complainant alleges the \$1,500 was sent through PayPal on August 19, 2019 to the Respondent for escrow funds and later visited Tennessee and provided two additional money orders for escrow

funds in the amount of \$1,000 and \$1,900. The Respondent refuses to return the Complainant's money.

The Respondent provided a response and stated the Complainant paid the Respondent a total of \$3,400 plus an extra \$100.00. The Respondent never refused to refund the Complainant. The Complainant demanded the return of the payment using PayPal and Respondent was unable to accommodate this request. The Complainant refused to provide an address to send a refund check. Later, the Complainant agreed to accept a cashier's check and provided the Respondent with a mailing address.

The parties have resolved the issue and the Complainant has received a full refund.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

72. 2020083261

Opened: 11/10/2020

First Licensed: 7/8/2011

Expires: 7/7/2021

Type of License: Real Estate Firm

History: None

The Complainant entered a property management contract with the Respondent on May 22, 2020. The Complainant alleges the Respondent is the property manager and the Respondent was attempting to rent a newly renovated home. The Complainant wanted the Respondent to rent the home and instructed them no animals were to be allowed. The Complainant had at least three calls per day for the rental home and referred those calls to the Respondent. The Complainant wanted the Respondent to put a "For Rent" sign in the yard and the Respondent never put the sign in the yard. The Complainant also asked them to install doors and they sent a maintenance crew to do the installation. The storm door that the Complainant had purchased was too big. The Complainant stated the Respondent charged the Complainant for unnecessary repairs. The Complainant claims the Respondent did not have the Complainant's authorization or permission to make the additional repairs. The Complainant did not want the tenants to use the washer and dryer. The Complainant also claims the Respondent broke into a storage shed on the property and stole everything. This unit was not allowed to be accessed by the tenants. The Complainant called the property manager several times and the Respondent would not return the Complainant's telephone calls.

Respondent provided a response and stated the Complainant contacted the Respondent on April 20, 2020 regarding the management of a home. The Respondent spoke to the Complainant at length and set up a time to meet two days later. The Complainant signed the property management agreement on May 19, 2020 and agreed to allow pets in the home. In fact, the box on the form was checked off to allow pets. The home is only 540 square feet and there were several things that needed to be repaired. A new storm door and bathroom door needed to be installed, the garbage disposal needed to be replaced, and some blinds needed to be installed. The Respondent agreed to

have these items completed along with any additional repairs. The home was full of furniture and the Complainant was to clear out the home and let the Respondent know when it was ready to be rented. A couple of months later, the home still had not been cleared out. The Respondent could not list the home for rent until it was cleared out and the Respondent could not even provide an occupancy date for a new tenant. The Respondent had staff check the property on multiple occasions and it was finally almost fully cleared out around August 2020. The Respondent checked with the Complainant and the Complainant indicated some items would be left in the home so when visiting the area, he had somewhere to sit. The rent the Complainant wanted for the property was too high and those that inquired about the home were not interested once they were told the rental amount. The home is a two-bedroom home and the second bedroom can only fit a twin bed and the washer and dryer connections are also in the second bedroom. There is a shed on the property for storage, but it was not empty, and the Complainant did not want anyone to use it and no key was available. The Respondent had to install a dryer vent because there was no venting for the dryer, and this was a safety hazard. The Respondent did change the locks and the agreement provides the Respondent can change the locks at their discretion. The Complainant even went to the home after it had been rented to meet the tenants because he “didn’t know what kind of people you put in there, so I had to find out myself.” The Respondent did not replace the garbage disposal but repaired it because it was not working, and this is specifically stated on the invoice to the Complainant. The blinds that were left at the home were all the wrong size and did not fit any of the windows and did not have all the brackets. There was \$30 spent on new blinds and \$20 in hardware pieces. The Respondent installed the missing smoke detector and put a battery in another. The law requires that all smoke detectors be 10 years old or less and these were older. The Complainant was charged \$6 for three 9V batteries. There was trash that had to be hauled away and \$20 was charged to the Complainant. The Complainant finally moved all items and furniture out of the storage shed. The Respondent did not have a key and had nothing to do with anyone breaking into the shed. There were some tires that were left in the shed. The Complainant also refused to allow the tenant to use the storage space. The Complainant did not receive any rental monies because the first bill sent to the Complainant for making the property ready was more than the rent collected. The Respondent sent an itemized statement. The Respondent even went over the entire invoice line by line with the Complainant and each item was explained. The Complainant will be receiving rent for November. The storm door left by the Complainant was the wrong size and did not fit. The Respondent told the Complainant to return the storm door because it had not been installed. The bathroom and bedroom doors had to have casings installed. There were pieces of wood on all the sides, but no door would fit in the holes. The Respondent had to install three missing doors. The Complainant never stated there were to be no pets in the home and even signed an agreement stating pets were permitted. The Complainant was even asked specifically about allowing a pit bull and the Complainant approved it. An extra fee was paid for the dog. The Complainant did not state the washer and dryer could not be used. The Respondent sent an e-mail confirming the property had been rented and the move in date of the tenant. The Complainant does not check e-mails and even initially provided an incorrect e-mail to the Respondent. The Complainant did not provide the funds upfront for the repairs. The Respondent had to pay the expenses for the repairs on the front end and was reimbursed after the property had been rented and the rental amounts had been collected.

This is a contractual dispute between the parties. The Respondent has not violated any provisions of the Tennessee Real Estate License Act or the Rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

73. 2020078601

Opened: 11/10/2020

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

Complainant is an Ohio resident and timeshare owner and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant alleges the Respondent misled and misinformed the Complainant about the purchase of a timeshare. The Complainant purchased the timeshare on August 29, 2020. The Complainant was not comfortable with the interest rate being offered but the Respondent insisted and stated this was the way the financing worked. This was not true, and the Complainant later learned it could have been financed through their own bank. The Complainant put \$2,799 as a down payment. The Complainant was shown a three-bedroom unit and it was large and spacious. The Complainant was under the impression the timeshare purchased would be the same, however, after all the signing was completed, the Respondent showed the Complainant the unit layout and it was not the same unit. The Respondent did not sell the Complainant a three-bedroom unit but three single units on three floating weeks. The Complainant attempted to contact Westgate corporate offices multiple times to find out where and what to send to cancel the timeshare. The Complainant even called the loan officer. No one would answer the telephone. The Complainant did not know whether a letter had to be sent within 10 days or 15 days. The cancellation letter was sent on Friday, September 11th and it was 13 days after the signing of the contract which was still within the 15 days for cancellation. The letter was received by the Respondent on September 14th in Tennessee and on September 17th in Florida at the Respondent's corporate offices. The Complainant later learned it was necessary to return the tablet and the binder with all the timeshare information. The Complainant was told a refund would be issued within seven to 10 business days. The first monthly payment was not withdrawn from the Complainant's account, however, suddenly on September 28th, the first monthly payment of \$437.69 was withdrawn from the Complainant's bank account. The Complainant contacted the Respondent and the Respondent stated since the card was still on file, the charge was processed. However, the Complainant had been told the card was removed and the information for issuing a refund would be obtained from the Complainant at a later date. A refund was supposed to be issued but the Respondent never contacted the Complainant and the account was not canceled. The Complainant had to make numerous calls to the Respondent to correct the issue and obtain a refund and the Respondent continued to tell the Complainant incorrect information and mistruths.

The Respondent provided a response and stated the Complainant signed and initialed the "Acknowledgment of Representations" wherein the Complainant affirmed the property was toured in person or virtually prior to the purchase. The Respondent has reviewed all their records and the Complainant did not call within the rescission period to cancel the purchase. The first mention of

a cancellation was not until September 11, 2020, which was after the state-mandated rescission period. The Complainant stated the cancellation letter was sent September 11, 2020. The Respondent complied with all disclosure requirements and disclosed the mandatory rescission terms and periods in the Purchase Contract. In addition, the Complainant acknowledged by signature that the Complainant received copies of all documents related to the transaction at the time of the purchase. The Complainant signed a receipt stating all timeshare documents were received. The Purchase Contract is valid and legally binding, and the Complainant did not seek to cancel the Purchase Contract in accordance with the terms of rescission, therefore, the Complainant is not entitled to a cancellation or any refund of the account.

The contract was not cancelled within the contractual and statutory rescission period. The Complainant can still bring a private cause of action against the Respondent pursuant to Tenn. Code Ann. § 66-32-119.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

74. 2020079041

Opened: 11/10/2020

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

Complainant is a Florida resident and timeshare owner and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant is a timeshare owner and was invited to a presentation to see the new units the Respondent had built. The Complainant was told if they attended the presentation, the maintenance fees would be paid for the following year. The Complainant attended and got a text confirmation the Complainant would receive a credit for the maintenance fees. The Complainant has contacted the Respondent and the Respondent alleges there was a drawing and the Complainant did not win the drawing, so the maintenance fees would not be paid.

The Respondent provided a response and the Respondent denies the Complainant was guaranteed to receive the benefit of payment of the 2021 maintenance fees for attending a presentation. The Respondent did not engage in any improper actions, misrepresentations or wrongdoing concerning the gift for attending the presentation. The Respondent was running a contest for members to obtain free maintenance and taxes for a year, but it did not guarantee that the Complainant would be the winner. As a gesture of good will, the Respondent has agreed to refund the maintenance and taxes for 2021. The Respondent has provided a refund to the credit card on file used by the Complainant in the amount of \$687.44.

The parties have resolved the issue in this matter. There is insufficient evidence the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

75. 2020077281

Opened: 11/17/2020

First Licensed: 5/11/2016

Expires: 5/10/2022

Type of License: Principal Broker

History: None

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

The Complainant hired a property management company to manage a rental home approximately five years ago. Approximately two and half years ago, the tenants were changing and all that needed to be done was a cleaning. The Complainant thought about selling the property and all the comps were around \$110K to \$120K. The management company stated there was a new tenant and the property manager knew them personally and made a recommendation. The Complainant decided to continue to lease the property based on a ready and available tenant. Last Fall, there was a problem with the HVAC unit and it was discovered that due to poor maintenance and cleaning, it was leaking for an extended period. The floors and HVAC unit were replaced. The property manager was supposed to perform a walk through to make sure that the repairs were done properly and check to make sure there were no issues. Last February, the tenants expressed an interest in purchasing the property, however, the parties could not come to an agreement about the terms or the price. The Complainant decided to move on and legally evicted the tenants. There was a judgment entered for back payments and late fees for \$4,200. On August 12, 2020, the tenants vacated the premises. The Complainant discovered that there was extensive damage to the property. The comps for the property are now \$45K. The property manager has admitted it is their fault and stated they would help make the repairs. Ten weeks later, the Respondent only completed some of the painting and has done nothing else. Now, the Respondent has been ignoring the Complainant. The Complainant has spent \$10K and there are still repairs that need to be completed. The property manager is supposed to protect their client from tenant misuse of a property and this property manager did not meet the duty.

The Respondent started managing the rental property, which is a mobile home in 2014. The last time the property was painted was three years ago. The property is in good condition for its age. According to the owner's questionnaire, the HVAC unit was serviced three years ago, and the approximate age of the carpet was also three years ago. The couple who rented the mobile home lived there for approximately a little over two years. The home was left in good condition and only required a small amount of cleaning. The home was against listed for rent and there was a vendor that the Respondent had worked with for many years as a landscaper that was interested in the school district and requested to see the mobile home and applied for the rental. It was approved

and the tenant moved into the rental unit in July 2017. The tenants were good tenants in the beginning of the rental contract and towards the end started to have issues paying rent. The tenants called about the AC unit and maintenance and AC contractors were scheduled and dispatched accordingly. Maintenance is trained to let the Respondent know if there are any violations of the lease contract when attending to or repairing properties. The invoices and receipts from all vendors were sent to the Complainant. In February, an inspection was completed, and the Respondent found the tenants to be in direct violation of the rental contract. The owners were served with a 30-day notice along with a letter for reinspection in March. During the reinspection, the Respondent found that the tenants had repaired and repainted, however, there were some items such as siding, sanitation and blinds that were not addressed. The owners offered to sell the property to the tenant and the Respondent spoke with the Complainant and went over the inspection results at which time the Complainant wanted to wait before moving forward with a termination of the lease to determine if the tenants were going to purchase the property. The Complainant was worried about entering any owner financing arrangement since these tenants had some issue with late payments. The owner financing fell through and the parties could not agree to a sale price, the owners decided to sell the property and served the tenants with a Non-Renewal of Lease and the Respondent personally delivered it to the tenants on May 22, 2020. On June 30, 2020, the tenants had not moved and stopped paying rent. The Respondent began eviction proceedings and the matter was heard in court on July 28, 2020 and the Complainant was awarded possession of the premises on August 12, 2020. The Respondent contacted the tenants and scheduled a final inspection. The Respondent let the owners know about the inspection because they wanted to be present for the inspection. When the parties all arrived on August 12, 2020, the tenant stated they had moved earlier in the week and their son had a house party and the police were called. As a result, the windows were broken, there were huge holes in the walls. The tenant was willing to repair the walls and the Complainant decided it was best if the tenants just leave. The tenant also left the material in the bedroom for the wall repair. The Respondent did feel a personal obligation for the repairs to the home because the Complainant had become their friend over the past few years and the Respondent owned three houses with their son, who is my soon to ex-husbands best friend. The Respondent was devastated that the tenants who had worked so responsibly for years had done this to the Complainant's rental home. The Respondent was unable to financially afford to help them because the Respondent is involved in a very messy and financially draining divorce and the Respondent's soon to be ex-husband is a co-owner of the property management company and is now doing the work for a fee on the home. With the Respondent's limited financial constraints, the Respondent has offered to do everything possible to get the home back into proper condition. The Respondent indicated it would be completed by October. The Respondent has spent hours cleaning appliances, painting and repairing damage. The Respondent runs a small management company and only has one maintenance person to help and has done as much as possible to help the Complainant. The Complainant was not pleased with the Respondent's timeline for getting the work done and told the Respondent not to return to the property and they would have the Respondent's ex-husband complete all the work.

This is a contractual dispute between the parties. There is insufficient evidence to indicate the Respondent has violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

76. 2020085401

Opened: 11/17/2020

First Licensed: 5/28/1991

Expires: 6/5/2021

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent was hired to sell the Complainant's home on October 29, 2018 with the agreement that both parties would pay the closing costs. The Complainant did not agree to pay any prepays or title search. There was an oral contract. The Respondent never showed up to show the home and overpriced the listing price of the home. The Complainant had to arrange for the inspection of the crawl space. The Complainant stated the Respondent tore off a steel door on the home while trying to fix it and denied it. The Complainant also had reduced the real estate fee by 1%. The Complainant alleges the Respondent made up a \$900 charge for an incident and the Complainant suffered great consequences from this incident. The Complainant alleges the Respondent misrepresented and/or made false promises stating the Complainant would not have to pay all the closing costs, there would be no title search and no prepays because the couple purchasing the home was wealthy. The real estate agent acted for the other party without the Complainant's knowledge and consent after the Complainant signed the necessary documents by DocuSign. The Complainant alleges the Respondent went back and wrote prepays into the contract without the Complainant's knowledge. The Complainant claims no documents were provided to the Complainant. The Complainant alleges the Buyers should have had to pay 3% of the commission and instead, the Respondent made the Complainant pay everything. The Complainant stated the Respondent had a lack of respect and ignored the Complainant who is an elderly person.

The Respondent provided a response and stated the Purchase and Sale Agreement shows a commission rate to be paid by the Complainant. The Respondent did not have a 3% subagency fee with the other realtor. The Respondent did not even receive the 3% commission in this transaction. The Respondent denies changing the contract at any point. The Respondent replaced the steel door under the Complainant's house at the Respondent's expense because the Complainant stated she wanted to sell the house and claimed there were teenage kids coming and smoking marijuana under her house. The replacement door was also metal. After the Complainant hired an attorney and filed a lawsuit, the Respondent explained the situation and the attorney nonsuited the case. The Respondent has been a broker for over 30 years and the statements made by the Complainant are not true. The Complainant was given copies of all documents at the closing. There were no documents or funds withheld.

This is a contractual dispute between the parties. The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

77. 2020085731

Opened: 11/17/2020

First Licensed: 4/16/2013

Expires: 12/16/2021

Type of License: Principal Broker

History: None

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

The Complainant entered into a Purchase and Sale Agreement with the Respondent on September 27, 2020. The Complainant stated that problems began to arise when the Respondent involved the title company and the Complainant was instructed to execute a Non-Disclosure Agreement (NDA). There were also court documents that were pulled from a divorce including a restraining order preventing the Complainant's soon to be ex-wife from coming to the home, awarding the Complainant exclusive possession, and prohibiting the ex-wife from selling the home. The Complainant alleges the Respondent was dishonest. The Complainant also repeatedly had to contact the Respondent to notify him the lights had been left on in the home and the doors had been left unlocked. Also, all requests to provide advance notice to the Complainant to access the home were ignored. The Respondent told the Complainant the Buyers wanted a final inspection on the morning of October 29th. The Complainant arrived at the home and all the doors were left unlocked and the key box code had been changed. The Complainant requested the new code and the Respondent claimed to have no knowledge about it despite the fact the Respondent was present when it was changed. The Complainant's estranged wife arrived and intended to enter the home in violation of the Restraining Order. The Complainant was forced to obtain an attorney to obtain information regarding the closing. The Complainant was unaware if the final inspection had occurred. The attorney finally notified the Complainant the Buyers wanted to conduct the final inspection on October 29th by 5 pm. The Complainant went directly to the home and waited until 6 pm and no one arrived. There were numerous attempts to resolve the issues and complete the transaction, however, the closing did not occur. The Respondent is requiring the Complainant sign the release admitting there was a breach by the Complainant and prevented the Buyers to enter for the final inspection.

The Respondent provided a response and stated the Complainant files complaints against all individuals. The Respondent approached the Complainant in early May by e-mail and the Complainant wanted the Respondent to represent the Complainant in the sale of her marital property during the pending divorce. The Respondent did not hear back from the Complainant until September 2020. The Complainant indicted her soon to be former spouse was violent, abusive, distrustful and a manipulative person. The Complainant advised the Respondent he needed to be careful on how to approach and communicate with the soon to be ex-husband. The Complainant indicated the best way to communicate with him would be by e-mail and make sure there was always proof of the communications. The property was listed for sale on September 27, 2020 and signed by all parties. There were problems with the title company and all parties were informed of the title company that would be representing the parties. The Complainant suddenly decided she was “wronged” and that is when things began to seriously deteriorate. The Complainant began to get very combative in nature and there were several attempts by many individuals to calm the Complainant and inform her the proper procedure was being followed by the title company. The Complainant did not agree and continued to be combative, disruptive, and threatening. The Complainant took the keys from the lock box and was the only one who had access once the appraiser completed the appraisal on October 19, 2020. The Complainant had been contacted and e-mailed with all requests for information by all parties involved. The Complainant was never denied any documents. The Respondent did not have access to the property and had not been inside the property since early October. The Complainant did not cooperate with anyone involved in the sale of the property and there were numerous unnecessary demands being made by the Complainant and this continued to put a strain on the transaction. The Buyers were very patient and attempted to take the actions of the Complainant in stride and they did attempt to offer another opportunity to resolve the matter on the day of closing, but the Complainant cut off all communication. There were never any derogatory comments made to the Complainant other than potential legal issues the Complainant could possibly face if there was a breach of contract. The house is still listed for sale; however, the Respondent cannot access the property and it cannot be shown. The Complainant will not respond in any inquiry for a showing and the Respondent has received at least 25 requests for a showing. There have been three additional offers submitted since the last closing date. The Respondent has not committed any illegal acts and has followed the correct procedures in the transaction.

The Complainant provided additional information and stated the sales contracts was executed by Sellers and Buyers on December 17, 2020. The closing date was scheduled for December 28, 2020. The contract contained a contingency the Buyer obtain 97% financing. The title company did not receive the contract until December 22, 2020. A request to extend the closing date was sent on the evening of December 28, 2020. The

Amendment was sent, and the party crossed out the 8 and wrote January 21, 2020. The listing agreement expired on December 31, 2020. Another amendment was sent for a revision to the price for a price reduction. Another request for extension was sent on January 20, 2021 and the received the request on January 22, 2021 and turned it the same morning. The closing disclosure was received on January 27, 2021 with several inaccurate items which created a need for an emergency hearing.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

78. 2020086061

Opened: 11/17/2020

First Licensed: 7/7/2020

Expires: 7/6/2022

Type of License: Time Share Salesperson

History: None

The Complainant is a Missouri resident and timeshare purchaser and the Respondent is a Tennessee licensed Timeshare Salesperson.

The Complainant was contacted by the Respondent on October 6, 2020 regarding the sale of the timeshare in Mexico. The Respondent indicated there was a Buyer and there had been a trust account set up at the bank with funds. The Complainant was directed to transfer \$1,973 to the account in Mexico for a notary fee. The Complainant did not believe this was a legitimate transaction and contacted the bank and were informed there was no record of a trust. The Complainant had signed the Sales Agreement on October 14, 2020 and notified the Respondent the Complainant was withdrawing from the agreement. The Complainant filed this complaint with the Commission and filed a complaint with the Federal Trade Commission. The Complainant later received an e-mail stating the Respondent would initiate a lawsuit for the 4% commission of \$3,947.04. The agreement had a clause that stated if the Complainant cancelled the agreement, the Complainant would owe these amounts. The Complainant stated the Respondent is engaged in fraudulent acts.

The Respondent provided a response and stated this complaint is a misunderstanding. The Respondent is not familiar with the transaction and does not know anything about the transaction. The Respondent believes he has been a victim of identity theft.

The Respondent's Timeshare company provided a response and stated the complaint indicates a Global Vacation Trading Group and the Respondent is not affiliate with a Global Vacation Group. The Respondent is employed by a licensed Tennessee timeshare company. The company believes this was a scam and there are individuals impersonating the Respondent and this is a timeshare scam originating in Mexico.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

79. 2020086821

Opened: 11/17/2020

First Licensed: 4/25/2017

Expires: 4/24/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent was given a deposit of \$500 for two lots on June 9, 2020. The Complainant repeatedly inquired about when the lots would be released and were told it would be over the next few months. In September 2020, the Complainant visited the lots and discovered all lots had houses built on them. The Complainant was never advised the lots were available. Later, the Respondent indicated to the Complainant it was necessary to put down \$100,000 nonrefundable earnest money deposit to purchase a home. The Respondent claimed to have sent an e-mail to the Complainant explaining all the details. The Respondent also claimed to have never heard from the Complainant in the past several months and thought the Complainant was no longer interested in the lots. The Respondent admitted to receiving the deposits. The Respondent responded to the Complainant on multiple occasions stating the lots were not released.

The Respondent provided a response and stated the Respondent was acting as the agent for the Seller and the Complainants were represented by another real estate agent. The Respondent's client entered into an agreement with the Complainant and requested to terminate the contract to pursue a different property. During the next several months, the Complainant proceeded to execute the contracts with my client to purchase two additional homes and later requested to terminate the contract. The last contract was terminated on May 1, 2020. The Complainants indicated they were no longer moving to Tennessee due to health-related reasons. The Respondents client agreed to cancel the contracts in each instance and returned the earnest money. When the Respondent's client found out the Complainants were interested in entering a fourth contract, the Respondent's client indicated a \$100,000 earnest money deposit would be required because the Complainants had cancelled three previous contracts with the Respondent's client. As to the funds tendered to serve as a deposit for the specific lots were never received by the Respondent or the Respondent's client. The Respondent indicated that if the Complainant's had submitted a deposit for two lots, there would be a contract executed by the Complainant and the Respondent's client. The Respondent did not mislead the Complainants and have no reason to do so. The Respondent was also under the impression the Complainant's real estate agent would keep them apprised of any information related to any lots for sale or the availability of the lots.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

80. 2020087171

Opened: 11/23/2020

First Licensed: 4/21/2005

Expires: 4/20/2021

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker and the listing agent in the transaction.

The Complainant's Buyer had entered into an agreement on August 24, 2020 to purchase a lot which was set to close on September 25, 2020. The Complainant received a call about the property from the team lead for the Respondent listing agent and offered to assist on the property owned by the Sellers and the purchase agreement was contingent on the sale of another property. The Buyer for the other property was still in underwriting and it was not clear when it would close. The team lead offered to help with the matter. It became evident to the Complainant the other contingent property was not going to close on September 25, 2020, the Complainant asked the Sellers for an extension of the contract until October 2, 2020. On September 28, 2020, the team lead again called for an update on the buyers for the contingent property and the Complainant did not have any further information from the lender. On October 1, 2020, the Complainant asked the team lead and the Respondent listing agent for another extension on the closing of the property. The Respondent listing agent stated it would be discussed with "the powers that be." The team lead indicated it would not be easy due to the complicated relationship with the previous firm. The Complainant did not receive any further correspondence on the second extension after September 30, 2020. During this transaction, both the Respondent listing agent and the team lead changed brokerage firms from one firm to another. On October 5, 2020, the Complainant received a change in status for the property and the team lead was the listing agent. The Complainant reached out to the new listing agent and the Respondent listing agent to verify the identity of the buyers of the property. The Complainant's broker also reached out the new listing agent to verify the buyers for the property. During the telephone conversation, the new listing agent confirmed with the Complainant's broker that this was the same client the Complainant had an exclusive Buyer's Representation Agreement with until December 31, 2020. The new listing agent had made no attempt to confirm an agency relationship and proceeded to close on the property on October 27, 2020. The listing agent did not treat all parties honestly as required under the Code of Ethics standards, Article 1, and Article 16, interfering with an Exclusive Buyer's Agency. The listing agent and former listing agent acted in their own self-interest to represent the sale due to the change in brokerage. The listing agent and former listing agent were both aware of the exclusive buyer's representation of the buyer of the property because the Complainant had been involved with the same buyers prior to October 5, 2020.

The Respondent listing agent provided a response and a response from the Seller of the property who stated this property was listed with the Respondent at the Seller's request and the Respondent has been selling properties for the Seller since 2017. The Seller had every intention to close with the first Buyer, however, it did not work out. The Buyers contacted the Seller directly to set up a meeting after the deal fell through. The Buyers loved the home and wanted the house and they also had every intention to close and were upset with the Complainant's representation. The Seller provided the Respondent's name to the Buyers and they contacted the Respondent. The Respondent listing agent and the new listing agent had no knowledge the meeting took place directly with the Seller. The Buyer and Seller renegotiated the contract and eventually closed on the property. The Seller states the Respondent listing agent and the new listing agent did not act in their self-interest, but rather in the Sellers' best interest because their job was to sell the home and they sold the home.

The Buyer of the property also provided a response and stated prior to being represented by the Respondent, the Buyer was represented by the Complainant and was not happy with the representation being provided by the Complainant. The communication was dishonest and critical pieces of information were withheld. The Buyers only learned that they were not clear to close 48 hours before the closing. The Buyers felt as though the Complainant was taking advantage of the situation and lack of transparency put both the buy and sell transactions in jeopardy. The Buyers did advise the Complainant that if the closing did not take place on October 2, 2020, the Buyers would part ways with the Complainant. The Buyers sent written notification of separation to the Complainant for both the sale and purchase of the properties upon the expiration of the contract on October 2, 2020. The Buyers had to renegotiate the contract, including a different financial arrangement, including paying monthly interest payments on the construction loan until the sale of the property.

The Respondent listing agent also stated there was no change in brokerage firms. The new listing agent became the Principal Broker at the firm. The Respondent was told by the Buyers that the Buyer's Representation Agreement had been terminated with the Complainant. The Buyer's also signed a Buyer's Representation Agreement with the Respondent and the agreement clearly stated the Buyer "is not under any exclusive right to buy contract or exclusive buyer representation agreement with any other agent at this time." The Buyer told the Respondent verbally and in writing there was not an agency agreement with the Complainant.

This dispute is between the Buyers and the Complainant concerning the Exclusive Representation Agreement entered by the parties. Based on the information provided, there is not sufficient evidence to show the Respondent has violated the laws and rules of the Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

81. 2020087141
Opened: 11/17/2020
First Licensed: 5/5/2016
Expires: 9/30/2021
Type of License: Principal Broker
History: None

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

This complaint is related to the previous complaint and the facts are almost identical to the previous complaint. The Complainant's client entered into an agreement to purchase a lot on August 24, 2020. The closing was set to occur on September 25, 2020. On the same day, the Respondent contacted the Complainant as the team lead for the listing agent. The Respondent was willing to assist with the sale of another property and it was contingent on the sale of the property to closing on the lot to occur. As of September 25, 2020, the Buyer of the property was still in underwriting and clearance to close had not been provided. Shortly thereafter, the parties learned the closing for the property would not occur on September 25, 2020 and the Complainant asked for an extension on the property under October 2, 2020. On September 28, 2020, the Respondent contacted the Complainant again and asked for an update on the Buyers of the contingent property. The Complainant did not have any further information from the lender to provide to the Respondent. On October 1, 2020, the Complainant asked the Respondent and the listing agent for another extension on the property. The listing agent responded and stated she would check and stated it was not going to be easy because of the complicated relationship with all the parties. The Complainant did not receive any further information on the second extension after September 30, 2020. During this period, the Respondent and the listing agent changed brokerages. On October 5, 2020, the Complainant received a change in status for the property for sale and the Respondent was now the selling agent for the property. The Complainant reached out to the Respondent and the original listing agent to verify the buyers for the property and received no response. The Complainant's broker also contacted the Respondent to verify the buyers for the property. During this phone conversation, Complainant's broker confirmed the identity of the buyers were the previous clients of the Complainant. The Complainant's broker informed the Respondent the Complainant and the Complainant's firm had an Exclusive Buyer's Representation Agreement with the buyers until December 31, 2020. The Respondent made no attempt to confirm this agency and proceeded to close on this property on October 27, 2020. The Respondent was dishonest and violated ethical standards and interfered with an Exclusive Buyers Agency Agreement. The Respondent was aware of the agreement because these were the same buyers that were involved in the transaction prior to October 5, 2020.

The Respondent provided a response and stated the Complainant's client took the initiative to reach out to the Respondent. The Complainant's client was disappointed with the representation being received by the Complainant. The Complainant's client told the Respondent their listing agreement with Complainant had terminated. The Respondent took the client's word that the representation agreement with the Complainant had terminated. The language in the agreement with the Respondent specifically stated the Complainant's client was not in any exclusive representation agreement with any other broker and the client signed this document. The

Respondent did not leave any firm during this period but was promoted to Principal Broker when the Respondent was representing the Complainant. The Respondent listed the house for sale and helped them find another house to purchase.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

82. 2020087421

Opened: 11/17/2020

First Licensed: 10/18/2004

Expires: 8/24/2022

Type of License: Principal Broker

History: None

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

The Complainant stated the Respondent is the managing broker for the Complainant's former firm. The Respondent provided the Complainant with the Respondent's MLS login information to make modifications to the MLS at the Respondent's request. Later, the Respondent accused the Complainant of using the MLS login information to make additional changes to the MLS. The Complainant did not make any other changes and states these are false allegations that resulted in the Complainant being wrongfully terminated from his job. The Respondent arranged for all earned commission to be paid to the Respondent which was has the same address as the firm. This was brought to the Complainant's attention in October 2020 because the loan processor questioned why the commissions were being paid to the company. The company has no affiliation with the Respondent's firm. The Complainant was only an employee of the Respondent's firm and the Commission's being paid to the other company should have been paid to the Complainant.

The Respondent provided a response and stated the Complainant was hired as a Junior Sales Counselor in January 2020 and the Complainant's role was to assist the Respondent and the other licensed affiliate brokers with the model homes including entering information into the MLS. The only access granted to the MLS was administrative. The Respondent was promoted to Sales Counselor at the end of March 2020 after obtaining a real estate license. The Respondent did not accuse the Respondent of making additional changes to the MLS and the Respondent was not directly involved in the process of terminating the Complainant's position and this was handled by the corporate HR department in Texas while the Respondent was on vacation. When the Respondent returned from vacation, the Respondent was advised the Complainant had been terminated. The Respondent always received the same commission of 1.5% of the total sales price paid to the Respondent's brokerage. The other company referenced by the Complainant acted as a Principal Broker/Sales Manager for each home sold by the Respondent's firm. The Respondent did not receive any additional or extra commissions, bonus, or compensation from the sales the Complainant was involved with. The firm has clear guidelines of how payment is made to an agent if they leave or are terminated from the firm. All amounts due to the Complainant are paid

by the firm and not by the Respondent. The Respondent is not aware of any emotional, verbal, physical or sexual abuse or threats made by any member of the firm, management staff, or any of the Complainant's coworkers.

This matter involves an employment dispute between the parties. There is no evidence the Respondent has violated any laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

83. 2020080461

Opened: 11/17/2020

First Licensed: 9/28/2015

Expires: 9/27/2021

Type of License: Real Estate Firm

History: None

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

The Complainant alleges there was a copy of a letter sent to the broker with a check in the amount of \$4,575.00. The Complainant worked with four different real estate agents and all four demanded the Complainant not work with them on an exclusive basis, but to provide representation on a house-to-house basis. One of the agents the Complainant worked with had suggested it as imperative to submit an offer immediately on a property. The Complainant decided follow the Respondent's advice and entered into a contract with the Respondent to make an offer on a property and assumed it was an agreement for a house-to-house representation basis and not an exclusive agreement with the Respondent. It turned out it was an exclusive buyer's representation agreement. When the Complainant did find a home through another real estate agent, the Complainant immediately contacted the Respondent and told him to stop looking for a home because the Complainant had found a home to buy. The Respondent told the Complainant it was an exclusive representation agreement the Complainant had signed with the Respondent. The Complainant stated the Complainant did not sign such a document and the Respondent sent another copy of the document to the Complainant to review. The Complainant admits to not taking the time to verify and read the document when the Complainant signed the representation agreement. The Complainant did not want to take away the deal from the other real estate agent because the Complainant believed that would not be fair or proper. The Respondent wanted to call the other real estate agent and let her know about the exclusive agreement. The Complainant demanded the Respondent not call the other agent and agreed to pay the Respondent's commission of \$4,575.

The Respondent's Principal Broker provided a response and stated the Complainant has been working with the Affiliate Broker in this transaction since 2017. There has been a

long-standing relationship with the Complainant and the Respondent. The Complainant executed a valid and binding agreement with the Respondent. The Complainant voluntarily entered into another representation agreement during the time there was an exclusive representation agreement in place. The Complainant always spoke very highly of the Respondent and the services provided. The Respondent's firm did offer to contact the real estate agent for the Complainant to further discuss this situation, but the Complainant did not want a call made to the other real estate agent. The Respondent provided a Mutual Release of Agreement to be signed once the Complainant paid the brokerage the amount of \$4,575 for the commission amount on the purchase of the property. The Complainant voluntarily signed the release and remitted the amount of \$4,575 for the commission. The Respondent was under the impression this matter had been settled and suddenly, the Respondent received this complaint filed by the Respondent.

The Affiliate Broker provided a response and stated the affiliate broker had been working with the Complainant since 2017. Although the Complainant may have been working with multiple agents, the Complainant agreed to work exclusively with the affiliate broker and the Respondent firm. The Complainant voluntarily signed the Exclusive Representation Agreement just two weeks prior to finding the home with another real estate agent. The Affiliate Broker explained to the Complainant at the onset the Respondent Affiliate Broker did not enter into agreements for specific properties. The Respondent Affiliate Broker was also willing to work things out with the Complainant and the other agent; however, the Complainant was adamant that neither the firm nor the Respondent contact the broker to discuss the matter. The Complainant did not want the other agent to even know about the Exclusive Representation Agreement with the Respondent Affiliate Broker. The Complainant and the Respondent Affiliate Broker agreed to a 1.5% compensation and thought it was a fair amount considering the time spent with the Complainant. The Complainant paid the amount and voluntarily signed the Mutual Release Agreement.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

84. 2020083051

Opened: 11/17/2020

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainant is a Missouri resident and timeshare owner. The Respondent is a licensed Tennessee Time Share Registrant and a Florida corporation.

The Complainant purchased a timeshare from the Respondent. The Complainant had gone to Hawaii with friends who were timeshare owners with the Respondent. The Complainant attended a sales presentation with them in 1990. The Respondent was providing free tickets to a luau in exchange for attending the presentation. The Complainant purchased a timeshare and received 65,000 points every year. In June 2015, the Complainant made reservations in Sedona, Arizona and stayed a week with friends prior to the vacation at the resort and decided to attend another presentation during their stay at the resort. The Complainant realized they wanted to have more points, so the Complainant purchased another 60,000 points so they had 125,000 points to use every year. The Respondent even offered a fixed week for 105,000 points for a small amount which the Complainant decided to purchase. In June 2017, the Complainant had a family vacation with four of their children. The Complainant attended another sales presentation and the salesperson stated the maintenance would be more stable and would not go up as much if they purchased another timeshare and since the Complainant wanted the timeshare to pass onto their children they decided to buy more points to convert the fixed week to regular points. In December 2017, the Complainant booked a stay in Branson, MO and sat through a presentation for free show tickets. This time the Complainant was told that the fixed week had not been previously converted and the Complainant would have to buy additional points to make sure the fixed week was converted. The Complainant refused to make any further purchase from the Respondent. The following day the Complainant returned and asked to speak to a supervisor and after checking into the matter, the Respondent's salesperson found the contract was supposed to have converted the fixed week to additional points, however, it was not done and it was just a purchase of a fixed week in the prior transaction in June 2017. The Supervisor explained that to convert the fixed week, additional points were needed and sold more points to the Complainant to convert the fixed week to regular points. In September 2018, the Complainant booked a two-week vacation in the Carolinas with friends who are also timeshare owners. There was a hurricane prediction and the reservation were cancelled by the Respondent and the points were returned to the Complainant's account. The next reservation booked was also in South Carolina and Georgia. The Complainant was unable to cancel because the hurricane had not officially been declared yet and the points would be lost. The Complainant was told to keep calling the resort to cancel and when they finally contacted the resort, it was after the deadline to cancel without losing the points. The points for South Carolina were lost. Fortunately, the reservation in Georgia was cancelled without losing points. As a result, the Complainants lost 90,000 points due to no fault of their own. In November 2018, Complainant had booked a reservation in Branson, MO and attended a sales presentation again and met a sales rep. The only reason the Complainant attended the sales presentation was for the free show tickets. The Respondent offered another deal of \$25,879 and the Complainant declined to make a purchase. In November 2018, the Complainant rebooked the Georgia trip and

stayed at an older resort which was not clean. There was no coffee in the unit or dish washing liquid. When the Complainant asked for towels, the resort advised the Complainant there was a washer and dryer in their unit to wash the towels. In December 2018, the Complainant had a reservation in Orlando, Florida. The Respondent offered to give the Complainant a \$100 off tickets to Disney World if the Complainant attended a sales presentation. The Complainant agreed and attended the sales presentation directly with the salesperson. The salesperson even brought them a box lunch. The Complainant was advised if the most expensive timeshare program was purchased the maintenance fees would be the most stable. The salesperson indicated a deeded property was the most simple and cheapest route. The salesperson indicated if another 105,000 points was purchased, the Complainant could take everything out of the point-based system and place it in the deeded property. The Complainant again declined to purchase. The Complainant seeks a cancellation of the contract and refund of all monies paid.

The Respondent provided a response and stated the Complainants have been owners since 1990 and made additional purchases in 2013, 2015 and 2017, In June 2017, the Complainant agreed to trade contracts to apply the equity to the purchase of another contracts in a membership ownership interest and allows for participation in the Club Access Vacation Ownership Plan and the right to use and occupy club accommodations. The Complainant agreed to receive an annual allocation of 295,000 perpetual points. In December 2017, the Complainants again agreed to trade a contract to apply the equity toward the purchase in the ownership association with the Club Access Vacation Ownership Plan and the right to use and occupy the Club Accommodations. The Complainant purchased another annual allocation of 210,000 perpetual points. The Complainant also had a membership in the exchange program which allowed them to use a variety of resort locations, seasonality, lengths of stay and unit sizes. The best value is the usage of their points at the Club Plus resort reservations. The contract documents signed and received by the Complainants provides fully disclosure of the agreement between the parties. There are very specific written disclosures provided to make sure a purchaser has no misunderstanding and to help them to understand the product that is being purchased. After the rescission period, the contract becomes legally binding for all parties. There has been no record of any complaints by the Complainant and the Complainant has used the ownership multiple times over the years. At this point, the Complainant has allowed the account to become severely delinquent and the Complainant has breached the contract. Based on the information provided and the documentation signed, there was no information substantiating the allegations set forth in the complaint. The Respondent has denied the cancellation request.

The Respondent also provided additional information. The Respondent states the Complainants have owned the timeshare property and the points for almost thirty years and have enjoyed the benefits of the contract with regular travel. There were no complaints in 2019 concerning the claims of being misled and there were no attempts to cancel the ownership. It was only when the Complainants started defaulting in April 2019 that the Respondent received the first request for cancellation of ownership. The circumstances of this account and the complaint fit a similar pattern to those complaints that have been prepared or influenced by third-party companies which claim they are able to provide timeshare contract cancellation services in exchange for large upfront fees and who often imprudently advised timeshare owners to default on payments as part of the exit strategy.

If the Complainant had not defaulted, the Complainant would be eligible to have qualified for the cost-free exit under the exit program prior to the delinquency. The Respondent recognizes the Complainant may have been misled by a third-party and are willing to work with them to discuss a potential resolution.

The contractual and statutory rescission periods have both expired and the Complainant cannot bring a private right of action for the rescission of the contracts that were entered into over four years ago.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

85. 2020083771

Opened: 11/17/2020

First Licensed: 5/19/2016

Expires: 5/19/2021

Type of License: Time Share Registration

History: None

The Complainant is a Tennessee resident and timeshare owner and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare and received 100,000 points and would allow the Complainant four vacations per year. The 100,000 points was also supposed to allow for other savings at the facilities and amenities on day trips without a reservation. In July 2019, the Complainant had their first vacation and received an additional 200,000 points as part of the purchase to use the first year. The reservation for four days required 160,000 points. All the amenities and activities were not free as promoted. The Complainant had to pay additional monies to use the facilities and participate in the extra activities. The Complainant was even charged for extra toiletries and paper towels. The Complainant has attempted to make reservations in 2020 and have been unable to make a reservation because there are no rooms for owners available at the location selected. The Respondent misrepresented the timeshare and made false claims about the point system and the resort stays.

The Respondent provided a response and stated the Complainant attended the timeshare presentation on September 30, 2018 and purchased a standard ownership interest. This entitles the owner to 100,000 club points per year in the club exchange, the developer's point-based exchange program. The owner can book reservations at twenty-eight resorts in the network and can book reservations in any available unit (standard unit or signature

collection unit) during any time of the year provided there are the necessary number of points available for use by the owner. The Respondent states there were no assurances provided there would be four (4) vacations per year. The number of club points required for any given reservation is entirely dependent on specifics for such reservation. There are examples provided of how the points can be used but there are a few factors considered when using points such as the length of the stay, the size of the accommodations, the season, etc.) The exact number of club points required for any reservation is clearly set forth in the Member Guide. The Member Guide provides all details concerning how many club points are required to book reservations. The Respondent stated the information provided by the Complainant concerning the four-night stay was inaccurate. The Respondent's records indicate the Owner contacted the Respondent on May 13, 2019 to book two (2) 2-bedroom units at Orange Lake Resort in Kissimmee, Florida from July 14, 2019 to July 18, 2019. Each reservation was secured with 66,400 Club points for a cumulative total of 132,800 Club points for both reservations. The Respondent's records reflect when the Owner booked the reservation, the bonus points were not yet deposited into the account. The reservation was secured using the 2018 Club points together with borrowed points from 2019. The 100,000 points have still not been used and remain available to the Complainant in the club account. There is no record of the Complainant attempting to book a reservation after the May 2019 reservation. A one-year advance booking is not required. An owner cannot book reservations more than fifty-nine days in advance. The Respondent does require additional fees for using additional resort amenities and other services. The Respondent is willing to extend a one-time offer in recognition of financial hardship to cancel the ownership pursuant to a Deed in Lieu of Foreclosure and release the Respondent from outstanding obligations in connection with the Ownership.

The Complainant submitted the Deed in Lieu of Foreclosure to the Respondent in December 2020. The parties have resolved this matter.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

86. 2020079911

Opened: 11/23/2020

First Licensed: 3/23/1998

Expires: 1/05/2022

Type of License: Affiliate Broker

History: None

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

The Complainant gave a power of attorney to his father to act on the Complainant's behalf concerning the listing, negotiation and sale of a home owned by the Complainant. The listing contract was executed in 2018 with the Respondent to sell the Complainant's home. On January 13, 2019, a Purchase and Sale Agreement was entered into by the Complainant with a Buyer, who was also represented by the Respondent. There was a handwritten addendum added to the last page to modify the sales contract to a lease to purchase stating the "Buyers are responsible for all maintenance and repairs." Also, the "Seller to pay commission at lease on January 17, 2019 and no commission is due at closing. On January 19, 2029, the Complainant and his wife stopped by the home to meet the owners and found they had demolished the lower level. The Complainant was assured the lessors/owners would be able to secure a loan and close but were not given a closing date. After three to four months, the Complainant was informed the husband of the lessors/owners had been removed by police and the parties were in the process of divorcing. The demo/reconstruction project on the home had never been finished. The Complainant had to obtain an eviction through the court system to get access to the home in early September 2020. The Complainant began to communicate with a real estate broker. The Complainant was trying to obtain all documents in relation to the property. The broker agreed to send an e-mail to the lessors/owners and the Complainant had not heard back from the broker. On September 21, 2020, the Complainant sent a letter to the broker requesting the home be restored to the same condition when the listing contract was made and return the commission of \$4,795 plus 12% interest to the Complainant. The Complainant has no documentation the level of agency changed or any whether there were other disclosure forms.

The Respondent provided a response and stated the parties entered into an agreement for a lease of the property for a two year period before the purchase of the property and the Purchase and Sale Agreement provided for payment of the commission at the time of the lease. The Respondent stated the Buyer was unrepresented. The Respondent never told the Complainant the Buyer would be able to close on the property. The Complainant's Power of Attorney agreed to pay the commission at the time the lease was entered, as opposed to the date of closing, because of the length of the lease. There is no evidence of misconduct by the Respondent or that the Respondent acted in bad faith.

This is a contractual dispute between the parties and a landlord-tenant matter. The Respondent has not violated any laws or rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

87. 2020082841

Opened: 11/23/2020

First Licensed: 8/30/2013

Expires: 8/29/2021

Type of License: Time Share Salesperson

History: None

Complainant is a Tennessee resident and timeshare owner and the Respondent is a licensed Time Share Salesperson.

The Complainant alleges the Respondent made misrepresentations, engaged in fraud, and used high pressure sales tactics for three timeshare purchases made by the Complainant. The Complainant originally purchased 155,000 points. The contract was amended on August 21, 2016, August 23, 2017, and July 21, 2019. The Complainant's initial purchase was for a timeshare with an entry level number of points because the Respondent guaranteed bonus points that would attach for a fraction of the price after the timeshare was owned for one year. The Respondent indicated with the additional contract amendments for the additional points and bonus points it would get the Complainant where they needed to be for optimal timeshare ownership. When the Complainant contacted the Respondent one year later, the Respondent stated that it would be necessary to pay an additional \$42,000 for 400,000 points. The Respondent claimed the price of the points had changed. The Respondent claimed it was a great investment and the Respondent could help them rent out the property and it would pay for itself. The Complainant finally agreed and purchased additional points for \$29,449. The Complainant states the proper disclosures were not provided concerning interest rates and other truth in lending requirements. The Complainant stated it looked like the applications for financing was altered from the original document signed by the Complainant. The Complainant was not given adequate time to review the documents and were falsely imprisoned because the Complainant could not leave until all the documents were signed. The Respondent indicated the contract could be cancelled for up to a month. The Respondent also claimed the maintenance fees would never go up and the rental of the timeshare would cover the costs. The Complainant was also told the value of the timeshare would increase and the Complainant would make a profit if the Complainant decided to sell the timeshare. Also, the Complainant was told the Complainant could go anywhere at any time in the resort network. According to the Complainant, the Respondent made multiple misrepresentations. The Complainant wants a full refund of all monies paid for the purchases.

The Respondent provided a response and stated the Complainants have been owners since 2016 with additional timeshare purchases in 2017 and 2019. The Respondent stated that the allegations made by the Complainants are difficult to substantiate due to the length of time that has passed since the original transaction. The Respondent believes the Complainant may be experiencing some financial hardship which may be motivating the Complainant to make allegations against the Respondent concerning misrepresentations, etc. against the Respondent. On August 21, 2016, the Complainant purchased a membership interest in the club vacation plan and the right to use and occupy the club accommodations. They purchased an annual allocation of points for use at the various resorts. The Complainant received an additional one-time allocation of 245,000 points

which were to be used within the period of January 1, 2017 and December 31, 2018. This also gave them temporary Silver VIP membership status until the end of the Bonus Points Use Period. On August 23, 2017, the Complainants traded a previous contract to apply as equity toward the purchase of another contract for a membership interest in the club vacation plan and the right to use and occupy the club and received a 266,000 perpetual points per year. On July 21, 2019, the Complainant purchased a membership interest in the club vacation plan and the right to use and occupy the club and received an annual allocation of 145,000 points. This entitled them to permanent Silver VIP membership status. All reservations are first-come first-serve basis and based on availability. The Complainant's were provided with a complete Member Directory and other detailed information concerning the terms conditions, rewards, point allocations, ownership interest, etc. The contract documents signed by the Complainant were provided every time a contract was executed by the Complainant. The amount of vacation usage is wholly dependent upon the number of points allocated to the member's ownership interest and how the points are used. The contract documents fully and completely disclose the full agreement between the Complainant and the Respondent. The contract documents were signed each time by the Complainant. There is also a review conducted at the time of each purchase and buyer's acknowledgement document was signed each time and this is used to assist a purchaser to make sure they understand the terms of the contract and avoid any misunderstandings. This also serves to aid them from the beginning of the signing of the contract to understand the ownership, discount, trade equity, down payment, monthly club assessment and loan payments, programs, resale assistance, rental income, investment, and tax benefit. Purchasers have rescission rights following the signing of each contract and it gives them the opportunity to carefully review and reconsider all contract provisions. After the rescission period, the contract becomes legally binding. The Respondent has no record of any history of any complaints filed by the Complainant and have used their ownership interests. On July 21, 2020, the Owner Resolution & Strategy Department received a complaint and there were no grounds to merit a cancellation of the contract. The Respondent has reviewed this matter and the documentation and there is not any information to substantiate the allegations set forth in the complaint. The documentation was all signed and received and there is no information to substantiate the allegations set forth in the complaint. The Respondent denies the Complainant's cancellation request.

The Complainant did not exercise the statutory and contractual rescission rights. There is no evidence to indicate the Respondent has violated the timeshare laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

88. 2020086771

Opened: 11/23/2020

First Licensed: 2/6/2009

Expires: 2/5/2023

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent contractor provided a warranty for a new home and the Respondent contractor will only come to the home one-time to do the warranty work and will wait until the 13th day of the month. The home warranty will be expired by that time.

The Respondent provided a response and stated the issue is related to the Respondent's construction business and not related to the real estate license. The Complainant is unaware how the home warranty process works. The Respondent returns to the home once during the process to fix all the items. However, if the issue is causing further ongoing damage, the Respondent will return immediately. The Complainant sent a certified mail to the Respondent's construction company and since none of the items were causing damage, the contractor determined would be acceptable to make the repairs during one visit. The Respondent met with the homebuyer on November 12, 2020 and discussed the various options with the Complainant and explained everything to the Complainant in detail.

The Complainant submitted a follow-up and stated a contractor came to the home and fixed some of the issues. The crack will be fixed by the contractor and the toilet has been fixed. The Complainant does not have any additional issues.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

89. 2020088011

Opened: 11/23/2020

First Licensed: 4/5/2017

Expires: 4/4/2021

Type of License: Affiliate Broker

History: None

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

The Complainant states the Respondent is the listing agent for the property which was active on November 5, 2020. The Complainant took clients to the home during an open house on November 7, 2020. The home was clear based on viewing the home, verifying the tax records and the Complainant's communication with the Respondent that the square footage on the home was incorrect and misrepresented. The basement is 100% unfinished and the Respondent was aware of this and has entered misleading information in the listing and misleading to the public. The RealTracs® listing states the home is 6,706 square feet but the home is 4,168 square feet. The Complainant alleges the Respondent is inflating square footage in this listing and possibly other listings and this could affect the current comps in the neighborhood and the values going forward. The current MLS listing needs to be corrected before the home sale in final.

The Respondent provided a response and stated the total square footage on the listing was correct, however, the Respondent did make an honest mistake on how the unfinished square footage was accounted for in the listing. The error was later corrected and it in no way was intended to be misleading. The Complainant received a text message from the Respondent concerning the square footage of the home after the Complainant had shown the home to his client. The Complainant indicated the square footage was 6,076 if the basement was finished and also confirmed the tax record was not correct and provided the Complainant with the expansion of the three rooms that were provided to the Respondent by the Seller when the home was built. When the Respondent created the MLS listing, the Respondent specified the square footage for the unfinished basement and clearly stated "full" "unfinished" to let potential buyers know the accurate state of the basement area. This was in the private remarks in the ALL CAPS that the "basement" was "unfinished" to draw attention to this fact. On the upgrades list attached to the MLS, it did not state the basement has rough-in plumbing and heating/cooling which is another indication of the area not being finished.

The mistake made in the listing was adding the square footage in the basement space which was added to the total square footage. When the Respondent discovered this mistake, the Respondent immediately made the correction and removed the square footage for the basement and hit the "next" link. When the e-mail from MLS was received about the error, the Respondent was confused because the Respondent had thought the correction had been made, but upon review realized the change did not "take" because the Respondent did not press the "save" link. The Respondent is very apologetic about this situation and admits to making a mistake and corrected the mistake as soon as it was discovered.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

90. 202008831
Opened: 11/23/2020
First Licensed: 7/6/2018
Expires: 7/5/2022
Type of License: Affiliate Broker
History: None

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

The Complainant's listing agent listed the property. The Respondent contacted the listing agent and submitted an offer on behalf of the Respondent's client. The offer was for \$205,000 with a \$2,000 earnest money deposit and was not contingent on financing, an inspection, or an appraisal. The offer was signed by both parties and bound on November 6, 2020. On November 7, 2020, the Respondent contacted the Complainant's listing agent and stated the Buyers wanted to cancel the contract. The Respondent did not deliver the earnest money to the title company and the earnest money was never received as of November 12, 2020. The Complainant is seeking the full earnest money amount by the Buyers.

The Respondent provided a response and stated the Respondent's client, the Buyers were instructed to submit the earnest money, however, failed to do so despite the Respondent repeatedly instructing the Buyers to make sure it was submitted when the contract was bound on November 6, 2020. Shortly after the contract was bound, the Respondent's client decided not to purchase the property and the Respondent advised the Buyers they would be in breach. The Respondent contacted the Respondent's Principal Broker for assistance and the Principal Broker attempted to resolve the matter but was unsuccessful in reaching a resolution of the matter. The Respondent provided the numerous communications with the Buyers concerning submitting the earnest money and the e-mails advising the Buyers of the breach of contract.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

91. 2020089001
Opened: 11/23/2020
First Licensed: 1/1/2006
Expires: 8/27/2021
Type of License: Principal Broker
History: 2017 Consent Order; 2019 Consent Order

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

The Complainant listed the home with the Respondent on June 16, 2020 with a six-month contract. There were two different buyers and both buyers backed out of the deal and the Respondent failed to act. The Respondent guaranteed the home would be sold. The first buyers offer date was July 5, 2020 and was accepted. The house inspection was on July 7, 2020. The results of the inspection were provided on July 10, 2020. The roof had two layers of shingles that needed to be removed and new layer was put on because it had a new tin roof. The repairs needed were completed. After receiving the results of the inspection, the Buyers wanted to take \$10,000 off the agreed sale price. The Complainant told the Affiliate Broker the Buyers needed to come out and reexamine the house and compare it to the results of the inspection. However, the affiliate broker did not relay this information to the Buyers. The second offer was through an FHA loan and the closing date was set for October 21, 2020. Two weeks before the closing the Complainant's agent advised that the lender required that the mobile home to have a 6X6 concrete footer with 2X6 walls around and connected to the outskirts of the home. Most contractors were booked and were unable to do the construction work within the two-week period prior to the closing date. The Complainant's agent stated this was the last thing that needed to be done. The Complainant's family worked one week in the rain to get this done before the closing date. The title agent did not know until the day before the closing that the property was a mobile home. The title agent told the Complainant that their real estate agent failed to tell them it was a mobile home. The closing date was postponed until October 28, 2020. A day before the second scheduled closing date, the Respondent notified the Buyers that it would take two more months until the closing took place. The six-month contract expired in a little over a month. As a result, the Buyers backed out of the contract and the Respondent failed to honor the guarantee to get your home sold. The listing agreement expired with the Respondent on December 14, 2020. The Complainant still has not sold the home. On November 2, 2020, the Respondent cancelled the contract without the Complainant signing a mutual release. The Complainant's home was taken off the market on November 3, 2020.

The Respondent provided a response and stated the Respondent listed the Complainant's home with the "your home sold" guarantee on June 16, 2020. The first potential buyer had an inspection completed and sent over a repair proposal of eight items that needed to be repaired. The Seller offered a \$2,000 repair credit. The Buyers wanted to cancel. The Respondent tried to negotiate the repair proposal with the Buyers, but the Buyer would only accept a \$10,000 repair credit. The Seller agreed to a \$4,500 repair credit plus a home warranty, however, the Buyer refused and cancelled the contract. The Complainant claimed the home inspector was "nit picking" items but the Respondent was unable to have the home inspector return to the home to reinspect the property. The roof issue had nothing to do with the amount of weight the two sets of shingles plus the tin would have on the manufactured home. The Buyers was an older single lady who got scared following the inspection and there was nothing the Respondent could do to salvage the transaction. The Respondent stated there was no issue with the repairs. In the second transaction, the appraisal was returned and there was no issue, however, the lender required a structural engineering letter to move forward and the Respondent knew that the Complainant did not have the money for someone to come out to perform a structural inspection. The Respondent arranged for an engineer to come and inspect the foundation and provide a letter. The Respondent paid the \$425 for the structural engineer. The structural engineer inspected the home and stated it needed to have a 2X6 half wall built underneath it that was sitting on a poured concrete footer. The Complainant was directly told this by the structural engineer. The Respondent tried to find a contractor to have this

done but was unable to find a contractor. Most contractors could do the work in three to four weeks. The Complainants needed to close as soon as possible to pay off their debts and move to Alabama, so the Respondent let them borrow \$1,500 to buy the materials and do the work themselves. The Respondent made sure to speak to the structural engineer, so it was clear what needed to be done. The Complainants assured the Respondent he would be paid back at the closing. The structural engineer came back to the property to inspect the work and approved it. The Respondent paid another \$225 to get the clearance letter from the structural engineer. The Respondent believes the Buyer's agent failed to tell the Buyer's title company the property was a manufactured home and the Complainant assumed it was the Respondent that failed to inform the title company the home was a manufactured home. The Respondent does not speak to the Buyer's title company unless necessary and it was not the Respondent's responsibility to tell the Buyer's title company the details about the property. On October 19, 2020, the title company informed the Respondent and the Buyer's agent that the mobile home had not been detitled. The title company would also have to send a VIR form to Nashville to make sure there were no liens against the manufactured home. The title company indicated it would take about a week to get the VIR back and a closing extension was signed. The title company informed the Respondent there were two liens on the mobile home. The title company had to find out lienholders and the amounts of the lien. The title company indicated it would take at least a month. The Respondent advised the Complainant. The Respondent tried to keep the deal intact, however, the Buyers were not willing to wait for the liens to be resolved or wait for the detitling process. The Respondent found there were liens from three owners back. The companies who had the liens had been sold and then the company who purchased the first company was sold and then that company was sold. The two previous purchasers of the mobile home had bought it for cash with no manufactured home title and did not have a title search performed or purchase title insurance. After the contract was cancelled, the Complainant started a Facebook page and made disparaging remarks about the Respondent. The Respondent's Principal Broker had to get involved and the Principal Broker recommended the Respondent enter a mutual release with the Complainant.

Recommendation: Close.

Commission Decision: The Commission voted to defer this matter until the next meeting and requested that counsel obtain a copy of the advertisement at issue in the complaint.

92. 2020081051

Opened: 11/23/2020

First Licensed: 6/8/1990

Expires: 10/2/2016

Type of License: Real Estate Firm

History: None

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

The Complainant has been the Respondent's client for two and half years and the Respondent has managed two apartment buildings for the Complainant. The Complainant transferred the management of both properties to a new property manager on August 20, 2020. The Complainant

asked the Respondent to transfer the security deposits directly to the new property manager and to send the remaining operating funds to the Complainant. The parties agreed that some of the operating funds would be transferred on August 31, 2020 with the balance to be released by September 30, 2020 to allow for payment of any unpaid bills. When it was time to release the funds, the Complainant discovered the property manager's records were incorrect. The Complainant advised the Respondent \$812.16 was still owed. The Respondent stated the Complainant owed the Respondent \$790.04. The Complainant attempted to contact the Respondent several times to resolve this issue and requested an explanation of the amount alleged to be owed to the Respondent. The Respondent stopped communicating. The Complainant alleges the Respondent failed to within a reasonable period account for or remit any moneys coming into the licensee's possession which belonged to the Complainant. The Complainant also requests the Commission audit the trust and security deposit accounts of the Respondent.

The Respondent is unlicensed and did not provide a response to the complaint.

Recommendation: Authorize a contested case proceeding and assess a \$1,000 civil penalty for unlicensed real estate activity.

Commission Decision: The Commission accepted counsel's recommendation.

93. 2020082141

Opened: 11/30/2020

First Licensed: 6/8/1990

Expires: 12/8/2016

Type of License: Principal Broker

History: 2016 Consent Order

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

The Complainant has been the Respondent's client for two and half years and the Respondent has managed two apartment buildings for the Complainant. The Complainant transferred the management of both properties to a new property manager on August 20, 2020. The Complainant asked the Respondent to transfer the security deposits directly to the new property manager and the remaining operating funds to the Complainant. The parties agreed that some of the operating funds would be transferred on August 31, 2020 with the balance to be released by September 30, 2020 to allow for payment of any unpaid bills. When it was time to release the funds, the Complainant discovered the property manager's records were incorrect. The Complainant advised the Respondent \$812.16 was still owed. The Respondent stated the Complainant owed the Respondent \$790.04. The Complainant attempted to contact the Respondent several times to resolve this issue and requested an explanation of the amount alleged to be owed to the Respondent. The Respondent stopped communicating. The Complainant alleges the Respondent failed to within a reasonable period account for or remit any moneys coming into the licensee's possession which belonged to the Complainant. The Complainant also requests the Commission audit the trust and security deposit accounts of the Respondent.

The Respondent did not provide a response to the complaint.

Recommendation: Authorize a contested case proceeding and assess a \$1,000 civil penalty for unlicensed real estate activity.

Commission Decision: The Commission accepted counsel's recommendation.

94. 2020084821

Opened: 11/23/2020

First Licensed: 6/25/2003

Expires: 8/5/2022

Type of License: Real Estate Firm

History: 2017 Consent Order; 2018 Order

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

The Complainant purchased a timeshare in September 2020 and wanted to cancel and were unable to cancel. The Complainant alleges the Respondent did not sell them the correct timeshare. The Complainant alleges the Respondent sold them a different timeshare package with the incorrect number of points.

The Respondent provided a response and investigated this matter and the allegations. The Respondent disagrees with the allegations and states the Complaints were provided full disclosure of the timeshare being purchased. In the interest of resolving the matter to the Complainant's satisfaction, the Respondent has agreed to cancel the timeshare membership and refund the \$3,995 which represents the down payment paid by the Complainant on September 13, 2020 in exchange for a mutual release. The documents will be drafted by the Respondent and the Respondent will coordinate with the Complainant.

This matter has been resolved between the parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

95. 2020085171

Opened: 11/23/2020

First Licensed: 10/12/1982

Expires: 7/9/2022

Type of License: Real Estate Firm

History: None

The Complainant is a Virginia resident and the Respondent is a licensed Tennessee Real Estate

firm.

The Complainant purchased a timeshare and opened a credit card because there was a special finance rate of 0% for an introductory six-month rate. The credit card company would not provide an extension of the introductory rate after the six-month period. The Complainant alleges the Respondent stated there were no membership fees, however, when the Complainant reviewed the terms and conditions online, it stated the club benefits would be provided so long as the purchaser complied with all membership terms including timely payment of all monthly and annual subscription fees. The current introductory membership renewal fees for the club varies and is dependent on the level of membership in the program and can range between \$199 to \$349. The Complainant was also told the Complainant would receive \$1,000 in travel credits every two years which could be used to pay for the maintenance fees which were currently \$540 per year for the one-week timeshare. This is the only reason the Complainant purchased the timeshare. On October 12, 2020 and October 13, 2020, the Complainant notified the Respondent about canceling the membership and the Respondent contacted the Complainant on October 13, 2020 by telephone and stated the Complainant was beyond the three-day cancellation provision in the contract. The enrollment had been signed on October 7, 2020. The cancellation period was ten (10) days in the contract.

The Respondent provided a response and stated the membership fee does depend on the level of membership and the Respondent did state the Complainant would receive the \$1,000 travel credits, however, the Complainant was not told the credits could be used to pay maintenance fees. The credit card had a point system that could be redeemed for cash to pay the maintenance fees. The Complainant sent the e-mail for cancellation one day after the normal cancellation period and the Respondent did contact the Complainant by telephone. During that phone call, the Complainant indicated that the Complainant did not want to cancel the global points program. One program had nothing to do with the other and the Respondent advised she could have both. The Complainant stated she would talk to her husband and get back to the Respondent and never heard anything back from the Complainant until receiving this complaint. The ten days referenced by the Complainant refers to the cancellation period for cancelling a reservation after it has been made. The Complainant was treated with honesty and integrity and was not told any lies and disputes the complaint. Nevertheless, the Respondent has refunded the Complainant the full amount to the credit card and placed the Complainant on the Do Not Contact list.

The parties have resolved the dispute.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

96. 2020084381

Opened: 11/23/2020

First Licensed: 8/27/2008

Expires: 8/26/2021

Type of License: Time Share Registration

History: None

The Complainant is a Pennsylvania resident and the Respondent is a licensed Tennessee Timeshare Registrant.

The Complainants are senior citizens and allege they are the victims of consumer fraud. The Complainant attended a sales presentation by the Respondent who was selling timeshares and what was promised during the presentation was not the same that was in the contract. The Complainant wishes to rescind the timeshare contract with the Respondent and demands a refund of all monies paid to the Respondent. The Complainant was not advised of a ten day right to cancel during the presentation and never provided a copy of the contract. The Complainant was told a digital copy would be provided to them on a thumb drive that was given to the Complainant, but the contract was not on the thumb drive. A few days later, the Complainant received an e-mail from the Respondent through DocuSign and the link did not work and the Complainant could not open it. When the Complainant wanted to dispute the charge on the credit card, the credit card company sent a copy of the contract from the Respondent. The Complainant only learned of the ten day right to cancel on September 11, 2020 and this was the first time the Complainant became aware of this right. The Complainant notified the Respondent's rescission department on September 14, 2020 about the Complainant's right to cancel and sent an e-mail to one of Respondent's Senior Case Specialists on September 14, 2020. The Complainant alleges the Respondent forced them to sign under duress and by lying to the Complainant about all the timeshare benefits. The Complainant advised that the spouse had cancer and was not feeling well during the time of the presentation. The presentation was only supposed to be one hour long, but it ended up being a five or six hourlong high pressure sales meeting. The salesperson kept repeating it was a great investment opportunity, insisted that the Complainant's must sign on that day and the Complainant was not feeling well. The Respondent's salesperson stated it would only be a few more minutes and brought some ginger ale for them to drink. The Complainant also advised the service dog was in the car the Respondent's salesperson would not let them both leave at the same time. The salesperson tried to show how the timeshare could be rented out to make money and the maintenance fees could be eliminated just by completing surveys. The salesperson also stated there were log homes that could house a whole family of 17 for a family vacation for only \$200 to \$300 per week. The salesperson also stated there would be free cruises and the Complainants could vacation for free. The salesperson provided personal phone number and when the Complainant contacted her for assistance, and she would not speak to them and never returned the call to help them. On August 17, 2020, the Complainant sent additional letters to the Respondents four other employees expressing a desire to cancel the contract. None of the employees ever contacted or responded to the Complainants. On September 9, 2020, the Complainant received an e-mail from another case specialist who asked to contact the Complainant, however, never called the Complainant. The Complainant called back twice and left messages for the case specialist and never heard back. On October 1, 2020, the case specialist again e-mailed to say a quality assurance review had been requested for the transaction. On October 5, 2020, the case specialist stated in an

e-mail that the Complainants knowingly and willingly signed the contract and is checking whether the contract was sent by DocuSign.

The Respondent provided a response and stated the Respondent received the communication and believes the Complainant may have come across information regarding the cancellation of contracts with the Respondent regardless of its validity. These forms of complaints reference issues that are difficult to substantiate or even contain information that may not be accurate or specific to the Owners' experience. In the absence of specific verifiable details in the complaint the Respondent must rely on the signatures acknowledging their understanding and agreement to the terms of the purchase. On January 29, 2020 they upgraded their Membership and applied it towards their purchase of an Annual allocation of 154,000 points. The Complainant signed and received the sale charge receipt using her personal credit card to satisfy her down payment in the amount of \$19,999.00. The Complainant does not have a loan payment with the Respondent and their monthly assessment would be \$95.69, subject to change from year to year. The Security Agreement signed and received by the Complainant stated the Complainant had ten (10) days from the date of purchase to rescind their contract. All written disclosures were signed and received and the fully disclosed the agreement between the parties. The Respondent did not find grounds to cancel the contract and denies the request to cancel.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

97. 2020085251

Opened: 11/23/2020

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration (Time Share Exempt)

History: None

Complainant is a Louisiana resident and timeshare owner and the Respondent is a licensed Time Share Registrant.

The Complainant purchased a timeshare and has attempted to communicate with the Respondent concerning cancelling the contract. The Complainant alleges the Respondent is engaged in deception and misrepresentation. The Complainant stated the behavior of the Respondent's representatives is questionable and the individuals employed by the Respondent are engaged in deceitful tactics. The Complainant stated the Respondent also has used deceitful tactics in advertising the timeshares. The Complainant was told by the Respondent the documents signed would reflect exactly what was verbally agreed upon during the transaction. However, the Complainant alleges this is incorrect. The Complainant stated the contract was based on false pretenses and therefore, the contract is invalid.

The Respondent provided a response and stated the documents related to the transaction do not

corroborate the verbal representations made by the Complainant. All disclosures were given. There are multiple documents signed by the Complainant where the Complainant acknowledges receipt and understanding of all the terms and conditions. The Respondent disputes the allegations of the Complainant and stated there is a valid contract. The Respondent voluntarily entered the contract to purchase the timeshare. The Complainant was provided copies of all documents and other timeshare reference materials.

The Complainant did not cancel within the rescission period in the statute and in the contract. There is insufficient evidence to show the Respondent violated the Tennessee Timeshare Act of 1981.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

98. 2020086731

Opened: 11/30/2020

First Licensed: 8/22/1994

Expires: 11/22/2021

Type of License: Affiliate Broker

History: None

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

The Complainant closed on the purchase of a home on September 11, 2020 for the sum of \$340,000 when the Respondent represented the Seller. The property was marketed and sold with a deeded dock on a lake and the Seller was asked to fill out full disclosure forms. After the Complainant received the letters, it stated the docks were not valid and the community dock violations could not be resolved, and the dock had to be removed per the Tennessee Valley Authority (TVA). The Complainant must now remove the dock by the end of December 2020 and remove the boat, canoes, and other property as soon as possible. The Complainant was shocked and dismayed as the purchase of the property was based on the property having a dock. The Complainant reached out to the Buyer and Seller's real estate agent and received one communication acknowledging receipt of the concern and stating there would be a follow-up. The Respondent represented another buyer on the same street just before the Complainant's closing where the deeded dock was also a major issue and their dock was stated in the deed and the Complainant's dock was not stated in the deed. The Complainant communicated this to the Respondent. After several phone calls, texts and e-mails, the Complainant has heard nothing from the Respondent. On November 14, 2020, the Complainant made on final attempt to contact the real estate agents and finally heard back from one of the real estate agents who stated that since the Complainant intended to hire legal counsel with the intent to file a lawsuit, the Respondent will not respond to any telephone calls. The Complainant discovered the Seller and the agent were aware with the pending issue concerning

the docks and the Complainant wanted an explanation from them. The Complainant believes the Respondent engaged in ethical violations and the rules of the Tennessee Real Estate Commission.

The Respondent provided a response and stated the complaint was made after the closing of a home where the Respondent was a facilitator of the transaction. The Respondent states this is a dispute between the owner and the adjacent owners of the property and the TVA. There were several other owners in the community affected by the land transaction that occurred that disqualified the community dock that was sold with the property. The Respondent did not have anything to do with the transaction that led to the controversy related to the land transaction.

The property owner of the dock also provided a response and states the property owner is the owner of "Dock B" on the lake and purchased the property six months prior to the Complainant's purchase. The property owner of the dock was required to submit paperwork for the TVA to change the ownership as well as any requests for upgrades to the existing dock which were done in September 2020. In October 2020, the dock owner was contacted by the TVA who stated the dock was in violation for several reasons: (1) the dock is required to have minimum amount of land frontage required for a community dock and the deeded land the dock owner had was only 36 feet wide. The land frontage was too small for a community dock and (2) the dock is 44 feet wide, partially residing on property not owned by the dock owner, and (3) an HOA must exist to govern the community dock and there was no HOA. The dock owner was not aware that the land frontage was more than 36 feet, meeting the TVA minimum requirement in the initial application. The dock owner discovered that approximately 8-10 years ago a large portion of the land was sold and deeded separately. The dock owner contacted the adjoining property owner asking to buy their land to meet the TVA minimum requirement and the owner would not sell the land. As a result, the dock owner had to inform the community that the dock violations could not be rectified, and the dock had to be removed per the TVA. As a result, the dock owner had to request all boats, canoes, etc. be removed from the dock as soon as possible.

The Complainant provided a rebuttal to the response and stated the real estate professionals representing both the Buyer and Seller in this transaction where the major issues arose post-closing should ethically and professionally address the issue and not hide in fear from it. The Complainant wanted to reiterate that the Seller was aware of the situation with the land attached to the docks prior to the closing and the real estate agent, the Respondent was also probably aware of the situation as well. The Complainant requested a response from the Respondent on numerous occasions and the refusal to answer the accusation implied to the Complainant that the Respondent was guilty. The Respondent should have at least provided some response and attempted to clarify the situation and respond to the numerous communications sent by the Complainant. The Complainant believes the Respondent fraudulently marketed the property and had knowledge of the dock and failed to disclose it. The Complainant only now has learned of the sworn statement by the Seller and the Respondent indicating they had no knowledge of the dock issue. The Complainant had never mentioned the Complainant would be taking any legal action concerning the dock until the Respondent refused to respond to the numerous communications sent to the Respondent. The Respondent closed on a transaction on a neighbor's house as the selling agent on August 28, 2020 about two weeks before the Complainant's closing. The Respondent assured that Buyer there would be a deeded dock in the title work and the deed specifically reflected it where the deed mentions the dock transferring ownership with the home. The Complainant's deed was

missing all this information concerning the dock. The Respondent was aware of this and never mentioned it to the Complainant, instead the Respondent merely acted as though the Complainant would be purchasing the dock with the property. The Complainant states the Respondent marketed the property with a dock and sold it with a dock and deeded the access with a dock and somehow the Complainant does not have a dock. The Complainant paid for a property because of the lake access and this was the biggest key factor in buying the property.

This is a contractual dispute between the parties and property dispute between the property owners.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

99. 2020088501

Opened: 11/30/2020

First Licensed: 1/29/2004

Expires: 1/18/2022

Type of License: Affiliate Broker

History: None

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

The Complainant owned property in Tennessee and was interested in purchasing a home in Tennessee. On July 3, 2020, the Complainant contacted the real estate agent who handled the sale of the acreage several years earlier. The same real estate agent was still working for the same company where the listing agent of the home worked. The Complainant was put in touch with Respondent real estate agent and expressed interest in purchase the home. The Complainant made an offer on the property and signed a Purchase and Sale Agreement on August 7, 2020 and closed on the home. After the Seller accepted the contract, the Complainant arranged for a home inspection and it was completed and sent to the Complainant on July 16, 2020 along with a list of recommended repairs. The inspection report noted the roof covering at the front facing of the home was sagging significantly and the Complainant could not determine if there was a leak. A licensed roofing contractor would have to be consulted concerning the condition. The Complainant contacted the Respondent real estate agent and requested a licensed roofing contractor perform an inspection and prepare a repair estimate as needed. Over the next two weeks, the Respondent was unable to get a licensed roofing contractor to assess the roof. The Complainant found a roofing contractor and the roofer sent out an inspector/estimator to assess the roof and determined the roof repairs would cost \$3,800. When the Complainant discussed this with the Respondent, the Respondent claimed it was a new roof and it did not require any repairs. The Respondent also told this to the roofing contractor and told the Complainant the Sellers did not have the money and refused to pay for the roof repairs. After the transaction closed, without the roofing repairs, the Respondent admitted that she had not been forthcoming about the roof and

stated she made a mistake and sent a check to the Complainant in the amount of \$1,500. The Respondent also made a \$1,000 referral commission payment to the referral agent who handled the Complainant's land transaction several years earlier. The commission was paid outside of closing and was ultimately termed a gift, which was determined to be permissible. The Respondent told the Complainant, the Respondent did not make any money on the transaction. Also, the Complainant was not provided a copy of the Seller's closing statement and when the Complainant asked for it on October 29, 2020, it reflected the Respondent did make a commission of \$3,150. The Complainant states there may not be any recourse in the Complainant's transaction, but the Complainant hopes other individuals are not poorly represented by the Respondent like this in a real estate transaction. The Complainant would like the public to be aware to help other individuals in the future from being poorly represented or not represented at all. The Complainant wants all individuals to have professional representation, honesty, and integrity from their real estate professional.

The Respondent provided a response and stated the Respondent received a call from a retired real estate agent who had been contacted by a former client who wanted to write an offer on a home. On July 2, 2020, an offer was accepted between the Buyer and Seller. At the time of the offer, a Confirmation of Agency was written and explained to Buyer and Seller and the Respondent was the facilitator for the transaction and represented neither party. The referral agent also demanded a referral fee and the Respondent could not provide the referral fee because the referral agent did not have an active license and it would not be permissible for the Respondent to pay a referral fee. The referral agent continued to demand the referral fee throughout the transaction. After the offer was bound, the Complainant had a home inspection conducted and based on the inspection, the Complainant had requested a licensed roofer inspect the roof. The Respondent made several attempts to contact a licensed roofer, but in the interim the Complainant contacted a roofer. The roofer used by the Respondent found no issues and the Respondent relayed this to the Complainant. The Complainant did not agree and hired another company to inspect the roof. The new roofing inspector found a problem with the roof and indicated it needed repairs in the amount of \$3,800. The Respondent relayed this to the Seller and the Seller indicated the roof was only several months old and there were no problems. The Seller completed the other repairs as requested and agreed to escrow \$5,100 for septic repairs to be completed after the closing. Seller stated the price had been reduced by \$2,000 and agreed to pay the Complainant's closing cost in the amount of \$3,000. The Respondent relayed this to the Complainant and the Complainant wanted to continue with the transaction with no repairs to the roof. The Complainant signed off on the Buyer's Final Inspection and waived the right for inspection and accepted the property "AS IS" on August 5, 2020. After the closing, the Respondent sent the Complainant a gift card as a thank you. The next week, the Complainant called the Respondent and was not happy with the roof situation and compensation from the Seller. The Respondent discussed the matter with the Principal Broker and Seller, and it was decided the Seller would be reimbursed a portion of the Commission so it could be given to the Complainant for any roof repairs. The Complainant was pleased with this offer and accepted it. The Respondent has acted in good faith towards the Complainant and the Seller in this transaction. The Respondent was surprised to receive the complaint because soon thereafter, the Complainant contacted the Respondent about purchasing another property in Tennessee.

The parties resolved the issues in this transaction. There is insufficient evidence indicating the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

100. 2020080791

Opened: 11/30/2020

First Licensed: 2/16/2012

Expires: 2/15/2022

Type of License: Real Estate Firm

History: None

This complaint was submitted by an anonymous North Carolina Complainant. The Respondent is a licensed Tennessee Real Estate Firm.

The Complainant alleges the Respondent sent three e-mails on various dates in October 2020 claiming lakefront property was available for sale. The Complainant lives in North Carolina and has friends in Tennessee and has been to this area. When the Complainant contacted the Respondent to express interest in the property, the Respondent indicated there was an issue with the Army Corps of Engineers or TVA owning all the lake frontage and the property abutted those areas. The Respondent indicated there could be a path that meanders to the water from the property and some of the trees could be cut down to see the lake from the property. The pictures and captions clearly showed the properties were waterfront properties. The Complainant did confirm with the Respondent the properties were waterfront properties. The Complainant alleges the Respondent's advertisements are false and the Respondent is engaged in false advertising.

The Respondent provided a response and stated the advertisements clearly indicate the property being sold is lake front property and there is a clear distinction between lake front and waterfront property. There was also waterfront property available for sale and the waterfront could be used for those properties. The pictures were accurately depicting the land for sale in the advertisements. The strip of land that touches the Army Corps of Engineers property is a strip of land along a portion of the waterfront and underground property along the waterfront that belongs to the Army Corps of Engineers. The property that abuts the land for sale can clearly be used and there is no issue with the waterfront area being used by an owner of the property. The nature of the land still is considered lakefront property and does not change the lakefront views from the property being sold even though a portion of the land is owned by the government. The aerial photos in the advertisements were accurate and correct. The only exception is the land cannot have a dock along the property and the trees cannot be cut on the portion of the land is owned by the Army Corps of Engineers. This was all disclosed to the Complainant. The Respondent did not have unsubstantiated or misleading advertisements and has not violated the laws and rules of the Tennessee Real Estate Commission.

There is insufficient evidence to indicate that the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

REPRESENTED MATTERS

SHILINA BROWN

101. 2018017331

Opened: 3/14/2018

First Licensed: 11/7/2013

Expires: 11/6/2019

Type of License: Vacation Lodging Service Firm

History: None

Complainants are an anonymous group of property owners and Respondent is a vacation lodging services firm that oversees the short-term rental of Complainants' properties.

Complainants allege checks made out to Complainants by Respondent have bounced on numerous occasions since 2017. Complainants also state payments have been late and on some occasions Respondent requests Complainants wait a few weeks before depositing checks. Complainants state they are in the process of moving their business to a different firm, but they are worried that if they leave, they will never receive their past-due money.

Respondent states that they may have issued a few late payments following a hospitalization, but that there are no outstanding payments due to any of the property owners.

An audit of Respondent's financial records revealed numerous issues. The auditor found several instances of returned checks due to insufficient funds. On nine such occasions, the records fail to establish whether the payments were rectified with the cabin owners. The records also show several transfers from the firm's escrow account to the firm's operating account and multiple cash withdrawals from the escrow account.

Tenn. Code Ann. § 62-13-104(b)(7)(B)(v) authorizes the Commission to take disciplinary action against a vacation lodging services licensee upon finding that the licensee has failed,

within a reasonable time, to account for or remit any moneys owed to others. Subsection (b)(7)(B)(vi) further authorizes disciplinary action upon finding that a licensee has failed to preserve accurate records of the firm's escrow account. Counsel recommends the Commission authorize disciplinary action for Respondent's failure to account for the nine outstanding payments owed to the property owners.

Recommendation: Consent Order providing for suspension of Respondent's license until such time as Respondent can provide proof of Respondent's compliance with the above-stated provisions of the Act.

Decision: The Commission voted to authorize a Consent Order with a \$9,000 civil penalty (\$1,000 per violation of Tenn. Code Ann. § 62-13-104(b)(7)(B)(v)) and suspension of Respondent's license until such time as Respondent is able to provide proof of Respondent's compliance with the above-stated provisions of the Act.

New Information: The Respondent has reimbursed all the Complainants involved in this matter in full for all amounts owed. The Legal Department has contacted individuals to confirm the reimbursement and confirmed this matter has been resolved and the Complainants had been reimbursed. The original entity is no longer in business.

New Recommendation: Close.

NEW DECISION: The Commission accepted counsel's recommendation.

102. 2018084951

Opened: 12/4/2018

First Licensed: 11/1/2000

Expires: 5/25/2020

Type of License: Affiliate Broker

History: 2010 Letter of Warning

Complainant, a property seller, alleges Respondent, a licensed affiliate broker, showed their property to a prospective buyer who caused damage to the home when they visited

the upstairs attic or crawlspace and inadvertently stepped through the floor, creating a hole in the ceiling above the master bedroom.

Speaking to Complainant, Respondent denied any knowledge of the property damage and contacted their client to ask if they knew anything about it. The client denied causing any damage and, offended, dropped Respondent as their agent. Later, Respondent spoke with their managing broker and, according to Complainant, they agreed to cover the repair costs. Complainant thereafter sent a receipt for the costs to Respondent's firm, but Respondent stated they would only pay half.

Respondent did not submit an answer to the complaint. A certified mail receipt shows that notice of the complaint was delivered to Respondent's firm, as reported to the Commission, on December 20, 2018.

Counsel recommends the Commission authorize a civil penalty for a failure to comply with T.C.A. 62-13-313.

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

Decision: The Commission voted to authorize a \$1,000 civil penalty for failure to respond and a \$1,000 civil penalty for failure to exercise reasonable skill and care.

New Information: The Respondent has provided an extensive response through an attorney. The Respondent provided an affidavit. The Complainant never received the original complaint and therefore, did not provide a response. Our office did receive a signed green card for receipt of the complaint signed by an individual. The Respondent claims there was one receptionist that accepts all the mail for the entire building and the certified mail with the complaint was never actually received by the Respondent. It appears there are multiple businesses in the building of the Respondent's address and Respondent did not actually receive the complaint. The first time the Respondent received any notice of a pending complaint was in November 2020 and contacted our office immediately and retained local counsel for assistance. The Respondent did represent the Buyer and the client did submit an offer. After submitting the offer, the Buyer wanted to take a general contractor to the property to discuss updates and renovations to the home and the Respondent accompanied the client and the contractor to the home. When they were leaving, the parties noticed a large hole in the ceiling in the master bedroom. The Respondent

immediately took a picture of the hole in the ceiling with a cell phone and sent it to the Seller's agent to notify them of the hole. The Seller's agent contacted the Respondent and accused the Respondent of causing damage to the property. When the Respondent's client learned of the accusation, the client was upset and withdrew the offer. The Seller's agent contacted the Respondent again about the hole in the ceiling and possible repair and after the Respondent discussed the matter with the Principal Broker, it was agreed the Respondent would pay for half of the cost of the repair to assist the Seller's agent and appease the Sellers. The repairs were completed to the ceiling and the Seller's agent submitted a bill to the Respondent requesting payment of the full amount. The Respondent contacted the Seller's agent and stated the offer was to pay only half the cost of the repairs. The Respondent never heard back from the Seller's agent and therefore, never sent the payment. The Respondent denies the damage was caused by an individual with the Respondent or the Respondent on the day of viewing the property for renovations. Also, the Seller and the Seller's agent never provided any evidence to support the allegation that the Respondent or the client caused the property damage. The Respondent offered to pay half from the start only to resolve the problem. The Respondent sincerely apologizes for not providing a response. The Respondent has been licensed since 2000 and is keenly aware of the importance of providing a response to the Commission.

The Respondent was not responsible for the damage and there two witnesses that can corroborate that the damage was not caused by any individual in attendance viewing the home to consider renovations to the home. There is no proof provided by the Complainant that the damage was caused by the Respondent. There is insufficient evidence to show a violation of the laws and rules of the Tennessee Real Estate Commission.

New Recommendation: Close.

NEW DECISION: The Commission voted to authorize a contested case proceeding and issue a Revised Consent Order with a \$1000.00 civil penalty for failure to respond to a complaint.

103. 2020063421
Opened: 9/28/2020
First Licensed: 1/24/2006
Expires: 5/15/2011
Type of License: Affiliate Broker
History: None

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

The Complainant alleges the Respondent represented the owner of a development located in Tennessee. The Complainant purchased a lot on July 29, 2017 as part of a "Land Liquidation" sale offered by the Respondent's firm. The Respondent's firm stated the land was "100% completed infrastructure, paved and curbed roads with underground utilities." On July 11, 2020, the Complainant's builder advised the Complainant there was no electric running to the lot and the builder even contacted the electric cooperative and were advised a payment would be required in order to run electric from a lot three lots away from the Complainant's lot. On July 12, 2020, the Complainant contacted a representative of the Respondent's firm who also worked on the purchase and explained the situation to the Respondent's associate. There were several e-mails exchanged including a power route map. On August 9, 2020, the e-mail response from the Respondent's firm stated since the electric is so close, it is the Respondent's thought this is a general cost associated with construction and not the obligation of the Seller. The president of the homeowner association where the land is located stated the Complainant contacted the Respondent Affiliate Broker to address this matter. The Complainant contacted the Respondent and received no response. There were several follow-up e-mails sent to the Respondent and there was no response from the Respondent. The Complainant found there were other complaints lodged against the Respondent by another landowner who purchased a lot on July 29, 2017.

The Respondent did not provide a response to the complaint. Respondent's attorney was to provide a response and requested an extension of time in mid-October 2020. The Respondent's attorney indicated the matter has been settled and the Complainant will be withdrawing the complaint. The Respondent's attorney never submitted a response and follow-up confirming settlement of all claims and no withdrawal of the complaint was submitted by the Complainant.

Recommendation: Authorize a contested case proceeding for violations of Tenn. Code Ann. §§ 62-13-313 (a licensee shall within ten (10) days file an answer to a complaint), 62-13-312(1) (making a substantial and willful misrepresentation), (4) misleading and untruthful advertising, and (20) any conduct that constitutes improper, fraudulent or dishonest dealing and assess a civil penalty in the amount of \$4,000 with the authority to informally settle by Consent Order.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The parties have resolved all the issues and the Complainant has requested to withdraw the complaint.

New Recommendation: Close

NEW DECISION: The Commission voted to authorize a contested case proceeding and issue a Revised Consent Order with a \$2000.00 civil penalty, \$1000.00 for the advertising violation and \$1000.00 for failure to respond to a complaint.

104. 2020025231

Opened: 5/12/2020

First Licensed: 10/18/2013

Expires: 10/17/2021

Type of License: Real Estate Broker

History: 2013 Consent Order for failing to disburse earnest money in a timely manner;

2016 Consent Order for self-dealing in failing to disclose an interest to potential buyers in a timely manner

This complaint was opened administratively. Respondent is a licensed Principal Broker. An audit resulted in three separate trust fund violations. There were three separate instances where the deposit of trust account monies was delayed. In one case, the trust account deposit was delayed for three days. Pursuant to T.C.A. 62-13-312(b)(5), trust monies must be promptly deposited. The EM check should have been deposited promptly upon the binding agreement date. In another situation, trust money deposit was delayed by thirteen days. In the final instance, the trust money deposit was delayed by five (5) days. The Respondent did not provide a response.

Recommendation: Civil penalty of \$500 for each violation for a total of \$1,500 and Continuing Education hours required for CE for violation of T.C.A. 62-13-312(b)(5) and Tenn. Comp. R. and Regs. 1260-02-.09(11) regarding management of trust accounts.

Decision: The Commission elected to issue a civil penalty for \$1,500.00 for the violation of T.C.A. 62-13-312 (b)(5) and Tenn. Comp. R. and Regs. 1260-02-.09 (11) with an additional civil penalty of \$1,000.00 for failure to respond to the complaint for a total of \$2,500.00 in civil penalties and the Respondent's license shall be downgraded to Affiliate Broker for a term not to exceed three (3) years.

New Information: The Respondent has retained an attorney and a submitted a detailed response through the attorney. During the time in question, the Respondent's father was very ill and was hospitalized on March 17, 2020. The Respondent's father had to have two surgeries shortly thereafter. The Complaint was filed on April 2, 2020. The Respondent's father had to have an additional four

surgeries during the month of April. The Respondent's father was also in critical condition during this entire period. The Respondent's father died on May 9, 2020. The Respondent respectfully requests the Commission reconsider and asks for leniency or a special accommodation by the TREC in this case due to the extenuating circumstances.

New Recommendation: Authorize a civil penalty in the amount of \$1,000 and require the Respondent to take continuing education course for trust account management for violations of T.C.A. 62-13-312(b)(5) and Tenn. Comp. R. and Regs. 1260-02-.09(11) (regarding trust accounts).

New Decision: The Commission accepted counsel's recommendation.

NEW MATTERS

PAMELA VAWTER:

105. 2020086011

Opened: 12/14/2020

First Licensed: 6/19/2000

Expires: 6/4/2021

Type of License: Time Share Salesperson

History: None

Complainant is a Wisconsin resident. Respondent is the holder of a timeshare sales agent license currently in retired status.

The Respondent sold a timeshare to Complainant on or about April 30, 2015. Complainant alleges that Respondent initially approached him while he was staying at a resort and inquired if he owned a timeshare. Respondent advised that he owned two. He told Respondent that the timeshare maintenance fees increased every year, and he was not interested in purchasing another timeshare for that reason. Respondent advised that she could help with the situation. According to Complainant, Respondent stated that credit for the two timeshares could be used toward the resort, and that Complainant would have a

“very low maintenance fee” with the same use. Complainant purchased the timeshare that day.

The Complainant alleges that the sales pitch was high-pressured and rushed. He states that after he signed, he discovered that he would he have to use a third-party company to accomplish what Complainant had promised – a process the Complainant claims was extremely time consuming and costly. Therefore, the Complainant believes that the Respondent was operating under unethical sales practices.

The Respondent submitted a response advising that she could not recall the particular transaction with the Complainant (which occurred almost six years ago), but what the Complainant alleges he was told would have been correct. A third-party company has always handled the resort’s transactions. It took customers’ current timeshares off their hands, allowing them to still travel via point system membership with minimal yearly maintenance fees. Respondent states that telling Complainant the maintenance fees would be less in his circumstance was a correct statement. She states that all this information would have been documented in the paperwork Complainant signed.

Respondent no longer works or resides in Tennessee. Her Tennessee license is retired. She currently works in Virginia and has no plans to return to Tennessee.

Based on the information provided by Complainant and Respondent, Counsel does not find any violations of the rules and statutes. The rescission/cancellation period for the contract has expired. The Complainant entered the contract for this timeshare purchase five years ago. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of the timeshare contract has expired. The cancellation must be done within a four-year period of the date of the contract. Therefore, Counsel recommends this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

106. 2020087341
Opened: 12/14/2020
Unlicensed
History: None

Complainant is a real estate broker licensed in Alabama. Respondent is the secretary of Tennessee licensed real estate firm. Complainant alleges that the Respondent and the principal broker of the firm employing the Respondent “are representing themselves as Tennessee[sic] licensed brokers and sales agents.” The Complainant provides no further information or specific allegations as to how she claims Respondent has engaged unlicensed activity.

The Respondent submitted a response stating that her employer (the principal broker of the firm) does hold a Tennessee real estate license. Respondent provided the firm and broker licenses numbers, and the respective licenses have been verified. The Respondent states that she has worked as the principal broker’s secretary since 1997 and has never represented herself as anything other than his secretary.

I reached out to the Complainant for more specific information as to the basis of her allegation against Respondent. The Complainant did not respond.

Based on the complaint and the information provided by Respondent, Counsel does not find that Respondent has violated the rules/statutes against engaging in unlicensed activity.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

107. 2020091701
Opened: 12/14/2020
First Licensed: 10/25/2016
Expires: 10/24/2022
Type of License: Affiliate Broker
History: None

This is a matter referred from the Kentucky Real Estate Commission (“KREC”) for review. The Respondent is a Tennessee licensed affiliate broker. KREC has forwarded a complaint that it received alleging that the Respondent may have engaged in unlicensed real estate activity in Kentucky. The complaint KREC received alleged that the Respondent engaged in brokerage activity under the credentials of another affiliate broker who is dually licensed in Kentucky and Tennessee, both of whom are affiliated with the same Tennessee firm. The Complainant submitted portions of text messages between the Respondent and the wife of a buyer, which the Complainant contends demonstrate that Respondent was involved in negotiations, submission of contractual documents, and details involving the purchase of a home in Kentucky. The Kentucky Complainant also claimed that another buyer has alleged the Respondent helped her place an offer on property and then shared the offer with the Kentucky-licensed affiliate broker. The Kentucky Complainant submitted screenshots of portions of a text conversation between the Respondent and the buyer’s wife in which Respondent advised the buyers that the Kentucky-licensed broker would be needed because she was not licensed there. The Kentucky Complainant alleges that another buyer stated that he spoke with Respondent regarding some paperwork, and Respondent put him in contact with representatives from the bank. Finally, the Complainant alleges that the Respondent received a check for her role in seven transactions in which the Kentucky-licensed broker was either the listing agent or buyer’s agent. The complainant claims the amount Respondent received for the transactions was greater than that of the Kentucky licensed broker. Complainant contends this proves that she was involved in Kentucky transactions.

The Respondent, her principal broker, and the Kentucky-licensed broker each submitted responses. The responses stated that the Complainant is a business competitor who perceives the Respondent as a threat to Complainant’s business relationship with a successful builder once that builder began using Respondent to sell some of his homes. The buyers had expressed no concerns with the Respondent until the buyer’s wife went to work for the Complainant and became her employee. The Complainant had the buyer’s wife contact other buyers and to try to create a complaint against Respondent. The Complainant researched the other buyers’ information and sought out messages that she could “cut and paste” for the complaint. The Respondent, principal broker, and Kentucky-licensed affiliate each contend the messages were snippets from conversations taken out of context to paint an untruthful picture. The Respondent provided the full conversations.

The Respondent stated that the buyers’ searches for homes were primarily focused in Tennessee in an area withing a proximity to the Kentucky border. She states that, as sometimes happens, the buyers later showed an interest in a particular home in Kentucky.

The Respondent informed the buyers that they would have to go to a Kentucky agent who would schedule the showing. Typically, customers send local houses in both Tennessee and Kentucky at once. The properties are within a few miles to a quarter mile of the Kentucky border and often showings require driving back and forth across the state line. The Respondent shows the Tennessee properties, and the Kentucky-licensed agent shows the Kentucky properties. The Respondent denies engaging in any negotiations on Kentucky properties. When a lender had mentioned the Respondent's name, the buyers had not yet chosen to purchase a property in Kentucky and were focused on property in Tennessee at that point. Any paperwork that began with Respondent occurred when buyers were seeking homes in Tennessee. Once the buyers expressed interest in a Kentucky home, they signed an agreement with the Kentucky-licensed agent, who then handled the negotiations and documents. All documents were properly executed by the Kentucky-licensed agent.

Regarding the differing fee amounts, the principal broker explained that Respondent received a referral fee in the transactions set out in the complaint. The principal broker advised that the firm had a capping policy. The Respondent was a capped associate who received 100% of commission earned. The Kentucky-licensed affiliate broker was not capped and received only 64% of commission earned. That is the reason the Kentucky-licensed agent received less than Respondent in a 50/50 split in the transactions set out in the complaint. Upon reviewing the transactions, the principal broker's explanation accounts for the differences in amounts received by Respondent and the Kentucky-licensed affiliate as highlighted by the complainant.

Upon receiving the above-described complaint, KREC forwarded a cease and desist letter to the Respondent. No charges were authorized for unlicensed activity in Kentucky. Therefore, based on the information provided by KREC, the Respondent, her principal broker, and the Kentucky-licensed affiliate, Counsel does not find a violation of Tennessee rules/statutes by Respondent.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

108. 2020092541
Opened: 12/14/2020
First Licensed: 4/18/2017
Expires: 11/11/2022
Type of License: Affiliate Broker
History: None

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

The Complainant alleges that Respondent leased a townhome that was owned by the Respondent's wife to her son and his roommate. An early draft of the lease agreement contained the name of a real estate firm and broker listed at the bottom of the form. The complaint questions if Respondent was working for that firm/broker at the time. The final executed version of the lease did not contain that broker's name or firm logo. The Respondent mentioned moving offices in a text to Complainant. The Complainant alleges that Respondent and his wife used bullying and harassing tactics by threatening eviction weekly for a utility bill that Complainant alleges was not yet due.

The Respondent submitted a response advising that his real estate license was not active at the time he assisted the owner (his separated wife) in managing the property. Respondent was once associated with the firm on the logo of the draft lease as an assistant. Respondent alleges they gave him access to the lease form and allowed him to use the logo since he had paid dues for 2020. He states he was in the process of activating his license when COVID-19 crises hit in March of 2020, and the test was cancelled. He has since taken the exam and activated his license. He is now affiliated with a different firm.

The Respondent states that the tenants signed the lease but were unable to transfer the utilities into their own names. Respondent's separated wife agreed to leave the utilities in her name with the understanding the tenants would pay the utility bills promptly as they were submitted to them. They did not do this. The bills were past due and damaging the wife's credit. The wife received a disconnect notice twice from the utility company. The tenants were also late with their rent payments. Respondent requested that the bills be paid, and, after several attempts, started eviction proceedings. The eviction proceedings did not proceed because of conversations with the Complainant. One of the tenants has since vacated the property and refused to pay any further rent.

Respondent advises that his current principal broker has counseled him on these matters and told him to cease property management for his estranged wife's property, which Respondent has done as of December 1, 2020. The principal broker has also provided a response detailing the advice and counsel he has given the Respondent regarding the complaint. He states that Respondent joined the firm in mid-November of 2020, and the issues raised in the complaint transpired before Respondent's affiliation. Now that he is aware, he has addressed each of the issues with the Respondent.

Based on the information provided by Respondent, he was engaged in managing rental property while unlicensed. Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity.

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

Commission Decision: The Commission accepted counsel's recommendation.

109. 2020088391

Opened: 12/21/2020

First Licensed: 11/22/2013

Expires: 11/21/2021

Type of License: Affiliate Broker

History: None

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

The Complainant is the former fiancé of a political commentator. The Complainant alleges that Respondent posted the commentator's address in a comment to a post on Instagram. Complainant alleges the original post was disparaging, comparing the commentator to a Nazi. Complainant asserts that posting the address in a comment put the subject at risk of harm.

The Respondent submitted a response via his attorney stating that the subject's address was publicly available. The Complainant has subsequently requested that the complaint be withdrawn.

Upon reviewing the content of the Instagram post and comments, the comment written by the Respondent contains only an address. A second comment by Respondent states that the address is publicly available. The original Instagram post was not written by the Respondent. The original post contains a photo of the commentator along with photos of other items, including a book associated with Nazism. The post does not contain the word "Nazi," nor any language comparing the commentator to a Nazi. The Respondent's comments did not include any threat or commentary about the post. Counsel has confirmed that the address posted in the comment is publicly available online by a search of the commentator's name on the county property assessor's website, which is where Respondent found the address. The Respondent was not involved in any real estate activity with the Complainant or the commentator.

Based on the information provided by the Complainant and Respondent, counsel does not find that Respondent violated the rules/statutes of the Tennessee Real Estate Commission. Complainant has requested the Commission not to pursue the complaint.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

110. 2020088881

Opened: 12/21/2020

First Licensed: 2/22/2013

Expires: 2/21/2021

Type of License: Affiliate Broker

History: None

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

The Complainant states her complaint pertains to the warranty for her new home. She states the contractor told her he would only come out one time to do the warranty work. She is concerned that the warranty will expire by the date the contractor arrives. She states the Respondent is the project manager for the builder's company.

The Respondent submitted an answer stating that he was not involved in listing the home. He did not represent the seller or the buyer. He works as a job site manager for the company that constructed the home. His job title with that company does not require a license. The complaint does not pertain to his real estate license.

Respondent states that he contacted the Complainant to address the concerns. He explained that the company's response had been slower than usual because of COVID-19. He also told Complainant that the company signed a one-year warranty agreement, and they intend to fully stand behind the warranty and correct all issues regarding items covered.

The Complainant submitted a follow-up email stating that a contractor came out to the home and fixed some of the issues. The Complainant states she does not seem to have any additional issues and states she will contact the Commission if a further issue arises.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

111. 2020092531

Opened: 12/21/2020

First Licensed: 2/7/1973

Expires: 3/10/2021

Type of License: Principal Broker

History: 2011 Civil Penalty; 2017 Consent Order

The Complainant is a Tennessee resident and the Respondent is a licensed principal broker. This matter was first presented to the Commission at the November 2020 meeting. The complaint was initially brought against the real estate firm. The Commission elected to close the complaint and reopen it against the firm's principal broker.

The Complainant alleges the Respondent's firm is buying Google ad words and running ads on Google using the Complainant's firm name. A Google search brings up the Respondent's name and their ad. The Complainant alleges this is false and misleading advertising and an intentionally deceptive practice aimed at luring prospects to their site by using the Complainant's firm name.

The Respondent provided an initial response stating the Respondent does purchase AdWords. The AdWords are not customizable and not created by the Respondent. The Respondent uses a service for the Respondent's website that other brokerages in Tennessee use. The service creates ads to target different markets. The company providing the service is expected to fully understand the Commission's real estate advertising laws and rules. The Respondent realizes ultimately the Respondent is responsible for all ads and does not believe any of the advertisements referenced were misleading. The Respondent is not aware of any misleading ads being produced and has contacted the management at the advertising service to advise them of the issue. The advertising service stated the use of a dynamic keyword insertion in the ads of "realty" and "Nashville" since both ads are relevant to a Google search of the Respondent. The advertising service also indicated it would revise the query to make sure the Complainant's name is removed when a query is made and it would purposefully exclude the Complainant's name so that Respondent's website does not appear in lieu of the Complainant's firm. Since this advertising service provides so many ads for brokerages across Tennessee, the Respondent wanted to make sure the advertiser was aware of this issue and to make sure that it does not happen again for the Respondent or others. The Respondent apologized for this issue and advised he never intended to intentionally deceive the public to lure prospects to the firm's site by using the names of any other brokerage firms.

Upon receiving notice of the reopened complaint now against his license as principal broker, the Respondent submitted another response advising that the above-described actions which he took last year have remained in effect. He reiterates that it was never the intention to mislead or lure traffic to the website by using names of other firms. He states that upon being notified of the issue last year, he sprang into action to resolve the matter. He followed up again with the advertising service and provided their most recent response

that the problem remains rectified. He states he has taken the complaint seriously and continues to work with the advertising service ensuring that advertising laws and guidelines are observed.

The Respondent has resolved and mitigated the situation. All confusion has been corrected and resolved.

Recommendation: Letter of Instruction concerning the Commission's real estate advertising laws and rules.

Commission Decision: The Commission accepted counsel's recommendation.

112. 2020092931

Opened: 12/21/2020

Unlicensed

History: None

The Complainant is an Indiana resident. The Respondent is a Tennessee resident who was the developer of a timeshare resort. The Respondent is not a licensee.

The Complainant alleges that employees of the resort manipulated her into signing a contract for the purchase of a timeshare on December 11, 2013. She claims that a sales representative of the resort promised to transfer the timeshare ownership out of her name but did not do so. She claims that Respondent should know that employees of the resort lie to gain new customers. She has contacted the resort numerous times in attempt to resolve the matter.

The Chief Operating Officer of the resort submitted an answer on behalf of the Respondent stating that Complainant has made multiple attempts to harass the resort into allowing him to surrender his week. He has been advised that he has the right to sell his week if can no longer use it. Complainant continues to have his week enrolled with a third-party company. He has been told that if he desires to cancel his membership with the third-party company, he must contact that company directly.

The complaint does not allege that the Respondent engaged in unlicensed activity. Counsel finds no evidence that Respondent has engaged in unlicensed activity. Additionally, pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to

file a civil lawsuit concerning the validity of the timeshare contract has expired. Accordingly, Counsel recommends this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

113. 2020095251

Opened: 12/21/2020

First Licensed: 9/25/2009

Expires: 1/12/2022

Type of License: Principal Broker

History: None

The Complainant and Respondent are both Tennessee-licensed real estate agents. Respondent is a licensed principal broker.

On November 5, 2020, Respondent (the listing agent) received a \$2,000.00 earnest money deposit for the sale of a home. The buyer and seller had executed a purchase and sale agreement on November 3, 2020, which required the seller to conduct an inspection within seven days. Upon completion of the inspection, buyer was required to provide a written notice to the seller complying that included one of the following options: (1) Furnish seller with a list of written objects and immediately terminate the agreement via notification form or written notice; (2) Accept the property "as is;" or (3) Furnish seller with a written list of items buyer requires to be repaired/replaced, in which event the parties have a resolution period of three days to negotiate the repairs in good faith. If the buyer and seller do not reach an agreement within the three-day resolution period, the agreement is terminated, and buyer is then entitled to a refund of the earnest money.

The Complainant (buyer's agent) alleges that notification was executed and delivered on November 6, 2020. The Complainant asserts that the Buyer terminated the agreement upon tree roots being found under the home during the inspection because Buyer was concerned it could create future foundation problems. Complainant claims that the Respondent and seller were nonresponsive except for informing the selling agent on November 7, 2020, that seller wished to pay \$8,000.00 toward the repair, and a second email on November 8,

2020. Complainant contends that if the repair proposal was not ratified within the three-day resolution period, the agreement is void with the earnest money is to be returned to buyer. Complainant states that Respondent has not returned the funds, nor filed an interpleader. Complainant believes the Respondent has committed a violation by holding the earnest money and placing the property back on the market on November 9, 2020.

Complainant states that an interpleader was requested on November 17, 2020, and in a subsequent email on November 24, 2020, but the Respondent has not interpleaded the funds.

The Respondent submitted a response along with copies of the contract and repair/replacement proposal. Respondent contends that the Complainant is being dishonest in her complaint and omits pertinent facts. After the inspection, the buyer chose the third option of submitting a written repair proposal. Respondent produced a copy of the repair proposal, which the Buyer submitted on November 6, 2020. The Buyer did not choose option 1, which required Buyer to submit objections and terminate the agreement immediately. Respondent states the tree stump issue was already addressed on the repair proposal with no issue or concern. Rather than negotiate in good faith during the three-day resolution period as required by option 3, the Buyer subsequently changed his mind and decided not to move forward. Respondent advised Complainant by phone call and email dated November 8, 2020, that her buyer would be considered in breach of the contract and earnest money would not be refunded. The Respondent states that Complainant/Buyer did not act in good faith by attempting to change to a notification to justify the buyer's father talking him out of moving forward with the purchase. If the buyer is in default, the earnest money is forfeited as damages to seller under the purchase agreement.

The Respondent states that she was not required to interplead funds under the purchase agreement. Respondent alleges the buyer is in breach, and the Complainant has not provided accurate or truthful statements.

Based on the information provided by Complainant and Respondent, Counsel finds that the disagreement as to whether Buyer is in default is a contract dispute matter. The earnest money funds, however, were not interpleaded, disbursed, or turned over to an attorney within twenty-one (21) days of written request as required by Tenn. Comp. R. & Regs

1260-02-.09(9). Therefore, Respondent is in violation of Tenn. Comp. R. & Regs 1260-02-.09(9).

Recommendation: Civil penalty in the amount of One Thousand Dollars (\$1,000.00) for violation of Tenn. Comp. R. & Regs 1260-02-.09(9).

Commission Decision: The Commission accepted counsel's recommendation.

114. 2020090401

Opened: 12/28/2020

First Licensed: 5/30/1991

Expires: 2/20/2021

Type of License: Principal Broker

History: None

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

The Complainant states that Respondent listed Complainant's home for sale without his consent or permission. He states he has a divorce case on appeal, and that the marital assets cannot be sold until after the appeal. He alleges that he notified Respondent that she could not sell the house and provided her with a copy of the appeal. He requested that she remove the listing from MLS and provide him with a copy. He states he did not receive a response, and the listing has not been removed.

The Respondent submitted an answer stating that the Complainant's ex-wife had contacted Respondent about listing her home. The seller, Complainant's ex-wife, provided Respondent with a copy of the final divorce decree which provides that seller is awarded ownership of the home "free and clear from any claims of Husband." Respondent spoke with the seller's divorce attorney, who confirmed the house could be sold. As soon as the listing went live, Complainant began calling, emailing, and texting Respondent. Respondent did respond to Complainant and advised she that could not legally release documents to him because ownership was not in his name.

The seller has provided a statement advising that Complainant is upset that he was not awarded the home in the divorce. She states that she presented Respondent with an executed and entered final divorce decree as evidence of having the full legal authority to do as she chose with the home.

The Final Decree of Divorce was entered on October 26, 2020. Complainant filed a Notice of Appeal on November 12, 2020. Complainant submitted a copy of the Notice of Appeal, which initiates the opening of an appellate case. The filing of a Notice of Appeal does not by itself operate as a stay or injunction of a trial court's order pending appeal. The Complainant did not supply any order enjoining seller from selling or listing the home pending appeal. Nonetheless, the seller agreed to withdraw the property from the market until the appeal is resolved. Respondent has submitted documentation of the removal of the listing.

Based on the information provided by the Complainant and Respondent, counsel does not find that Respondent violated the rules/statutes of the Tennessee Real Estate Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

115. 2020093381

Opened: 12/28/2020

First Licensed: 3/30/1980

Expires: 3/18/2021

Type of License: Real Estate Broker

History: None

The Complainant is a Tennessee Resident. The Respondent is a licensee.

The Complainant alleges that he executed a purchase and sale agreement on October 23, 2020, to purchase certain property. Thereafter, Complainant paid \$2,700.00 in earnest money to Respondent (the listing agent). The contract contained a financing contingency

and a home inspection contingency. The home inspection was required to be performed within ten days, pursuant to the contract.

Complainant states the inspection took place on November 5, 2020. During the inspection, Complainant found issues with the property. Later that evening, Complainant's agent notified Respondent that Complainant was not satisfied with the property. Complainant contends that on November 6, 2020, his agent sent Respondent an email with a list of objections, including mismatched cabinets, water damage to windows, and door damage. Complainant contends that the notice of objections triggered Respondent's obligation to return the earnest money pursuant to the contract. Complainant states that Respondent has offered to return half of the earnest money and contends that failure to remit a full refund is a breach of the contract.

The Respondent answered stating the Complainant was required by the contract to conduct the home inspection within ten days of executing the contract on October 23, 2020. The Complainant did not inspect the home until November 5, 2020, which was first time Complainant had been on the property. When Complainant told his agent the inspection failed, thirteen days had already elapsed since the contract date. In such case, the contract provides that the buyer shall accept the property in its current condition. The contract also states that buyer shall apply for a loan within three days of the executing the contract and immediately notify the seller or seller's representative of having applied for the loan. The Respondent alleges this was never done. The Respondent states that the earnest money is in escrow with the title company until this dispute is resolved.

Complainant states that Respondent allowed him to inspect outside the ten-day window because Respondent worked with the buyer's agent to schedule the inspection on November 5, 2020. Complainant was in quarantine during the ten-day period and could not have conducted the inspection sooner. Complainant alleges he was unable to obtain the requisite financing because of poor condition of the property.

The Complainant threatens a lawsuit for breach of contract if Respondent does not provide a full refund of the earnest money. There is no indication that an interpleader was requested.

The parties' disagreement as to whether buyer is in breach is a contract dispute. Based on the information from both parties, Counsel does not believe Respondent has violated any of the Commission's rules and statutes

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

116. 2020094361

Opened: 12/28/2020

First Licensed: 3/21/2012

Expires: 3/20/2022

Type of License: Affiliate Broker

History: 2017 Consent Order; 2020 Letter of Warning

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

The Complainant (buyer) and the Respondent (listing agent) are involved in litigation. Complainant sued Respondent alleging failure to disclose adverse facts concerning water intrusion on the property, which Respondent denies. The complaint before the Commission concerns dispute about a document Respondent's attorney produced during depositions. Complainant alleges that Respondent's attorney produced a RF656 notification form during depositions which had Respondent's name printed at the bottom with a date of October 30, 2015, at 5:00 p.m. Complainant states there is a dispute as to whether the document is genuine and/or contains a forged signature.

The Respondent denies forging the Complainant's signature on the document and states that the document was produced from his transaction file. The Complainant admits under oath in his deposition that his signature is on the RF656 notification form. Respondent states that there would not have been any reason for forging such a form as it was not required by his office for the transaction, and the substance of what is checked on the RF656 form is essentially the same information that is checked in the Buyer's Inspection form, relating to the property. The Buyer's Inspection form was also signed by the Complainant and produced earlier in the lawsuit.

The parties have resolved their legal dispute since the Complainant's submission of his complaint. Complainant has requested through his attorney the complaint against Respondent be dismissed. Based on review of the information provided by both parties, including deposition testimony, counsel does not find evidence that Respondent has violated the Commission's rules and statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

117. 2020095191

Opened: 12/28/2020

First Licensed: 11/5/2003

Expires: 8/23/2021

Type of License: Real Estate Broker

History: None

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

The Complainant alleges that Respondent failed to diligently exercise reasonable skill and care in the sale of his home and failed to provide services with honesty and good faith. Specifically, Complaint contends that he accepted an offer of \$457,000.00 on October 29, 2020. The closing was set for December 7, 2020. Complainant alleges that Respondent (selling agent) asked him for his payoff balance, and he told her the amount was \$430,000.00. He alleges that Respondent failed to record the amount initially, which resulted in her asking him multiple times. Complainant alleges that he answered on one occasion that the amount was \$420,000.00, but that was a typo. Complainant claims Respondent told him throughout the transaction that he would receive \$5,400.00 following the closing.

Complainant alleges that the title company stated on December 5, 2020, it would be conducting an internal audit. Complainant contends that discrepancies were discovered in the audit which led to a hasty closing scheduled for December 10, 2020. At 8:32 a.m. on December 10, 2020, Complaint received the ALTA statement in an email from Respondent. Complainant contends the title of the email stated, "\$5,400 back to you." The Complainant was out of the country at that time. He states that when his power of attorney

began to sign, the title company explained that he would have to pay \$5,400.00. He states he refused to sign, and the closing was moved to December 11, 2020. On December 11, 2020, Respondent called and explained there was an issue with the taxes, and, once cleared, the Complainant would receive \$2,400.00 and Respondent would be reimbursed \$2,000.00 for the taxes. Complainant states that “against [his] wishes,” he informed his power of attorney to go ahead and sign the documents under the duress of being concerned about legal ramifications from the buyers. On December 14, 2020, the Complainant received a settlement certification document for signing which had not been in the closing packet.

The Respondent and principal broker both submitted an answer stating that Complainant submitted incorrect payoff information to the Respondent. The Complainant did not correct his error until after the closing documents had been prepared. Upon listing the property, Complainant and Respondent went through his finances. At certain times during the transaction, price drops occurred. At one point, Respondent asked Complainant for payoff information to double check her numbers when the Complainant’s file was not directly in front of her now of the requested price decrease. Once a contract on the property was received, Respondent reviewed the number and asked Complainant for the payoff information again, and Complainant submitted a payoff amount of \$421,000.00. Respondent created a net sheet based upon what Complainant had communicated as the current payoff amount. Respondent indicated that Complainant would net about \$5,400.00 if his payoff was less than \$422,000.00. On multiple occasions, Respondent stated to Complainant via text messages that the projected seller proceeds were reflecting a payoff of \$421,000. This was also reflected on the net sheet provided to Complainant prior to closing. The issue of the seller’s proceeds was further complicated by the later discovery that the taxes were not paid by the mortgage company.

Respondent states that the buyer’s lender performed an internal audit, not the title company. The title company stated that the delay on the payoff occurred because Complainant submitted unclear and inaccurate information. The title company sent the closing documents to Respondent on December 10, 2020, before the closing. Respondent scrolled to the bottom of the message showing \$5,000.00 and forwarded the information to Complainant, assuming it was correct. Respondent did not know at the time of making that statement that Complainant’s mortgage company had not paid the city and county taxes or that the payoff amount of \$421,000.00 that Complainant had provided \$10,000.00 off. Respondent and her principal broker worked, with Complainant’s consent, to resolve the tax issue. Respondent reduced her commission by \$10,000.00 to make sure Complainant would still receive proceeds from the closing. After Complainant received and reviewed the revised closing documents on December 11, 2020, indicating he would receive

\$2,400.00, he advised Respondent that his power of attorney was on her way to sign and instructed Respondent via text to “tell the buyers to go ahead and move in.” There is no evidence in the copy of the communications supplied by the parties to support that he gave the instructions against his will. The closing occurred on December 11, 2020, with full consent from Complainant.

Respondent’s principal broker’s response states that Respondent is a very diligent, hardworking, and skilled affiliate broker and has represented Complainant in previous real estate transactions with no issues.

Based on review of the information provided by the parties, Respondent has not violated the Commission’s rules and statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

118. 2020095291

Opened: 12/28/2020

First Licensed: 4/4/2003

Expires: 3/24/2022

Type of License: Affiliate Broker

History: None

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

In 2017 Complainant began renting certain residential property under a series of one-year leases, the last of which expired on September 30, 2020. Complainant states the Respondent would approach him near the end of the lease each year with an offer on behalf of the landlord to extend the term of the lease for an additional year. Complainant contends that the Respondent emailed him on September 28, 2020, offering the option to either renew the term for an additional year, purchase the unit, or go to a month-to-month tenancy. Complainant states he responded with a request to renew for an additional year. He states that Respondent responded, “no problem,” and then advised that he would send over the

lease extension for execution. Complainant received a copy of a lease extension, signed, and returned it to Respondent. Complainant contends that several days passed without hearing further from Respondent. On October 8, 2020, when Complainant requested a copy of the lease executed by the owner, the Respondent wrote back: "On it pal. I will have signed today and resent dude."

Complainant alleges that less than fifteen days after Respondent's September 28, 2020 email, Respondent notified Complainant that the unit would be sold, and the buyer would not honor the lease. He advised Complainant that the sale would take place in November and that Complainant would need to vacate before the closing. Complainant contends he was informed that the unit was part of bankruptcy case that had been initiated in June. Complainant contends that Respondent did not inform him of the potential bankruptcy sale, which would result in the loss of his home. Respondent forwarded correspondence from the bankruptcy attorney, which Complainant alleges contained a misrepresentation by Respondent that Complainant had knowledge of the bankruptcy. Complainant states he was told he had no rights and that possession would be delivered with or without a tenant, at the buyer's election. Complainant then hired an attorney to negotiate on his behalf.

The Respondent submitted an answer stating that the lease under which Complainant had occupied the premises was null as of September 30, 2020. He emailed the tenant to notify him of the deadline and to explain the lease expiration. Following the email, a series of calls occurred during which Respondent notified Complainant that the owner was during some estate issues that were leaning towards selling. Respondent offered the sale to the Complainant, who quickly responded that he was not interested. Respondent states he advised Complainant that he was not sure of the circumstances of a renewal and requested that Complainant make the unit available for showings, and Complainant agreed. Respondent states he asked the Complainant if he would like to stay in the event a buyer wanted to obtain the unit because it warranted a leasing permit for a short period of time, and Complainant said yes. Respondent states that he consulted with the seller at that time, and the bankruptcy court had not taken a position on the unit's disposition date. Respondent claims Complainant understood that he was signing the lease for presentation to the seller for his position. The seller declined to re-lease the unit. The court later allowed Complainant to become a hold over tenant and remain until November 30, 2020. Respondent denies making any misrepresentations.

A review of the email correspondence shows that Respondent was clear in telling Complainant in the September 28, 2020 email that the owner would be selling the unit as

part of an estate sale. Respondent states in the email that if the unit were to be purchased by an investor, he could position a spot in the unit with the same terms for the first year. The unit was ultimately by a buyer who wished to live in the unit. Therefore, based on the information provided by the both parties, there is insufficient evidence that Respondent has violated the Commission's rules/statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

119. 2020090731

Opened: 12/28/2020

First Licensed: 4/3/2014

Expires: 4/2/2021

Type of License: Time Share Registration

History: None

Complainant is a North Carolina resident. The Respondent is a registered timeshare resort.

Complainant purchased a timeshare at the resort on May 21, 2015. Complainant states he has recently come to believe that the resort does not treat visitors and customers respectfully. Complainant claims he was approached by two sales agents, who convinced him to become an owner with the resort. Complainant now believes the sales practices were deceitful because the perks of ownership that were advertised and promised never materialized. He was especially interested in rental income and exchanges with other resorts. He states that his main issue with the resort is the lack of professionalism he has seen recently. He has tried to contact the resort four times for assistance with cancelling his contract, but only received one call back, and the call was not helpful. He did receive a response to a letter, but it did not give him the assistance to cancel his contract. Instead, he received instructions on how to sell the timeshare. He does not wish to spend money on advertising or web marketing. He has had trouble selling the timeshare in the past for lack of interest.

The Respondent submitted an answer stating that Complainant purchased a week with the resort in 2015 and enrolled it with a third-party company for travel points to enhance his travel options. He cancelled his membership the third-party company in 2017, which means

he can contact the resort to make his reservation going forward under the flexible use protocol. The Respondent states that resort staff have returned calls and answered correspondence to Complainant directly as well as through other agencies, explaining each time that the entity he is contacting is a homeowner's association with the responsibility of maintaining the resort. The homeowner's association does not buy or sell weeks and cannot accept a deed per individual circumstance. The association has an independent company on site to resale weeks acquired from estates and foreclosures. This company cannot facilitate private resales.

The Respondent states that Complainant owns a deed to the timeshare allowing him to convey his ownership. In August 2020, Respondent provided him with a packet of information on how to market his week for sale. The association receives many successful owner transfers, which requires some time and marketing effort by the owner.

The Complainant submitted a follow-up email stating that the sales agent involved in purchase of the timeshare in 2015 used deceitful sales practices. Specifically, he states he was told by the agent that owning the timeshare would mean he could travel and exchange time easily, but he has not been able to find a place he wants to travel that has availability. He is also not having success renting and the resort has not been helpful in his attempts.

There is insufficient evidence that Respondent has violated any of the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period for the contract has expired. The Complainant entered the contract for the timeshare purchase six years ago. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

120. 2020093921
Opened: 1/4/2021
First Licensed: 9/8/2016
Expires: 9/7/2022
Type of License: Affiliate Broker
History: None

The Complainant is a Georgia resident and former tenant of Kentucky rental property. The Respondent is a Tennessee-licensed real estate broker.

This complaint concerns litigation in Kentucky over a lease agreement. The Complainant sued a property management company located in Tennessee seeking a return of his security deposit and expenses. The Respondent is an affiliate broker for the company. The rental property is in Kentucky. The disagreement between the parties concerns a dispute over the security deposit and repair expenses charged by the company upon moveout. The Complainant filed a lawsuit in Kentucky seeking a return of his security deposit and received a default judgment in the Kentucky lawsuit when the company failed to appear. The Complainant attaches the default judgment for his complaint with the Commission. There appears to be an issue with service of process.

The rental property is in Kentucky. The transactions at issue occurred in Kentucky. The allegations in the Kentucky lawsuit occurred in Kentucky and pertain solely to dispute over interpretation of the lease agreement. It does not appear that this complaint falls under the jurisdiction of the Tennessee Real Estate Commission's rules and statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

121. 2020095421
Opened: 1/4/2021
First Licensed: 8/4/2005
Expires: 8/3/2021
Type of License: Affiliate Broker
History: None

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

The Complainant alleges that on December 13, 2020, the Respondent posted on Twitter, Instagram, and Facebook misleading advertising offering a cash/rebate bonus in exchange for listings. The ad stated: "List Now: \$10,000 Bonus" and urged consumers to call for details. The ad did not disclose details of the offer.

The Respondent submitted an answer stating that the ad was only posted for nine minutes. As soon as it was up, Respondent revised it to provide a clearer explanation. The initial ad was intended to reference Respondent having been able to consistently net sellers an additional \$10,000.00 in the current market over six months ago. Respondent states his market is in a severe shortage of inventory, and he wished to initiate new inventory as well as inform potential sellers that this is an incredible inventory to maximize their situation. After the ad was up, however, he revised it to say: "List Now: Additional \$10,000." He believed that would be easier to understand. The Respondent provided screenshots of the revised ad. Respondent states that any misunderstanding was unintentional. He states it is his focus and desire to maintain the highest ethics and honesty in the business.

The Respondent also alleges that the name given on the complaint for the Complainant was false. Upon receiving the complaint, Respondent called the Complainant to apologize for any misunderstanding. The name listed as the Complainant was that of a close friend. The friend stated she was unaware of complaint. The address listed for her was incorrect, and the email given in the complaint was an old AOL account which she had not used in many years. She called the Commission to report that this was a false complaint made with her name.

Based on the information provided, the Respondent has resolved and mitigated the situation. The confusion has been corrected and resolved.

Recommendation: Letter of Instruction concerning the Commission's real estate advertising laws and rules.

Commission Decision: The Commission accepted counsel's recommendation.

122. 2020096331

Opened: 1/4/2021
First Licensed: 4/5/2002
Expires: 12/21/2021
Type of License: Affiliate Broker
History: None

The Complainant and Respondent are both Tennessee-licensed real estate brokers.

The Complainant states he had been working with a buyer for a while, when they had noticed a listing they wanted, which was under contract. The buyer called to check the deal's status and was told the appraisal was coming in low, and the deal would likely terminate. Buyer asked Complainant to pursue it. The Complainant contacted Respondent (seller's agent) about showing the home. Respondent advised via text that they were working with the appraiser to try to save the deal. The Complainant said when he called the buyer to tell them what he learned, the buyer stated that Respondent had been calling to encourage buyer and his family to make an offer, and telling them he could write it up to make it work. Complainant alleges Respondent told the buyer it would be easier to work with him, and that he was not making money on the deal because he was just doing a favor for the seller, who was his pastor. Complainant states the buyer assumed they had to work with Respondent if they wanted the house. Complainant says he explained how a real estate transaction worked and that he could represent them. The buyer continued to work with the Complainant and purchased the home. At closing, the buyer noticed that Respondent did receive a commission. The Complainant alleges the Respondent's above-described behavior was unethical.

The Respondent submitted a response. Respondent states this was popular property, and he took several calls. Buyer contacted Respondent directly saying he believed the property would be a good fit for the buyer and his parents. Respondent states that when buyer contacted him about the property, he never informed him that he was working with an agent. Respondent received additional calls from buyer's mother, who asked Respondent to call if the first deal fell through. The mother called again a couple weeks later when it looked like the deal was going to terminate. He advised her that she was welcome to make a backup offer.

That evening Complainant texted Respondent about showing the property. The mother called Respondent again stating she really wanted the home and would like to make an offer. Respondent states he pointedly asked her if she had an agency relationship with

anyone, and the mother stated she had not signed anything with anyone. Respondent denies telling her she had to work with him to ensure she “wouldn’t lose” the home. She made a verbal offer which Respondent took to the seller. During the communications about the offer, Respondent told the mother he was not making a commission on the home that the sellers were purchasing.

A couple of days later, the mother mentioned to Respondent that Complainant had been showing her son several homes. Respondent stated it sounded like Complainant had done a lot of work for their family and suggested she should have him write up the offer. She agreed, and, thereafter, Respondent dealt directly with Complainant and had no further interaction with the buyers. The Respondent states that the property closed with Complainant as Buyer’s agent and Respondent as the listing agent.

Based on the information submitted by the parties, Counsel does not find that Respondent has violated the Commission’s rules/statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

123. 2020094971

Opened: 1/11/2021

First Licensed: 8/13/2013

Type of License: Affiliate Broker

Expires: 8/12/2021

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

Complainant brings this complaint contending that Respondent breached an ethical duty by acting in an unprofessional and dishonest manner. Complainant alleges that Respondent “entrapped” Complainant into signing a Buyers Representation Agreement against her knowledge via Dot Loop. Specifically, she claims Respondent did not have a discussion with her about signing the agreement or go over the details. Complainant contends she was unaware that the documents she was emailed for her signature included a buyer’s

representation agreement. She claims that she was purposely deceived because she was not provided a copy of what she signed. Complainant contends that Respondent abandoned her for ninety days and then called her in a bullying manner, threatening that Complainant should not be talking with other agents because she signed a buyer's representation agreement. Complainant contends that she did not receive a copy of the agreement as she requested during the call.

The Respondent submitted an answer denying that she deceived Complainant in any way or engaged in any unprofessional or dishonest behavior. Complainant entered into a buyer's representation agreement in the fall of 2019. When first writing up a contract for Complainant, Respondent explained to her client that she was attaching a buyer's representation agreement that said they would continue working together even if the contract fell through. Complainant did lose the first contract to another buyer. Respondent states she then went door to door to over two hundred homes looking for a seller in the neighborhood Complainant desired. They tried to negotiate a sale in that neighborhood but could not agree on price. Knowing that Complainant wanted to buy a home at the end of the school year in May, there was no communication over the Thanksgiving, Christmas, or New Year holiday season. Respondent contends that when she contacted Complainant after the holidays, Complainant became very hateful on the phone and stated she could use any agent she wanted. Respondent alleges she reminded Complainant that she had a buyer's representation agreement with Respondent's real estate firm to buy a home before school ended.

Complainant went under contract with another real estate agent in February 2020. Respondent provided copies of the MLS material with dates. Respondent has records of over one hundred text messages and numerous calls where she and Complainant communicated about houses and tours. Respondent states Complainant has a copy of all the documents she signed in her Dotloop account, which Complainant can review at any time. Complainant opted out of receiving the listings Respondent was sending on December 15, 2020. Respondent states she did not bully or threaten Complainant or act in an unprofessional manner during their phone call. She simply reminded Complainant about the buyer's representation agreement.

Respondent submitted a copy of the "Exclusive Buyer Representation Agreement" that Complainant signed on October 14, 2019, at 11: 42 p.m. via dotloop. Respondent states that Complainant submitted this complaint on her license after a judge ruled in Respondent's favor to allow a lawsuit to proceed over the 3% commission.

This appears to be a legal dispute concerning alleged breach of the buyer's representation agreement. According to Respondent, there is pending litigation to resolve the dispute. Based on the information submitted by both parties, Counsel does not find that Respondent violated the rules/statutes of the Tennessee Real Estate Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

124. 2020096251

Opened: 1/14/2021

First Licensed: 8/8/2017

Expires: 8/7/2021

Type of License: Affiliate Broker

History: None

The Complainant and Respondent are both licensed affiliate brokers.

The Complainant alleges that Respondent is engaged in misleading and untruthful advertising. Specifically, Complainant contends that Respondent left his employment with a certain firm on March 9, 2018, but that he still advertises as the former firm's associate with the former firm's web address. Complainant attached the alleged misleading and untruthful advertising, which is a link from a website used by real estate professionals.

The Respondent submitted an answer stating that the website had been up for three years. It was mostly blank and had little to no information on him. He was unaware of the domain until it was brought to his attention through the complaint. He states it was simply a very old, lost domain. When Respondent became aware through the complaint, he contacted his previous principal broker, who advised Respondent he would clear his name off the old site. The former principal broker told Respondent that it would be taken care of by the end of that week.

At the time of this report, the link to the website still states, inaccurately, that Respondent is affiliated with the former firm and advertises the former firm's web address under Respondent's name. Because removing the link to the old domain is within the control of Respondent's former principal broker, Counsel recommends that Respondent receive a letter of warning concerning the Commission's advertising laws and rules, and that a complaint be opened against the principal broker for Respondent's previous firm for violation of Tenn. Code Ann. § 62-13-312(b)(4) and/or Tenn. Comp. R. & Regs 1260-02-.12(3)(f).

Recommendation: Letter of warning to Respondent concerning the Commission's advertising laws and rules. Open a complaint against the principal broker for Respondent's previous firm for violation of Tenn. Code Ann. § 62-13-312(b)(4) and/or Tenn. Comp. R. & Regs 1260-02-.12(3)(f).

Commission Decision: The Commission accepted counsel's recommendation.

125. 2020097861

Opened: 1/14/2021

First Licensed: 8/10/2018

Expires: 8/9/2022

Type of License: Principal Broker

History:

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

This complaint was first presented to the Commission as a complaint against the Respondent's firm. The complaint alleged that a billboard on a highway states: "[G]et a guaranteed offer on your home today." When the Complainant contacted the firm, the firm's representative indicated they did not purchase homes in the Complainant's area. The Complainant contended that the firm should not be advertising in the area if they do not purchase homes in the area.

The Respondent provided a response to the initial complaint and stated the billboard is part of the firm's "Guaranteed Offer program." The billboard clearly states that the offer is "subject to terms and conditions."

At the December 2020 meeting, the Commission elected to authorize a formal hearing and issue a Consent Order with a \$1000.00 civil penalty for the advertising violation to the firm and to open an administrative complaint against the principal broker for failure to supervise. The Respondent (principal broker) has submitted an answer to this complaint denying that the billboard contains false, misleading, or deceptive advertising. The company website outlines market areas and qualifications for the Guaranteed Offer program. When consumers call the office, they are informed of such qualifications and the terms and conditions outlined. Therefore, no false, misleading, or deceptive advertising is presented to consumers. Respondent states that people are mobile, and the company's billboards are subject to availability of blank billboards in various locations. The company's advertising on the billboard is clearly states that it is "subject to terms and conditions." Respondent states that deception was present nor was any detail of the advertising false or misleading.

The complaint did not allege that billboard or the firm's advertising activities were performed by an affiliate broker or anyone supervised by the Respondent. The Respondent answered the initial complaint on behalf of the firm as the president and principal broker. There is no evidence that the advertising at issue was the activity of any affiliate or that it resulted from inadequate supervision by Respondent of any affiliate. Therefore, Counsel recommends a penalty for violation of Tenn. Comp. Rules & Reg. 1260-02-.12(3)(f) concerning false, misleading, or deceptive advertising.

Recommendation: Authorize a penalty in the amount of \$1,000.00 and issuance of a consent order for violation of Tenn. Comp. Rules & Reg. 1260-02-.12(3)(f) concerning false, misleading, or deceptive advertising.

Commission Decision: The Commission accepted counsel's recommendation, but also voted to add the Principal Broker Core Class to be completed within 180 days of the execution of the Consent Order and not to count toward continuing education required for licensure.

MATTERS TO BE REPRESENTED

ERICA SMITH

126. 2018061831

Opened: 8/29/2018

First Licensed: 1/11/2006

Expires: 8/27/2021

Type of License: Principal Broker

History: 2014 Consent Order, 2016 Consent Order, 2017 Agreed Citation, 2017 Consent Order

Complainant is a licensed agent and Respondent an actively licensed principal broker. Complainant provided a copy of an email advertisement that they allege was sent by Respondent. as referred to in the complaint above. As summarized in the complaint above, Respondent sent a different copy of the email/advertisement, stating their copy is the “email in its entirety.” The Respondent’s copy of the email looks more complete than what the Complainant provided, as it includes pictures of two specific properties for sale with the addresses and sales price. Respondent notes the copy of the advertisement includes the firm name and firm phone number at the end of the email. Respondent explains that the email comes from a “virtual assistant” located in the Philippines, hired through a third party, and the emails are sent to those people who have signed up for emails and registered with Respondent’s website, noting all emails are sent out on Respondent’s behalf with Respondent being cc’d on all emails sent out. Respondent states that the emails simply instruct the client of what to do next to get more information on these real estate investment properties, as the email provides guidance to the client to go to the firm’s website or they can call Respondent directly by using the firm number provided. Respondent requests that they be instructed if anything in the advertisement needs to change.

Complainant was provided with a copy of what the Respondent sent in and states the copy provided by Respondent is a modified email from what they originally received, noting the phone number included is not the firm number, there was no “cc” to anyone, and provides another more recent email from Respondent (from the same third party in the Philippines). Complainant also states they have never registered or visited the Respondent’s website or requested to receive these emails and Complainant’s clients who have received them have not registered or requested to receive them from Respondent either, but they still are receiving emails.

Counsel recommends discussing Respondent’s disciplinary history and past advertising violations when considering any discipline which may be assessed. Respondent has voluntarily entered into the following Consent Orders and an Agreed Citation, admitting to the following violations:

2014026191 - Consent Order for advertising violation with \$1,000 civil penalty and attendance at one TREC meeting

2016063881 - Consent Order for advertising violation regarding guarantees, claims, or offers with \$1,000 civil penalty

2017063011 - Agreed Citation for advertising violation

2017081291 - Consent Order for advertising violation with \$1,000 civil penalty

Recommendation: Discuss.

Decision: The Commission voted to authorize a Consent Order downgrading the Respondent's license from "Broker" status to "Affiliate Broker" status for a mandatory minimum of twelve (12) months.

New Information: This matter is set for hearing on February 17, 2021. However, Complainant has communicated to Counsel that they are not able to be a witness and are unwilling to participate in the hearing. Therefore, Counsel is unable to make their case at a formal hearing or prove any violations occurred. Counsel recommends dismissal of this complaint.

New Recommendation: Dismiss

Commission Decision: Deputy Chief Counsel, Mark Green, requested that this matter be pulled from this report and not be considered for purposes of this month's Commission meeting, however, it will reviewed and added to next month's meeting as a represented case.

Chairman John Griess adjourned the meeting at 1:25PM