



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

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

MINUTES

The Tennessee Real Estate Commission held a meeting on July 07, 2021, at 8:30 a.m. CDT at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243. In addition, the meeting was streamed virtually via Cisco WebEx meeting platform. John Griess called the meeting to order and welcomed everyone to the Board meeting.

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

The July 07, 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.

Minutes for the June 09, 2021 board meeting were submitted for approval.

Motion to approve the June 09, 2021 minutes was made by Commissioner Diaz and seconded by Commissioner Smith. Motion passed unanimously. With Vice-Chair Franks abstaining.

INFORMAL CANDIDATE APPEARANCE

Shelly Copeland and Principal Broker Victoria Carmack appeared before the Commission to obtain approval for Ms. Copeland's affiliate broker license.

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

WAIVER REQUEST

Director Maxwell presented Tricia Haraway to the Commission seeking Medical Waiver request for late penalty. Motion to grant Ms. Haraway's penalty waiver request was made by Vice-Chair Franks and seconded by Commissioner Farris. Motion passed unanimously.

Director Maxwell presented Erin Fowler to the Commission seeking Waiver of the E&O penalty. Motion to grant Ms. Fowler penalty waiver request was made by Commissioner Begley and seconded by Commissioner Farris. Motion passed 6-1 with Commissioner Guinn voting against the motion.

Director Maxwell presented Dina Burnett to the Commission seeking Waiver of the E&O penalty. Motion to grant Ms. Burnett's penalty waiver request was made by Commissioner Guinn and seconded by Vice-Chair Franks. Motion passed unanimously.

EDUCATION REPORT

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

Motion to approve courses J1-J20 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously.

Education Director Ross White presented Instructor Biographies to the Commission.

Motion to approve instructors was made by Commissioner Diaz and seconded by

Commissioner Begley. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the topics below.

- **INTRODUCTION:** Director Maxwell introduced Assistant Commissioner Alex Martin to the Commission.
- **ARELLO:** Director Maxwell updated the commission on her feedback of the ARELLO Mid-Year Conference. In addition, the Commission voted to send two (2) commissioners and staff to the Annual ARELLO Conference in September. This year's conference will be held in Orlando, Florida.
- **MISCELLANEOUS:** Director Maxwell advised the Commission on outreaches held in Jackson and Memphis. In addition to outreaches for the distressed counties coming in August.

COMMISSION DISCUSSION:

- Vice Chair Franks, Education Director, Associate General Counsel Matlock, gave updates and feedback to the Mid-Year ARELLO conference held in San Antonio, Texas.
- The Commission discussed a letter sent by Tennessee REALTORS ® pertaining to distance education instructor certification. Specifically, Tennessee REALTORS ® raised concerns pertaining to the prices for course approval by the Association of Real Estate License Law Official ("ARELLO"). The letter requested the Commission "to discuss other options available in certifying these courses." During the conversation Ms. Addison Russell, of Farrar & Bates, appeared to provide more information and clarification to the specific questions of the Commission. The Commission requested that Tennessee REALTORS ® create a plan, or an alternative to this situation, that would remedy this situation and present this idea in the future.

CONSENT AGENDA:

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

A motion to accept counsel's recommendation for cases 1-36 with exception of the following cases, which were pulled for further discussion: **2021020951, 2021006541**. This motion was made by Commissioner Diaz and seconded by Commissioner Begley. Motion passed unanimously.

After further discussion by the Commission on complaint 2021020951, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2021006541, Vice-Chair Franks made the motion **to not accept counsel's recommendation and voted to continue with the original discipline**. The motion was seconded by Commissioner Guinn. Motion passed 7-1 with Commissioner Farris voting against.

NEW MATTERS

PAMELA VAWTER

- 1. 2021020951**
Opened: 4/13/2021
Unlicensed
History: None

Complainant is a licensed affiliate broker. Respondent is unlicensed.

Complainant contends she represented a buyer who was interested in a FSBO listing on Zillow. Complainant called the number listed on Zillow believing it to be the owner. Respondent answered and told her she was not the owner but was in charge of marketing the property. Respondent advised that she had been managing the home as a rental property for eight years. Complainant states she asked if Respondent was an agent, and Respondent said she was not and did not need a license to broker the property.

Complainant knew the owner and texted her to ask if she would work with a buyer's agent. The owner told Complainant to defer to her "Rep," who was Respondent. Complainant claims the owner told her to include a 1% commission as Respondent's compensation. Complainant contends that Respondent is listed on MLS in private

remarks as the person who agents are instructed to contact regarding the listing.

Complainant did not have a physical or email address for Respondent and instead used the address of the property in the complaint. Therefore, the complaint was never received by Respondent. Counsel was able to contact Respondent, however, via telephone at the number provided in the listing. Counsel requested that Respondent provide an email or mailing address in which to forward the complaint for response. Respondent declined, stating she did not wish to respond to the complaint or provide any contact information. Respondent expressly waived her right to provide an initial response to the complaint against her. (Counsel has since obtained possible addresses for Respondent through additional investigation.)

Although the MLS listing referenced in the complaint is no longer active, Counsel was able to find a social media post in which Respondent listed the property at issue and designated herself as the contact.

Counsel recommends a civil penalty in the amount of \$1,000.00 for engaging in unlicensed activity in violation of Tenn. Code Ann. § 62-13-301.

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

Commission Decision: The Commission accepted counsel’s recommendation.

2. 2021021211
Opened: 4/13/2021
Unlicensed
History: None

Complainant is a Tennessee citizen. Respondent is an unlicensed property management company and possible vacation lodging service.

Complainant alleges Respondent is operating a property management service without a license. Complainant provided a link to and copies of Respondent’s website advertising property management services and short-term rentals. The website states “[W]e deal with tenant issues, collect rent, . . . and qualify new tenants.” Respondent’s website describes Respondent as “complete tenant

management” including “marketing.” The website includes listings for vacation rental homes for “as many nights as you want.”

Respondent’s attorney submitted a response stating that Respondent could not provide a response due to insufficient facts in the complaint. Respondent’s attorney describes his response letter as “a general denial of the complaint.”

Based on the information provided and Counsel’s review of Respondent’s website, Counsel recommends a civil penalty in the amount of \$1,000.00 for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301 and/or violation of Tenn. Code Ann. § 62-13-104(b)(2) and (3)(B)(i) to the extent Respondent is operating a vacation lodging service.

Recommendation: Authorize a civil penalty in the amount of \$1,000.00 for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301 and/or Tenn. Code Ann. § 62-13-104(b)(2) and (3)(B)(i).

Commission Decision: The Commission accepted counsel’s recommendation.

- 3. **2021034871**
 - Opened: 5/24/2021**
 - First Licensed: 9/17/2019**
 - Expires: 9/16/2021**
 - Type of License: Affiliate Broker**
 - History: None**

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

Complainant alleges that he purchased a home from Respondent on April 1, 2020. Complainant states that Respondent owned the property. After purchasing the home, Complainants state they found multiple problems, including the hot water heater, basement flooding, and septic issues. Complainant is out the cost for the repairs and feels that Respondent took advantage of him as a first time homebuyer.

Respondent submitted a response stating that Complainant was presented with all the required and necessary disclosures in good faith during the process of purchasing Respondent’s home. Respondent states that the disclosures were presented through Complainant’s agent. Respondent received the disclosures back acknowledged and executed by the Complainant. Respondent states that he had no knowledge of several

items Complainant references in his complaint. He states Complainant had the property inspected by an inspection company during the inspection period and any repair requests were addressed prior to closing. Respondent denies having withheld or misrepresented any material information.

Tenn. Code Ann. § 62-13-104(a)(1)(A) provides that the Tennessee Real Estate Broker Act does not apply to an owner of real estate with respect to property owned or leased by that person. Respondent is the owner/seller of the property in this transaction. Because the transaction at issue is exempt, Counsel recommends that this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

4. **2021036781**
Opened: 5/24/2021
First Licensed: 2/5/2018
Expires: 2/4/2022
Type of License: Affiliate Broker
History: None

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

Complainant contends that she listed a home with Respondent. Complainant alleges that, after the house closed, Respondent complained that she should have received 6% commission, but the listing agreement stated 3%. Complainant contends that Respondent entered into "a slander and defamation of character campaign" against Complainant in a post on Facebook. Complainant states that Respondent's Facebook page contains the name of her firm and that Complainant is Facebook friends with her broker.

Respondent submitted a response explaining that Complainant called her a few days before closing with a disagreement over the commission percentage in the Exclusive Right to Sell document. Respondent states that the 6% split with 3% to buyer's agent and 3% to listing agent were correctly stated in the document, as well as in MLS, but there was a clerical error where a 3 was inputted where the 6% total should have been. As a result, Respondent did not get paid commission. She states that a friend posted on Facebook how sorry she was that Respondent did not get paid and then

others started commenting on the post. Respondent states this occurred on her personal Facebook page that was private to friends only. She states Complainant is not mentioned anywhere in the post. Respondent took the entire post down on the same day it was posted.

Upon review of the Facebook post and comments, it does not appear that Complainant's name is mentioned by Respondent (or anyone else), nor that Respondent made any disparaging or untruthful statements. Counsel finds there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

5. 2021037941
Opened: 5/24/2021
First Licensed: 1/18/2014
Expires: 2/14/2022
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker. This matter is related to Case No. 2021036781 above. Respondent is the principal broker of the affiliate in Case No. 2021036781.

Complainant contends that she listed a home with Respondent's affiliate. Complainant alleges that, after the closing, the affiliate complained that she should have received 6% commission, but the listing agreement stated 3%. Complainant contends that the affiliate entered into "slander and defamation of character campaign" against Complainant in a post on Facebook. Complainant states that Respondent condones the behavior. Complainant's basis for the allegation against Respondent appears to be that Respondent is Facebook friends with the affiliate.

Respondent submitted a response stating that she did speak with the affiliate about the post after it was deleted. She did not see the post before it was deleted but was provided screenshots, which she reviewed. Respondent states the affiliate did not mention Complainant nor even state what happened. Respondent states the affiliate did not state anything untrue. Respondent states the post was only up for a few hours,

and it would be difficult for her to monitor every affiliate's personal Facebook page, as she rarely uses Facebook.

Upon review of the Facebook post and comments, it does not appear that Complainant's name is mentioned, nor that Respondent had any involvement in post or comments. Counsel finds there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

6. 2021037991
Opened: 5/24/2021
First Licensed: 3/16/2007
Expires: 3/22/2023
Type of License: Real Estate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. This matter is related to Case No. 2021036781 above.

Complainant contends that she listed a home with the affiliate broker who is the respondent in Case No. 2021036781. Complainant alleges that, after the closing, the affiliate complained that she should have received 6% commission, but the listing agreement stated 3%. Complainant contends that the affiliate entered into "slander and defamation of character campaign" against Complainant in a post on Facebook. Complainant alleges that Respondent is an agent who commented on the post made by the affiliate. The complaint provides no details or other allegation against Respondent.

Respondent submitted a response stating that she merely made a general statement showing support for a fellow agent. She did not know who the seller/owner was at the time of making the comment, nor did she read all of the replies before posting her comment. Respondent states that she had no malicious intent or personal motivation for advantage toward anyone.

Respondent provided a screen shot of her comment, which states: "We all make mistakes. Taking advantage of a mistake that one knows was unintentional is just

wrong.” It does not appear that Complainant’s name is mentioned by Respondent (or anywhere else in the post or comments), nor that Respondent made any disparaging or untruthful statements. Counsel finds there is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

7. 2021038181
Opened: 5/24/2021
First Licensed: 1/5/2017
Expires: 1/4/2023
Type of License: Affiliate Broker
History: None

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

Complainant entered into a contract to sell her property. Respondent represented the buyers. Complainant contends that the buyers were unemployed. Complainant alleges that Respondent and Complainant’s listing agent allowed the buyers to sign an occupancy addendum and move into her home between April 8 – 9, 2021. Complainant contends the buyers told neighbors they were squatters.

Complainant contends the buyers repainted the interior of the home without permission. Complainant fears she is in danger of having a \$6,000.00 lien filed for the cost. Complainant contends she cancelled the sale because the buyers failed to close on the closing date. Complainant states she never agreed to an extension. Complainant contends that the buyers are now under contract on another home, and so she has notified the listing agent for the new contract that Complainants are squatters posing as buyers. Complainant believes Respondent and her listing agent engaged in unethical and fraudulent behavior.

Respondent’s principal broker provided a response on Respondent’s behalf stating that Complainant and buyers entered into the contract on February 17, 2021, with a closing date of April 1, 2021, and a 15-day inspection period. The closing date was extended to April 8, 2021, when the lender became aware of an issue with the subject property involving a high-power transmission tower being too close to the home. They broker states they had a letter from the buyer’s previous employer explaining

his large severance package which provided the funds he would need for closing. They also had a letter from the buyer's new employer that his new job was set to begin on May 24. The broker alleges that Complainant's statement about the buyers' unemployment is misleading because the buyer was technically just between leaving his previous job and starting his new job. The lender was doing the FHA loan under a program which allowed for this type of transfer. The issue with the power pole being too close to the home was the reason given by the lender for the financing falling through and not the buyer's employment status.

The broker states that the buyer painted the home against advice from the listing agent, Respondent, and the lender. The buyer, however, paid the full costs for the paint job, and there is no concern of a mechanic's lien. The buyer requested a replacement of the hot water heater after the home inspection, which the broker states was paid by the listing agent. On April 21, 2021, the sellers sent a notification of cancellation due to the buyer not closing on April 8. The notification stated the Temporary Occupancy Agreement would remain in effect. Then a mutual release was signed by both parties on April 23. Buyers had moved out of the home, and Complainant has had full possession. The had received a denial letter from the lender for inadequate collateral due to the power pole issue not being resolved or a waiver obtained by TVA. The broker states that Respondent kept in touch with him throughout the process of this transaction.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

8. 2021038131
Opened: 6/14/2021
First Licensed: 10/1/2009
Expires: 9/30/2021
Type of License: Affiliate Broker
History: None

Complainant is an out-of-state resident. Respondent is a licensed affiliate broker. This matter is related to Case No. 2021038181 above. Respondent was the

Complainant's agent.

Complainant entered into a contract to sell her property. Complainant contends that the buyers were unemployed. Complainant alleges that Respondent and the buyer's agent allowed the buyers to sign an occupancy addendum and move into her home between April 8 – 9, 2021. Complainant contends the buyers told neighbors they were squatters.

Complainant contends a new water heater was installed, which the Complainant alleges she approved at the buyer's risk. Complainant contends the buyers told her later they did not pay for the water heater which has made Complainant concerned there will be a lien placed on the property for the cost of the water heater. Complainant alleges the closing date was extended from April 1 to April 8 because of a low appraisal. Complainant states she told Respondent to have the buyers provide a copy of the appraisal as proof, but the lender would not provide it. Complainant later told Respondent that the buyers could either provide a copy of the appraisal themselves or walk away. Complainant states Respondent then provided it within minutes. Complainant speculates that Respondent was more interested in getting the buyers a lower price than giving Complainant an option to walk away from the contract.

Complainant contends the buyers repainted the interior of the home without permission. Complainant believes she is in danger of having a mechanic's lien of \$6,000.00 for the cost. Complainant contends she cancelled the sale because the buyers failed to close on the closing date. Complainant states she never agreed to an extension. Complainant believes Respondent and the buyer's agent engaged in unethical and fraudulent behavior.

Respondent submitted a response stating the home appraised at \$15,000 below purchase price. Respondent states at first did not seem like the buyers could come up with the difference between the appraisal and contract price, but then buyers' agent did advise Respondent that the buyers would be able to cover the difference. Respondent states when Complainant asked for a copy of the appraisal, he emailed the lender asking for a copy, but the lender declined to share it. Respondent then asked the buyer's agent, who did send it to Respondent. Respondent states he forwarded it to the sellers shortly after receiving it. Respondent provided copies of his email correspondence with the lender, buyers' agent, and Complainant, which support Respondent's claims.

Respondent states the appraiser added the power lines as being a safety hazard. The

lenders underwriting team questioned it, which delayed the closing. The underwriter requested a letter from the power company stating it was not a safety issue. The power line issue delayed the closing. Respondent states they expected it would only delay the closing for a few days, but they discovered it would take longer after they dug into it.

Respondent states he met the painter at the house for buyers to get a quick quote. Respondent states he told the painter he would have to schedule something with the buyers after the closing. Respondent states painting prior to the closing was never brought up by the buyers or their agent, and no one gave them authorization to paint. Buyers paid the painter for the paint job. Respondent states Complainant signed a temporary occupancy agreement that the buyers' agent prepared. Respondent states he paid for the water heater repair to keep everything on track because Complainant was out of state in "stress overload." Respondent states he did talk with Complainant on the phone about it.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

9. 2021038241
Opened: 5/24/2021
First Licensed: 8/28/2019
Expires: 8/27/2021
Type of License: Affiliate Broker
History: 2021 Errors and Omissions Suspension

Complainant is anonymous. Respondent is an affiliate broker whose license is suspended.

Complainant submitted an anonymous complaint stating Respondent's license was suspended, but Respondent was still listing properties for sale on the internet and Facebook. Complainant submitted an undated screenshot from a website in which Respondent is listed as an agent. Complainant also submitted an undated screenshot from Respondent's Facebook page which contains a post by Respondent from April 24, 2020.

Respondent submitted a response to the complaint stating that she is a new agent, and this was the first time for insurance renewal. When she received notification of lapse, she immediately renewed her policy. Respondent states her real estate page was been taken down until the situation was resolved. Respondent states her goal is compliance, and that this has been a hard lesson that she will never let happen again.

Respondent's license was suspended on January 29, 2021. The anonymous complainant did not any provide documentation or any information about the of the date of the alleged advertisement/screenshot. The only date visible on the screenshot is April 24, 2020, and Respondent's license was active at that time. Respondent states that she took down her real estate pages upon receiving notification of the suspension. Therefore, Counsel finds there is insufficient evidence provided in this case to establish that Respondent violated the Commission's rules and statutes on unlicensed activity.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

10. 2021036691

Opened: 5/24/2021

First Licensed: 10/14/2019

Expires: 10/13/2021

Type of License: Real Estate Firm

History: None

Complainant is a Tennessee-licensed affiliate broker. Respondent is an online real estate marketplace that holds real estate brokerage licenses in multiple states, including Tennessee.

Complainant contends that Respondent's website fails to include on pages displaying a listing a statement that some or all listings may not belong to the firm whose website is being visited in violation of Tenn. Comp. R & Regs. 1260-02-.12. No documentation supporting the allegation was provided with the complaint.

Respondent submitted a response denying the allegations. Respondent states that a statement complaint with the Tenn. Comp. R & Regs. 1260-02-.12 is included on each page where Tennessee listing search results are visible on Respondent's

website. Respondent states the statement is visible at the bottom of each page. Respondent provided screenshots showing the location and language for the statements.

Based on the information provided, it does not appear that Respondent's website is in violation of Tenn. Comp. R & Regs. 1260-02-.12.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

11. 2021032001

Opened: 6/1/2021

First Licensed: 6/16/2015

Expires: 6/15/2021

Type of License: Affiliate Broker

History: None

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

Respondent was the listing agent for a home Complainant purchased. Complainant alleges the home was incorrectly listed as having tile and carpet flooring. Complainant acknowledges that the kitchen, laundry room, and dining area "appeared to have tile flooring." However, Complainant claims she discovered after moving in that it did not have tile when she looked under a rug in the laundry room. Complainant states that after notifying the listing agent, an offer to settle was made. Complainant did not take the offer, stating that she would need additional time to further research flooring costs. Complainant states it took a while to receive estimates, but she did obtain estimates and forwarded them in a package to Respondent's broker. When she called to speak with the broker, she alleges she was told that the issue had been turned over to an attorney. Complainant states that she has not heard from any attorney regarding the estimate.

Respondent's attorney provided a detailed response to the allegations as well as sworn declarations (i.e., a form of affidavit testimony). Respondent states that she obtained information from the sellers for the listing and entered it into MLS, which specified "Floors: Carpet; Tile." Respondent states that Complainant was represented by her own agent in the transaction, who scheduled a viewing, which Complainant attended either in person or via video. On October 7, 2020, the sale of

the property closed, and Complainant waived the final walkthrough. After the closing, the settlement statement was provided to Respondent. Neither the settlement statement nor the transaction documents gave any indication that the description of the flooring material in MLS was inaccurate.

Sometime between October 7 and December 5, Complainant contacted Respondent and stated she had moved a rug in the laundry room and noticed the flooring was not tile. Respondent apologized and explained that she thought the flooring was a tongue in groove type of tile. She offered to purchase tile for Complainant at a local tile outlet. Complainant refused and sometime later sent an estimate for \$6,852.00 for replacement of the flooring.

Respondent states that she believed based on her observation of the property that the flooring was a tongue-in-groove type tile. Respondent notes that Complainant also acknowledged that the flooring appeared to Complainant to be tile. Respondent states that the public remarks in the listing state “Buyer to Verify Info.” The MLS listing also contains a disclaimer which states: “Information believed to be accurate but not guaranteed. Buyers should independently verify all information prior to submitting any offer to purchase.” The Purchase & Sale Agreement also stated “Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to, those matters which could have been revealed through a survey, flood certification, title search or inspection of the property...” Respondent also notes that Complainant has not provided any evidence or documentation that the floor is in fact not tongue-in-groove tile or some other type of tile.

Respondent states that once the complaint was received and submitted to the E&O carrier, her broker instructed her to cease direct communications with the other party involved pursuant to company’s policy. Respondent states she is still willing to provide Complainant with a \$100 gift card to a local tile outlet to replace the flooring in the laundry room.

Complainant previously filed a related complaint against Respondent’s broker which was closed with no action.

Based upon the information and documentation supplied by the parties, and the declaration testimony of the listing agent, there is insufficient evidence to establish that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

12. 2021037681

Opened: 6/1/2021

First Licensed: 4/10/2008

Expires: 4/30/2023

Type of License: Principal Broker

History:

Complainants are Tennessee residents. Respondent is a licensed principal broker.

Complainants' neighbor owns two adjoining lots which he purchased from Complainants in 2016. Respondent represented the neighbor in the transaction. Complainants contend the neighbor told them that Respondent said the neighbor had a right of way on the land, which Complainants allege is not accurate. Complainants contend the neighbor has installed three driveways and violated restrictive covenants, thereby devaluing the property and causing a nuisance. Complainants contend Respondent is guilty of fraud and liable for property damage.

Respondent submitted a response stating that she sold two adjoining lots to the neighbor (Respondent's client) that were listed by another agent. The transaction closed on July 7, 2016. Respondent states the neighbor saw a plat map in August of 2016 showing a lane that stated it was "to be opened later." Respondent states the neighbor asked her to check on it, and Respondent stated she would call the road superintendent to see if it was a county road. Respondent states she did call, and no one was able to find a record of it being a county road. Respondent states that was the end of any discussion regarding any road or right of way.

Respondent states that when the neighbor began to build his home, Complainants became upset with everything he did. Respondent states the complaint contains numerous falsehoods, and Respondent does not know what three driveways Complainants are talking about. Respondent states that if anyone ever has questions about restrictions, she will refer them to an attorney. Respondent states she believes that the neighbor consulted with an attorney before he began building. Respondent denies any allegation of fraud or property damage.

The is a legal dispute between Complainants and their neighbor concerning the deed

and restrictive covenants that may run with the land. Counsel does not find evidence that Respondent violated any rules or statutes of the Commission. Moreover, the transaction at issue occurred in 2016, and, therefore, this complaint is time-barred pursuant to Tenn. Code Ann. § 62-13-313(e)(1).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

13. 2021041501

Opened: 6/1/2021

First Licensed: 3/18/2020

Expires: 3/17/2022

Type of License: Affiliate Broker

History: None

Complainant is anonymous. Respondent is a licensed affiliate broker.

Complainant submitted an anonymous complaint alleging that Respondent has been remodeling her own home for four months without a builder's permit, which Complainant alleges is unethical conduct.

Respondent submitted a response stating that she has not been remodeling for four months, but she did start a landscaping project in January to April which did not require a permit. At the end of April, Respondent did begin preparations to convert a screened porch to living space and a kitchen remodel. Respondent provided a copy of the permit for this work.

Based on the information provided, Respondent has not violated any rules or statutes of the Commission. Moreover, the alleged transactions pertain to property owned by Respondent and are, therefore, exempt under the Tennessee Real Estate Broker License Act of 1973 pursuant to Tenn. Code Ann. §§ 62-13-104(a)(1)(A).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

14. 2021042431
Opened: 6/1/2021
First Licensed: 11/2/2006
Expires: 11/1/2022
Type of License: Affiliate Broker
History: None

Complainant and Respondent are both licensed affiliate brokers.

Complainant contends that a “for sale” sign was placed in Respondent’s yard for over twenty-four hours without the listing appearing on MLS. No documentation or further information was provided with the complaint.

Respondent submitted an answer stating that her nephew put up a directional sign at her house while he was there cleaning out the garage. Respondent states that she did not know about it at the time because she was in the process of moving and had not been back home to notice the sign. Respondent states she will take the sign down. Respondent states that the Complainant is her neighbor who lives two doors down.

Based on the information provided, the alleged transaction pertains to the sale of Respondent’s home, and, therefore, is exempt under the Tennessee Real Estate Broker License Act of 1973 pursuant to Tenn. Code Ann. §§ 62-13-104(a)(1)(A).

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

15. 2021040281
Opened: 6/8/2021
First Licensed: 3/17/1998
Expires: 9/5/2021
Type of License: Real Estate Broker
History: None

Complainants are Tennessee residents. Respondent is a licensed affiliate broker.

Complainants entered into a contract to purchase a home on or about May 1, 2020. Respondent represented the sellers. Complainants contend Respondent had notified their agent that a prior contract had fallen through because of a finding of water intrusion in the crawlspace. Complainants allege Respondent verbally assured their agent that the problem was fixed, and that this was the only issue found on the prior buyer's home inspection. Complainants allege they did not include a home inspection contingency in their offer because they relied on the seller's property disclosure statement and assurance by Respondent that the water issue was fixed.

Complainants state that the final walkthrough was the first time they had ever seen the property in person. During the walkthrough, Complainants allege they found additional issues with a storm door, a ceiling fan light that did not work, and moisture between the window sash. Complainants contend Respondent had told them that the appliances were all new, but they were actually purchased around 2014. Complainants state that, notwithstanding the issues, they went forward with the closing with the intent of filing a formal complaint alleging misrepresentation. Complainants state they discovered later in September that the water intrusion issue was not properly fixed, and they incurred expenses for mold and mildew remediation in the crawlspace.

Respondent submitted a response stating that she called Complainants' agent after the earlier contract fell through and advised the agent that the contract had been terminated due to a water issue in the crawlspace. Respondent advised that the seller had agreed to repair the issue. Respondent states she did not tell the agent that the water issue was fixed nor that it was the only issue on the prior home inspection. Respondent told the sellers to revise their property disclosure to include the water issue that had just been discovered. The seller revised the disclosure and sent it to Complainants' agent. Respondent states the seller had completed the original disclosure to the best of her knowledge and had never been advised of any water under the house prior to the former buyers' home inspection. Respondent states that the seller had an annual contract with pest control, and they had just inspected in February of 2020 with no mention of any water, mold, or mildew in the crawlspace. Respondent states the seller repaired the water issue, which was determined to have been caused by an underground drainpipe.

On the day before closing, Complainants' agent called Respondent stating there were problems with a storm door that was hard to open, an upstairs window, and a ceiling fan light. Respondent immediately called a contractor to address the issues, and Complainants agreed to accept a \$100 gift card to replace the ceiling fan. Respondent states Complainants spent three hours on the walkthrough with ample time to inspect

the premises. Complainants then signed a Buyers Final Inspection accepting the property in its present condition.

Respondent states at no time did she or the seller have any knowledge of mold or mildew in the crawlspace. Respondent states she has never been in the crawlspace and had no knowledge of any past or present mold or mildew. Upon being made aware of the crawlspace issue, the seller had revised the property disclosure. Respondent denies telling Complainants the appliances were completely new. Respondent states the seller completed the property disclosure form to the best of her knowledge and neither she nor the seller intentionally misrepresented anything.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 16. 2021044141**
Opened: 6/8/2021
First Licensed: 1/24/2019
Expires: 1/23/2023
Type of License: Affiliate Broker
History: None

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

Complainant is the owner of rental property. Respondent is an employee of the property management company that manages Complainant's property. Complainant alleges that that Respondent refused to file for eviction against the tenants despite Respondent asking them to do so. Complainant also contends Respondent's company failed to post documents on time, and the accounting was not accurate. Complainant contends Respondent's company has held onto funds that rightfully belong to her, such as the current tenants' \$4,000 security deposit. Complainant states that Respondent's company did not release \$1,000 owing to her until she made an uproar on Facebook which led to a cease and desist letter from Respondent's company. Complainant is upset that the tenants may receive anything from their security deposit because they owe a significant amount of rent.

Respondent submitted a response stating that the company could not initiate eviction procedures on the sole basis of non-payment of rent because the tenants had claimed impact from COVID-19 and were seeking coverage under the CDC Eviction Moratorium. Respondent states it would violate federal housing laws and the CDC Eviction Moratorium to have evicted the tenants. Respondent states they have tried to explain this to Complainant multiple times and have advised her that directing initiation of illegal action is a breach of the management agreement. Respondent states they continued to process as many partial payments as possible from the tenant within the law and fair housing regulations. They worked with the tenants to get them enrolled in THDA rental assistance while communicating all their efforts to Complainant. Respondent states that the process took over 90 days and the money was deposited from the State once the application received final approval. Respondent denies holding any money owing to Complainant. Respondent attached validation of payments received, the tenant ledger, and owner revenue distribution schedule to refute claims of any lack of transparency or diligence in duties owed to Complainant. Respondent denies every allegation and states they have followed the law, fair housing, and federal government regulations while protecting the Complainant and the Respondent's company from liability. Respondent states that Complainant asked them to continue as property management notwithstanding this complaint.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

17. 2021043881
Opened: 6/14/2021
First Licensed: 6/18/2019
Expires: 6/17/2023
Type of License: Affiliate Broker
History: None

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

Complainant sold her home in Tennessee. The closing was May 24, 2021. Respondent represented the buyers. Complainant contends that Respondent forced Complainant to change her move out time on May 24, 2021, and were only given 48 hours' notice. Complainant alleges that Respondent told Complainant's agent that the buyers' moving truck would be there at 2:00 p.m., which was the same time Complainant's moving truck was scheduled. Complainant states they were able to reschedule their moving truck to 12:00 p.m., but the truck did not show up until 2:15 p.m. Complainant states the buyers did not show up with their truck at 2:00 p.m. Complainant confronted Respondent about why the buyers did not show up with their truck. Complainant believes that Respondent was untruthful about the buyers' truck and should not be allowed to have an active license.

Respondent submitted a response stating that sellers asked to delay the closing date twice to May 24. Respondent called the seller's agent to request that buyers do the final walkthrough on May 23 but did not receive a response. The sellers' agent later called back stating the sellers were not planning on moving until after the closing at 1:30 p.m. It was the sellers' agent who requested the sellers change their move out date and time to the morning of May 24 so that the buyers could do the final walkthrough with no items in the home. Buyers had intended to move in that afternoon but were coming from Buffalo, NY and were delayed arriving in Tennessee.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

18. 2021045361
Opened: 6/14/2021
First Licensed: 9/14/1989
Expires: 9/6/2022
Type of License: Real Estate Broker
History: None

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

Complainant alleges that Respondent listed a property for sale in the local MLS. Complainant contends that several agents from Complainant's company tried to schedule an appointment but were denied a showing by the seller, who did not wish to do business with Complainant's company. Complainant contends that some of his company's agents were able to obtain an appointment but were denied access and told to leave by the seller when they mentioned their company name. The seller stated he had a bad experience with Complainant's firm when purchasing the property.

Complainant states he spoke to Respondent about the matter. Complainant claims Respondent stated that the seller mentioned an issue at the time of listing, but he did not exclude any agents or company for the showings or receiving offers in the listing agreement. Complainant claims Respondent told him that the seller handled all showing requests directly. Complainant asked Respondent to talk with the seller about allowing the showings. Complainant claims that, after he discussed the matter with his broker and the seller, Respondent advised that the seller had the right to deny showings as long as he was not discriminating against anyone. Complainant contends that Respondent's conduct violated the duties owed to all parties and his client, as well as the code of ethics.

Respondent submitted a response denying any alleged wrongdoing. Respondent states he followed industry standards when listing the home. He went over the options with the seller on showing the home. The seller stated he did not want a keybox and wanted to be present during all showings. The seller indicated he did not want any sales associates with Complainant's firm showing his home. Complainant suggested he should consider letting all buyers view the home regardless of the company, but the seller would not change his mind. Respondent states the seller's reasons were not discriminatory or illegal but related to a negative business transaction with the company. Respondent stated he followed the seller's legal instructions.

When Respondent received a call from Complainant stating the seller would not let one of his company's agents show the home, Respondent informed Complainant he had suggested to the seller that he should not refuse any buyers from seeing his home, but the seller was adamant. Respondent told Complainant that he would seek input from his firm's general manager. Respondent's general manager advised that the seller had a right to deny the showings as long as he was consistent and not discriminating due to race, gender, etc. Respondent called the seller and asked him to elaborate on his reasons. The seller stated he purchased the home from one of the company's agents and they did "a lousy job," and he did not want anything to do

with that company or their agents. The seller has provided a statement to the Commission explaining his reason for precluding the showings as described.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

19. 2021045371

Opened: 6/14/2021

First Licensed: 3/28/1974

Expires: 9/7/2022

Type of License: Real Estate Broker

History: None

Complainant is a licensed affiliate broker. Respondent is a licensed principal broker. This matter is related to Case No. 2021045361 above. Respondent is President of Residential Real Estate for the affiliate's firm.

Complainant alleges that Respondent's firm listed a property for sale in the local MLS. Complainant contends that several agents from Complainant's company tried to schedule an appointment but were denied a showing by the seller, who did not wish to do business with the company. Complainant contends that some of his company's agents were able to obtain an appointment but were denied access and told to leave by the seller when they mentioned their company name. The seller told them he had a bad experience with Complainant's firm when purchasing the property.

Complainant states he spoke to Respondent's affiliate about the matter, who stated the seller mentioned an issue at the time of listing, but he did not exclude any agents or company for the showings or receiving offers in the listing agreement. Complainant claims the affiliate told him that the seller handled all showing requests directly. Complainant asked the affiliate to talk with the seller about allowing the showings. Complainant claims that, after the affiliate discussed the matter with Respondent and the seller, the affiliate advised that the seller had the right to deny showings as long as he was not discriminating against anyone. Complainant

contends that Respondent and the affiliate's conduct violated the duties owed to all parties and his client, as well as the code of ethics.

Respondent submitted a response denying any alleged wrongdoing. Neither the firm nor the affiliate have a policy to exclude any broker or licensee in good standing from showing a listing. Respondent notes that Complainant alleges violations of the NAR Code of Ethics which the Commission does not adjudicate. Respondent states he is not the affiliate's supervising broker but is responding as the company's President of Residential Real Estate. Respondent contends that the affiliate obeyed the seller's lawful instructions, whose did not exclude the company's agents based on gender, race, religion, etc., or for any illegal purpose. The seller has provided a statement to the Commission explaining his reason for precluding the showings as described.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

20. 2021035901
Opened: 6/14/2021
Unlicensed
History: None

Complainant is a Tennessee resident. Respondent is a limited liability company that owns rental property.

Complainant began leasing property owned by Respondent in January of 2021. Complainant contends the property management did not properly clean the home before move in. Complainant had to clean and paint the home in order to move in. Complainant contends they noticed in late March that the house did not have an air conditioning unit, but it will not cool below 80 degrees. Complainant has complained since April 10 that the property manager still has not fixed the unit.

Respondent submitted a response stating that they have terminated the property

manager. The house has been steam-cleaned and sanitized, and they have repaired the air conditioning unit. Respondent states there are no outstanding issues.

Respondent's attorney also submitted a response stating that the Complainant named the wrong respondent. Respondent's attorney provided the name of the property management company, which Counsel researched. It appears from the company's online advertisement that they operate as a full property management company for rent collection, etc., and listing of properties online. Because the named Respondent appears to be the owner of the property (and not the property manager), Counsel recommends this matter be closed against the owner. Counsel also recommends a complaint be opened against the property management company for potential unlicensed activity.

Recommendation: Close against the property owner and open a complaint against the property management company for potential unlicensed activity.

Commission Decision: The Commission accepted counsel's recommendation.

21. 2021046131
Opened: 6/14/2021
First Licensed: 1/31/1990
Expires: 6/12/2023
Type of License: Real Estate Firm
History: None

Complainant is a Tennessee resident. Respondent is a real estate home builder.

Complainant purchased a home from Respondent in 2020. In February of 2021, Complainant discovered ponding water and mold growth in the crawlspace. Complainant's notified the Respondent's warranty department. Complainants contend it has taken over four months to get corrective action. Complainants are still unsure if the problem has been corrected. Complainants believe Respondent is withholding information because of negligence in building the home that caused the water issue.

Respondent submitted a response stating that this complaint was brought against the real estate company, but the complaint is against the warranty company. Respondent

explained how the warranty issues were resolved and states this a post-closing issue involving the warranty company only. Respondent states there are no issues involved that are related to a licensee or the firm's real estate services or the Commission's rules and statutes.

Based on the information provided, there is no evidence Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

22. 2021042961

Opened: 6/14/2021

First Licensed: 4/1/2016

Expires: 3/31/2022

Type of License: Vacation Lodging Service Firm

History: 2020 Consent Order for advertising violation

Complainant is an out-of-state resident. Respondent is a licensed vacation lodging service.

Complainant contends she stayed in one of Respondent's cabins on March 21 – 26, 2021. She claims her family developed a rash which Complainant believed was caused by bedbugs. Complainant states she spoke to someone in guest relations on March 27 who was dismissive and rude. She was told that the cabin would be tested for bedbugs when the current tenants checked out. Complainant contends there was also an issue with the hot tub being dirty and the kitchen sink leaking. Complainant alleges that Respondent is in breach of contract.

Respondent submitted a response explaining that Complainant was told that each issue would be addressed and were taken care of the next day. After Complainant's phone call on March 27 regarding bedbugs, Respondent had the cabin inspected as quickly as possible by a pest control company, and no bed bugs were found.

This is a contract dispute matter. Based on the information provided, there is no evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

23. 2021036961

Opened: 5/17/2021

First Licensed: 9/29/2014

Expires: 9/28/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident. Respondent is a licensed Affiliate Broker. This complaint was referred to the Division by Consumer Affairs.

Complainant alleges that Respondent did not properly disclose the health hazards associated with electromagnetic field exposure ("EMF") from the power lines on the lot the Complainant purchased. Complainant states there was a clause in the signed contract concerning the power lines and EMF but alleges it was Respondent's responsibility to mention this clause. Complainant further alleges that the contract provision did not adequately describe the serious risks associated with EMF exposure and the Respondent did not communicate those potential health risks. Complainant states that the contract was voided through a mutual release agreement but the construction deposit of \$5,000 was not refunded to the Complainant as the Respondent breached the contract by not proceeding with the purchase.

Respondent filed a response and included the contract provision in question, which states there is still quite a great deal of controversy as to whether or not there is an increased chance of health risks due to EMF exposure. The contract further states that Complainant assumes the risk associated with EMF and releases the Respondent from any claims relating to EMF exposure. The Complainant signed the contract.

Complainant filed a rebuttal in which they continue to allege it was the duty of the Respondent to point out and draw attention to the contract provision concerning the powerlines and EMF.

Recommendation: Close. The Respondent disclosed the possible risk of EMF due to the powerlines and Complainant accepted those risks by signing the contract. The Respondent has an obligation to disclose the adverse facts that have a negative impact on the value of real estate, this includes health risks to the occupants of the property. TENN. CODE ANN. § 62-13-403(2). This obligation was fulfilled by the Respondent with the inclusion of the contract provision stating that the property was at risk of possible EMF exposure.

Commission Decision: The Commission accepted counsel's recommendation.

**24. 2021026801
Opened: 5/17/2021
First Licensed: 8/6/2018
Expires: 8/5/2022
Type of License: Real Estate Firm
History: None**

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

The Complainant alleges the Respondent's real estate agent violated several provisions of the Tennessee Real Estate Brokers License Act. The Complainant alleges the violations concern advertising of a property without placing the real estate agent's license number on the signage, the real estate agent did not provide contracts and counteroffers to the Buyer partnership entity in a timely manner or when requested, the Respondent did not have an active listing agreement or approval by majority vote of the partnership with a signed resolution by partners appointing the real estate agent to represent or list the property, the Respondent's real estate agent induced the partnership into signing a lease with a friend without information the partnership of the conflict of interest and without providing a personal interest disclosure to the Buyer/Tenant or Partners. The Respondent's real estate agent is a partner in the partnership with a minor interest but this should have been disclosed to all parties of the transaction, the Respondent real estate agent provided contracts and counteroffers without providing a personal interest disclosure or for the most part acting for more than one (1) party in a transaction without the knowledge and consent in writing of all the parties for whom the Respondent's real estate agent acted on behalf of, the Respondent was asked by certain partners to remove the signage from the property and refused to remove the signage, the Respondent's real estate agent was asked to sign documents, a counteroffer and copies of e-mails where

the Respondent's real estate agent represented the Partnership and would not provide them to all partners or specific partners asking for such information. The Respondent's real estate agent did not provide them in a timely manner and failed to furnish a copy of the signed counteroffer or other contract relevant to a real estate transaction, the Respondent's real estate agent listed the property with LoopNet and is not reflecting the classification of the Property accurately and is not accurately reflecting the square footage price on the raw land, inducing other parties to present unsigned LOIs to the Partnership to interfere with other valid non-contingency contracts (interference of contract) in order to manipulate the sale to the real estate agent's personal benefit which can be construed as a sheer act of personal gain of the licensee, the Respondent's real estate asked other non-licensed individuals and non-employees to represent him by showing the property instead of doing it himself.

Respondent filed a response with background information, letters from each partner, and addressed each of the issues raised by the Complainant. In the background information provided, Respondent stated the property in question is owned by a partnership consisting of the Respondent, Complainant, and three other members. Respondent states that he is acting as an owner of the property rather than as an agent and is not receiving a commission. Each of the three additional partners submitted letters stating that they refute the claims made in the complaint and do not support the Complainant's allegations. The partners further state they are in full support of the Respondent and confirm everything that Respondent has stated in their response. In addressing the allegations made in the complaint, Respondent stated there is no requirement an agent's license number be listed on a sign advertising property. Respondent alleged all documents concerning the property were conveyed to all parties within 24 hours, Respondent stated the only documents that they did not provide Complainant were copies of Respondent's outgoing emails. Respondent further alleged that he was confirmed by a majority of the partners to list the property. Respondent states that he did not know the individual who leased the property, Respondent also included a letter from the lessee denying the allegation that there was a previous relationship between the two. Respondent states that Complainant was the only partner who requested that Respondent remove the signage advertising the property. Lastly, Respondent states they were present at 90% of the showings and the showings where they were not present another member of the partnership, who is an owner of the property, was present at each of the showings.

Recommendation: Close. There appears to be no credible evidence to support Complainant's allegations, Respondent has included letters from each of the partners that own the property which refute Complainant's claims. As for rule violations, Respondent is not required to include their license number on the

sign advertising the property. Tenn. Comp. R. & Regs. 1260-02-.12(3). The Respondent did not violate Tenn. Code Ann. § 62-13-403 because they acted reasonably in conveying all contracts and counteroffers to the other partners within 24 hours. Also, there was no rule violation by allowing the partnership members to show the property, since they are owners of the property.

Commission Decision: The Commission accepted counsel's recommendation.

25. 2021033801

Opened: 5/17/2021

First Licensed: 5/12/2011

Expires: 5/11/2023

Type of License: Real Estate Firm

History: None

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

Complainant alleges that Respondent is seeking to hire a property manager to manage their apartment community that is not a licensed real estate agent. Complainant included the job listing and qualifications for the property manager job listing.

Respondent filed a response citing Tenn. Code Ann. §62-13-104(a)(E), which states that the licensing requirement does not apply to property managers where their responsibilities are limited to overseeing the property. Respondent further alleges that they are seeking someone to manage the apartment community, and the property manager will not negotiate the amounts of rent, security deposits, or lengths of leases.

Recommendation: Close. Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. TENN. CODE ANN. § 62-13-104(a)(1)(E) provides that an individual acting solely as a property manager is not required to be licensed by the State of Tennessee.

Commission Decision: The Commission accepted counsel's recommendation.

26. 2021035741
Opened: 5/24/2021
First Licensed: 8/2/2001
Expires: 10/4/2022
Type of License: Principal Broker
History: None

Complainant is an out-of-state resident. Respondent is a licensed Tennessee Real Estate Broker.

Complainant entered into a listing agreement with the Respondent. Complainant alleges no updates concerning offers and counteroffers for the property are provided by the Respondent. Complainant further alleges that Respondent does not timely answer their questions. Complainant is seeking to have the listing agreement cancelled.

Respondent submitted a response and included several documents to support the Respondent's position. Respondent stated that they were unable to respond to the Complainant for a short period of time because the Respondent underwent surgery and advised the Complainant of the absence during this period. Respondent has always acted promptly, but the Complainant still has will not returned necessary paperwork. Respondent included emails showing they submitted offers to the Complainant. Respondent states all offers submitted would expire without Complainant viewing them. Respondent included an email from a buyer asking about whether Complainant decided not to reply to a counteroffer submitted. Respondent states that they found a buyer for the property but now, Complainant is trying to cancel the listing agreement so that they do not have to pay commission on the sale.

Recommendation: Close. There is no evidence which shows that Respondent is nonresponsive to the Complainant and not in communication with the Complainant. If there is a dispute concerning the cancellation of the listing agreement, the Complainant should consult with an attorney and seek recourse in a Court of competent jurisdiction.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2021037501
Opened: 5/24/2021
First Licensed: 3/3/2017
Expires: 3/2/2023
Type of License: Affiliate Broker
History: None

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

Complainant was trying to purchase a home for their mother and saw a for sale sign at a home. Complainant submitted an offer on the home immediately and alleged no response was received. Complainant states a second offer was submitted and alleged that the Respondent told them that the offer would not be considered without a showing. Complainant advised the Respondent that they were the previous owners and sold the home to the current owner so there was no need to schedule a showing as they knew everything they needed to know about the home. Complainant scheduled a showing which was cancelled within thirty minutes. Complainant then submitted a third offer and alleges that they received no response to this offer and later found out that the home was sold to someone else.

Respondent submitted a response and included several documents supporting their allegations. The Respondent states that they received a total of eleven offers on the home and submitted a copy of a spreadsheet that includes all offers made. The Respondent alleges that the Complainant's offer was the lowest of all received as it was under asking price, and it was reflected in a spreadsheet with all the offers. The Respondent stated a response was provided to the Complainant's agent regarding the first offer and the Seller wanted all Buyers to see the home before submitting an offer. The Respondent stated the showing scheduled by the Complainant was not cancelled. It was never accepted because the Sellers did not want any showings after 6:00 p.m. The Respondent included an e-mail that was sent to the Complainant regarding the showing which stated the showing was declined by the Seller. The Respondent states that Complainant submitted a second offer with the exact same terms as the first. The Respondent alleged a response was provided to the second offer and only an expiration date of a few hours and this did not work for the Sellers because they would not be home in time to review all offers before the Complainant's offer expired. The Respondent states that the Complainant submitted a third offer, with the exact terms of the two previous offers. The Respondent states that they acted in good faith and in the best interest of their client and the Complainant's offers were the lowest that they received. The Respondent included

a letter from the Sellers stating they remember Complainant's offer and that they received all information regarding their offer, they chose not to entertain it because it was a poor offer. The Respondent included the purchase and sale agreement for the home which shows that the home was sold for \$15,000 over asking price when each of Complainant's offers was below asking price.

Recommendation: Close. The documentation provided indicates all offers were presented to the Seller. There is no indication the Respondent did not act diligently in communicating the offers to their client pursuant to Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted counsel's recommendation.

28. 2021038071

Opened: 5/24/2021

First Licensed: 3/10/1998

Expires: 1/13/2023

Type of License: Principal Broker

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

The Complainant is an out-of-state resident. The Respondent is a Real Estate Agent licensed with the State of Tennessee.

The Complainant states that Respondent is the property manager for a home located in Tennessee owned by the Complainant. The Complainant alleges that Respondent has been rude and did not fulfill his contractual obligations. The Complainant alleges that Respondent manipulated renters out of their lease early in hopes of becoming the listing agent for the home when it got put up for sale. The Complainant alleges that they have three-years of emails that show that Respondent has been difficult. The Complainant further alleges that the Respondent has repeatedly lied to them and also called the Complainant a racist. The Complainant alleges that they are now having a hard time selling the home due to the condition of the home and the failure of the Respondent to properly maintain the property. Complainant alleged that when they got the keys from the Respondent there was an overbearing smell of mothballs that was so strong no one could stay in the home.

The Respondent sent a response to the allegations and included several supporting documents. The Respondent states that throughout the business relationship with the Complainant, the Complainant was condescending and abusive. The Respondent never called the Complainant a racist but has mentioned a suspicion that the neighbor of the rental home may be at fault because he made the renters who were foreigners feel very uncomfortable. The Respondent states that there was no manipulation on their part to get the tenants out of their lease early to list the home. Respondent states that Complainant told them they wanted to sell the home and would not be renewing the tenant's lease. The Respondent then sent a letter, included in the documents, to the tenants letting them know that their lease would not be renewed because the owner wanted to sell the home. The tenant then replied with a letter from their employer stating that the tenant will be transferred back to work in their home country, thus terminating the lease early. The Respondent included a copy of the lease provision which states that if a tenant is relocated more than 30 miles for work the lease may be terminated. The Respondent alleges that they left the home in perfect condition when they handed the keys over. The Respondent included a copy of the invoice for a professional home cleaning service and a professional carpet cleaning service which were both completed the day the keys were handed over. The Respondent further states that at all times while they were property manager, the occupancy remained at 100% and they included documents to support this.

Recommendation: Close. There is no evidence indicated the Respondent violated any of the laws or rules of the Tennessee Real Estate Commission.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2021038341
Opened: 5/24/2021
First Licensed: 1/28/2015
Expires: 6/6/2022
Type of License: Real Estate Broker
History: None

The Complainant is an out-of-state resident. The Respondent is a licensed Tennessee Real Estate Agent.

The Complainant closed a new home build property. The Complainant states that they were initially told that they owned the pond, which was on the property, but

when they spoke with their neighbor, they were told that the neighbor owned the entire pond. The Complainant alleges they conveyed this information to the Respondent as they were initially told that they owned the pond, and Respondent assured them that they owned 90% of the pond. The Complainant later had their own survey done which shows that Complainant did not own the pond. Complainant states that the survey submitted at closing showed that Complainant did own the pond on the property. The Complainant further alleges that a soil test which was supposed to be completed was never done, Complainant contacted the person responsible for completing the soil analysis and he said that he needed clarification to complete the tests and never got the information needed. The Complainant alleges that there was a false representation of the property by the Respondent which is now hindering the Complainant from selling the property.

The Respondent submitted a response as well as documentation to support their claim. Respondent states that the soil test was fully paid and completed. The Respondent alleges the soil test was completed but the paperwork was not finalized because the person doing the soil analysis needed more information from the sellers that he did not receive. The Respondent included the MLS record which included the findings of the soil analysis. The Respondent states that the Complainant does in fact own the pond, they included two separate surveys which show that 90% of the pond is included within Complainant's property line. The Respondent further states that because of the layout of the property lines it would be impossible for the neighbor to own the full pond.

Recommendation: Close. There is insufficient evidence of any violations of the laws and rules of the Tennessee Real Estate Commission. The Respondent communicated the information that was available to them to the Complainant.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

- 30. 2021030491**
Opened: 5/24/2021
First Licensed: 5/19/2016
Expires: 5/19/2022
Type of License: Time Share Registration
History: None

Complainant is an out-of-state resident. Respondent is a timeshare registrant.

Complainant alleges that Respondent violated good business practices and was untruthful about the maintenance fees. Complainant contends there is no resale value in the timeshare, and no one is helping Complainant resell points to pay for maintenance fees and mortgage. Complainant alleges the contract was created in bad faith and should be cancelled.

Respondent submitted a response stating that Complainant has owned the timeshares with Respondent since 2011. After 2011, Respondent entered into four additional purchases and currently has one active ownership. Respondent denies “violating good business practices” or acting in bad faith. All financial obligations, including increases in maintenance fees, were disclosed to Complainant at the time of each purchase and set forth in the purchase documentation executed by Complainant on the dates of purchase. Respondent states that Complainant has not remitted maintenance assessments that were due on January 1, 2021, and has not responded to any of Respondent’s calls or correspondence to discuss the status of the account.

Respondent states that its sales consultants do not promote its products as financial investments with increasing values, but as use-based products. Additionally, the purchase and sale agreement Complainant executed for each purchases acknowledges that Respondent makes no representation concerning rental income or investment potential. Complainant also initialed an Owner Clarification Form acknowledging that Complainant is “not purchasing with an expectation of receiving any tax benefit or income from rental or profit from the resale of your Timeshare Interest, and (ii) the market for resale of timeshare interests is poorly established”

Based on the information provided, this a contract dispute between the parties, there is insufficient evidence that Respondent violated the laws and rules of the

Commission. Moreover, the rescission/cancellation period for the contract has expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

31. 2021031971

Opened: 5/24/2021

First Licensed: 12/28/2017

Expires: N/A

Type of License: Time Share Exempt

History: None

Complainants are out-of-state residents. Respondent is a time share exempt company.

Complainants purchased a timeshare in 2018. Complainants contend the representatives at a sales presentation "laid it on thick" with all the benefits, and Complainants signed up. Complainants contend the salesperson knew Complainants had just gotten out of the hospital and were not feeling well, but they plowed ahead with the presentation anyway. Complainants state the benefits and expectations never happened. They vacation at a low class resort after accepting the cheapest timeshare. Complainants wish to cancel the sales contract.

Respondent submitted a response stating that Complainants attended a presentation in 2018. They met with a sales consultant who went over the benefits of ownership and the points-based exchange program. At the conclusion of the presentation, Complainants elected to join the club program and purchase a standard interest in the time share. Respondent denies that ownership is other than what was presented to Complainants at the time of purchase. Complainants were not badgered nor prevented from leaving the presentation. At the time of the purchase, Complainants executed a sales pre-confirmation checklist identifying his reasons for the purchase. Respondent disputes Complainant's assertion that he was forced into purchasing a timeshare interest he was not interested in.

Respondent states Complainants are well past their rescission period. Complainant's purchase documents, signed by Complainants, contain full and accurate disclosures of the terms of the purchase, Respondent states Complainants are not entitled to

contract cancellation.

Based on the information provided, this is a contract dispute between the parties, there is insufficient evidence that Respondent violated the laws and rules of the Commission. Moreover, the rescission/cancellation period for the contract has expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

32. 2021037971

Opened: 6/1/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

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

Complainants state they purchased a timeshare 16 years ago. They contend they were told lies to convince them to purchase a timeshare. Specifically, Complainants allege they were told the timeshare would be a way for them to travel the world and stay wherever they wanted. Complainants state that has not been the case. Complainants wish to cancel their contract.

Respondent submitted a response stating that Complainants were correctly told that they are able to put their occupancy week a program in order to travel worldwide. Once the week is deposited, Complainants are bound by availability protocols. Respondent states that Complainants signed an Acknowledgement of the representations. Respondent states that Complainants did not seek to cancel the purchase contract in accordance with the mandatory terms of rescission, and the cancellation period has passed.

Based on the information provided, the contractual and statutory rescission periods and statute of limitations have expired. The purchase was 16 years ago, and there is no violation of the Tennessee Time Share Act of 1981.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

33. 2021032791
Opened: 6/8/2021
First Licensed: 3/9/2010
Expires: N/A
Type of License: Time Share Registration
History: None

Complainant is a Tennessee resident. Respondent is an out-of-state timeshare registrant.

Complainant purchased a timeshare on or about August 28, 2020. Complainant alleges they were told by Respondent that the timeshare they purchased was a once in a lifetime deal that would make vacationing easier. Complainant contends this was untrue, and the timeshare has caused financial strain. Complainant states they wrote a letter to Respondent, who has refused to acknowledge any wrongdoing. Complainant wishes to cancel the contract.

The timeshare at issue is out of state. The contract provides for a ten-day rescission period which has elapsed. The contract further provides that disputes regarding the contract be brought in the federal or state court where the timeshare is located. Based on the information provided, Counsel does not find a violation of the Tennessee Time Share Act of 1981. Complainant has the option to pursue legal remedies in the state and county where the timeshare is located.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

34. 2021038891
Opened: 5/24/2021
First Licensed: Applicant
Expires: N/A

Type of License: Time Share Registration Applicant
History: None

The Complainant is an out-of-state resident. The Respondent is licensed Tennessee Time Share Registrant-Applicant.

The Complainant stated they own three weeks of a time share, which they have owned for the past thirty years. The Complainant stated they spoke with someone who said a management entity had taken over the resort and all scheduled vacations have been cancelled. The Complainant stated they had never dealt with this person previously. The Complainant stated that there is a sunset clause in place for January 2, 2022 but no changes to their vacations could be made prior to that date. The Complainant alleged that no voting took place to authorize these changes and did not have any say in these changes being made.

The Respondent filed a response stating that they do not own, operate, manage, or control this facility. The Respondent states that they are not involved in the day-to-day operations of the resort. The Respondent states that they have spoken with the Complainant, and Complainant agreed Respondent was incorrectly named in the complaint.

Recommendation: Close. The complaint was filed against the wrong Respondent.

Commission Decision: The Commission accepted counsel's recommendation.

RE-PRESENTS:

35. 2021019181

Opened: 3/29/2021

First Licensed: 8/24/2004

Expires: 2/25/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Complainants are the sellers of a home. Respondent was the buyer's agent.

Complainants contend they entered into a contract to sell their home on 1/22/21. Complainants state the buyer provided pre-approval with no contingency to sell their existing home before the closing. Complainants contend that their agent reached out to Respondent on 2/13/21 to verify the appraisal, and Respondent stated it had appraised but the underwriter needed one more verification. Complainants state Respondent notified their agent on 2/22/21 that there was an underwriting issue and the buyer must close on the sale of her home before purchasing the property. Complainants state they agreed to an extension to 3/17/21 with buyer forfeiting the earnest money if the closing did not occur. Complainants contend that Respondent then informed their agent on 3/10/21 that the appraisal was short. Complainants contend this was unethical and state they wish to file a complaint against the buyer and Respondent for breach of the purchase agreement.

Respondent submitted a response stating the buyer entered into a contract to purchase the home on 1/22/2021 at a price of \$340,001.00. There was no "sale of home" contingency on the purchase because at the time the buyer did not need to sell her home to purchase a new home. Respondent states she was informed on 2/22/21 that the buyer needed the proceeds from the sale of her home to close because of some unexpected and personal situations. Respondent immediately informed the listing agent. The buyer asked for an extension and offered to forfeit the earnest money if closing did occur by 3/17/21.

Respondent states the appraisal was done on 2/4/21, but she was not notified that it came in short until 3/10/21. Respondent then immediately notified the listing agent. On 3/10/21 Respondent was informed by the lender that the appraisal came in at

\$315,000. Respondent tried to re-negotiate. The listing agent insisted seller was upset and required the buyer to pay the \$340,001.00. On the same day, the listing agent sent Respondent the release to the contract. The buyer did not sign immediately because she was still under contract. The buyer was in the process of making arrangements to come up with the balance of the money since the contract did not expire until the 3/17/21, and all other conditions on the loan were cleared.

Respondent states the sellers went into contract with another buyer on 3/10/21, the same day she heard about the appraisal being short. MLS showed that the seller went into contract with someone else while the contract with the buyer was still legally bound. Respondent states the buyer felt pressured because the listing agent sent the release to everyone involved immediately and signed the mutual release, forfeiting the earnest money. Respondent provided copies confirming the communications

Based on the information and documents provided, it appears that Respondent informed the sellers' agent that the property had appraised, but the appraisal report came in short almost a month later. Therefore, Counsel recommends that the Commission authorize a \$1,000.00 penalty for failure to diligently exercise reasonable skill and care.

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

Commission Decision: The Commission accepted counsel's recommendation but voted to decrease the civil penalty to \$500.00.

New Information: Following the decision by the Commission, and submission of a proposed Consent Order to Respondent detailing the factual allegations upon which the authorized penalty is based, Respondent's principal broker and Respondent provided additional information and a supplemental response clarifying the context of the alleged conversation on or about February 13, 2021, in which Respondent told Complainant's agent that the home had appraised. Respondent has clarified that the statement was in reference to the appraisal on her buyer's home (which the buyers were in the process of selling in order to assist with the purchase Complainant's home) and not the appraisal of the Complainant's home which later came in short. Counsel has also reviewed a text conversation in which Respondent states to Complainant's agent that the "appraisal came back good on my buyers[sic] home . . .," which supports

Respondent's clarification.

Counsel's recommendation for a penalty was based upon the concern that Respondent represented to Complainant's agent on or about February 13, 2021, that Complainant's home had appraised, but then did not discover until over a month later on March 10, 2021, that the appraisal had actually come in approximately \$35,000.00 short, thus causing the sale to fall through. Based upon the new information, however, from Respondent and her broker and the supplemental response, Respondent had no notification that the appraisal report on Complainant's home was short until the lender informed Respondent of same on March 10, 2021. Respondent then immediately notified Complainant's agent. Based upon Respondent's clarification and supplemental response, Counsel does not find there is sufficient evidence that Respondent violated the rules or statutes of the Commission.

New Recommendation: Close

New Commission Decision: The Commission accepted counsel's recommendation.

**36. 2021006541
Opened: 2/16/2021
First Licensed: 9/6/1988
Expires: 4/26/2022
Type of License: Affiliate Broker
History: None**

This is an administratively opened complaint. Respondent is a Tennessee-licensed affiliate broker.

On December 22, 2020, Respondent pled guilty in the United States District for the Western District of Virginia to one count of conspiracy to commit bank fraud and obtain money by false pretenses in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 1349. Respondent and her principal broker reached out to the Commission about the matter. Respondent has provided copies of the conviction and plea agreement, which provide that Respondent opened several bank accounts, deposited counterfeit

checks, and shipped large quantities of fraudulently obtained cash overseas to a man with whom she had an online relationship.

According to the plea admissions, Respondent engaged in a continuing scheme from February of 2019 through November of 2020 of opening a series of bank accounts for the purpose of depositing counterfeit checks and receiving fraudulent transfers of funds from other financial institutions. Respondent fraudulently received funds totaling \$190,000.00.

Respondent submitted an answer in which she argues that her license should not be revoked for the following reasons: (1) She is 76 years old and had never previously been convicted of a crime; (2) She has been a licensed broker in good standing in Tennessee and Virginia for many years; and (3) She did not use her real estate license to commit the acts to which she pled guilty.

Recommendation: Authorize a contested case hearing for revocation of Respondent's license for violation of Tenn. Code Ann. § 62-13-312(b)(12) (conviction for conspiracy to defraud/obtaining money under false pretenses).

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Following the decision by the Commission, Respondent retained counsel to represent her in this matter. Counsel has since engaged in settlement discussions with Respondent's attorney regarding Respondent's discipline. Respondent's attorney has presented a supplemental response, a copy of the Judgment in a Criminal Case, and Respondent's sentencing memorandum, and requested consideration of the following:

Respondent is a 76-year-old widow, has been a licensed real estate agent since 1989, has been licensed in two states in good standing, and has no other criminal history. Respondent states she was the victim of a scam and preyed upon by a man who contacted her online and with whom she became involved in an amorous relationship. This man abused her trust and took advantage of her age, loneliness, and vulnerability with promises of marriage and security. Spurred on by promises to take care of her, Respondent helped the paramour sign other people's names to counterfeit checks provided by the paramour and deposited the funds in her accounts. She received wire transfers from individuals she did not know when the paramour told her to do so. Respondent then sent substantially all the money to the paramour and other individuals as

she was instructed. None of the actions taken by Respondent involved any broker activity or her real estate licenses.

Respondent was sentenced to four (4) months' supervised release (house arrest) and three (3) years of probation. The Government did not oppose the sentence of probation in the Plea Agreement, and no restitution was ordered. The lack of any period of incarceration in a financial crime of this amount was due to the extenuating circumstances. Respondent indicates she received no personal financial gain from her actions, as the money she assisted her paramour to obtain was transferred at the behest of her paramour to him or to his associates.

Respondent is continuing to serve three years of probation under a number of mandatory conditions, which include the requirement that Respondent must not commit another federal, state, or local crime and must pay a \$100 criminal penalty (which Respondent's attorney advises has been paid).

New Recommendation: Based on the above considerations, Counsel recommends a suspension of one (1) year. Respondent shall incur no criminal, civil, or administrative charges relating to Respondent's real estate license during the suspension period. Respondent shall abide by all mandatory conditions of probation as set forth in the Judgment in a Criminal Case. If Respondent is found in violation of probation, Respondent will notify the Commission within thirty (30) days, and Respondent's license shall be further suspended for a period of one (1) year. Upon the completion of suspension period(s) and compliance with all terms above, Respondent shall appear before the Commission at an informal appearance during a regularly scheduled meeting.

New Commission Decision: The Commission did not accept counsel's recommendation and voted to continue with the original discipline.

Chairman John Griess adjourned the meeting at 11:00 A.M. CDT