



**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 June 09, 2021, at 8:30 a.m. CST at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243. In addition, the meeting was streamed virtually via the 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 Jon Moffett, Commissioner Joan Smith, Commissioner Stacie Torbett, & Chairman John Griess. Vice-Chair Marcia Franks was absent. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Associate General Counsel Anna D. Matlock, Associate General Counsel Shilina Brown, Associate General Counsel Pamela Vawter, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The June 09, 2021 board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Diaz and seconded by Commissioner Smith. Motion passed unanimously.

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

Motion to approve the May 07, 2021 minutes was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed unanimously.

INFORMAL CANDIDATE APPEARANCE

Dontavious Daniel and Principal Broker Larry Willard appeared before the commission to obtain approval for Mr. Daniel's affiliate broker license.

Motion to approve Mr. Daniel was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion passed unanimously.

INFORMAL APPEARANCE

Mr. Billy Featherstone appeared before the Commission, with his principal broker Mr. Harold Moore, to discuss the matter deferred from the May meeting. The Commission decided that upon completion of all the necessary requirements needed for an application, proof of completion of the continued education provided in the Order, completion of the thirty (30) hours broker office management course, and passage of the state and national exams that his license will be reinstated as a real estate broker. Additionally, Mr. Featherstone will have to pay the \$5,000.00 (Five Thousand Dollar) civil penalty, which can be paid concurrently via payment plan if so desired.

EDUCATION REPORT

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

Motion to approve courses J1-J17 was made by Commissioner Diaz and seconded by Commissioner Begley. Motion passed unanimously.

Education Director Ross White presented Instructor Bios to the commission.

Motion to approve instructors was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the topics below.

- **ARELLO:** Director Maxwell advised the Commission that approval had been given and Commissioner Diaz, and Commissioner Smith would represent the State of Tennessee Real Estate Commission at the Mid-Year ARELLO meeting in San Antonio Texas.
- **PSI:** Director Maxwell advised that PSI would host a roundtable with initial providers prior to the next meeting. She will attend and update the commission at the July meeting.
- **MISCELLANEOUS:** Director Maxwell, advised the Commission that meeting date for 2022 would be discussed.

OPTION TO BUY:

Ms. Matlock updated the Commission on the “option to buy” legal opinion. Following the decision in *Soto v. Presidential Properties* (2021 WL 1626275), decided by the Court of Appeals of Tennessee in March of 2021, the court held the following:

“The Act defines a ‘broker’ as an individual who deals or attempts to deal by ‘negotat[ing] the listing, sale, *purchase, exchange, lease or option*’ to buy or sell real estate...To hold the [Defendant] did not violate the Act because [defendant] only attempted to sell an option in [property in question] would be a blatant misreading of the Act.”

(emphasis added) (*Soto v. Presidential Properties* 2021 WL 1626275, *9 Tenn. Ct. App. 2021).

Further the Court held that even if the Defendant was not working for a fee or commission, Tenn. Code Ann. § 62-13-102(4)(A) defines a broker as a person who deals in real estate with the expectation of receiving ‘a fee, or commission, finders fee or *any other valuable consideration*. (emphasis added). *Id.*

In short, when an individual sells or attempts an option that this is unlicensed activity and requires a license. The Commission and Legal Division will be providing additional information and communications in the coming future further explaining how this impacts the industry.

COMMISSION DISCUSSION:

The Commission discussed an informal opinion requested by Farrar & Bates relating to charitable contributions from earned commissions and facilitator fees for real estate agents' transactions without representing either party. Specifically, the Commission held that regarding charitable contributions from earned commissions—this practice is permitted. However, the Commission did state it is likely this information should be disclosed to parties of a transaction. Further, decisions pertaining to disbursement of earned commissions following a closing is left to the discretion of each broker and/or firm. The Commission also decided that licensees may serve as a facilitator for a fee that is a percentage of the purchase price. As a reminder, informal opinions are not binding, can change at any time, and should not be held as binding. An informal opinion is an opportunity for the Commission to provide their own interpretation of their rules and statutes to a specific question or scenario.

CONSENT AGENDA:

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

A motion to accept counsel's recommendation for cases 1-55 with exception of the following cases, which were pulled for further discussion: **2021021431, 2021032311, 2021031241, 2021034051, 2021035951, 2021029441**. This motion was made by Commissioner Diaz and seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021021431, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Smith. Motion passed unanimously.

After further discussion by the Commission on complaint 2021032311, Commissioner Smith made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021031241, Commissioner Begley made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Guinn. Motion passed unanimously.

After further discussion by the Commission on complaint 2021034051, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021035951, Commissioner Diaz made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021029441, **The Commission elected to authorize a formal hearing for failing to exercise reasonable skill and care and good faith owed to all parties in a transaction and allow settlement by Consent Order following completion of four (4) hours CE in Contracts to be completed within 180 days of the execution of the Consent Order and over and above the CE required for licensure**. Commissioner Diaz made the motion. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

NEW MATTERS

SHILINA BROWN:

1. 2021021281

Opened: 4/13/2021

First Licensed: 8/7/2014

Expires: 8/6/2022

Type of License: Affiliate Broker

History: None

Complainant filed an anonymous complaint. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent made an Instagram® post on March 17, 2021 and used several hashtags (“#”) at the end of the post. One of the hashtags was “#broker.” The Complainant alleges this is misleading because the Respondent is an Affiliate Broker and not a Broker.

The Respondent provided a response and stated it was an error. The Respondent uses

an application (“App”) that generates a multitude of hashtags and the Respondent did not check the hashtags and did not realize this hashtag was in the list of hashtags. This was unintentional and will not happen in the future.

Recommendation: **Letter of Warning concerning Tennessee Real Estate Commission’s advertising rules concerning misleading advertising.**

Commission Decision: **The Commission accepted counsel’s recommendation.**

2. 2021021811

Opened: 4/13/2021

First Licensed: 12/7/1988

Expires: 2/5/2022

Type of License: Affiliate Broker

History: Errors and Omissions Suspension effective 1/29/2021

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

The Complainant is the land purchase coordinator for a non-profit organization in Tennessee and works with multiple federal agencies to develop vacant city lots and other projects. The non-profit has been attempting to purchase a parcel of land since 2019. The Complainant contacted the property owner and later had a “disturbing conversation” with the Respondent. The Respondent represented the property owner. The property owner purchased the property for \$400 from a tax sale from the city. The Complainant offered to pay all the back taxes, property code violations and the fair market value for the property. The Respondent was very abrupt and stated the property owner would only accept four times the fair market value to sell the property. The Respondent had not conferred with his client or even discussed the generous offer made by the Complainant. The Respondent did not relay the verbal offer or request a written offer from the Complainant to present to his property owner client. The Respondent told the Complainant “[t]hat’s a lowball offer and it’s not going anywhere.” The Complainant met with the Respondent’s Principal Broker in February 2020 and asked them when a buyer makes an offer under contract to a real estate agent to purchase a property is that offer to be submitted to the client who owns the property, by contract and in accordance with the real estate board. The Respondent’s Principal Broker stated that is the procedure. The Complainant asked why the Respondent had not submitted an offer to his property owner client in September 2019. The Respondent’s Principal Broker did not have an answer for the

Complainant. The Principal Broker drafted a contract for the Complainant to sign with the offer. The offer was going to be submitted to the property owner from the foundation. The Complainant was not given a copy of the proposal and when the Complainant asked for a copy, the Complainant was told it would be mailed to the Complainant. The Complainant never received a copy. The Complainant did not believe the offer would ever be presented to the property owner and he was correct. After two weeks, the Complainant contacted the Respondent's firm and was told the property was already under contract. The Complainant had never been notified or informed the property was under contract. In May 2020, the Respondent contacted the Complainant by telephone and advised the Respondent the property had been sold. In fact, it appeared the property had never been transferred out of the property owners name since the date of purchase. The register of deeds records showed the property owner was the same and had not been transferred to another owner. Also, upon further verification, the Complainant discovered the "FOR SALE" sign has still posted on the property. The Complainant has not received any response from the property owner at any time and some individuals indicate the property owner may be deceased because she is in her 70s. The property owner's home and the property are in great disrepair and neglect and both have city and county liens for unpaid taxes going back to 2018. The Complainant stated the foundation offered to pay more than fair market value on a distressed property with title and land issues and take care of the back taxes and property violations. The Complainant does not believe the offer was ever presented to the property owner. The Complainant alleges the Respondent has violated the standards of conduct of the Commission and was dishonest, not providing full disclosure about the condition of the property, misleading potential buyers, and making misrepresentations to the Complainant.

The Respondent provided a response and stated the Complainant has been contacting his office since 2019 to purchase this property for the foundation. The lot was listed for \$4,900 and the Complainant insisted to the Respondent the lot was only worth \$2,300. The Respondent stated the Complainant calls every few months inquiring about the property and wanting to make a verbal offer each time on the property. The Respondent indicated the Complainant has become a nuisance and insists he knows real estate law and will retain a real estate agent to make a written offer. The Respondent never drafted a written offer for the Complainant. Also, the Respondent indicated that one of his agents was assigned to assist the Complainant and the agent stated the Complainant insists the property owner accept the \$2,600 offer for the property. The Complainant also called the agent several times a month and demanded the verbal offer be accepted by the property owner. The Principal Broker did not meet with the Complainant and merely made an introduction to one of the real estate agents in the Principal Broker's office. The real estate agent is now in the

hospital with COVID-19 and cannot speak or respond. The Principal Broker is in the process of retiring his license due to his health issues. Also, the property owner died in 2020.

There is insufficient evidence to show the Respondent has violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

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

3. 2021024521

Opened: 4/13/2021

First Licensed: 11/21/1979

Expires: 11/15/2022

Type of License: Real Estate Broker

History: None

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

The Complainant alleges the Respondent was a local real estate agent and purchased property from an estate on the same day the Complainant purchased property. The Respondent's deed had the right of way on the property and the Complainant only discovered this in 2018 after the Complainant had been checking deeds at the county courthouse. The Complainant alleges the right of way was typed on the Respondent's deed in a different font and using a different typewriter and appears to be forged. The Complainant checked with the attorney of the estate from whom the Respondent purchased the property and the attorney stated there was no right of way on the deed on the day of the sale. The Complainant asked the Respondent directly if the Respondent typed the right of way for his property on the deed and the Respondent indicated he did because the wife of the decedent's estate authorized him to include it in his deed. The Complainant advised the Respondent the only authorized person that could type it into the deed was the attorney for the estate when the property was sold on December 11, 2001.

The Respondent provided a response and stated in January 2000, the Respondent purchased four lots from the decedent's estate and his wife. They were both good

friends with the Respondent and the Respondent's father. The Respondent did confirm with the decedent that if the Respondent purchased the lots, there would be ingress and egress to the lots from the main road located behind the lots. The decedent's estate and his wife agreed to provide the ingress and egress in the deed and wanted to use their attorney to draw up the deed and the decedent's wife asked the attorney to make sure the right of way was put on the deed to the Respondent so there were no questions or issues in the future concerning the right of way. They picked up the deed from the attorney and brought it to the closing. At the closing, the deed did not contain a statement about the ingress and egress as had been discussed and requested. At the closing, the attorney was contacted and was unavailable to drive to the title company to make the necessary changes to the deed and instructed the title company could add it to the deed before the documents were signed. The secretary at the title company typed it into the deed. The deed was then recorded at the courthouse. The Respondent divorced in 2005 and received the property in question as part of the divorce settlement. The Respondent did trade part of the lot in question to the Respondent's ex-wife for another lot in another county. The Respondent did not visit the tract of land often and thought his son might use the land in the future to build a home. The Respondent later realized his son was not interested in building a home on the property and decided to sell it. The Respondent decided to go check the lot and found a cable had been placed across the road. The Respondent decided to contact the decedent's wife to obtain a statement concerning the ingress and egress. The widow signed a statement and stated it was her intent at closing and presently, for the road to remain open and allow for ingress and egress. The Respondent still has the written statement of the widow. A few days later, the Respondent went back to the property and found the cable was gone and load of dirt had been dumped in the road and this made the road impassable. The Respondent discovered it was done by the adjacent property owner. Since the Respondent did not witness the Complainant dumping the dirt, he did not confront the Complainant about the dirt. Three years ago, the Respondent alleges he saw the Complainant at an auction and asked him if he knew who had been blocking the road. The Complainant became very angry and stated he owned the land and the Respondent had falsified the records at the courthouse. The Respondent explained to him the records were not falsified and explained what had happened on the date of the closing. The Complainant had not purchased the property on the same day as the Respondent and was not a party to the original purchase of the property. The Respondent stated the Complainant has no interest in the underlying land where the right of way is located. The road is considered to be a county road and has even been given the name of "County Road ___") The signed statement by the widow of the original property owner corroborates that the Respondent owns the right of way and evidences the property owners original intent to convey the roadway with the

Respondent's lot. The Respondent stated the Complainant has no basis for his claim and is frivolous and is using the Commission's complaint system against the Respondent and this is not directly related to a real estate transaction involving the Complainant and the Respondent.

This is a property dispute between the parties and it would be more appropriate for the parties to resolve this in a court of competent jurisdiction. There is no evidence the Respondent has violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

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

4. 2021025551

Opened: **4/13/2021**

First Licensed: **4/16/2003**

Expires: **3/30/2023**

Type of License: **Real Estate Broker**

History: **None**

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

The Complainant alleges the Respondent was referred through the Complainant's real estate agent in Hawaii. The Complainant was going to move from California to Tennessee and needed a Tennessee real estate agent. The Complainant found a home on Zillow being sold by owner. The Respondent never saw the home in-person. Throughout the process, the Complainant alleges the Respondent was very difficult to contact and did not return phone calls or e-mails unless the Complainant followed-up after the original call. It usually took one to two days. The Complainant alleges she had several issues with the Respondent. After the home inspection there were several items the Complainant wanted repaired and the Seller agreed to make the repairs. The Respondent refused to put the repairs in writing. The Complainant's original real estate agent in Hawaii had to get involved and contacted the Seller/Owner of the property to work out the details of the repairs. The Complainant even had to write a demand letter to the Respondent to have the Respondent put the repair items in writing pursuant to the Purchase and Sale Agreement. The Complainant attempted to meet the Respondent when she came to Tennessee to

inspect the home and the Respondent was not available. The Complainant also attempted to meet the Respondent in the Respondent's hometown, but the Respondent would not answer her telephone or return phone calls. The Complainant's Hawaii real estate agent had to review all the contract terms with the Respondent and answer all the Complainant's questions. The Respondent also asked the Complainant's Hawaii real estate agent to reduce the referral fee. The Respondent mentioned to the Complainant that she wanted to get paid for the sale as soon as possible. At the final walk through the day before the closing, the Respondent claimed she did not have to attend. The Respondent claimed it was the attorney's role to attend the walk through. The Complainant insisted the Respondent represent her at the final walkthrough and the Respondent told the Complainant she had COVID-19 symptoms. The Respondent had Zoom call arranged with the Seller/Owner, but the Respondent did not provide the proper representation in the transaction. The Complainant alleges she moved into a dirty home due to the Respondent's failure to properly represent the Complainant in the real estate transaction. The cabinets were filled with the Seller's personal items and there was construction debris in the backyard. If the Respondent represented the Complainant properly, the Complainant alleges these things would not have happened. The Complainant stated she is a disabled veteran and was put under extreme stress because the Respondent's actions and inaction in this real estate transaction.

The Respondent provided a response and stated she began working with the Complainant on January 4, 2021. The Complainant was interested in purchasing a property in Tennessee and the property was no longer available and the Respondent located another home for the Complainant. At first, the Complainant was adamant about a particular area and when the Respondent indicated there were no homes. The Complainant finally agreed to expand her search area to a seven-county wide area. On January 11, 2021, the Complainant happened to find the perfect home through Zillow. It was new construction and met the Complainant's criteria for a home. The home was below \$190,000 and the Complainant knew she would have to build a detached garage and carport after the purchase. On January 12, 2021, the Complainant entered a contract with a 10-day inspection period. The Complainant had to schedule a visit to Tennessee and the Respondent agreed to meet with the Complainant the following day after the Complainant arrived in Tennessee. The Complainant suddenly called the Respondent the evening of her arrival and stated she had driven by the property and did not like the home and wanted to cancel the contract. The Respondent explained they were in the 10-day inspection period and the Respondent could draft the paperwork to cancel the transaction. On January 14, 2021, the transaction was cancelled. On the same date, the Complainant found another property a friend had found on Zillow. The Complainant spoke with the

homeowner since it was a Sale by Owner and had made an appointment the following day. The Respondent could not attend the showing with a three-hour notice provided by the Complainant and the Complainant told the Respondent she understood the Respondent could not attend on short notice. Later that afternoon, the Complainant contacted the Respondent and wanted to make an offer on the home. The offer was prepared the same day and the paperwork was finalized with the Seller/Owner of the property. The Respondent did see the property with the Complainant. The Complainant incorrectly stated the Respondent never visited the property. The Respondent met the home inspector at the property on January 25, 2021. The Complainant was not present for the home inspection and the home inspection report was sent to the Complainant by e-mail from the inspection company. The sale price for the home was \$220,000 with the Seller/Owner paying \$2,000 in closing costs and a 3% real estate commission. The closing date was scheduled for February 26, 2021, the inspection was completed on January 25, 2021, the appraisal was completed on February 5, 2021 and repairs were negotiated on February 8, 2021. The repairs were verbally approved by the Complainant and the Seller prior to February 8, 2021 and the final document could not be executed until the appraisal was cleared. The repair agreement was typed and sent by e-mail to the Complainant on February 7, 2021 and executed by all parties on February 8, 2021. The appraised value of the home failed to meet the contract price and amendment was prepared to reduce the sales price to \$210,000, which was the appraised value, and the commission was reduced from a 3% fee to a flat fee of \$5,000, which was a \$1,300 reduction in the Respondent's commission. The amendment was executed by all parties. Since the negotiations involved quite a bit of discussion about commission, Respondent believes the Complainant incorrectly assumed the Respondent was only interested in the commission. Since the Respondent had to accept a reduction in the commission, the Respondent did ask the Complainant's original real estate referring agent in Hawaii to reduce the referral fee, especially since there was no referral agreement that had been signed. The referral contract was not reduced to writing and was verbally agreed upon as 25% on January 4, 2021. The referral contract was not submitted on paper by the referral agent until February 8, 2021. The referral agent did not agree to reduce the referral percentage, but the Respondent office did receive a reduction in overall commission. The Complainant planned to arrive on February 25, 2021 for the closing. The Respondent had told the Complainant the Respondent would be unable to attend the closing because of possible COVID-19 exposure on February 24, 2021 and one of the Respondent's daughters had been quarantined. The closing office had all the closing documents from the lender and the closings are handled by the title company and an attorney in Tennessee and does not involve the real estate agent. The Complainant was very upset the Respondent would not attend the closing. The Respondent did offer to

conference by Zoom at the closing. Instead, the Complainant called the Respondent's Principal Broker to "report" her. The Principal Broker offered to Zoom at the closing and the Complainant agreed to allow the Principal Broker video conference with the Complainant on the closing date. The Respondent stated she put quite a bit of work into helping the Complainant secure the home and it is unfortunate the Complainant was not satisfied with the Respondent's performance. The Respondent has been a licensed agent for over 23 years and has never had a complaint filed against her. The Respondent did not intend for the Complainant to ever feel unrepresented in the transaction. Also, the Respondent was always responsive to the Complainant by e-mail and telephone. There were some instances when the Respondent was not available because it was late at night or the Respondent was at another appointment, showing or at church. However, the Respondent would always respond as quickly as possible.

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

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

5. 2021021991

Opened: 4/13/2021

First Licensed: 9/12/1997

Expires: 3/26/2023

Type of License: Real Estate Firm

History: None

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

The Complainant entered into a lease agreement on December 31, 2020. The responsible leasing agent for the property was an agent with the Respondent's firm. The Respondent's agent provided the Complainant with all lease documents and the Complainant signed the documents by DocuSign. The Complainant moved into the property on January 5, 2021 and the property was in poor condition. There were several items that needed to be repaired such as the Heating and AC unit, kitchen sink, kitchen floor, and the holes in the walls. The Complainant informed the Respondent's agent and the Respondent's agent and staff were very rude to the Complainant. The Complainant was told to not communicate with the Respondent

any further because the property owner is the landlord executing the lease and handling all the issues with the property. Additionally, the Respondent's agents showing the property had to have been aware of the condition of the property and should have had the repairs completed. The Complainant was not given the opportunity to view the property before taking possession even though the lease agreement specifically stated the Complainant would be allowed to view the property prior to signing the lease agreement. The repairs should have been completed and/or disclosed to the Complainant.

The Respondent provided a response and stated the property management staff aims to treat everyone with kindness and professionalism and apologized for how the Complainant was treated during this transaction. The Respondent provided copies of the e-mail chain between the Complainant and the property management agent and the agent was not rude or unprofessional. The Respondent's agreement with the property owner is for "Lease Only." This means after a lease is executed, it is forwarded to the owner with the lessee's contact information and the documents the owner may need because after the lease is executed, the property owner takes over collecting the rent and managing the property. The owner is the main point of contact for the Complainant concerning any issues or future needs. The owner's contact information is on the lease agreement. The Complainant was not residing in the area and was not available to physically view the property prior to the move-in date. The Complainant could have come to see the property prior to signing the lease agreement, however, chose not to view the property prior to entering into the lease agreement. The Respondent even provides for both a "self-showing" by using a lockbox system or if preferred, an agent can meet prospective tenants at the home. The Respondent prefers if a prospective tenant visits the property prior to signing the leasing agreement, but also assists those prospective tenants that live out of town or out of state to move forward with the rental application and rental process. The Complainant lived in Oregon and wanted to sign the lease prior to arriving in Tennessee because the Complainant wanted to be able to move-in as soon as he arrived in Tennessee because he had all his belongings with him and just wanted to pick up the keys to the premises when the Complainant arrived on January 4, 2021. The Respondent was not advised the Complainant would be arriving on January 4, 2021 because according to the lease agreement the move-in date was January 5, 2021. The Respondent's agent explained the keys could not be given to the Complainant because the lease began on January 5, 2021 and the pre-inspection was scheduled for January 4, 2021. The Complainant did not ask to view the property on January 4, 2021. Also, the Complainant signed a "hold harmless agreement" with the Respondent which was included in the lease documents signed by the Complainant. The Respondent's maintenance coordinator conducted a pre-move-in

inspection to check the property, take pictures of every room, make sure the HVAC worked, noted any present wear and tear, any holes, checked the appliances, the cleanliness of the unit, and made sure all doors were functioning and locking properly. The Pre-Move-In Inspection was conducted on January 4, 2021 and a report was issued. The staff member noted the thermostat was not working properly and was sticking. The HVAC worked and both the heat and air conditioning were both operational. The owner had already arranged for the HVAC vendor to go to the property because the owner had spoken with the Complainant. The Complainant never reported any issues to the Respondent concerning the kitchen sink and no issues were noted with the kitchen sink noted during the Pre-Move-In inspection conducted by the Respondent's agent. The owner was aware the floor may have been installed incorrectly and the vinyl did have a bubbly feel when stepped on and this was a cosmetic issue. Nevertheless, in March 2021, the owner requested help on finding a vendor to provide an estimate for replacing the kitchen floor. This issue was being addressed by the owner of the property. The Respondent arranged for an estimate to be provided by one of their vendors on March 12, 2021 and it was approved for repair by the property owner. The Complainant filed this complaint on March 20, 2021 and may not have been aware the flooring issue was being addressed and would shortly be resolved. The Respondent stated there were no holes in the home larger than a nail or screw holes. The Pre-Move-In inspection did not note any holes beyond normal wear and tear. There were patched holes in the garage larger than ordinary nail holes, but these had been patched. Also, the Respondent stated nail or screw holes are considered normal wear and tear and considered cosmetic. The Respondent stated the owner of the home has been responsive to the Complainant's concerns and issues concerning the rental property throughout the process.

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

Recommendation: **Close.**

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

6. 2021025051

Opened: 4/19/2021

First Licensed: 10/28/2020

Expires: 10/27/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges he and his wife went with their agent on March 26, 2021 to find a home and as they were driving around looking at houses, another real estate agent was watching them from another vehicle as they were visiting one of the homes. The Complainant found a home and made an offer to the owner. The Complainant's agent submitted the offer to the Respondent and learned the Respondent failed to submit the offer to the Seller the same day and submitted it the following day. The Complainant alleges this resulted in multiple bids and drove the price of the home higher. The Complainant contacted the owner and the owner indicated he did like the Complainant better, but his agent advised him to choose a different Buyer. The owner indicated that if the Complainant increased their offer by \$5,000, he would accept their offer. The Complainant alleges the Respondent told the Seller to select a different offer of another Buyer. The Complainant alleges the Respondent has broken many laws and has cost the Complainant their dream home. The Complainant alleges the Respondent knew her "color" and discriminated against her by withholding two offers and waiting to submit the offer. The Complainant alleges this is a violation of the consumer act and the Respondent did everything she could to make sure the Complainant did not get to purchase the home because she was Black. The Complainant states the Respondent should be fired from her job and her license should be revoked because the actions by the Respondent are serious violations and this should not happen to any other consumers.

The Respondent provided a response and stated she is a new agent and loves her job. The Respondent is devastated that someone who she never met would accuse the Respondent of acting in such a horrible way. The Respondent would never discriminate against anyone no matter what race. The Respondent was not brought up by her parents to act in such a manner. The Sellers told the Respondent they really liked the Complainant and since they had been outbid, the Seller wanted to give them a second chance so the Seller asked them to submit the highest and best offer which the Seller later informed after the Respondent had turned in the second offers. The Seller had told the Complainant the offer price the Complainant had to beat was \$365,000 and they needed to come up with an additional \$5,000 but this was incorrect. The Complainant would still be \$99.00 short of the amount needed to outbid the highest offer and there was also another bid \$10,000 higher. The Respondent stated all of this had nothing to do with the Complainant's race. The Complainant was simply outbid. In fact, the Respondent did not know the Complainant's race until it was stated in the complaint submitted to the Real Estate Commission.

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

Recommendation: **Close.**

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

7. 2021026441

Opened: 4/19/2021

First Licensed: 2/20/2001

Expires: 8/11/2022

Type of License: Principal Broker

History: None

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

On March 25, 2021, the Complainant received a letter from the Respondent advising the Complainant the Respondent was displeased with two of the Respondent's agents and they have retaliated against the Complainant by not extending the contract for a few days on a transaction. The Complainant's Buyers and his agents worked diligently and in good faith to meet the closing date. Unfortunately, the appraiser did not submit the report on time. The Respondent is blaming the Complainant's agents for not "pushing the lender and appraiser" harder to get the work completed. The Respondent also decided to handle the transaction himself and contacted the appraiser for the lender directly and offered him lunch and dinner if he would quickly complete the appraisal report and submit all the necessary documents to the lender immediately. This could have negatively affected the appraiser's timeline or even influenced the final value. The Complainant believes the Respondent is upset because the Buyer's agent asked for certain items to be done prior to the appraiser coming to the home with the intent of being proactive and eliminating the need for a reinspection by the appraiser and possibly causing further delay. The Complainant alleges this has resulted in the Complainant having to cut their commission to a flat fee which is over \$2,500 less than original and demands that the Complainant send a different agent to handle the transaction who the Respondent will directly compensate. The Respondent has directly contacted the agent newly assigned to the transaction and has not contacted the Complainant to resolve any issues, voided the Buyer's Representation Agreement so that the Buyer would not be responsible for any commission. The Respondent has also threatened the Complainant by stating he would speak to the client directly and make them aware that the Complainant either killed the deal or saved the deal. The Respondent has also told the Complainant several other realtors and builders will now refuse to work with the Complainant and the Complainant's agents. The Respondent also refused to send the Closing Date Amendment to the Complainant's agents after it was signed and sent it three days later. The Respondent also removed the key from the lockbox, and no one could access the home. The Respondent claims this was not intentional, but the agents must use the proper App to access the lockbox. There was no one else accessing the lockbox before the closing except the real estate agents and there was no reason the key should have been removed. The Respondent also tried to demand the Buyers use a specific termite inspector. The Respondent also refused to have the items on the punch list completed pursuant to the Repair and Replacement Amendment. The Complainant alleges the Respondent has taken advantage of the real estate agent's age and inexperience and manipulated the

situation to his benefit in retaliation and to make more money. The real estate agents were forced to reduce their commission in order ensure the transaction was completed and the Buyers were able to purchase the property.

The Respondent provided an extensive response to the complaint. The Respondent stated this is a false complaint. The Respondent did not ask any of the agents to reduce their commission and has never requested an agent reduce their commission in 20 years of practicing real estate. The Respondent stated the Complainant did not provide all the documents and proof to support the allegations and stated there were pages and messages missing and several text messages were taken out of context. There have been a multitude of texts, calls, e-mails, and undocumented verbal communications over the course of the past few months concerning the transaction at issue. The Respondent does admit to being hateful and rude during this transaction. The Respondent stated he should not have accepted a contract from these agents or offered to extend the contract. The original Purchase and Sale Agreement expired and became null and void. The parties involved in the transaction willingly signed the Amended Compensation Agreement. There was a contract extension that also resurrected the Original Purchase and Sale Agreement. The Respondent did encourage the Complainant's agents to contact the lender and ask for a reassignment of the appraisal. The appraiser was taking too long to complete the appraisal. The Respondent did not send a text to the appraiser, it was a "talk to text" and sent by error. The appraiser first contacted the Respondent. The Respondent believes the lender gave him the Respondent's phone number. The Respondent did call him back because he had missed his call and they talked about auctions because he was a fellow auctioneer and he was a friend of the Respondent and was the former Lieutenant Governor of Tennessee. The appraiser indicted he was going out of town and would take the appraisal with him and work on it. The Respondent did not engage in any unethical conduct. The Respondent had several phone calls back and forth between the Respondent and the Complainant's agents regarding this transaction. The agents were indicated that the additional repairs/work on the home were a requirement for the VA loan and inspection to be completed. This was incorrect and the Respondent merely told them they were incorrect. The Respondent stated the Complainant and the agents failed to meet the contract criteria and the contract became null and void and new agreement had to be drafted. The Respondent wanted to complete the transaction and only requested the Complainant assign a different agent to the transaction to resolve the issues and complete the transaction. The Respondent did not make demands but gave the Complainant and the agents three new contract terms. The Respondent was not the Buyer's agent but was concerned that the Buyer would not be able to purchase the home because of the actions of the Complainant's agents. The Respondent did not

have to continue with the transaction and could have refused to sign the extension and the Buyers would not have been able to purchase the home. The Respondent was the builder of the home and knew there would be an ongoing relationship with the Buyers for the next year. The Respondent did tell the Complainant there were real estate agents and builders that would not accept any offers from the Complainant's two agents in the future. The Respondent was in fact contacted by more than one person who stated they had dealings with the two agents in question and it resulted in a catastrophic situation. The Respondent sent a text on February 11, 2021 and advised the two agents to use the door code box and provided them with the box code. This box was used during the entire process and it was not a Supra lockbox. Once the garage door was hooked up on the opener, the Respondent put the lockbox on the Saturday before the walkthrough on Monday. The Respondent wanted recorded proof the agents had entered the home. The Respondent did forget to put the key in the Supra lockbox and it was unintentional. The Respondent had his elderly father bring the agents the key immediately because the Respondent was out-of-town. Also, on March 2, 2021, the Respondent told the agents by e-mail the key was not in the lockbox. It was merely a mistake that the key had not been transferred to the Supra lockbox. The Repair Replace Amendment was signed and agreed upon prior to closing and everything was completed. There was not a punch list. The punch list was the list the Respondent made to make sure the home was completed for the Buyers. This had no bearing on the contract. The two agents wanted to see the punch list and all the issues the Respondent found for the subcontractors to complete. The Respondent properly gave the Buyers and the real estate agents an update on the progress of the concrete, guttering and cleaning on February 27, 2021. The Respondent even provided an update on the spot painting and sheetrock fixes that needed to be made and the new vanities had arrived but were cracked again. The Respondent gave continuous updates on the progress of the home. The Complainant's agents were not forced into any agreement and agreed to the terms on their own accord.

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

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

8. 2021021431

Opened: 5/4/2021

First Licensed: 8/25/2014

Expires: 8/24/2022

Type of License: Principal Broker

History: 2021 Close and Flag; 2021 Close and Flag; 2021 Close and Flag; 2021 Close and Flag (related complaints) alleging fraud

Complainant is a local Tennessee real estate association. The Respondent is a licensed Principal Broker.

The Complainant states the association has never filed a complaint against a real estate agent in their five-decade history. The Complainant has refrained from initiating this complaint for several months and has made multiple private requests to the Respondent to cease the conduct, however, this has only intensified the Respondent's response to the requests from the Complainant. The Complainant calls into question the Respondent's character and fitness to serve as a licensed real estate broker in Tennessee and to disclose the Respondent's conduct to the Commission. The Complainant alleges the Respondent has engaged in bizarre and egregious course of conduct since at least October 2020. In September 2020, the Complainant received several grievance complaints against the Respondent from third parties that were not staff or board members of the Complainant association. Those complaints were handled accordingly. Upon learning of the complaints filed with the Complainant association, the Respondent initiated a fraudulent public smear campaign against the Complainant association's board and staff members. The attacks were first directed at then association President. On October 1, 2020, the President posted a comment on the association's Facebook page and explained the circumstances surrounding a proposed change to the Bylaws and it was the subject of an upcoming vote. In response to this post, the Respondent posted several comments such as "_____ does _____ know what nasty things you are up to at that board?.. You all messed with the Wrong gals [sic] business. Disgraceful what

im [sic] being reported you been doing to our Members.”! “If anyone has the nerve to keep slandering me or my company in this ‘group’ stay away from them w a 10-foot pole bc [sic] what they have been doing is illegal. Im [sic] happy bc [sic] we can now focus on the \$. Its [sic] not in the crime … its [sic] in the cover up. This is a lot of cover up. We all are VERY happy this is finally coming to light and feel wonderful these poor agents and past victims can get some justice.” “I know there are a large amount of competing REALTORS & a Local Attorney (not local/local…just practices locally) guilty of committing Anti-trade crimes against our Company . . . We are currently investigating embezzling by some of these suspects . . . However, this is a lot of ‘cover-up’ tactics makes you wonder how much/bad it is we accidentally uncovered. The closer we get to this vote, the more wilder the tactics. We have recently asked for the Boards Minutes the last 2 years. Another request will go out Monday for a new set of documents. Im [sic] not going to stand for this. They picked the wrong Broker to mess with.” The Complainant alleges the Respondent then began to publicly spread manufactured conspiracy theories that the Complainant association’s board members and staff members were breaking into member’s online accounts and stealing, modifying, deleting, or otherwise profiting off members’ transaction documents. There is a platform link to a feature called “Transaction Desk” which is offered and provides agents access to various forms. Each agent has his or her own “Transaction Desk” account which can only be accessed using the agent’s respective login credentials. The Complainant association does have the ability to access each of the member agent’s “Transaction Desk” account via the MLS platform and this is a feature which the MLS host platform automatically enables and which is unknown to the association staff members until the Respondent discovered it and complained about it. The Complainant associations staff members have never accessed the Respondent’s Transaction Desk profile and while the Respondent was complaining about this the Complainant’s association’s staff members discovered they had the ability to do so. There are three full-time staff members that have this ability, the board members do not. The Respondent began to falsely accuse the staff and board members on social media of using this feature to steal and manipulate the Transaction Desk accounts of the members. The Complainant association President responded to the Respondent on the Facebook post and stated “_____ , if you would

like to discuss these matters with the Board, let's set up a zoom meeting. Call and speak with _____ on Monday to set it up," The Respondent responded and stated "_____. No thanks. You can already hack my broker portal. Change my listing data, and harass my agents, I've had enough of your help. Step down _____ and push this ridiculous vote. Or we can do it the hard way. [emoji]." The Respondent further commented, "Anti-Trust is a very serious crime a line has been crossed. I love my Industry and my Community. I dnt [sic] know what you all are hiding or up to, but gigs up." Following these maliciously false postings on Facebook, the Complainant association sent a letter to the Respondent demanding the Respondent cease the defamatory postings about the Complainant association, staff and board members. On February 4, 2021, a staff member was approached by the Respondent at a local establishment and the Respondent told the staff member that an association executive had been embezzling money through the association by getting into agents' accounts and changing things. The Respondent also stated the FBI is watching the association. On February 24, 2021, the Respondent drafted and circulated a petition seeking a special meeting of the Complainant association to address and vote on, among other things, the "unauthorized access and file transfers in the Members Transaction Desk TAR form Portals & present some of the Board Members/Brokers that are listed in other Brokers (via report) for an explanation & resolution" and the "wire fraud crisis in our Area & how there are links to association form, Portals & Authentisign." The Respondent further stated, "Members want clarity & answers in which they were never provided regarding the Embezzlement Dispositioning as it is still in a statute of limitations period." By March of 2021, the Respondent began directing her slander at the current association President Elect. The Respondent posted the following on Facebook "_____ you are on my report as breaking into My broker portal deleting and transferring MY files. So please email me and explain yourself. Otherwise I'm turning you in w [sic] all the other board members and realtors we discovered on our recovered files. Have a nice weekend!! [emoji] btw any agent in the state of TN you can break into our forms portals wo our passwords." When another member responded to the Respondent's post, the Respondent stated, "you are suppressing a whistleblower bc you're on women council of Realtors w the Realtors that's on our tech server reports of breaking into our state forms portals deleting and

transferring files. Once again _____ is all over these reports. So I def feel I'm owed and everyone else in our association as she's president elect, an explanation." The Complainant alleges the Respondent has made these malicious comments and also spread other lies regarding breaches by the Board of the association by-laws, secret e-mails by Board and staff members to inappropriately procure votes on certain By-law revisions, alleged efforts by the association executive to convince and coach third parties to file grievances against the Respondent in order to "bring her business down," and a variety of other outlandish conspiracy theories which have been publicly communicated by the Respondent to other association members. The Respondent's misleading communications are fabrications designed to undermine the confidence of the association membership in the association leadership and staff. The Complainant alleges these are not just publicly voiced opinions or disagreements with the policies, achievements, or changes by the association leadership. The Respondent is spreading mistruths in an effort to convince other association members that the association Board and staff members have committed serious crimes. The Complainant states this conduct is inconsistent with the professional standards by which a licensed Tennessee real estate broker is expected to conduct business. This is damaging to the business and reputation of many hardworking and honest licensees who have volunteered their time to serve on the association. The Complainant alleges the Respondent has violated the following provisions of the Real Estate Broker License Act, Tenn. Code Ann. § 62-13-312 (1) Making any substantial and willful misrepresentation; (3) Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, any medium of advertising or otherwise; (20) Any conduct, whether of the same or a different character from that specified in this subsection (b), that constitutes improper, fraudulent or dishonest dealing. The Respondent's misrepresentations are intentionally designed to invoke fear and anger in association members to get rid of the current association leadership. The Respondent's representations are not supported by fact or common sense and are manufactured to further a personnel vendetta.

The Respondent provided a response and stated this complaint is a means by the Complainant to harass and attack a vocal member of the association that is attempting to voice an opinion different from the association and its leadership. The factual background set forth in the complaint by the Complainant is laughable and is clearly an attempt by the association at their own “smear campaign” against the Respondent. The association includes multiple statements made by the Respondent that are selectively chosen as being beneficial to the Complainant’s complaint against the Respondent. The Respondent stated a petition was circulated to call a special meeting as provided by the By-laws. The Respondent made multiple attempts to reach out privately to the association to discuss this matter but was ignored or given the run around regarding various issues the Respondent was interested in addressing with the association. The Respondent claims this is another attempt by the Complainant to silence the Respondent. The Respondent merely wants to make sure the association is being run in an appropriate manner and consistent with the Bylaws. The Respondent is not manufacturing conspiracy theories, creating vicious lies to further a personal vendetta or engaged in bizarre conduct. The Respondent claims the Complainant is painting the Respondent’s reference to previous embezzlement as a “manufactured conspiracy theory” and/or “willful misrepresentation” and is quite disingenuous given the fact that the association bylaws were amended to require a review of financial records by a CPA each year as a result of an audit which uncovered certain practices that resulted in misappropriation of a large sum of money that was not disclosed to the membership of the association.

Legal Counsel opines this matter is not within the jurisdiction of the Tennessee Real Estate Commission and would be more appropriate to be handled by a civil court where the Complainant can seek relief for a possible defamation or other legal claim against the Respondent.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

9. 2021029361

Opened: 5/4/2021

First Licensed: 9/6/2006

Expires: 9/20/2022

Type of License: Principal Broker

History: None

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

The Complainant put an offer on a home and the Seller accepted the offer. The Complainant alleges the Seller received other offers and the Seller wanted to cancel the contract. The Seller's real estate agent and broker told the Seller he could cancel the contract. The Complainant alleges the Seller improperly cancelled the contract.

The Respondent provided a response and stated there was an offer from the Complainant on April 7, 2021 with contingencies of viewing the property on April 17, 2021. On April 8, 2021, the Sellers counteroffered and the Complainant accepted the offer on April 9, 2021. Another higher offer was received on April 9, 2021, but it was not accepted because the Complainant's acceptance of the counteroffer came in before the second higher offer. On April 17, 2021, the Complainant went to view the property and after two hours decided to "pass" on the property. The Respondent requested the Complainant's real estate agent send a notification declining the property, but never received the notification. The Respondent attached text message from the Complainant's real estate agent indicating the Complainant no longer wanted to purchase the property.

The Complainant sent a rebuttal to the Respondent's response and stated the Respondent and Seller wanted to cancel the contract long before the Complainant decided not to pursue the property. The Complainant admitted that on April 17, 2021 in accordance with the contract terms and the contingency, the Complainant viewed the property and declined to pursue the purchase of the property.

The Complainant withdrew the contract and decided not to purchase the property. There is no violation of the Tennessee Real Estate Broker License Act by the Respondent. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

10. 2021030461

Opened: 5/4/2021

First Licensed: 2/25/2021

Expires: 2/24/2023

Type of License: Affiliate Broker

History: None

The Complainant is an anonymous individual. The Respondent is a Tennessee licensed Affiliate Broker.

The Complainant states in the complaint against the Respondent that the Respondent should not be a licensed real estate agent. The Complainant has known the Respondent for many years and previously worked with the Respondent. The Complainant alleges the Respondent has stolen from people and businesses to buy drugs and heroin. The Complainant alleges the Respondent has stolen money and gift cards from a pregnant friend he lived with in 2019 after he got out of a halfway house after serving a prison sentence. These gift cards were gifts given to his friend at a baby shower. Last year, the Complainant alleges the Respondent was arrested for theft of over \$10,000 and drug possession. According to the Complainant, these cases are still open, and the court dates have repeatedly been postponed. The Complainant has concerns about an individual with a drug and theft problem holding a Tennessee real estate affiliate broker license.

The Respondent and the Respondent's Principal Broker provided a complete response and explanation concerning this matter. The Respondent provided full disclosure and appeared before the Commission and brought forth all the Complainant's criminal issues and the Commission reviewed the application of the Respondent and granted it to the Respondent. All the issues raised by the Complainant have been previously shared with the Commission and discussed during the application process and during the interview process with the Commission. The Respondent has been transparent and provided all the information to the Commission. The Respondent has paid all monies to the pregnant friend and has made amends with this individual and continues to make amends with all individuals he has wronged. This individual has even offered to write a letter of

support on his behalf to resolve this issue. The pending criminal matter has been resolved, but it the court requires additional time to process the matter. The Respondent is willing to request a letter from the Judge presiding over his case and/or the District Attorney to provide further information or explanation about the issues raised by the Complainant. The Respondent will not have conviction from the case and the Respondent is not on probation. This case will eventually be dismissed by the Court. The Respondent deeply regrets this time in his life and cannot change his past bad acts. The Respondent hopes it will be a learning and growing experience going forward. The Respondent stated he loves his work and career and has a home under contract with two clients. The Respondent may even have his first listing soon. The Respondent would not jeopardize his real estate license. The Complainant is not aware of all the things that have happened to the Respondent in the past two years. The Principal Broker stated the Respondent has done very well over the past year and has flourished. The Respondent is an active agent in the Respondent's market center and participates regularly in team meetings and trainings and is also involved in the Productivity Coaching (mentoring) Program offered by the Principal Broker's firm.

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

Recommendation: **Close.**

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

11. 2021030951

Opened: 5/4/2021

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 lapse in affiliate's E&O insurance

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

The Complainant alleges on March 6, 2021, the Complainant contacted the Respondent's real estate agent about a listing and if back offers were being accepted. The Complainant received a response and stated they were accepting backup offers

and offered to help the Complainant find a home. The Complainant advised the Respondent's agent the offer would come from the Complainant's wife. The Complainant advised the Respondent she was in a same-sex relationship. Afterwards, the Complainant alleges the communication between them completely changed and the Respondent's agent was no longer willing to help and ignored the second offer made by the Complainant's wife. The Complainant contacted the Respondent Principal Broker three times to advise of the discrimination by the real estate agent. The Respondent never responded to the Complainant.

The Respondent provided a response and stated the matter was fully investigated by the Respondent's firm. The Respondent's agent confirms she was initially enthusiastic about helping the Complainant. During e-mail and text communications, the Complainant indicated the parties saw the property and made an offer and this indicated to the Respondent's agent they were working with another real estate agent. The Respondent's agent referred the Complainant back to her agent. The Respondent's agent did not have any knowledge about the Complainant being in a same sex marriage until it was stated in the Complainant's complaint filed with TREC. The Complainant's marital status had no bearing on the service provided by the Respondent's agent.

There is no actual evidence of discrimination by the Respondent or the Respondent's agent.

Recommendation: **Close.**

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

12. 2021032311

Opened: 5/4/2021

First Licensed: 8/18/2017

Expires: 8/17/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the Respondent made a Facebook post on April 21, 2021

and was critical of seniors in general (calling them “Boomers”) and criticized the Complainant’s wife’s appearance in a photograph and compared her to horse. The Complainant believes this public behavior is an indication the Respondent may not be complying with the Fair Housing Act laws given the Respondent’s willingness to disparage people in this manner. The Complainant contacted the Respondent by e-mail to express his concerns to the Respondent and the Complainant received a reply from the Respondent stating the office got a good laugh from the Complainant’s e-mail.

The Respondent provided a response and stated the comments referenced by the Complainant were made in a private Facebook group. The page is private and requires an invite, consent to join and the clear purpose of the page is for jokes. Also, when joining the group, the user agrees and consents to viewing all posts as jokes and made in jest. The Complainant was a member of this private group. The comment in question was made in response to another posting by Complainant which was made in response to another post. These posts were all made in jest and intended to be humorous. The term “Boomer” is an acceptable term for anyone born between 1946 to 1964. The comment made by the Respondent was not as an advertisement or on a public forum and had no connection to the Respondent’s real estate license or in connection with any real estate transaction. The private page is a forum for dark humor. The environment was a joking environment with no intentional harm meant to be directed to a specific individual.

There is no nexus between the post made by the Respondent and any possible violations of the Fair Housing Act. Also, this was a private Facebook group unrelated to the Respondent’s practice of real estate in Tennessee and was not connected to any real estate transaction. The original post was made by the Complainant and by virtue of the forum and type of Facebook page, the Complainant unintentionally solicited comments from the members of the private Facebook page. There is no evidence the Respondent violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

Commission Decision: **The Commission accepted counsel’s recommendation.**

13. 2021033881

Opened: 5/4/2021

First Licensed: 6/9/2006

Expires: 8/16/2021

Type of License: Principal Broker

History: None

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

The Complainant alleges that on Friday, November 20, 2020 the Seller and the Buyer entered into a Purchase and Sale Agreement for the purchase of the Seller's property. The agreement became binding on November 20, 2020. The offer was to purchase the property for \$850,000. The closing date was set for November 18, 2020. There was \$5,000 in earnest money to be held by the Buyer's real estate firm where the Respondent was the managing broker. The contingencies for the contract were financing and there was alternative financing arranged by CIG, the same day. A Closing Date/Possession Date Amendment was submitted requesting the closing date be extended to February 1, 2021. The financing was still not in place and the financing company needed more time to complete the funding documents. The Seller agreed to the extension and signed the Amendment #1. On January 29, 2021, the Buyer submitted Closing Date/Possession Date Amendment #2 and requested the closing date be extended to March 5, 2020. The Seller agreed to the extension and signed the Amendment #2. On March 4, 2021, the Buyer submitted an Amendment #3 to the Purchase and Sale Agreement requesting the closing date be extended to September 5, 2021 and the \$5,000 earnest money was to go to the Seller upon execution of this Amendment. The funding documents were not ready, and the Buyer was still attempting to seek alternative funding. The Seller was not agreeable to a six-month extension. On Friday, March 5, 2021, the Seller submitted an amendment to the Purchase and Sale Agreement requesting the closing date only be extended to April 20, 2021 and the \$5,000 earnest money be sent to the Seller upon the execution of the amendment. This amendment was unanswered by the Buyer. On Friday, March 5, 2021, the Purchase and Sale Agreement expired without an agreed upon extension or a denial of funding from the Buyer's funding source. The Respondent claimed the Buyer was going to let the property go and focus on the other two properties the Buyer was in the process of buying. On March 10, 2021, the Complainant e-mailed the Respondent to request the earnest money funds be interpled in court. The Respondent never responded to the Complainant's request. On March 24, 2021, the Complainant again e-mailed the Respondent to

follow-up on the progress of the interpleader and received no response. The Complainant called the Respondent to follow-up and the Respondent stated the court advised that a lawsuit would need to be filed before they could accept the earnest money funds. The Complainant advised that the TAR interpleader form had to be filed and it was sufficient. The form serves as the notice to the courts, buyer, and seller when there is a dispute about the earnest money funds. The interpleader must be filed within a certain period and the Seller was requesting the funds be interpledged. On April 7, 2021, the Seller hired an attorney to draft and send a demand letter to the Respondent to either release the earnest money funds to the Seller or interplead the funds. As of April 26, 2021, the request has gone unanswered by the Respondent and the parties have yet to receive any type of written denial of funds from the Buyer's funding sources.

The Respondent stated at the time of the proposed closing date of March 5, 2021, the Buyer wished to postpone the closing for six more months because of the issues with the finance company not being able to provide a date certain on the finalization of the loan. The Respondent never received an answer to the counterproposal for the six-month extension. On the day of the closing, the Buyer still did not have the funds and filed suit for fraud. The Respondent's Buyer had to hire an attorney. The General Sessions Court Clerk indicated that a suit for earnest money had to be filed for the Respondent to file an interpleader with the court to take the money out of the Respondent firm's escrow account and be transferred to the Court. The money is still in the escrow account. The Respondent refused to file the interpleader because of the contingency of financing was not met on the agreed date of closing and the parties did not come to an agreement on any extension. The Respondent claims the Buyer is entitled to the return of the earnest monies.

Counsel finds the Respondent has mishandled the disbursement of earnest money. Tenn. Comp. R. & Regs. 1260-02-09(9) states that absent demonstration of a compelling reason, earnest money shall be disbursed within twenty-one (21) days. Although Rule 1260-02-09(7) authorizes a Principal Broker to properly disburse trust money upon a reasonable interpretation of the contract which authorizes him to hold the trust money. Respondent was within their rights to rely on a reasonable interpretation for disbursement of the earnest money, however, where there is a dispute of a contractual nature, it would need to be heard in a court of competent jurisdiction. On March 10, 2021, the Complainant requested the release of the earnest money or filing of an interpleader. The earnest money has yet to be released or interpledged approximately three (3) months later. Legal Counsel has determined the Respondent is in violation of Tenn. Comp. R. & Regs. 1260-09-.09(9).

Recommendation: Authorize a contested case proceeding and allow settlement by Consent Order and payment of a One Thousand Dollar (\$1,000.00) civil penalty for the violation of Tenn. Comp. R. & Regs. 1260-09-.09(9) for failure to interplead or release Complainant's earnest money in accordance with the Commission's rules

Commission Decision: The Commission accepted counsel's recommendation.

14. 2021031241

Opened: 5/11/2021

First Licensed: 8/3/2018

Expires: 8/2/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the listing agent and his counterpart were aware of the defects with the property they listed. The Complainant sent both parties several inspection reports showing active termite infestations, an inoperable air conditioner, and a statement by a licensed roofer indicated the home needed a new roof. The Respondent failed to disclose this information in the listing. Also, the Complainant real estate agent alleges these conditions were known to the Respondent when the Complainant's Buyer made an offer and the Purchase and Sale Agreement was accepted. This agreement was later terminated for these reasons. The Complainant alleges the Respondent is intentionally concealing the true condition of the home.

The Respondent provided a response and stated the Seller did not have a licensed inspection of the property performed at the time of the original acquisition of the property. The Seller did conduct a virtual interior assessment and exterior assessment of the property. The Seller did not discover any defects as alleged by the Complainant. The Respondent stated the Complainant initially started off the negotiations in a confrontational manner and added an increased commission. The commission was supposed to be 2.5%, however, he increased it to 3% in the contract. This was not the amount offered in MLS. The Buyers offered \$480,000 and this was \$13,000 below the list price of \$493,000. The Sellers countered at \$487,550 which was accepted by the Buyers on April 1, 2021. The negotiations continued to be non-productive after the home inspection. The Buyers submitted a \$20,000 repair ask for

a new roof, new HVAC system and a few additional items. The Seller disputed both the amount and condition of the systems. The Seller attempted to negotiate in good faith to come to a mutually agreeable amount to close on the property. The Complainant's negotiation style used threats, intimidation, exaggerated claims and/or misstatements of the property condition. For example, in the inspection report the inspector noted the HVAC was tested in both heating and cooling mode for over an hour using the thermostat and it never engaged the system in either modes. The inspector indicated the unit was past its life expectancy because it was an 18-year old unit and most HVAC units begin to fail at 15 years. The equipment was evaluated by a licensed and qualified HVAC technician and total replacement of the unit was recommended. The Sellers follow-up was that the HVAC is a split system and the furnace had been replaced in 2019 and was working. The compressor and evaporative coils needed service or replacement and the Seller has replaced them. The system is working. The Buyers inspector stated the roof had heavy granule loss at the base of the front roof valley. The amount of granule loss suggests the shingles are near the end of their life expectancy and recommended replacement of the roof. The Sellers follow-up comments was that the roof is the original roof and is 18 years old. There are no known leaks. The Sellers roof inspector indicated the roof still had a 2-4 years life expectancy remaining. The Buyers did come down in the repair request to \$7,300 as a credit and the Sellers countered with \$6,500. The Buyers chose to cancel the contract effective April 16, 2021 and the earnest money was refunded. The Seller did not agree that there were undisclosed issues with the roof or HVAC. On April 19, 2021, the property was placed back on the market as an oversight without verifying if the issues raised in the Inspection Report were material defects and the Seller did not update the disclosure statement from the prior Buyer's inspection report. The Complainant reported this to his Principal Broker and the property was immediately taken off the market and removed from ACTIVE status. The Seller was in the process of reviewing and evaluating the home inspector's findings. After seven (7) days the MLS automatically changed the listing back to ACTIVE and the property assessment had not been completed. The Principal Broker had the listing updated to inform any Buyer Agents to contact the Principal Broker for an updated Seller's disclosure and this should have included a copy of the prior Buyer's repair requests. The Seller continued to evaluate the property and determine what they were going to repair and what could be considered a material defect that would need to be disclosed. The Seller has inspected and repaired everything on the Buyer's Inspection Report. The big items were the HVAC, the condenser and evaporative coils, termite report and treatment, and miscellaneous items such as the stairs, electrical and windows. The whirlpool tub was not fixed, and it was vapor locked due to someone turning it on without water it. The Principal Broker and the Seller were aware of the material defects that needed

to be disclosed or repaired and have taken steps to double-check the items that need repair going forward. The Principal Broker has handled over 1000 properties for the Seller in Tennessee over the last three years.

The Complainant provided an additional response to the Respondent's response to the complaint. The Complainant never spoke with the Respondent and tried on numerous occasions to contact him and he was unresponsive. The Complainant was in contact with another real estate agent in his office. Whenever the Complainant tried to contact the Respondent, he was transferred or connected to another real estate agent. The Sellers owned the property for a minimum of 10 days before they relisted the house for sale. During this time, the Sellers painted some parts of the home before they relisted the house for sale. The Sellers painted portions of the interior of the home and had the opportunity to have all things inspected and/or repaired before relisting the property. The negotiations were not confrontational. The parties negotiated the transaction. An offer was made, and the terms were negotiated. The counteroffer was made and there were negotiations. The increase in commission was part of those negotiations. The Sellers purchased the home on January 1, 2021 and relisted it 10 days later for \$495,000. It was difficult to negotiate a purchase price based on comps because the home was priced lower than the comps in the subdivision. The Complainant also vehemently denies being threatening or intimidating. The Complainant did not use exaggerated claims concerning the repairs. The verbiage the Complainant used was from the inspection reports. The repair proposal submitted included the estimated repair costs and were submitted as part of the post-inspection negotiations. When the inspections indicated that a new roof is needed, a new HVAC system is needed, termite treatment and termite damage repair is needed, most would ask that these items just be repaired and not a credit. It was clear the costs of the repairs had been overstated. The Complainant believes this was not disclosed because they believed they could get away with it because of the Property Condition Disclosure (PCD) Exemption.¹ Since they were Sellers that had not lived in the home for the past year. The Sellers were aware of the issues and should have disclosed them. The Sellers cannot keep denying knowledge of these defects but provide no material to substantiate such an imaginable claim – especially when the receipts to the contrary. The current MLS does not have any references to the repairs and there is no PCD update.

Legal Counsel determined the Respondent and the Sellers were aware of the issues with the home and the issues should have been disclosed regardless of the PCD

¹ PCD Exemption Sellers may be **exempt** from having to complete the Disclosure form in certain limited circumstances (e.g. public auctions, court orders, some foreclosures and bankruptcies, new construction with written warranty, or owner has not resided on the property at any time within the prior 3 years)

Exemption form.

Recommendation: Authorize a contested case proceeding and authorize settlement by Consent Order with the assessment of a civil penalty in the amount of \$1,000 for a violation of Tenn. Code. Ann. § 62-13-403(2) which requires the Respondent disclose to each party to the transaction any adverse facts of which the licensee has actual notice or knowledge; The property owner is required to provide a residential property statement concerning the condition of the property and any material defects known by the owner.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2021034051

Opened: 5/11/2021

First Licensed: 3/16/2005

Expires: 4/13/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges on April 2, 2021, the Complainant and his wife met with a title agent to close on their home. The closing was set to begin at 12 pm. The Respondent and the client (Sellers) did not arrive until 1:30 pm. The Complainant alleges the Respondent had a very unpleasant and unprofessional attitude during the closing. The Complainant's real estate agent advised the Sellers the Complainant Buyers were planning on holding \$15,000 in escrow because there were items that should have been repaired in the home that were not repaired and also appliances (refrigerator and washer and dryer) that should not have been removed were removed by the Sellers. The Respondent stated this was not permitted and the refrigerator was left in the home. The Complainant's real estate agent advised it was not the same refrigerator that was in the home during the original showing. The Complainant stated this was an ethical violation and misrepresentation of the property. The Respondent argued the refrigerator was the original refrigerator and after the inspection the refrigerator stopped working and this was the replacement refrigerator. The Complainant's agent advised it should have been replaced with the same refrigerator and not a cheaper one. The Respondent claimed this did not matter. The Sellers threatened to tear up the sales agreement due to the unfair

amount to be held in escrow. The Respondent agreed the amounts were unfair and the Sellers had already agreed to reduce the price of the home and the appraised value of the home was much higher than the Sellers had originally expected. The Sellers had also been attempting to remove items considered real property from the home and had been previously informed they could not remove the items.

The Respondent provided a response and stated the closing was scheduled for April 2, 2021 at 12:30 pm. The Respondent and the Sellers did arrive after 1:00 pm because the Respondent got lost getting to the title company and had to call the Complainant's real estate agent for directions. Also, there was no sign on the building except on the title company door and it was not very visible from the. The Respondent's Sellers were also ten minutes late because the Respondent gave them wrong directions. The Buyers were also unaware the real estate agent did not have to attend the closing. Also, they were not told that the Buyers and Sellers are typically scheduled for different times on the closing date. The Respondent denies being unprofessional or unpleasant during the closing. The Respondent even played with the Sellers 15-month child. The Respondent has never been disrespectful or late for a closing regardless of how stressful the transaction might have been or the attitudes of the parties. The Seller was required to replace the following items: broken window (which had been ordered), vinyl siding (which had been ordered), septic system, and the pool liner was to be repaired but had not been due to weather. Unfortunately, it snowed and rained most of the month and all the items were on schedule to be repaired after the closing. The Complainant's real estate agent also accused the Sellers of removing the stove and replacing it. However, this was not true. The stove had not been replaced. The washer & dryer were not part of the listing but were added to the contract. The Sellers did not remember stating the appliances would be staying and the appliances were all still in the garage and the Sellers apologized and left them. The washer and dryer did remain at the property. The refrigerator was replaced a week after the contract was accepted. The freezer stopped functioning and there was no warranty on the unit. The Sellers bought another refrigerator very similar to the previous refrigerator and made sure it matched the other appliances and it was a brand new refrigerator from Lowes.TM The Buyer agent told the Sellers at the closing \$15,000 would be held in escrow for repairs. The Respondent represented the Sellers and disputed this amount. The Respondent requested that \$2,000 be held in escrow and gave the justification as to why the lower amount was more reasonable. The Seller was ready to leave and walk away from the deal and was willing to forget the deal and claimed he did not have to sell the home. The Buyer's agent and the Seller exchanged some words and argued for a few minutes about why the Seller would put up a house for sale if he did not care if it sold or not. This argument was not caused by the Respondent. The

Buyer's agent asked them to step out of the room for a few minutes so the Complainant could discuss the matter with the Buyers. After the Respondent and the Sellers returned to the room, the Buyer's real estate agent stated they would accept the replacement refrigerator, agreed the stove had not been replaced and were satisfied the washer and dryer were still on the property and in the garage. The Complainant Buyers asked for \$3,000 to be held in escrow for the remaining repairs. The Sellers agreed to this escrow amount. The Respondent claims the Complainant's real estate agent was argumentative with the Seller and this was unprofessional and unpleasant. Also, the Complainant's real estate agent often told the Seller's wife to "hush" and he was not addressing her. He also called the Seller a liar on two occasions during the conversation. Also, there were other issues related to the transaction the Respondent feels compelled to tell the Real Estate Commission. The Buyers and Sellers agreed the Sellers would use the detached garage for a period of three months from the closing date to store their personal belongings and time to get their business property removed from the premises. The parties agreed during the hours of 8 am to 8 pm, seven (7) days a week, the Sellers could access and use the garage if no business was conducted on the premises. According to the local District Attorney's Office, the County Sheriff had been dispatched to the home four times in the prior three weeks. The Respondent was not involved in any of the incidents, but the Sellers would contact the Respondent each time there was an incident involving the Sheriff. At the last incident on April 25, 2021, both parties' real estate agents were called to the home and it appeared both the Buyer and the Seller made bodily threats against each another. The Buyer threatened to kill the Sellers and the Sellers had this on video. The Seller also threatened to jab the Buyer in the ear with a screwdriver. The Buyer stated he was in fear of his life and the Sellers are now banned from the property. The Sellers had to file \$300 repossession papers to get all their personal belongings out of the garage and back to them and had to retain an attorney. The Sellers still had business and personal items stored in the garage. The court date is on May 13, 2021. The Respondent has been advised to stay out of these issues between the parties by the District Attorney's Office and not to return to the home in the future if there was an issue between the Buyers and Sellers even if the Seller summoned the Respondent to the home. The Buyers' real estate agent did suggest at one point when these incidents had occurred that the Buyer may suffer from PTSD and has anger issues.

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

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

16. 2021034591

Opened: 5/11/2021

First Licensed: 1/15/2003

Expires: 10/4/2021

Type of License: Affiliate Broker

History: None

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

The Complainant and her husband purchased a home and used the Respondent as their agent. As part of the inspection process, the Respondent asked for a licensed electrician to check the electrical system in the home. The Respondent hired an individual to check the electrical wiring. The electrical person told the previous owners the electrical panel box needed to be changed and quoted a price of \$1,800. The previous owners agreed to pay for the work to be done. The work did not get done prior to closing so it was added to the closing costs of the previous owners. At closing, a check was made payable to the electrician for the electrical box replacement. The Complainant alleges it has been eight months and the electrical box replacement still not been done. The Complainant alleges the Respondent does not want to accept responsibility for making sure the electrical work is completed and insists the Complainant handle the matter directly with the electrician. The Complainant claims the Respondent located the electrician, set the appointment to check the home and hired the electrician. The Complainant has also learned the electrician is not properly licensed. The electrician has had eight months to do the work and still has not made the repairs. Also, the electrician was paid in full and will not even provide a refund. The Complainant has an electrical panel with no cover and the wall has been ripped open for the past eight months. The Respondent has told the Complainant he has repeatedly asked the electrician to complete the work in the home and he has no control over the electrician.

The Respondent provided a response and stated he has been selling real estate for 18 and half years and never had a complaint filed against him. The Respondent takes this complaint very seriously. The Respondent has contacted the electrician on the Complainant's behalf on multiple occasions to ask him to complete the work. The electrician is a licensed electrician and there were two items the electrician was to repair. First, prior to closing, the entire house was to be re-wired and this was

completed by the electrician. Those services cost \$386.04 and the electrician was paid. While the wiring was being changed, it was discovered the panel box was antiquated and the electrician recommended it be changed. An additional \$1,500 was set aside at closing to have the box replaced. The electrician agreed to get this done “post-closing.” The title company disbursed the check to the electrician post-closing. The Respondent attempted to coordinate a mutually convenient time “post-closing” for the Complainants and the electrician to meet and had them exchange phone numbers to coordinate a mutually convenient time to get the electrical work completed. The Respondent assumed the Complainant would contact the electrician and make an appointment for the work to be completed. A month after the closing, the Complainant contacted the Respondent and stated the electrician still has not completed the work. The Respondent contacted the electrician to find out what had happened. After this incident, the Complainant began to contact the Respondent 5-10 times per day by text message or voice calls. The Respondent did not understand why the Complainant could not directly contact the electrician and arrange an appointment to have the work completed. The Respondent again contacted the electrician and asked him to complete the electrical work. The Respondent later learned that the Complainant’s husband and the electrician had a personality conflict and the electrician was not willing to complete the job at the convenience of the Complainant. The scheduling did not get worked out and the Complainant wanted to control the time of the appointment and this is not always a convenient for the electrician and vice versa. The parties were unable to coordinate a mutually convenient time. The Respondent has no control over the electrician. Also, the Respondent has called the electrician on the Complainant’s behalf on multiple occasions to schedule an appointment and has even asked him to return the \$1,500 to the Complainant. The Respondent has also learned the electrician’s cancer has returned and due to the COVID-19 pandemic has also not been able to work. On May 2, 2021, the Respondent again requested the electrician return the monies to the Complainant.

Legal Counsel has verified with the Respondent that the electrician has recently provided a refund to the Complainant. The material (breaker box) was purchased for a total of \$936.00 and left at the Complainant’s home and a check for the balance of \$564.00 is available for pick-up by the Complainant from the title company. Also, the receipts for the purchase of the breaker box and other material were to be provided to the Complainant. Legal Counsel has verified the breaker box purchased is in the possession of the Complainant.

The title company issued the check directly to the electrician upon closing for \$1,500 for the electrical box repairs. There was no duty for the Respondent to have the

electrical box repairs completed by the electrician. Also, this was a post-closing agreed to upon by the Complainant and it was incumbent upon the Complainant to contact the electrician and have the electrical work completed. If there is a dispute concerning this matter, it is a contractual matter between the Complainant and the electrician.

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

Recommendation: **Close.**

Commission Decision:

17. 2021030511

Opened: 5/11/2021

First Licensed: 3/29/2019

Expires: 3/28/2023

Type of License: Real Estate Firm

History: None

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

The Complainant alleges the Respondent real estate firm and their agent misrepresented the lot being sold and claimed the sale included the neighboring lots. The owner of the lot has attempted to sell this lot at inflated prices on and off for several years. The Complainant alleges the lot is worthless because it includes a large ravine, dry riverbed, and a rocky steep hill. The real estate agent marketed the lot with a picture of the land. The new neighbor who purchased the adjacent lot marked off the lot and was going to fence it off. The Respondent had to argue with the new property owner about the property boundaries because the new property owner insisted the pictures of the land provided by the real estate agent showed he was purchasing part of Complainant's land. The land had been surveyed in the past when it was subdivided, and the real estate agent should have known the proper property boundaries. The Buyer overpaid based on the misrepresentations made by his real estate agent. The Complainant had to spend hours with the new owner explaining which land belonged to the Complainant. The Complainant walked the property line with the new property owner and showed the necessary documentation to prove the area that belonged to the Complainant. The Complainant alleges the

Respondent misrepresented the property to the new property owner.

The Respondent provided a response and stated he did not misrepresent the property. The plat was provided to the prospective buyer and there was also aerial drone footage provided, as well as photos for informational purposes. The prospective buyer found the land to be perfect for his horse rescue business and wanted to proceed with the purchase. The Buyer signed all the contractual documents and purchased the property "AS IS" and signed the necessary disclaimers and agreements. The prospective buyer chose not to get a survey and signed the disclaimer. The Respondent spoke to the Buyer and found that the he was preparing to install a fence and the Complainant had a conversation with him regarding the property lines and the Buyer may have been confused about the property lines. The Buyer and the Complainant walked the property lines and worked out the issue concerning the property lines. He installed the fence and was under the impression the issue of the property boundaries had been resolved. The Buyer also accepted full responsibility because he did not get the land surveyed before closing on the property.

The complaint was filed by a third-party property owner who was not involved in the real estate transaction with the Respondent. The Complainant was not privy to the conversations or documents in the transaction for the sale of the adjacent property and was not a party to the transaction between the Respondent and the Buyer of the land and is also not privy to any representations made to the Buyer of the land or any other individuals. Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

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

18. 2021031431

Opened: 5/17/2021

Unlicensed

History: None

Complainant is a Tennessee resident and the Respondent is owner of a real estate investment LLC that sold the Complainant a home.

The Complainant filed a complaint and states there were three problems. The complaint was very vague concerning the allegations against the Respondent. The Complainant alleges the Respondent and the real estate investment firm is the prime mover of the Complainant's problem. The Complainant also alleges the local water company has failed and continues to fail to turn on the Complainant's water supply on the Tuesday and on Saturday following the closing of escrow on April 10, 2021. The postal service defines what is mailable mail. The postal service has failed to deliver the demand letter to the Respondent and the real estate investment firm. The postal service keeps mailable matter out of circulation for twenty-one (21) consecutive days. It appears the Respondent did not properly represent the condition of the pool to the Complainant and walked away from the purchase after the closing and would not help the Complainant. The Complainant alleges the Respondent knew the pool could not be tested for correct operation because the water had not been turned on by the water company. The Complainant states this was the fault of the water company and blames the postal service for not properly delivering the mail to the Respondent.

The Respondent provided a response and stated the complaint is with reference to a property sold to the Complainant in April 2020. The Respondent's real estate investment firm was the seller of the property. The Complainant made an offer to the Respondent's LCC. The Respondent's company accepted the offer on March 17, 2020 and the closing was on April 1, 2020. The Buyer and Seller were represented by different licensed real estate agents. All necessary documents and disclosures were provided to the Buyer and the Seller and the Buyer willingly entered the contract with the Respondent's firm. The Buyer did request several repairs and there were additional repairs submitted on the Repair/Replacement Amendment. The requested repairs were either from the Buyer's inspection or an inspection from a licensed inspector. The Seller was responsible for repairing the requested repairs and the Buyer was responsible for either conducting a final inspection or hiring a licensed inspector to conduct the final inspection to check all the repairs were completed. The Buyer has three days prior to closing to conduct a final inspection. The Buyer submitted a final inspection to the Buyer and the Buyer agreed to repair the requested items no later than April 19, 2020. The Buyer repaired the items listed by the date. There was no issue concerning the pool or the pool liner in the repair amendment. The Respondent has no information concerning the condition of the pool liner or the installation of a pool liner or the water supply. The parties closed on the property as scheduled and there were no issues concerning the property.

The Respondent is not required to be licensed pursuant to the exemption listed in

Tenn. Code Ann. § 62-13-104(a)(1)(F) concerning real estate owned by a corporation. The Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

19. 2021033841

Opened: 5/17/2021

First Licensed: 2/14/2019

Expires: 2/13/2023

Type of License: Affiliate Broker

History: None

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

On February 24, 2021, the Respondent contacted the Complainant about the home for sale. The Respondent had some prospective Buyers. The Complainant indicated they were only accepting cash offers since the home was a rehabilitation property. The Respondent indicated she would talk to her Buyers and get back to the Complainant and indicated there was a family member willing to loan the Buyers the cash to buy the home. On Sunday, April 25, 2021, the family member loaning the cash to the Buyers arrived first at the property and was waiting for their niece. When the Respondent arrived, she introduced herself to the individuals present and stated she was a real estate agent and the Buyer to everyone present. The Complainant was not present. The Respondent never disclosed to the Complainant previously she was also the Buyer. The Respondent walked around the property with her family. The Complainant alleges the Respondent lied to the Complainant. The Complainant ended up removing the home from the market and advised her to be honest with Sellers in the future.

The Respondent stated she showed the property to her husband on April 24, 2021. The Respondent's husband is a renovation buyer and they were in the market for a new home. After viewing the property, the Respondent continued to explore the area and came upon a home for sale. There was a real estate sign in the yard and the Respondent called the number to schedule a showing. The Respondent left a voicemail and identified herself as a real estate agent. There was no garage and no

cars in the driveway or on the street in front of the house. The Respondent decided to wait a little while and see if there was a call back and since there was no call, they returned home. Approximately one hour later, the Respondent received a return call approximately an hour later. The Complainant identified herself to the Respondent and began to explain they were only accepting cash buyers to view the home and the home would not qualify for a loan. The Respondent asked if they would consider a renovation loan and the Buyer stated they would not. The Respondent realized the woman was the Owner/Seller and not a real estate agent. The Respondent stated a relative offered to lend the cash for the Respondent to buy the home. The Respondent attempted to call the Complainant to tell her that they were the potential Buyer and to ask what proof she needed to allow us to see the home. The Respondent got no answer and there was no option to leave a voicemail. The Respondent sent a text message a few minutes later asking the Complainant what proof was needed to see the home. The Complainant responded and stated the home was available for a showing the following day. The Respondent explained to the Complainant she was a real estate agent and her husband was interested in purchasing the home. Later that evening, the Respondent was informed by text message the Complainant was taking the home off the market. The Respondent wanted to make an offer and she responded the Respondent could make an offer and stated not to make a low offer. The next morning the Respondent received a text saying the Complainant was keeping the home and advising the Respondent that in the future the Respondent should advise Sellers they were buying the home.

The potential purchaser of the home was the Respondent's husband. The Respondent was not a party to the transaction and was representing her husband in the transaction. The Respondent has not violated any of the laws or rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

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

20. 2021035951

Opened: 5/17/2021

First Licensed: 8/29/2014

Expires: 7/23/2021

Type of License: Affiliate Broker

History: None

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

The Complainant alleges on April 19, 2021, the management company that rented the apartment to the Complainant and sent a text message to the Complainant to tell him he wanted to show the unit the next day on April 20, 2021. The Complainant let them know this was not convenient for the Complainant and to schedule it for another day. The agent entered the apartment the following day at 12:31 pm and stated to his client to not touch anything because they were not supposed to be at the property. At 3:43 pm, the agent entered a second time and stated they were not supposed to be at the property. The Complainant reported this to the local Sheriff and filled out a report.

The Respondent provided a response and stated there was no file established for the client. The Respondent was not the listing agent involved in the matter and the Respondent had a client who wanted to look at the home and contacted the listing agent. The listing agent advised the home would be ready for a showing. The next day the Respondent took her client to the property for a showing. The lockbox was on the front door and the home contained both the house key and apartment key and both were clearly labeled. There was an apartment key and an information sheet on the home inside the home on the counter. The Respondent assumed an arrangement had been made since the apartment key was available. The Respondent showed the home and went to the apartment, knocked on the door, no one answered, and used the key to step in and allowed the client to see the inside of the home. The Respondent did not spend more than a couple of minutes in the apartment because it was easy. The Respondent was not contacted by the Sheriff's Department. The Respondent did not have any information about the agent who entered the apartment. The Respondent believes this was a mistake and a miscommunication.

The Respondent was aware the Respondent should not have been in the apartment unit on the day of the showing as evidence by the videorecording provided by the Complainant.

Recommendation: **Authorize a contested case hearing and authorize settlement by Consent Order and payment of a civil penalty in the amount of \$1,000 for failure to exercise reasonable skill and care in a transaction pursuant to Tenn. Code Ann. 62-13-403(1).**

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

21. 2021036251

Opened: 5/17/2021

First Licensed: 6/4/2014

Expires: 6/3/2022

Type of License: Affiliate Broker

History: None

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

The Complainant inquired about a property on January 2021. The Complainant was in close contact with the Respondent and the Seller for approximately four weeks. The Complainant saw the property several times and kept them updated weekly on the progress. The Complainant agreed on several issues needed to secure the transaction and provided a signed Letter of Intent to the Respondent. The Respondent received the Letter of Intent. On February 25, 2021, the Respondent told the Complainant the Respondent received another offer and the Complainant stated one of the Sellers would counteroffer. The Complainant immediately responded to the Respondent and stated the Respondent would receive the official offer that evening and it was a full price offer of \$380,000. On February 26, 2021, the Respondent e-mailed the Complainant and stated the Seller had told another Buyer the Complainant's offer was a full price offer and the other Buyer submitted an offer over the full price offer. The Respondent indicated to the Complainant that she would allow them until Monday to submit the "best offer." The Complainant believed this was unfair and unethical and not appropriate to tell the other Buyer the Complainant's offer was a full price offer. The Complainant had not been told what the other Buyer's offer had been over the offer price. The Complainant did not know what the best and final offer should be because the Respondent did not indicate the amount of the other Buyer's above list price offer. The Complainant asked the Respondent what the offer was by the other Buyer and the Respondent did not respond to the Complainant. The Respondent later told the Complainant's real estate agent that the Seller would make a counteroffer by Tuesday, March 2, 2021. The Respondent also asked the Complainant's real estate agent for an approval letter for the loan and requested it be submitted to the Respondent by March 1, 2021. The Respondent also advised the Complainant they would submit an escalation clause to the offer and the Complainant's real estate agent also discovered the other buyer had also added an escalation clause. On March 2, 2021, the Complainant and Complainant's real estate agent received no communications, as promised. On March 3, 2021, the Respondent texted the Complainant's real estate agent and asked

if the Complainant would accept \$440,000 for the home. The Complainant's real estate agent got a second text telling the agent to disregard the previous text message. The Complainant alleges the Respondent acted in an unprofessional manner. The Complainant was willing to pay \$440,000. The property was sold for \$435,000. The Complainant alleges the Respondent improperly shared the offer price with the other buyer and this conduct is unethical and a violation of the real estate laws.

The Respondent provided a response and stated this transaction was being negotiated for over a month and the Seller had received a Letter of Intent from the Complainant. The Respondent did not receive a signed offer from the Complainant until February 25, 2021. Thereafter, the Respondent advised the Complainant's real estate agent that they had received another offer. Once both offers were submitted, the Respondent e-mailed the second buyer's agent and asked if the Buyers were willing to do better than the asking price. If they were not, the Sellers were going to accept the Complainant's offer. At that time, the Respondent indicated a Multiple Offer Notification with a time limit was to be issued for the highest/best offer. The other Buyer's agent responded and stated the Buyers were willing to offer \$400,000 and the Respondent e-mailed the Complainant's real estate agent and advised them the other Buyer was willing to go over the asking price and the Respondent sent both sides an e-mail informing them that a Multioffer Notification would be sent out. Both the Complainant and the other Buyer responded by informing the Respondent that they would both respond to such a notification with a \$1,000 over escalation clause. The Respondent had a conversation with the Seller and asked if they would rather choose one of the Buyers to counter instead of sending out the Multioffer Notification requesting the highest offer. The Seller wanted to get as much as possible and would prefer to work with the other Buyer because they seemed less demanding and the Seller felt that the other Buyer would be easier to work with after closing. Also, the other Buyer already had the financing in place and the Seller had received a letter from the bank and the financing was already in place. The Respondent told the Complainant's real estate agent the Seller would counter and instead, the Seller ended up countering the other Buyer's offer on March 2, 2021 in accordance with the Seller's wishes. The other Buyer accepted the Seller's counteroffer on March 3, 2021. The Respondent stated the Seller did not receive another offer during the time there were verbal negotiations with the Complainant. It is likely the Seller would have sold to the Complainant after coming to a mutual agreement on the stipulations, however, the Seller decided to go with an "easy-to-work-with" Buyer who came with a quick offer, bank letter and very few stipulations, regardless of whether or not the Complainant could match the purchase price. The Seller had met with the Complainant in-person and felt the Complainant would be too demanding and controlling after closing (since the Seller was leasing

the real estate back from the Buyer for a period). Also, the other Buyer was not going to charge the Seller for the four-month occupancy after closing). The stipulations and demands of each of the Buyers was the deciding factor for the Seller to accept the offer of the other Buyer.

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

Recommendation: **Close.**

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

TIMESHARES:

22. 2021020901

Opened: 4/13/2021

First Licensed: 9/29/2009

Expires: 9/28/2021

Type of License: Real Estate Firm

History: None

Complainant is a Tennessee resident and timeshare purchaser and the Respondent is a timeshare seller, Tennessee licensed Real Estate firm and a Florida corporation.

The Complainant accepted an offer for a short vacation from the Respondent at one of their resorts in Tennessee. The Complainant was aware the free vacation was conditional on the Complainant attend a 45-minute sales pitch to listen to the product the Respondent was selling. The Complainant went on this short vacation on June 24, 2019. The Respondent had to use a cane and informed the Respondent's agents his Parkinson's disease was acting up and the Complainant was also experiencing a headache. The Complainant sat down, and a salesperson approached him, and the Complainant told him he was not feeling well. The salesperson left and soon returned, and the Complainant was still not feeling well but realized if he did not attend the meeting, he would be charged full price for three days instead of the \$90 charge. The Complainant asked if it could be done quickly and to conduct the presentation as quickly as possible. The salesperson began to discuss the timeshare and asked the Complainant many questions about his background and lifestyle. The Complainant was a previous timeshare owner and the salesperson assured him the billing was the same process. The salesperson also asked the Complainant about his

military career, rank, background, etc. The manager then approached the Complainant and stated they had a special program for retired military personnel where the Complainant could purchase a membership of returned points they had on hand from their buy-back program and these were priced at the price of the original sale. This interested the Complainant because of his age and medical condition and the Complainant was unsure how much longer the Complainant would be able to travel. The manager stated that if the Complainant ever wanted to sell the points, the Complainant could use the Buy Back Program. The Complainant purchased 100,000 points. Later, when the Complainant contacted the Respondent about the Buy Back Program, he was told a member of his family could take over his package, the Complainant could sell the package to someone or the Complainant could pay the amount in full of the points purchased. The Complainant was also told he could rollover unused points and there was no timeframe that those needed to be used. Later, the Complainant learned that the points could only be used once a year and would expire at the end of the rollover year. The Complainant alleges the Respondent took advantage of him because he was not feeling well and because of his military background.

The Respondent provided a response and stated the Complainant entered the transaction with the Respondent on June 24, 2019 and purchased a standard beneficial interest which provided for 100,000 club points every year in the Respondent's point-based program. The club points can be used for secure reservations at the Company's 28 resort locations. The Respondent stated the Complainant was not "coerced" or "pressured" into making the timeshare purchase. The Complainant was not forced to make the purchase and the Complainant made the decision to purchase the timeshare. The Complainant could have left the sales center without making a purchase and the Complainant could have rescinded the purchase. The Complainant had indicated to the Respondent the reason he was interested in purchasing a timeshare was because of the Respondent's reputation, locations, and travel with grandkids. Also, the Complainant was given full disclosure of all financial obligations prior to purchase of his timeshare interest. The Complainant was told the maintenance assessments are separate from the mortgage payments and billed separately. The Complainant was presented with a simple easy to read one page Purchase Proposal prior to his purchase which set forth the key terms of the purchase, including purchase price, down payment, amount financed, monthly payment, maintenance assessments, term of the loan and interest rate. The Complainant signed and confirmed his understanding of the document and agreement to the terms and conditions of the purchase. The assessment clearly stated his assessment was \$816 and included the real estate taxes. The Purchase Agreement and the Owner Clarification Form also clearly disclosed the maintenance

assessments were to be billed annually and are due and payable on January 1 of the following year. The Complainant was also explained his rescission rights and told he could rescind his purchase within the statutory and contractual rescission period. The Complainant alleges he was told about a Buy Back program. The Respondent does not offer such a Buy Back program and the Complainant could not have been told about a repurchase program by the Respondent. The Complainant was told he could rollover unused points. The points are deposited each January of every year and club points do not expire until the following year. The Complainant could also deposit club points in the rewards program and these points would never expire and can be used to book accommodations in certain branded hotels worldwide. The Respondent is unable to substantiate any of the Complainant's allegations concerning misrepresentations and also, since the Complainant has outstanding mortgage obligations, the Complainant is not eligible for contract cancellation and/or refund and the Respondent declines to cancel the Complainant's contract.

Based on the information provided by Complainant and Respondent, there is insufficient evidence of any violations of the Tennessee Timeshare Act of 1981. The rescission/cancellation period for the contract has expired. The cancellation period is 10 days from the date of the signing of the timeshare contract pursuant to Tenn. Code Ann. § 66-32-114(a). Also, pursuant to Tenn. Code Ann. § 66-32-119, Complainants are still within the statute of limitations to pursue a civil lawsuit concerning the validity of the timeshare contract if they choose. Therefore, Legal Counsel recommends this matter be closed.

Recommendation: **Close.**

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

23. 2021022421

Opened: **4/13/2021**

First Licensed: **9/29/2009**

Expires: **9/28/2021**

Type of License: **Real Estate Firm**

History: **None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee real estate firm and Florida corporation selling timeshare properties in Tennessee.

This complaint is identical to the previous complaint (2021020901) and is a duplicate complaint.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

24. 2021031401

Opened: 5/11/2021

First Licensed: 3/22/2018

Expires: 3/21/2022

Type of License: Real Estate Firm

History: None

Complainant is an Alabama resident and the Respondent is a licensed Tennessee Real Estate firm engaged in timeshare sales.

The Complainant purchased a timeshare from the Respondent in February 2003 and states the timeshare has been a constant burden. The Complainant alleges the Respondent lied to them and they were "swindled." The Complainant alleges that due to unforeseen health issues and the HOA fees being raised from \$257.00 in 2004 to \$721.00 in 2021, the Complainant can no longer afford to pay the HOA fees. The Complainant is seeking that the Respondent "return the deed" for their timeshare. The Respondent has refused to provide the deed unless the Complainant pays additional fees. The Complainant is now retired and has no way of knowing what the HOA fees will be in the future and if it will skyrocket to an outrageous amount. The Complainant has recently been diagnosed with breast cancer and the expenses have put a strain on their finances. The Complainant states this was the worst purchase they ever made in their lives. The Complainant has not been able to use it as they were told by the salesperson when they originally purchased it in 2003. They have never been able to exchange it either. When they did manage to book the timeshare, they were given subpar accommodations and when the Complainant refused to stay at the unit. The Respondent did not give them their money or points back. The Complainant was also told they could exchange their points and could come at any time. However, they were never able to get a reservation because there were never any reservations available and the Respondent's units were always booked. The Respondent was renting to non-owners and therefore, the owners were never able to secure a booking unless it was booked six months before. The

Complainant purchased a biannual ownership and were told they could come anytime, however, this was not true. The Complainant has tried to make the timeshare work and it can no longer afford to pay the fees and requesting the “deed back” of the ownership from the Respondent.

The Respondent provided a response and stated they have investigated all the allegations in the complaint filed by the Complainant. The Respondent understands that financial and health circumstances may change over time, however, pursuant to the terms of the contract with the Complainant, the Respondent does not have to accept a voluntary surrender of the timeshare interest from the Complainant. The Complainant is responsible for their annual maintenance fee obligations. The Respondent does offer a “transition” program, however, there are certain requirements such as the member or owner must not have an existing loan balance or other lien encumbering the vacation ownership or any contracts submitted, the member or owner must be current on the payment of all maintenance fees up to a year for which they are relinquishing, the member or owner must have a clear and free title to the vacation ownership in that the contract was purchased directly through a managed property or entity and not through a resale or exit company, all future reservations must be cancelled or traveled on prior to submitting a request. If the Complainant is seeking a deeded or fixed week owner, they must not have any future reservations that are exchanged with another timeshare company, released for rent, and/or guest name must remain the same, the owner or member cannot be working with a third-party exit company or law firm. The Respondent will accept an application from the Complainant for the “transitions” program, but the Complainant will need to adhere to the requirements for cancellation through the program, including the \$1,000 per contract surrender fee. There is no obligation for the Complainant to use the “transitions” program to divest themselves of the interest in ownership and can pursue other options, such as selling to another individual or gifting their ownership to family or friends.

Based on the information provided by Complainant and Respondent, there is insufficient evidence of any violations of the Tennessee Timeshare Act of 1981. The rescission/cancellation period for the contract has expired. The cancellation period is 10 days from the date of the signing of the timeshare contract pursuant to Tenn. Code Ann. § 66-32-114(a). Also, pursuant to Tenn. Code Ann. § 66-32-119, Complainants are outside the statute of limitations to pursue a civil lawsuit concerning the validity of the timeshare contract.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

25. 2021025181

Opened: 5/4/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

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

The Complainant purchased two timeshares several years ago. One timeshare was purchased 20 years ago, and the other timeshare was purchased eight (8) years ago. The Complainant was under the impression they had eliminated the first time share when they purchased the second timeshare but that was not the case. There was sales pitch made by the Respondent's employees to upgrade the timeshare or to purchase a different timeshare. The maintenance fees have become too high for the Complainant's income. The Complainant has contacted the Respondent to cancel the timeshare contract, however, they requested that additional fees be paid to cancel the contract. The Complainant was under the impression when the larger timeshare bought out the Complainant's timeshare company, the maintenance fees would be reduced but that did not occur. The maintenance fees just continue to get higher. The Complainant has not been able to travel in the past wo years because of their health. Both the economy and the Complainant's health as well as other family issues has resulted in the Complainant not having enough money to continue to pay the maintenance fees. The Complainant has not been able to enjoy using the timeshare because of the pressure the timeshare company puts on owners when they visit the resort to upgrade or purchase additional time share interests. The Complainant would be willing to return the timeshare to the Respondent, but the Respondent has refused. The Respondent does not take timeshare back once they are sold. The Complainant has major health problems and unable to financially pay for the timeshare maintenance fees and both timeshares are paid in full. The Complainant requests the assistance of the Commission in exiting from the timeshare contracts and surrendering the timeshares to the Respondent.

The Respondent provided a response and stated since the Complainant's can no longer afford to pay their timeshare and wish to relinquish, the Complainant can participate in the Legacy Program, however, their account is not current and until the account is not current they cannot participate in this program. Also, this program requires a timeshare administrative fee. The Respondent cannot cancel the Complainant's contracts and is unable to accept the surrender of the timeshares.

Based on the information provided by Complainant and Respondent, there is insufficient evidence of any violations of the Tennessee Timeshare Act of 1981. The rescission/cancellation period for the contract has expired. The cancellation period is 10 days from the date of the signing of the timeshare contract pursuant to Tenn. Code Ann. § 66-32-114(a). Also, pursuant to Tenn. Code Ann. § 66-32-119, Complainants are outside the statute of limitations to pursue a civil lawsuit concerning the validity of the timeshare contracts.

Recommendation: **Close.**

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

REPRESENTS:

26. 2021002551

Opened: 3/1/2021

First Licensed: 7/31/2017

Expires: 7/30/2021

Type of License: Affiliate Broker

History: None

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

The Complainant Buyer purchased a home on July 2, 2020 from the Respondent who was also affiliated with the same firm that represented the Buyers. The Complainant Buyer alleges the Respondent Seller failed to disclose material facts regarding the flood insurance policy of the property. The Seller made no mention of any claims on the transferred flood policy and nothing was disclosed on the property

disclosure form regarding these claims. The Complainant asked the Respondent post transaction and the Complainant Buyer was told by e-mail, there was an open well in the basement in 2016-2017 and resulted in two flood claims for approximately \$36,000. The Respondent and the real estate firm made a series of intentional misrepresentations of material facts or committed fraud by failing to disclose material facts to the Buyers when the Seller had a duty to do so under the contract, specifically (1) the number of times the home had flood damage; (2) the extent and amount of such damage to the foundation, footers, basement, plumbing, sub pumps, sewer lines, HVAC, electrical wiring, etc. and the remainder of the home (3) failing or omitting to disclose material facts to the Buyers; (4) the remediation efforts that were made each time the home had flood damage; (5) disclosure of the damage to the basement floor which had been hidden; (6) all relevant facts relating to flood damage insurance claim and amount of insurance recovery and how the Respondent Seller or prior owners used the insurance proceeds.

The Respondent provided a lengthy explanation and response. The Respondent stated the complaint is improper because the Respondent was not acting as a real estate licensee during the transaction at issue. The Respondent was the Seller and represented by a listing agent. The incidents that occurred at the home were not the result of a flood and occurred because of a hidden well within the home. When the home was discovered, the well was backfilled and capped and there was no adverse property condition when the Complainant purchased the home. These claims/incidents do not prevent the Complainant from obtaining a flood insurance for the property. The Complainant had been told the property had flooded on one occasion during the 2010 flood. In July 2016, there was a hard rain and there had been water in the basement. The plumbing company had recommended the exterior drainage pipes and recommended the pipes be replaced and/or rerouted. This was reported to the homeowner's insurance company and this was sent to the carrier for the flood insurance and a claim was filed and paid in the amount of \$11,066.98. There was another rain in August 2017 and there was one to two inches of water in the bedroom and laundry room area. At this point, the well was discovered and it was backfilled with gravel and bentonite clay and a two foot cement cap was placed to fill the top of the well casing. The flood insurance carrier paid \$24,394.71. The Water Well Closure Abandonment Report was filed with the State. The disclosure statement was provided indicating the property had a flooding issue and the Respondent had been advised the "basement took on water in 2010." The Respondent did not provide information about the well because the water would not enter the property from the well. The cause of the water entry was not the flooding because the water did not come into the home from the outside. The Respondent offered to transfer the homeowner's insurance policy with the included flood

insurance, because there was a good rate on the policy and transferring the policy would be helpful to the Complainants. The sale of the property was closed and the insurance policy was transferred to the Complainants. The Complainants received a notice of previous claims from the flood insurance carrier and detailed the payments made for the July 2016 and August 2017 incidents in which water entered the property from the well. The number of claims were not disclosed, but the flooding issue was disclosed. The property is still insurable. The coverage will only be cancelled if there are four “severe repetitive loss” claims are made.

The Respondent made the necessary disclosures concerning the property. There is insufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

Recommendation: **Close.**

Commission Decision: **The Commission voted to authorize a formal hearing and issue a Consent Order with a \$500.00 civil penalty for failure to disclose pertinent information regarding a transaction.**

New Information: The Complainant submitted a letter withdrawing the complaint against the Respondent. Additionally, the Respondent was not acting in her capacity of a real estate agent when the Respondent sold the property. The Respondent had a real estate agent representing the Respondent in the transaction. Also, any issues concerning the well were resolved and fixed and there was not an adverse property condition. There was no material defects concerning the well. There was no problem or adverse facts concerning the well. The statute defines “adverse facts” as conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to the occupants of the property. There was no adverse condition concerning the well that should have been disclosed. The parties have resolved the issue and settled the matter.

New Recommendation: **Close.**

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

27. 2021001281

Opened: 2/22/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

The Complainant is a Florida resident and timeshare purchaser and the Respondent holds a valid Time Share Registration.

The Complainant was originally contacted in January 2014 concerning a timeshare and a promotional vacation package for a weekend getaway. The Complainant attended the sales representation and was not interested in making a purchase, but finally decided to make a purchase. The Complainant purchased the smallest one-bedroom unit available and used it for the first time in December 2015. Before leaving, the Complainant was required to attend a mandatory meeting and claimed the Respondent held them captive in the meeting all day even though they claimed the Complainant could leave at any time during the meeting. The Complainant was shown a larger cabin and it was three separate units. The Respondent repeatedly told the Complainant it was a great investment and an upgrade and it could be used as one unit. The Complainant advised they could not afford the upgrade and the Respondent continued to exert pressure to make the purchase. In 2016. The Gatlinburg fires burned the cabins to the group and the Respondent sent the Complainants to other units in Orlando, Florida that the Complainant could use until the Tennessee cabins were rebuilt. In January 2019, the Complainant tried to use the cabin and were denied because the HOA fees had not been paid for the year. The credits from 2017 were not available to be used to pay the January 2019 HOA fees. The Complainant claims they have increased expenses because their daughter is attending college and the maintenance fees have increased astronomically. The Complainant has attempted to cancel the timeshare, but the Respondent has refused. The unit has been rebuilt and the Complainant is still responsible for the payments and the fees for the timeshare. The Respondent did send a hardship application and

requested submission of all the supporting documents with the application. The document would be revised and after review, they would present exit options. The Respondent claimed the Complainant was working with a third party that was assisting the Complainant to help them get out of the timeshare contract. The Complainant was not working with a third party to get out of the timeshare contract and sent a written statement attesting to the fact the Complainant was not working with any other outside service to cancel the contract. The Respondent agreed to provide a Warranty Deed in Lieu of Foreclosure for the property. The exit fee would have to be paid and the documents sent by the Respondent would have to be signed and notarized. The Complainant sent the signed affidavit on September 30, 2020 and never received any further contact from the Respondent. On November 23, 2020, the Complainant contacted the Respondent's legal department and the Respondent stated they were not going to allow the Complainant any exit options.

The Respondent did not provide a response to the complaint.

Recommendation: Authorize a contested case proceeding for failure to provide a response and allow settlement by Consent Order and payment of a \$1,000 civil penalty for the violation of Tenn. Code Ann. § 62-13-313(a)(2).

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Respondent did provide a timely response to the complaint. During the transfer of the complaint file, it did not get transferred to the Legal Division's complaint file. The Respondent apologizes for the length of time of the timeshare presentation and stated there was no obligation for the Respondent to stay or make a purchase. The Complainant was provided with all necessary disclosures and a complete Acknowledgment of Representations (AOR) with all disclosures in an easy to read format. It clearly stated there was no resale or rental program offered by the Respondent. The Respondent stated the fires were an unfortunate event and the Respondent made all possible accommodations for all timeshare owners and offered free exchanges to other resorts. The Respondent stated the fees paid in 2017 could have been used in 2019 by the Complainant if the reinstatement fees were paid per the terms and conditions. The Respondent states the contract is valid and declines to cancel the contract.

New Recommendation: Close.

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

NEW MATTERS

PAMELA VAWTER

28. 2021009581

Opened: 4/5/2021

First Licensed: 6/16/2006

Expires: 6/15/2022

Type of License: Affiliate Broker

History: None

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

Complainant alleges Respondent committed crimes of “fraud and harassment and bullying of senior citizens.” No other information was supplied with the complaint. When additional information was requested, Complainant stated in a follow up email that she was Respondent’s client. She states Respondent left numerous voicemails stating that buyers had closed the day before and that “the house is still full of stuff,” and she needed to get it out. Complainant states this was untrue. She states she was driving a moving truck and could not take the calls. Complainant states Respondent called and texted her all morning about this. She pulled over and called Respondent back asking why he was being obnoxious and how could she get moved if everyone was harassing her about getting out of the house and lying about it still containing her belongings. Complainant states this was bullying and harassment of senior

citizens.

Respondent submitted a response via his attorney stating that Respondent referred Complainant to an auction and real estate company when she expressed an interest in auctioning her property. Respondent entered into a referral agreement with the auction company and assisted the company with the auction of the property and closing. Respondent states Complainant was difficult to reach throughout the transaction and became unresponsive after the auction.

On the day of the closing, the auction company asked Respondent to try to get in touch with Complainant because she was not answering their calls. The title company also could not get in touch with Complainant, and the buyer was concerned Complainant was not going to close. The auction company owner told Respondent he had been to the property and found it was locked and still full of Complainant's belongings. Respondent sent Complainant a text asking, "what's going on" and relaying what the auction company owner had told him. Respondent states Complainant responded calling him a "creep," accused him of harassing her, and stated, "I would not recommend you or anything or anybody associated with you to a mangy maggot!!!" Respondent did not have any further communication with Complainant at that point.

Respondent denies that he represented Complainant in the transaction. He contends that his actions were in full compliance with the Commission's rules and statutes.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

29. 2021026271

Opened: 4/19/2021

First Licensed: 9/4/2013

Expires: 9/03/2021

Type of License: Affiliate Broker

History: None

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

Complainant had a listing with Respondent's firm (a real estate development company) to sell a vacant lot. Complainant contends he signed a renewal of the listing agreement in which he was required to pay a commission of 10% of the gross sales price, including a transfer fee for the social membership in the club. Complainant states the sale price was \$285,000.00 but alleges he was charged a commission on \$286,320.00, which was the sale price plus an additional fee of \$1,320.00 for HOA initiation to the community association. Complainant states he reviewed the closing documents and saw that the commission included the additional fee but signed the settlement statement anyway. Complainant seeks the Commission's help in obtaining a refund of \$2,132.00, which he states is the commission charged based on the additional fee HOA initiation fee.

Respondent's principal broker submitted a response stating that the commission charged was consistent with the terms and conditions of the listing agreement and the purchase agreement. Complainant entered into a listing agreement on January 20, 2020, in which he agreed to pay the stated commission on the gross sales price. Respondent states this agreement was consistent with each listing agreement the firm had with Complainant since 2014. Respondent states that commissions are based on a gross or total sales price. The HOA initiation fee was included as part of the total sales price on the purchase agreement signed by Complainant on October 22, 2020.

Respondent states Complainant was not charged a transfer fee. Complainant agreed to pay the club the social membership as a condition of the sale and signed an addendum to that effect on October 22, 2020.

This is a contract interpretation matter. Based on the information and documentation supplied by the parties, there is no evidence that Respondent violated rules or statutes of the Commission. The contracts at issue set out the parties' rights and remedies in the event of a contractual dispute.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

30. 2021026331

Opened: 4/19/2021

First Licensed: 10/10/2012

Expires: 10/9/2022

Type of License: Real Estate Firm

History: None

Complainant is a Tennessee resident. Respondent is a licensed real estate firm and development company. This matter is related to Case No. 2021026331 above.

Complainant had a listing with Respondent to sell a vacant lot. Complainant contends he signed a renewal of the listing agreement in which he was required to pay a commission of 10% of the gross sales price, including a transfer fee for the social membership in the club. Complainant states the sale price was \$285,000.00 but alleges he was charged a commission on \$286,320.00, which was the sale price plus an additional fee of \$1,320.00 for an HOA initiation to the community association. Complainant states he reviewed the closing documents and saw that the commission included the additional fee but signed the settlement statement anyway. Complainant seeks the Commission's help in obtaining a refund of \$2,132.00, which he contends is the commission charged based on the additional fee HOA initiation fee.

Respondent's principal broker submitted a response stating that the commission charged was consistent with the terms and conditions of the listing agreement and purchase agreement. Complainant entered into a listing agreement on January 20, 2020, and agreed to pay the stated commission on the gross sales price. Respondent states this agreement was consistent with each listing agreement the firm had with Complainant since 2014. Respondent states that commissions are based on a gross or total sales price. The HOA initiation fee was included as part of the total sales price on the purchase agreement signed by Complainant on October 22, 2020.

Respondent states Complainant was not charged a transfer fee. Complainant agreed to pay the club the social membership as a condition of the sale and signed an addendum to that effect on October 22, 2020.

This is a contract interpretation matter. Based on the information and documentation supplied by the parties, there is no evidence that Respondent violated rules or statutes of the Commission. The contracts at issue set out rights and remedies of the parties in the event of a contractual dispute.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

31. 2021026611

Opened: 4/19/2021

First Licensed: 2/14/2012

Expires: 1/28/2020 (Expired)

Type of License: Real Estate Broker

History: None

Complainant is a Tennessee citizen. Respondent was formerly a licensed affiliate broker. Respondent is deceased.

Complainant purchased a home in March of 2019. Complainant contends there were multiple problems with the home that were not disclosed or discovered in the inspection. Complainant contends Respondent is the seller's nephew and performed maintenance and upkeep on the property. Complainant contends Respondent drafted the property disclosure form. Complainant alleges that Respondent is a licensed real estate agent, but that she was represented in the purchase of the home by Respondent's wife, who is also an agent. Complainant states she has a lawsuit pending concerning the issues in the complaint. She has also filed regulatory complaints against the seller's agent, Respondent, the home inspector, and the attorney who was representing her in the lawsuit. Complainant believes these persons conspired with the seller to defraud her.

Respondent's father submitted a response to the complaint stating that Respondent was killed in an accident in October of 2019. Respondent's father provided a copy of the death certificate. Respondent's father also states that his son was not involved in this matter. Counsel spoke with Respondent's father and confirmed that Respondent did not have an aunt with the seller's name, nor a wife who was a real estate agent and was, in fact, never married. Respondent's father had never heard of the seller.

Respondent is deceased and did not appear to have been involved in the transaction. Based on the information provided, Counsel recommends this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

32. 2021027651

Opened: 4/19/2021

First Licensed: 8/27/2002

Expires: 4/15/2023

Type of License: Principal Broker

History: 2017 Consent Order Advertising violation

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

Complainant purchased a home in September of 2020. Complainant did not order a home inspection but did complete a physical walkthrough prior to closing. After the closing, Complainant alleges she discovered several repair items, including mold in the master bedroom floor and walls, a moldy floor and drywall, and a septic tank that needed to be pumped.

Complainant contends that Respondent was her buying agent. She states she learned from the seller's agent that there had been a home inspection performed by a potential buyer. Complainant decided not to order another inspection and requested that Respondent obtain a copy of the report for her. Complainant claims she did not receive a copy of the inspection report until after closing. Complainant contends the report contained information that would have led her to discover the undisclosed repair issues prior to closing. Complainant believes that Respondent and seller's agent were aware of the problems and hid the information until after closing.

Respondent submitted a response stating that Complainant requested his assistance in writing an offer on the property but insisted on proceeding with the remainder of the transaction unrepresented. Respondent states he completed all the documents, went over them with her, and the house went under contract. Respondent states he advised her to get a home inspection. Respondent states Complainant knew there had been a previous inspection and a repair replacement amendment created for a previous contract that fallen through due to financing. Respondent states Complainant requested a copy of that information on August 16, 2020, and it was provided to her on the same day via dotloop before the home went under contract. Respondent states the contract contained an inspection contingency, and he recommended that Complainant obtain her own inspection. Respondent states Complainant said she was comfortable with the repair replacement agreement between the prior parties and did not want the time and expense of another inspection.

Respondent denies making any misrepresentations to the Complainant. He states that had never seen nor been in the home and knew nothing about the house or the sellers. Respondent states he did not make any representations of the condition of the home and merely tried to accommodate Complainant's wish to get an offer in. When Complainant contacted him later after the closing about issues with the home and claiming not to have a copy the inspection report, Respondent mailed hard copies of the report to Complainant.

Based on the information provided by the parties, Counsel finds there is insufficient evidence that Respondent violated the rules and statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

33. 2021027631

Opened: 5/17/2021

First Licensed: 10/12/2012

Expires: 10/11/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. This case is related to No. 2021027651 above. Respondent was the seller's agent.

Complainant purchased a home in September of 2020. Complainant did not order a home inspection but did complete a physical walkthrough prior to closing. After the closing, Complainant alleges she discovered several repair items, including mold in the master bedroom floor and walls, a moldy floor and drywall, and a septic tank that needed to be pumped.

Respondent was the seller's agent. Complainant learned from Respondent advised that there had been a previous home inspection performed by a potential buyer. Complainant requested to receive a copy of the prior inspection report on August 16, 2020. Respondent reached out to the former buyer's agent and obtained a copy of the report. Respondent provided a copy of the email in which she forwarded the report to the agent representing Complainant on August 16, 2020, before the

property went under contract. Respondent states she did not open or review the documents.

Respondent states that Complainant had toured the home when it went back on the market after the former buyer was unable to secure financing. Respondent showed Complainant the repair and replacement amendment from the previous contract at that time. Respondent states she had no knowledge of what was found in the prior inspection report except what repairs were requested, and that information was disclosed to Complainant at the showing. Respondent also advised Complainant that the property was a rental home, and that the seller had not lived in the home in the past three years.

Respondent states there was an inspection contingency in the purchase and sale agreement Complainant executed on August 16, 2020. In counteroffer #1 made by the seller on August 16, 2020, Complainant was advised that the “[s]eller does not believe the septic has been pumped.” Respondent states Complainant did not do a septic inspection. Respondent states Complainant could have performed her own inspections of the property according to the contract but declined to do so other than a final walkthrough. Respondent states that she did not misrepresent any information to the Complainant but rather acted in good faith to obtain and forward the information Complainant requested in a timely manner.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

34. 2021029441

Opened: 4/19/2021

First Licensed: 3/15/2017

Expires: 7/26/2022

Type of License: Principal Broker

History: None

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

On April 12, 2021, Complainant submitted an offer to purchase a home. Respondent

represented the seller. At 6:11 p.m. Respondent texted Complainant as follows: "Congratulations!!!! . . . contract is accepted and good to go. I'll get all signed docs together and over to you in the morning. Please send me lender info . . ." On the following day at 2:42 p.m., Respondent texted Complainant stating he had bad news, and the sellers got a better offer they decided to go with. Complainant believes Respondent's conduct was unprofessional and illegal.

Respondent submitted a response stating that the sellers decided not to accept Complainant's offer after all and instead accept the offer of another interested buyer making a full price offer through a reputable buyers' agent. Respondent also supplied a supplemental response through an attorney. Respondent's attorney states that Respondent did not represent Complainant as an agent in the transaction, but rather the seller. Respondent's attorney contends that there was never a binding contract in this matter because Complainant never provided the earnest money deposit nor supplied the financial lender information requested by Respondent to present to the seller. Respondent's attorney states that at the time the text message was sent indicating acceptance of the offer, Respondent believed that his clients were agreeing to the transaction if Complainant provided the proof from the lenders. Respondent states Complainant failed to do so, and the seller did not execute the offer. Respondent's attorney argues there was not a binding contract in this matter.

Counsel finds there was never a valid contract between the parties in this matter because the seller did not accept the offer; therefore, the evidence provided is insufficient to establish a violation of the rules and statutes of the Commission. Counsel, however, recommends a letter of instruction and/or warning be issued to Respondent regarding the duties owed to all parties in a transaction and the diligent exercise of reasonable skill and care.

Recommendation: Letter of instruction/warning regarding the duties of reasonable skill and care and good faith owed to all parties in a transaction.

Commission Decision: The Commission elected to authorize a formal hearing for failing to exercise reasonable skill and care and good faith owed to all parties in a transaction and allow settlement by Consent Order following completion of four (4) hours CE in Contracts to be completed within 180 days of the execution of the Consent Order and over and above the CE required for licensure.

35. 2021014571

Opened: 4/26/2021

First Licensed: 2/2/1996

Expires: 12/11/2022

Type of License: Principal Broker

History: 2009 Letter of Instruction

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

This matter is related to an identical case (No. 2021013741) that was presented to the Commission at its April 7, 2021 meeting. The prior complaint was against the affiliate broker. The Respondent in the instant complaint is the affiliate's principal broker.

Complainant is a member of the security committee for a private gated community neighborhood. Complainant contends the affiliate listed the community's gate code in an internet listing. Complainant is concerned this could have compromised the community. Complainant states the affiliate's company did not register with the community's security committee and failed to follow the community's guidelines for real estate companies. Complainant asked the Commission to assist in having the code information removed from the listing.

The affiliate submitted a response to the complaint against her stating she immediately removed the information and informed the seller once she became aware the entrance code should not have been posted. The security team did not know how to contact the seller who owned the property inside the neighborhood, and Respondent asked the seller to contact security. Because the affiliate removed the code information and remediated the potential harm once she became aware the code should not have been listed, the Commission voted to accept the recommendation to issue a letter of warning concerning diligent exercise of reasonable skill and care in providing services.

The complaint opened against Respondent does not provide any new or additional allegations nor indicate that Respondent failed to adequately supervise the affiliate. Respondent submitted a response in which he

confirmed that the affiliate quickly removed the information once she was informed by Complainant that the information should not have been posted. Complainant also removed the code from the community gate computer and assigned a new code to the owner. Respondent states the affiliate is a conscientious broker. Respondent states he had a discussion with the affiliate, and it will not happen again.

A letter of warning has already been issued to the affiliate. 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.

36. 2021020821

Opened: 4/26/2021

First Licensed: 12/26/2019

Expires: 12/25/2021

Type of License: Affiliate Broker

History: None

Complainant is anonymous. Respondent is a licensed affiliate broker.

Complainant alleges that Respondent advertised a listing on Facebook that did not contain Respondent's office name or number. Complainant provided screen shots of the alleged online listing which Complainant contends violates the Commission's rules on social media advertising.

Based on the screen shots provided the anonymous complainant, the office name and number does not appear in the screen shots. There is a clickable link, however, in the post by Respondent's name that says "See Profile" where additional information could be found. The post is from a private group on Facebook visible only to members. Therefore, Counsel was unable to review the full post. Based on the screenshots, however, it appears that the office name and number, if present, would

be at least one click away from the listing information.

A copy of the complaint was sent to Respondent at the office address of her firm and also at the email address on record for Respondent with the Commission. Respondent failed to respond to the complaint.

Recommendation: Authorize civil penalties totaling \$1,500.00 for the following violations: (1) \$1,000.00 civil penalty for failure to respond to the complaint in violation of Tenn. Code Ann. § 62-13-313(2); and (2) \$500.00 civil penalty for the advertising violation as set forth in Tenn. Comp. R. & Regs. 1260-02-.12(3)(b).

Commission Decision: The Commission accepted counsel's recommendation.

37. 2021027861

Opened: 4/27/2021

First Licensed: 9/1/2016

Expires: 8/31/2022

Type of License: Affiliate Broker

History: None

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

Complainant alleges that Respondent misrepresented a property in a listing. Complainant states that the property was listed as having laminate flooring but it was actually vinyl. Complainant states the roof was described as new, but it was leaky. Complainant states the windows were described as new, but they are original. Complainant states the property was listed as having a new well, but it the property was on public water.

Respondent submitted a response to the complaint, stating that her clients were a referral that came with six different inherited properties to sell. Upon meeting with the clients for the first time, she was informed that the property at issue and the neighboring properties were trailer home rentals that were managed by the clients' father who had recently passed away. The two children who inherited the properties based the information they gave Respondent from the description and information that had been given to them by their 90+ year old father. Respondent states the information the clients/sellers were able to provide was used for the listing. Because the sellers were not aware of all the maintenance that may have been done, they

based information on what had been relayed to them by their father.

Respondent states that she and the sellers had limited access to the home because it was occupied by a tenant. The tenant agreed to a short walk through which she, the sellers, and photographers attended. Respondent took notes from the sellers, and they moved forward with marketing. Because of the limited access to the property, Respondent made it clear to anyone wishing to view the property that it likely needed work and strongly encouraged the potential buyers to get an inspection.

Respondent states that Complainant placed an offer on the property and wished to waive the inspection, but Respondent and Complainant's agent suggested they obtain an inspection. Complainant ordered a full inspection and emailed Respondent noting items that were inaccurate in the listing. At that time, the sellers renegotiated the contract price based on the findings of the inspection. The sellers agreed to lower the price in lieu of repairs. At this point, Complainant was aware of the condition of the home and signed a notification accepting the property "as is."

Respondent states that the information in the listing regarding flooring was based on the owner's notes. On the checklist of mechanicals, the roof and water heater were marked as less than five years old. The sellers were informed by their father that the windows had been replaced during the last 5 years as well. The inspection report indicates they were unable to inspect the windows and does not say they are original. Sellers were told the flooring was added less than five years ago. The sellers' father had a well installed on the property, and the well is still on the property, which the sellers had believed serviced both properties.

All the conditions which Complainant states were inaccurate in the listing were addressed in the inspection report. Complainant made the decision to purchase the home "as is" with full knowledge of the condition of the home. Respondent states she acted in good faith at all times based on the information available and denies having misrepresented information in the listing or otherwise.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

38. 2021029121

Opened: 4/27/2021

First Licensed: 3/29/2005

Expires: 1/13/2023

Type of License: Principal Broker

History: None

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

Complainant alleges that Respondent is doing business with a suspended license. Complainant alleges Respondent listed a property on MLS dating on March 1, 2021. Complainant states the property started with a listing agreement, went active and under contract immediately until the status changed to withdrawn after 21 days. Complainant states it was relisted with a new MLS number under the “coming soon” status. Complainant states the list price is higher and does not believe it is comparable with listings in the community. Complainant believes that the property did not go under contract and that the listing served the purpose of generating interest and increasing the market value for other properties in the area. Complainant believes that is in an unethical practice and that Respondent’s license was suspended when the property was listed.

Respondent submitted a response stating that her license is active and in good standing. Respondent states that the property listing is her own property that she is selling. Additionally, Respondent states that the property did go under contract for the time period described. The buyers were having difficulty obtaining financing and were not forthcoming with information about their ability to purchase. A second notification was sent when the buyers were unable to demonstrate a clear financial path to close. While giving more latitude in the timeline for the buyers to obtain financing, the backup offer moved on to purchase another property. The property was withdrawn from the market to give Respondent and her husband a chance to regroup and prepare their property for showings.

Based on the information provided, the listing at issue is exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(A), which 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. Because the transaction at issue is exempt, Counsel recommends that this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

39. 2021029971

Opened: 4/27/2021

First Licensed: 5/10/2006

Expires: 5/9/2022

Type of License: Affiliate Broker

History: 2011 Consent Order

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

Complainant contends he submitted an offer to purchase a home on 4/12/21. Respondent was the sellers' agent. Complainant alleges he received a counteroffer shortly afterward that confirmed the seller's name along with their preferred closing agency. Complainant states he signed the counteroffer, and it was forwarded to Respondent. Complainant states he was informed later that the sellers wished to rescind the contract. Complainant seeks contract damages or specific performance.

Respondent submitted a response stating the property was listed on 4/9/21, with notification in agent remarks that all offers will be reviewed at 4:00 p.m. on 4/12/2021. On 4/10/21, Complainant's agent texted Respondent indicating that she would be sending an offer. Respondent told Complainant's agent via text that the agent remarks stated all offers would be reviewed on 4/12/21 at 4:00 p.m. Complainant's agent submitted an offer on 4/10/21 at 4:00 p.m. with a deadline to respond at 4/12/21 at 4:00 p.m. Respondent received another offer on 4/10/21 at 8:31 p.m. with a deadline to respond on 4/12/21 at 6:30 p.m.

On 4/12/21 at 1:00 p.m., the seller began reviewing offers as there were no further offers had come in at that point, nor information indicating other offers were coming. Respondent and the client decided to begin negotiations in order to meet Complainant's response time deadline of 4:00 p.m. At 2:40 p.m., Respondent sent a counteroffer to Complainant's agent. At 2:55 p.m., Respondent received a third offer that was significantly higher in price. Respondent sent the third offer to the seller to review. The seller was in a business meeting at that time but later replied that she wished to rescind the counteroffer until they could review the third offer and talk.

At 3:48 p.m., Respondent sent an email to Complainant's agent stating that the sellers were rescinding the counteroffer. At 4:09 p.m., Complainant's agent emailed

an accepted counteroffer. Respondent called her principal broker to discuss how to proceed, and they spoke with Complainant's agent's broker in a good faith effort to reach an equitable offer with Complainant, but Complainant declined to match the third offer. After Complainant's agent advised they would be submitting an offer on another property.

Respondent/seller's position is that the language in the counteroffer provided the seller could withdraw the offer by 8:00 p.m. on 4/12/21 at any time before acceptance and notice. Respondent provided notice at 3:48 p.m. that the seller wished to withdraw the counteroffer was accepted. Moreover, Complainant was on notice that all offers would be considered at 4:00 p.m.

Based on the information provided, this is a contract dispute between the parties. There is insufficient evidence that Respondent violated any rules or statutes of the Commission. Complainant has the option to pursue legal remedies under the contract.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

40. 2021016111

Opened: 4/27/2021

First Licensed: 12/7/2015

Expires: 12/6/2017

Type of License: Real Estate Firm

History: 2018 Complaint Closed and Flagged

Complainant is a Tennessee resident. Respondent is a licensed property management company.

Complainant is a tenant who began renting a home from Respondent in 2017. On October 21, 2020, the home was sold, and a different company took over the property management. Complainant wanted out of the lease when a new property management company took over. Complainant states she has been given "the runaround" regarding the security deposit. \ Complainant states the property manager has asked Complainant to complete an addendum to the lease to end the agreement and release the security deposit. Complainant states that when she made revisions to the addendum, the property manager refused to sign. Complainant states the lease agreement is over (expired on April 30, 2021), and she would like to receive

the security deposit.

Respondent submitted a response stating they had been contacted by the attorney for the new owner-company stating his client purchased the home and requesting the deposit be turned over to the new owner. The Complainant/tenant also contacted Respondent stating that her attorney (who is the same attorney representing the new owner) stated Respondent must return to the deposit to the tenant. Respondent contacted their own attorney for guidance and were advised that, pursuant to the lease agreement, the deposit must remain in the escrow account until such time as the tenant vacates the home.

Respondent states it requested a release from Complainant in hope of resolving the matter, but Complainant would not mail the release and did not execute or return it. Respondent states it would like to release the funds, but it is unclear who should receive the funds. Respondent seeks the Commission's guidance on where to release the deposit.

Upon reviewing Complainant's lease agreement to which Respondent is a party, Respondent is required to inspect the premises within 30 days of the tenant vacating the property to assess for any damage to be charged against the security deposit. If the tenant leaves owing no rent and has a refund due, the tenant will be notified at their last known address. Because 30 days have not elapsed since the expiration of the lease agreement, there is insufficient evidence at this time that Respondent has violated the rules or statutes regarding remitting of monies. Therefore, Counsel recommends this matter be closed with a letter of instruction on the Commission's rules and statutes pertaining to interpleading funds and disbursal of trust money.

Recommendation: Letter of instruction on the Commission's rules and statutes pertaining to interpleading funds and disbursal of trust money.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2021019201

Opened: 4/27/2021

First Licensed: 11/1/2010

Expires: 10/31/2022

Type of License: Real Estate Firm

History: None

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

Complainant is a tenant. Respondent is the property owner and landlord. Complainant alleges that the owner of the Respondent company came to her residence on January 8, 2021, looking for her ex-husband, whose vehicle was in Complainant's driveway. Complainant states the owner tried to peep inside the house. Complainant alleges the owner later did an annual inspection of Complainant's property and also sent and an addendum to the lease agreement regarding changes Complainant had made to the doors. During the inspection, the owner told Complainant she would not be renewing the lease. Complainant believes Respondent's actions were in retaliation for the owner's ex-husband being at her home.

Respondent submitted a response stating Complainant's property was inspected because other tenants had informed Respondent that Complainant had an unauthorized pet. During the inspection, Respondent noticed Complainant had hung wallpaper, changed out interior doors to barn doors, attached screen doors to the exterior, and also had two cats in hiding. Complainant admitted to having the cats and stated she would not get rid of them or pay a deposit. Complainant's lease stated she was not to have pets without written permission and a pet deposit. The lease also prohibited changes or alterations to the home.

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.

42. 2021028701

Opened: 5/4/2021

First Licensed: 10/8/2019

Expires: 10/7/2021

Type of License: Affiliate Broker

History: None

Complainant and Respondent are both licensed affiliate brokers.

Complainant alleges the company he owns entered into a contract on March 10, 2021, for the sale of property owned by the company. Respondent represented the buyer. An inspection was performed. On March 16, 2021, Respondent emailed Complainant regarding the buyer's concerns about the findings and the structural integrity of the 100-year-old home. The parties agreed that the buyer would not ask for repairs other than what a structural engineer would recommend. Structural issues were found according to the March 30, 2021 engineer's report. Complainant stated they would make the repairs recommended in the engineer's report.

On April 6, 2021, Respondent advised Complainant via text that an issue had arisen with the buyer's job that might affect financing. Respondent stated she was trying to get more information. On April 7, 2021, Respondent messaged Complainant again and advised that the buyer, who is a nurse practitioner, was informed by her employer that the start date for her new job was being pushed back to May 1 or later, and buyer would not have the income that would allow her to close on April 9, 2021. Complainant accused the buyer of failing to apply for financing and failing to order an appraisal within 14 days as required by the contract. Respondent advised Complainant that the buyer had applied for and been approved for the financing before she found out her boss was having to push the start date. Respondent stated that the lender was going to finance the buyer based on her resuming work in April. Because the buyer had been without an income for three months, she would not now be able to meet the down payment with the delayed start date, caused the financing to fall through with the lender. Respondent and Complainant messaged back and forth about how the deal could be salvaged, with Complainant concluding that the buyer was in breach of the contract, and that he intended to pursue legal action. Respondent asked if the closing could be pushed until later in May, and the buyer forfeit the earnest money, and Complainant declined. On April 8, 2021, Respondent emailed notification terminating the contract to Complainant on the basis that the buyer's finances had recently changed, and she is no longer able to get financed.

Complainant accuses Respondent and the buyer of breaching the contract. Complainant alleges his company made repairs, but the buyer never intended to close. He believes Complainant and the buyer acted in bad faith and committed fraud.

Respondent submitted a response stating that the structural engineer report found

that the walls of the home could not support the roof. Respondent states Complainant assured her that they could correct the structural problems before closing. Respondent denies that the buyer intended on having repairs made but not closing on the property. Respondent states that when the buyer found out her start date was being pushed back to May 1 or later, the financing fell through with the lender. Respondent states that her client disclosed this information to her on April 7, 2021, and she relayed it to Complainant. Respondent notes that the contract was contingent on financing. Respondent denies acting in bad faith, and states that Complainant has no basis to allege that the buyer never intended to close. Respondent provided the denial letter from the lender as well as a letter from the CEO of the buyer's employer verifying that her start date was pushed back.

The contract in this matter was contingent on financing. Therefore, based on the information supplied by the parties, there is insufficient evidence that Respondent violated the rules or statutes of the Commission. This matter involves a contractual dispute. Complainant has advised that he intends to pursue legal action to address an alleged breach of contract.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

43. 2021030741

Opened: 5/4/2021

First Licensed: 10/2/2017

Expires: 10/1/2021

Type of License: Affiliate Broker

History: None

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

Complainant states her friend was Respondent's client. Complainant alleges Respondent did not make himself available to her friend for multiple showings, causing the client to miss out on opportunities. Complainant alleges Respondent had the client sign a buyer's agreement without explaining it was a binding contract and advised the client to represent herself as a cash buyer. Complainant alleges Respondent spoke in a demeaning manner to client and Complainant.

Complainant sent a follow up email asking that the complaint be withdrawn and stating all issues have been resolved.

Respondent submitted an answer stating that Complainant is a friend of a former client who was an enthusiastic participant in finding the client a home. Respondent states that he and the client decided not to continue working together in the hope it would relieve some of Complainant's frustration toward him. Respondent denies he misses showings. He puts every showing in his calendar and follows it. Respondent denies that he failed to make himself available. Respondent states he tells every client on the day they meet that he will not answer his phone or respond to texts if he is with another client. Otherwise, he regularly responds to every call or text within 30 minutes. Respondent states that he thoroughly explains every contract with every client and advises them that they can cancel the buyer's agreement at any time.

Respondent states he received a call from another agent and found out Complainant had been setting up appointments under his name. He states he advised Complainant that she could not represent herself as an agent because she was not licensed. He states he told her that he would turn her in to the proper authorities if he found out she was continuing. Respondent states Complainant told him "two can play at this game," and filed this complaint.

Complainant has requested to withdraw the complaint and states the issues are resolved. Based on the information provided by the parties, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

44. 2021030931

Opened: 5/4/2021

First Licensed: 4/11/2017

Expires: 4/10/2023

Type of License: Affiliate Broker

History: None

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

Complainant alleges she reached out to Respondent on March 6, 2021, inquiring about backup offers on a listing. Complainant states that Respondent was initially enthusiastic in her reply, stating they were taking backup offers. Complainant contends she let Respondent know that the offer would come from her wife. Complainant alleges that once she stated she was in a same-sex relationship, Respondent was no longer willing to help and ignored the second offer.

Respondent submitted an answer stating that she initially reached out to Complainant on March 6, 2021, after receiving her information as a team lead when Complainant asked for more information about the property. It was not Respondent's listing, but she was the agent who had responded to the request for information. Respondent was under the initial impression that Complainant was an unrepresented buyer. Complainant, however, then indicated that she had already submitted an offer, which let Respondent know she was working with an agent. Complainant told Respondent her agent would be submitting a backup offer. Respondent states she advised Complainant that she needed to circle back with her agent on the status of the backup offer, and that her agent could check with the listing agent for the status. Respondent states Complainant never expressed that she was in a same-sex marriage, and that neither Complainant's marital status nor sexual orientation had any bearing on Respondent's willingness to help. Rather, Complainant was a represented buyer already working with another agent, and Respondent redirected her back to her agent.

Respondent's principal broker also submitted a response stating that Respondent acted ethically by referring Complainant back to her agent once Complainant indicated she was represented. Complainant's marital status had absolutely no bearing on receiving service from Respondent or the firm.

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.

45. 2021031011

Opened: 5/4/2021

First Licensed: 9/24/2020

Expires: 9/23/2022

Type of License: Affiliate Broker

History: None

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

Complainant alleges that Respondent was rude to her, cursed at her, hung up in her face, and passed along personal information to her friend. The two-sentence complaint contains no details or other information.

Respondent submitted a response to the complaint, stating that she does not know Complainant. She has never worked with or provided services for Complainant or anyone by that name. Respondent states the situation described in the complaint did not occur with her.

Complainant did not provide a contact number. Upon further research, it appears the address given by Complainant may have been fictitious.

There is insufficient proof to establish a violation of any rules or statutes of the Commission based on the information provided.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

46. 2021033121

Opened: 5/4/2021

First Licensed: 9/10/2019

Expires: 9/9/2021

Type of License: Affiliate Broker

History: None

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

Complainant states she received an email from Respondent which Complainant believes was unprofessional and untruthful. In the email, Respondent is expressing concern over a court case involving the legal guardianship of Respondent's friend. Respondent is upset with Complainant and the other recipients over their perceived

role in the outcome in the case. Respondent expresses her belief that Complainant provided untruthful information to the court in order to take advantage of her friend and obtain his money. Respondent states she believes they are treating her friend like a child, and that he is able to take care of himself. She alleges the recipients are liars and thieves and states she intends to help her friend obtain his own attorney.

Respondent submitted a response to the instant complaint explaining the context of the email and the reasons she believes her friend's guardian is taking advantage of him. When Respondent's friend let her know that the recipients did not have anything to do with the case outcome, Respondent emailed the recipients back to apologize for her mistake.

Based on the information provided, Respondent was not involved in any real estate transactions nor engaged in any broker activity with Complainant, other recipients, or her friend (who lives out of state) or as it pertains to the subject matter of the email. It appears the Respondent was merely expressing her personal views in the email about her friend's guardianship and his court case in another state.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

47. 2021030211

Opened: 5/4/2021

First Licensed: 4/16/1997

Expires: 11/11/2022

Type of License: Real Estate Firm

History: None

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

On February 22, 2021, Complainant entered into a contract to purchase a newly construction. The Respondent firm represented the builder in the transaction.

Complainant contends that the purchase agreement required her to pay \$1,500.00 in

trust money because she chose to use a lender other than the builder's preferred lender. Complainant states that she believed she would be using her own lender. Complainant contends that the seller later threatened to cancel the contract if Complainant did not get pre-approved through their own lender.

Complainant alleges an agent from the Respondent firm provided information to Complainant's real estate agent on March 5, 2021, for Complainant's pre-approval application. Complainant contends that the Respondent's agent emailed Complainant's agent on March 8, 2021, addressing the requirement that use a preferred lender pursuant to the purchase agreement. Complainant alleges this became the seller's excuse for cancelling the contract on March 12, 2021.

Respondent's principal broker submitted a response on behalf of Respondent. Respondent states that Complainant went under contract to purchase a new construction on February 24, 2021. One of the terms of the contract between her and the Seller is that she agreed to apply with the Seller's preferred lender within five business days of effective date of contract. The due date for this commitment would have been on March 3, 2021. Respondent contends that Complainant and her agent were aware of this obligation prior to submitting the purchase agreement for consideration. Respondent states that, as of March 8, 2021, Complainant had not made application with one of the preferred lenders or provided approval from her own lender. Respondent's agent inquired with Complainant's agent if or when she planned to do so. When Respondent's agent followed up on March 11, 2021, there had not been application with either of the preferred lenders. At that time, the seller determined that Respondent was well outside the contract deadline and instructed that the contract be cancelled and Complainant's earnest money be returned.

Documentation provided by the parties substantiates Respondent's contentions regarding the correspondence and contract terms. The purchase agreement provided as follows: "*Buyer agrees to make mortgage application and provide such lender with all necessary supporting documentation, within 5 business days of effective date of contract, with Seller's preferred lender, for prequalification purposes, however is under no obligation to use this lender to obtain a mortgage.*" (emphasis in original).

This is a contract dispute matter. Based on the information provided, Counsel does not find evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

48. 2021033071

Opened: 5/11/2021

First Licensed: 12/2/2015

Expires: 12/1/2021

Type of License: Affiliate Broker

History: None

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

Complainant alleges she purchased a newly built home from a construction company on December 27, 2018. Respondent represented the seller. Respondent was the sister of the construction company's owner, which was disclosed on the Personal Interest Disclosure form.

Complainant states she had a one-year construction warranty. Complainant alleges she was informed at the closing that Respondent would be a contact person for repairs under the construction warranty. Complainant contends that many repair requests were disregarded or performed poorly. Complainant states it was difficult to reach Respondent regarding repairs, and Respondent stopped answering after seven months. Complainant sold the house in approximately March of 2020 and contends she had to pay \$10,000.00 in repair costs that should have been covered by the builder.

Respondent submitted an answer stating that Complainant's agent was given a vendor contact list along with the one-year builder's warranty at the closing. Respondent believes that Complainant was told by her agent that Respondent could assist solely with relaying request messages to the builder. Respondent states she has explained to Complainant that she is not responsible for making the repairs or ensuring that they are completed as Complainant's warranty contract is with the builder and not the builder's real estate agent.

Respondent states that she has had to reiterate to Complainant on multiple occasions that she was only the real estate agent. Respondent states she has continued to receive harsh and demanding emails from Complainant demanding that Respondent facilitate action from the builder. Respondent alleges she became uncomfortable when some of the emails contained racial slurs/undertones such as: "If this were way back when, you would be whipped and hung," "I own you until my year warranty is up," and "You're not fit to make my burrito." Respondent states she

tried to explain that the time of builder responding to Complainant's requests and how the repairs were performed were contract issues between Complainant and the builder.

Based on the information provided, this complaint involves a contract dispute between Complainant and the builder. It does not appear that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

49. 2021032281

Opened: 5/11/2021

First Licensed: 1/9/2008

Expires: 1/8/2022

Type of License: Real Estate Firm

History: 2017 Consent Order for failure to account for moneys belonging to others in a reasonable time

Complainants are out-of-state residents. Respondent is a licensed real estate and property management business.

Complainants state Respondent has been the property manager for rental property Complainants own for five years. Complainants state that Respondent entered into a two-year lease with a tenant on April 6, 2021. Complainants allege that Respondent should not have signed a new lease for a longer term without their consent according to the terms of the property management contract. They allege that Respondent has not provided them with a copy of the lease as required by the property management contract. Complainants state they gave written notice of termination under the contract in October of 2020. Complainants state the contract provides that any future negotiations after written notice of termination will be completed with Respondent merely acting as broker. Complainants and Respondent disagree as to when and whether the notice was properly given and received under the contract when Complainants allowed Respondent to place the new tenant.

Complainants state Respondent has failed to inform them about work orders and respond to requests from the tenant about the status of "things taking place" on the

property. Complainants state there have been months since 2016 in which Respondent has not provided monthly statements and/or has provided statements containing inaccuracies. Complainants state there is an online portal, but they are having trouble using it and not receiving further assistance and clarification on how to look up items using the portal. Complainant alleges Respondent has violated the contract by approving work orders over \$200.00 without their consent.

Respondent submitted a response stating that Complainants' home is under a contract for sale while also being subject to a current management agreement with Respondent. Respondent states Complainants informed them after the property went under contract that they would be breaking the management agreement. The parties are in a contract dispute about management fees owed by Complainants for breach of the agreement. Respondent states that after the last tenant broke the lease, they signed a two-year lease with a new tenant to help alleviate extra costs with associated with tenant turnovers. Respondent states Complainants did send an email in October of 2020 indicating they wanted to terminate the agreement but said they would send the official letter at a later date that is required for notice under the contract. Respondent states they never received the required letter in order to begin the owner export process. Respondent denies it has ever received notice of termination required by the contract. Respondent states it has always provided Complainants with their owner statements and copies of leases, and that they have always had access to their documents in the owner portals. If they ever called with an issue, Respondent would reconcile and email the statements directly.

Respondent states that any work order over the \$200.00 limit was authorized by Complainants. Respondent denies any funds were mismanaged and states that the only inaccuracy occurred in 2018 due to importing and exporting numbers into a new accounting program. Respondent states the error was quickly corrected.

Based on the information provided, this a contract dispute matter. Complainants have the option to pursue legal remedies for any alleged violations of the property management contract. There is insufficient evidence that Respondent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

50. 2021032881

Opened: 5/17/2021

First Licensed: 9/21/2001

Expires: 1/22/2023

Type of License: Principal Broker

History: None

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

Complainant states she received a request from a customer on April 21, 2021, to schedule a showing for a new listing they had found online. Respondent was the listing agent. Complainant alleges that in the process of trying to find information on scheduling a show for the listing, she discovered that Respondent's license was suspended.

Respondent submitted a response stating that she was contacted by her local board on April 22, 2021, and informed that her license was suspended. Respondent states she was unaware of the suspension and believed she had renewed her E&O policy with a different insurance company for this renewal period. Respondent states that when she became aware, she immediately renewed the policy and paid the reinstatement fee on April 22, 2021. Her license was updated to active on April 22, 2021.

Respondent's license appears to have been in suspension status from January 29, 2021, through April 22, 2021. Based on the information provided, Respondent engaged in broker activity while her license was inactive. Therefore, Counsel recommends a penalty of \$1,000.00 for engaging in unlicensed activity.

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

Commission Decision: The Commission accepted counsel's recommendation.

51. 2021035971

Opened: 5/17/2021

First Licensed: 6/9/1977

Expires: 12/10/2022

Type of License: Principal Broker

History: None

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

Complainant is the tenant of an apartment located on a larger property with a main house. Complainant was contacted via by the property manager/listing agent on April 19, 2021, at about 4:15 p.m. asking for permission to show the apartment the next day. Complainant stated the next day would not work, and the property manager told her they would show the main house and view the apartment another day. At 12:31 p.m. on April 20, 2021, Respondent entered tenant's apartment and showed it accompanied by two women and a boy. Complainant had a Blink camara which recorded the showing on video. Complainant provided a copy of the video, and Respondent can be heard telling the others during the showing, "We won't touch anything. So we're not supposed to be here. They won't know we've been here."

Complainant filed a report with sheriff's department. Complainant states the incident caused her major stress and anxiety. She states she doesn't feel safe behind her own locked door.

Respondent provided a response stating he made an appointment on April 19, 2021, to show the home on the following day at noon. He was contacted in the evening on April 19 by the listing agent. Respondent states the listing agent told him that the main house could be shown the next day, but the adjoining apartment could not. Respondent states that when he arrived to show the home, there was information about the property on the kitchen island and the key to the apartment was there as well. Respondent states he thought he could enter the apartment because the key was available. He also states, however, that he felt concerned he could be wrong about permission to show the apartment as they were entering it. Respondent received a call from the broker for the property manager/listing agent that evening stating the tenant had caught Respondent and his clients in the apartment on video and was very upset. Respondent states the broker was surprised to hear the key was on the counter.

Respondent acknowledged that he did not have a good faith belief that he had the owner and/or tenant's consent as he entered the apartment with his clients. This is also confirmed by his statements on the video. Based on the information provided, the Respondent's actions meet *prima facie* elements of trespass. Therefore, Counsel recommends a \$1,000.00 civil penalty for failure to diligently exercise reasonable skill and care to all parties and/or provide services with honesty and good faith.

Recommendation: \$ 1,000.00 civil penalty for failure to diligently exercise

reasonable skill and care to all parties and/or failure to provide services with honesty and good faith in violation of Tenn. Code Ann. §§ 62-13-403 (1) and (4).

Commission Decision: The Commission accepted counsel's recommendation.

52. 2021036641

Opened: 5/17/2021

First Licensed: 12/10/2015

Expires: 12/9/2021

Type of License: Affiliate Broker

History: None

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

Complainant purchased a home on April 16, 2021, that was listed by Respondent. Complainant contends the property was listed on MLS as 5.5 acres. Complainant states she reviewed tax records that described the property as 5.0 acres. Complainant believes the discrepancy is misrepresentation and false advertising. Complainant states her original offer was the full list price and no contingencies. Complainant contends her buyer's agent cut their commission by 0.5% so that the seller could clear the amount needed to agree to the contract. Complainant asked Respondent to cut her own commission as because of the error with the property description, but Respondent refused. Complainant states Respondent did not apologize or "offer anything up."

Complainant states she paid cash for the home with no contingencies. Complainant alleges that Respondent "forced" her to sign an amendment correcting the acreage amount prior to the closing. Complainant thinks the amendment was Respondent's way of covering up her misrepresentation. Complainant believes Respondent bullied the sellers and turned them against Complainant. Complainant thinks Respondent did not want her to have the property. Complainant states she hates, distrusts, and disrespects Respondent more than anyone.

Respondent submitted a response stating that the seller had a plat that showed the property as 5.5 acres. Respondent states the seller believed until April 14, 2021, that he owned 5.5 acres. He had to call the former owner to discuss the discrepancy. The former owner told the seller that 30 feet had been taken on two sides. The current seller had never received the information.

Respondent states that the listing stated in comments that “Buyer/Buyer’s Agent to verify pertinent info including schools.” It also stated that the information in the listing was believed to be accurate but not guaranteed, and the buyer should independently verify all information prior to submitting an offer to purchase. Respondent states she provided Complainant’s agent with the name of a surveyor to get a copy of the survey, but this was not done. Once the parties realized there was a conflict with the information provided by seller, an amendment was created to address the situation and refer to the recorded deed, with the property description stating “5 acres more or less.” Although the contract did not have any contingencies, the sellers made it clear to Complainant that they would release her from the contract with earnest money refunded if the acreage did not meet her approval. Complainant chose not to terminate the contract and close on the property as is.

Respondent states Complainant contacted her directly on multiple occasions asking her to give up commission. Respondent states she explained that it was her agent’s choice to give up commission, but Respondent was not bound to do so. Respondent states she told the Complainant it was inappropriate for her to contact Respondent directly on the subject. Respondent states Complainant told her if she would give Complainant 0.5% of her commission, that “this would go away,” meaning a complaint about the acreage discrepancy.

Respondent’s principal broker also submitted a response stating that Respondent is an experienced agent who conducts herself in a professional manner in all aspects of dealing with buyers and sellers. Respondent’s broker states there was no misrepresentation. The listing at issue stated that the acreage amount was not guaranteed, and that buyer/buyer’s agent were to verify pertinent information, which they did. Respondent’s broker states the seller instructed Respondent not to do a commission reduction, and Complainant became very angry when Respondent declined to reduce her commission.

Based on the information provided, the discrepancy in acreage was quickly addressed and the Complainant moved forward with purchasing the property “as is.” Therefore, Counsel recommends closure with a letter of warning concerning the exercise of reasonable skill and care about information included in a listing.

Recommendation: Letter of warning regarding diligent exercise of reasonable skill and care.

Commission Decision: The Commission accepted counsel’s recommendation.

53. 2021032191

Opened: 5/17/2021

Unlicensed

History: None

Complainant is a Tennessee resident. Respondent is a construction and development company.

Complainant states he entered into an agreement with Respondent to construct a home. Complainant alleges he encountered multiple delays and was concerned about the quality of the lumber used in the framing and the length of time to make requested changes. Complainant states he was asked to quickly make selections regarding appliances, tiles, and other features. Complainant hired an outside inspector to conduct the framing and states the report addressed concerns about lumber quality and the possibility of mold and beetles. Complainant contends that he received an email from Respondent stating he either could get his deposit back or move forward with the project without addressing the new concerns. Complainant wants a refund on his deposit.

The co-owner of the Respondent company submitted a response on behalf of Respondent. Respondent states the complaint pertains to a building contract between Respondent and Complainant concerning the building of a custom home. The owner states Complainant was in breach of the violation of the building contract and the company had approached the Complainant to terminate the contract. A mutual release was negotiated and executed by all parties. Respondent states that Complainant was refunded the money.

Respondent states it is a construction and development company and is not a real estate brokerage.

This matter appears to be a contractual dispute between the Complainant and Respondent. Complainant does not allege that Respondent was engaged in brokerage activity, and there is no evidence of such activity. Accordingly, this matter is outside the Commission's jurisdiction. Moreover, Respondent was the owner/seller of the property, and, as such, the transaction would be exempt from the Commission's rules and statutes pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(F).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

54. 2021026481

Opened: 5/17/2021

First Licensed: 2/1/2002

Expires: 6/6/2023

Type of License: Real Estate Firm

History: None

Complainant is an out-of-state resident. Respondent is a licensed time share registrant.

Complainant purchased a timeshare from Respondent during a phone call in 2018. Complainant contends a salesperson for Respondent gave a pitch as to why Complainant should purchase the timeshare. The salesperson told them that they could rent for additional income to offset the mortgage or maintenance fees, that they would receive bonus points, and that the timeshare would build equity. Complainant alleges that the salesperson became pushy when he told them he had doubts. Complainant states the salesperson brushed off Complainant's hesitation and said they would drop the price.

Complainant states he was not told that the maintenance fees would go up every year. The timeshare has become more expensive than Complainant anticipated, and Complainant does not wish to keep it.

Respondent submitted an answer stating that Complainant purchased a vacation interest on October 8, 2018. Respondent states Complainant's participation in the telephonic sales presentation was voluntary, and Complainant had the opportunity to disconnect the call at any time. Respondent states that the purchase agreement signed by Complainant provides as follows: “[b]y signing below, purchaser acknowledges having read and agreed to all such terms and conditions . . . No purchaser should rely upon representations other than those included in this agreement and in the documents referred to herein. . . The parties hereto agree that this Agreement, along with the documents referred to herein, are the only agreements

and disclosures between them. *Purchaser should not rely upon any representations, oral or written, which are not herein set forth.*"

Respondent states that the Purchaser/Member Beneficiary Acknowledgment executed by Complainant addressed the maintenance fee structure and dues for subsequent years. The purchase agreement provided for a ten-day rescission period in bold immediately above Complainant's signature block. Respondent states that Complainant did not cancel within the ten-day rescission period.

There is insufficient evidence that Respondent violated the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period for the contract has expired. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for a claim concerning the contract has not yet expired should Complainant decide to pursue a cause of action.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

55. 2021035351

Opened: 5/17/2021

First Licensed: 1/18/2019

Expires: 1/17/2023

Type of License: Time Share Salesperson

History: None

Complainant is a Tennessee resident. Respondent is a licensed timeshare salesperson.

Complainant states he attended a sales presentation on March 5, 2021. He states that he was asked to meet with another sales representative (Respondent) on his way to leave. Complainant alleges that he was told by Respondent that there would be no additional fees, and that he was purchasing a membership only because he already had a timeshare with the club. Complainant states he was told that the total charge would be \$3,995.00, and that he could transfer his points through an exchange program. Complainant states Respondent went over the contract with him but scrolled up and down on an iPad at a fast pace. He received a copy after they finished. Respondent states his credit card was charged before he received the copy of the

contract. Complainant is seeking a refund of \$3,995.00.

Respondent states that every guest who decides to move forward with a purchase has to sign and agree to the membership agreement at the time of purchase, which covers the contract terms and conditions. Respondent states guests initial their acknowledgement and understanding of the terms and conditions regarding how the program works and are provided copies at the point of sale. Respondent states he is an exit representative and spent approximately 5-10 minutes immediately after purchasers complete a 1 – 3 hour sales presentation. Respondent states purchasers are given time to read and think about the agreement.

There is insufficient evidence that Respondent violated the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period for the contract has expired. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for a claim concerning the contract has not yet expired should Complainant decide to pursue a cause of action.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

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