



**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 May 07, 2021, at 8:30 a.m. CST at the Jackson City Hall located at 101 E. Main Street, Jackson, TN 38301. 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 Marcia Franks, Commissioner Steve Guinn, Commissioner Jon Moffett, Commissioner Joan Smith, Commissioner Stacie Torbett, & Chairman John Griess. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Chief Counsel Anthony Glandorf, Deputy General Counsel Mark Green, 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 May 07, 2021 board meeting agenda was submitted for approval.

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

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

Motion to approve the April 07, 2021 minutes was made by Commissioner Guinn and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

INFORMAL CANDIDATE APPEARANCE

Angela Powell and Principal Broker Corey Hammonds appeared before the commission to obtain approval for Ms. Powell's affiliate broker license.

Motion to approve Ms. Powell was made by Commissioner Diaz and seconded by Commissioner Farris. Motion passed 7-2 by roll call vote with Commissioner Begley and Vice-Chair Franks voting against.

INFORMAL APPEARANCE

Mr. Billy Featherstone, Sr. appeared before the Commission for an informal appearance. The Commission deferred making a decision regarding licensure to the June meeting.

WAVIER REQUEST

Director Maxwell presented Alexander Leczinsky to the Commission. Mr. Leczinsky requested exemption from retesting after license expiration over a year.

Motion to deny the request was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed 6-2 roll call vote. Commissioner Farris and Commissioner Torbett voting against. Chairman Griess abstained from the vote.

EDUCATION REPORT

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

Motion to approve courses M1-M85 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously by roll call vote.

Education Director Ross White presented Instructor Bios to the commission.

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

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the topics below.

- **PSI:** Director Maxwell advised the of issues experienced by candidates and education providers. PSI is working to create documentation for providers regarding registration to alleviate some of the issues.
- **MISCELLANEOUS:** Director Maxwell advised that legal is continuing to work through outstanding E&O violations and Principal Broker consent orders related to E&O violations.

COMMISSION DISCUSSION:

The Commission discussed the ARELLO Mid-Year meeting to be held in San Antonio, Texas. Commission discussed openings for two commissioners to attend this meeting. Commissioner Farris and Commissioner Diaz voiced interest. The Commission approved two commission members and three staff members to attend.

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 1-66 with exception of the following cases, which were pulled for further discussion:

2021016731, 2021019571, 2021023791, 2020063421, 2021006971, 2021020791, 2021016121, 2021019181, 2021023331, 2021021371, 2021011561. This motion was made by Commissioner Diaz and seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2021016731, Commissioner Farris made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Torbett. Motion passed 8-1 with Vice-Chair Franks voting against.

After further discussion by the Commission on complaint 2021019571, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Moffett. Motion passed 8-1 with Commissioner Farris voting against.

After further discussion by the Commission on complaint 2021023791, Vice-Chair Franks made the motion **to accept counsel's recommendation and voted to increase the civil penalty to \$1000.00 and open a complaint against the Principal Broker**. The motion was seconded by Commissioner Diaz. Motion passed 5-4 with Commissioner Farris, Commissioner Guinn, Commissioner Torbett, and Chairman Griess voting against.

After further discussion by the Commission on complaint **2021016121**, Vice-Chair Franks 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 **2021019181**, Commissioner Farris made the motion **to accept counsel's recommendation but voted to decrease the civil penalty to \$500.00**. The motion was seconded by Commissioner Diaz. Motion passed 8-1 with Vice-Chair Franks voting against.

After further discussion by the Commission on complaint **2021023331**, Commissioner Farris made the motion **to issue a Letter of Warning to Respondent regarding failure to exercise reasonable skill and care regarding the receipt of earnest money**. The motion was seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint **2021021371**, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint **2021011561**, Vice-Chair Franks made the motion **to accept counsel's new recommendation**. The motion was seconded by Commissioner Guinn. Motion passed 8-1 with Vice-Chair Franks voting against.

After further discussion by the Commission on complaint **2020095251**, Commissioner Guinn made the motion **to accept counsel's new recommendation**. The motion was seconded by Commissioner Moffett. Motion

passed unanimously by roll call vote.

SHILINA BROWN:

1. 2021002421

Opened: 3/1/2021

Unlicensed

History: None

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

The Complainant purchased a home from the Respondent as a turnkey investment in December 2019. The home is now owned by the Complainant's company. The Respondent was the property manager of the home until January 11, 2021. The contract required the Respondent to pay the Complainant \$1,350/month for a two-year guarantee. The last payment was to be received on September 15, 2020. The owner of the Respondent company owes \$5,000 in rent money and the Complainant is unsure whether the home is still occupied. The Complainant has attempted to contact the Respondent and has not received a response. The last communication was on January 4, 2021 and the Respondent assured the Complainant the money would be wired to the Complainant by the end of the day.

The Respondent did not provide a response and all mail sent to the Respondent has been returned. We are unable to locate the Respondent. This is being forwarded to the Respondent again based on updated addresses obtained through the SOS for the company.

Recommendation: Authorize a contested case proceeding and allow settlement by Consent Order and payment of a \$1,000 civil penalty for Respondent's violation of operating as an unlicensed real estate firm in Tennessee.

Commission Decision: The Commission accepted counsel's recommendation.

2. 2021015781

Opened: 3/16/2021

First Licensed: 6/24/1997

Expires: 8/12/2022

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent demanded all offers had to be submitted by March 1, 2021. The Complainant's real estate agent submitted the offer on March 25, 2021. The Complainant's agent also requested the Respondent advise if there was a multiple offer situation, so the Complainant could submit a best and final offer. The Respondent agreed and later the Complainant learned that another offer was accepted. The Respondent never notified the Complainant's real estate agent and did not wait until the deadline or without reaching out to the individuals that submitted an offer to obtain the best and final offers.

The Respondent provided a response and stated there were multiple offers on this property and many of them were over the asking price. The listing for the property became active for the property on February 18, 2021. There were 29 showings scheduled for the weekend. Due to an ice storm, the Sellers requested the timeline be moved back a week. All agents were notified the showings were cancelled and the active date was moved. The listing was moved to Active status on the MLS on February 25, 2021. At this point, there were 63 showings scheduled. By Friday morning, there were 78 showings scheduled for the property and the MLS deadline was Monday at Noon. The Complainant contacted the Respondent directly about the property and made an inquiry about the offer and deadlines. The Respondent found out the Complainant was represented by a real estate agent and the Respondent began to copy the agent in all communications so the Buyer Agency Agreement was not violated. The Complainant would repeatedly reply only to the Respondent and the Respondent had to repeatedly add the Complainant's real estate agent in the response back to the Complainant. On Thursday, February 25, 2021, the Respondent received an offer that was a bit higher than the asking price and had a financing contingency. The offer deadline was March 1, 2021 and the showings had not started. The Respondent did not provide a response to the Complainant or the Complainant's real estate agent. After the listing went active, there was a small open house and the Complainant attended. The Respondent later received an offer that was \$60K over the asking price of the home. The Complainant discussed this with the Principal Broker and the Principal Broker advised the Respondent the Seller had the right to accept an offer at any time and can accept any offer. The Seller wanted to accept the offer and not wait until the deadline. The Seller accepted to do an immediate notification to all agents that an offer had been accepted and the Seller was accepting back-up offers. The Sellers accepted the offer and it was 24% over their asking price. After the Complainant filed the complaint against the Respondent, the Complainant's real estate agent indicated the Complainant did not realize that an actual complaint was filed and did not intend to pursue the complaint.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

3. 2021016151

Opened: 3/16/2021

First Licensed: 11/4/2015

Expires: 11/3/2021

Type of License: Affiliate Broker

History: None

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

The complaint was filed by the Buyer's agent for a property being purchased for \$299,000 with \$9,000 to be paid in closing costs by the Sellers. The home went under contract on January 28, 2021. The appraisal from the lender was issued on February 24, 2021 and was appraised for \$290,000. An amendment was sent on February 24, 2021 to change the purchase price. The Selling agent stated the Sellers would not cover the closing costs at the newly appraised amount. The appraiser was contacted on February 25, 2021 to request a reassessment of the property value. The Buyers were notified the Sellers were not willing to cover the closings costs and signed the notification and it was e-mailed to the Respondent on February 25, 2021. The Respondent sent an addendum to the Purchase and Sale Agreement on February 25, 2021. The Sellers agree to terminate the contract once they received proof of the appraisal amount and then soon after stated they agreed to continue with the purchase and agreed to pay the closing costs. The Sellers were going through a divorce and the personal information was provided about the details of the sale of the home from the divorce decree. The Complainant sent the notification on February 25, 2021 and no further documentation needed to be signed because the deal had been canceled. The lender e-mailed all parties to deny the loan for the Buyers on February 26, 2021. An official loan denial letter would be produced once the bank processed the request. The Seller still send a second addendum to the contract because they had not received proof that the financing was cancelled because of the appraisal. The Complainant alleges the Respondent contacted the Buyers' family member (sister-in-law) on February 26, 2021 to discuss the purchase of the home by the Buyers. The Respondent accused the Complainant of lying to the Buyers about what the Sellers were willing to pay for closing costs. On March 1, 2021, the Buyers were contacted again by the Sellers. The Seller contacted them and threatened them with a breach of contract and other threats and demands. The Complainant alleges the Respondent acted in an unprofessional and unethical manner in dealing with this transaction and the contract. The Complainant also learned the Respondent also contacted the appraiser, contacted the Complainant's clients and continued to contact them after the contract has been cancelled.

The Respondent represented the Sellers who were in the process of a divorce proceeding and was assisting them with the sale of the home as part of the divorce settlement. The Lender had just completed the appraisal. The Complainant indicated the appraisal was less than the expected price of \$299,000 and was appraised at \$290,000. The Complainant indicated a counteroffer would be made to lower the offer to the level of the appraisal. Under the terms of the divorce decree only one of the Sellers would be paying the closing costs. The initial contract with the Buyers had included \$9,000 in Seller paid closing costs for the home. In order for this term to remain the same, both Sellers would have to agree to a total reduction in the price of \$18,000 and with one of them paying the additional \$9,000 in closing costs. The subsequent counteroffer was made while

the Respondent was out of town and the Respondent was not sure if the Sellers would accept this counteroffer. The Respondent did message the Complainant some of the concerns with the counteroffer. The Respondent was in the process of relaying the counteroffer and getting the necessary permissions from each of the Sellers for the counteroffer. The Respondent also contacted the appraiser to get further information about the appraisal amount and the appraiser directed the Respondent to the lender. The appraiser was not being asked to change the value. The Sellers merely wanted more information concerning the appraisal. On February 25, 2021, the Respondent received notification from the Complainant the contract was being terminated because of the low appraisal. The Respondent had not even been able to fully discuss the situation with the Sellers and provide them with all the necessary information. The Respondent immediately contacted the Complainant and advised the Complainant twice by two separate messages that the Complainant was in the process of relaying the details of the counteroffer and getting the necessary permissions from the Sellers. The Complainant stated the Buyers were still intent on cancelling the entire transaction based on the low appraisal. The Respondent asked the Complainant to attach a copy of the appraisal to the notification of cancellation since the executed contract was being rescinded based on the appraisal. The Complainant did not comply and did not attach the appraisal. The Complainant later stated to the Respondent that the lender would not allow the appraisal to be sent to anyone. The Respondent was merely attempting to make sure that there was some sort of proof showing the deficient appraisal since this term was the entire reason for the rescission of the contract. The Sellers were still at a loss and decided to send an addendum to the contract with the new terms. At the end of the week, the lender sent an e-mail regarding the appraisal. The lender sent a second denial letter claiming an issue with Buyers' collateral. This was conflicting information from what was provided by the Complainant. The Respondent did contact the sister-in-law of one of the Buyers on the same day and the relative referred the Respondent to the Complainant. The sister-in-law also indicated the Buyers were never told about the acceptance of the price reduction and the payment of the closing costs by the Sellers. The Sellers were still confused and requested to speak with the sister-in-law and contacted the relative. Also, during this time, the Seller learned the Buyers had made an offer on another home the previous Wednesday after visiting the Seller's home and second time with their children. This was never relayed to the Respondent by the Complainant. The Complainant sent a termination letter after the offer was made on the other home. There were still negotiations going on with the Respondent's Sellers. The Respondent does not believe any of the Respondent's actions in the transaction were unprofessional or unethical. The Sellers were entitled to a reasonable period to decide concerning the counteroffer. The Complainant failed to properly communicate with the Respondent and provide all necessary information and was not honest with the Respondent. If the Complainant had been more transparent, this would have reduced the confusion by the Respondent and the Sellers. In fact, it was the Complainant who acted in an unprofessional and unethical manner. There was never an escrow release submitted to the Sellers. The Respondent is unaware of the status of the escrow even today. These are still open questions. The escrow amounts are not being held by the Seller. Lastly, the personal information concerning the divorce decree was public record and available to all to review and Complainant and the Buyers were well aware the original agreement set forth that one of the Sellers was responsible for the payment of the closing costs due to the impending divorce.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

4. 2021018031

Opened: 3/16/2021

First Licensed: 11/4/2015

Expires: 11/3/2021

Type of License: Affiliate Broker

History: None

Complainants are the Buyers of a home and the Respondent is a licensed Affiliate Broker and was the listing agent representing the Sellers of a home.

The Complainants allege the Respondent has attempted to hold the earnest money since the contract cancellation date and has demanded the release of the appraisal. The Complainant alleges the Respondent contacted the Complainant's real estate agent to get the Complainants to sign another document with addendums for the property for which there was no longer a contract. The Respondent has even contacted the Complainant's family members to attempt to obtain the Complainants phone numbers so the Respondent can talk to the Complainants. The Respondent contacted family members on multiple occasions and when the family members would not respond, the Respondent used a different number to reach the family members. The Respondent attempted to renegotiate the sale with the Complainants and the Respondent advised the Complainants what the Sellers were willing to sell the property for and how much would be spent on closing costs by the Seller. The Complainant alleges the Respondent acted unprofessionally, harassed the Complainant and violated the Complainant's privacy.

The Respondent represented the Sellers who were in the process of a divorce proceeding and was assisting them with the sale of the home as part of the divorce settlement. The Lender had just completed the appraisal. The Complainant indicated the appraisal was less than the expected price of \$299,000 and was appraised at \$290,000. The Complainant indicated a counteroffer would be made to lower the offer to the level of the appraisal. Under the terms of the divorce decree only one of the Sellers would be paying the closing costs. The initial contract with the Buyers had included \$9,000 in Seller paid closing costs for the home. In order for this term to remain the same, both Sellers would have to agree to a total reduction in the price of \$18,000 and with one of them paying the additional \$9,000 in closing costs. The subsequent counteroffer was made while the Respondent was out of town and the Respondent was not sure if the Sellers would accept this counteroffer. The Respondent did message the Complainant some of the concerns with the counteroffer. The Respondent was in the process of relaying the counteroffer and getting the necessary permissions from each of the Sellers for the counteroffer. The Respondent also contacted the appraiser to get further information about the appraisal amount and the appraiser directed the Respondent to the lender. The appraiser was not being asked to change the value. The Sellers merely wanted more information concerning the appraisal. On February 25, 2021, the Respondent received notification from the Complainant the contract was being terminated because

of the low appraisal. The Respondent had not even been able to fully discuss the situation with the Sellers and provide them with all the necessary information. The Respondent immediately contacted the Complainant and advised the Complainant twice by two separate messages that the Complainant was in the process of relaying the details of the counteroffer and getting the necessary permissions from the Sellers. The Complainant stated the Buyers were still intent on cancelling the entire transaction based on the low appraisal. The Respondent asked the Complainant to attach a copy of the appraisal to the notification of cancellation since the executed contract was being rescinded based on the appraisal. The Complainant did not comply and did not attach the appraisal. The Complainant later stated to the Respondent that the lender would not allow the appraisal to be sent to anyone. The Respondent was merely attempting to make sure that there was some sort of proof showing the deficient appraisal since this term was the entire reason for the rescission of the contract. The Sellers were still at a loss and decided to send an addendum to the contract with the new terms. At the end of the week, the lender sent an e-mail regarding the appraisal. The lender sent a second denial letter claiming an issue with Buyers' collateral. This was conflicting information from what was provided by the Complainant. The Respondent did contact the sister-in-law of one of the Buyers on the same day and the relative referred the Respondent to the Complainant. The sister-in-law also indicated the Buyers were never told about the acceptance of the price reduction and the payment of the closing costs by the Sellers. The Sellers were still confused and requested to speak with the sister-in-law and contacted the relative. Also, during this time, the Seller learned the Buyers had made an offer on another home the previous Wednesday after visiting the Seller's home and second time with their children. This was never relayed to the Respondent by the Complainant. The Complainant sent a termination letter after the offer was made on the other home. There were still negotiations going on with the Respondent's Sellers. The Respondent does not believe any of the Respondent's actions in the transaction were unprofessional or unethical. The Sellers were entitled to a reasonable period to decide concerning the counteroffer. The Complainant failed to properly communicate with the Respondent and provide all necessary information and was not honest with the Respondent. If the Complainant had been more transparent, this would have reduced the confusion by the Respondent and the Sellers. In fact, it was the Complainant who acted in an unprofessional and unethical manner. There was never an escrow release submitted to the Sellers. The Respondent is unaware of the status of the escrow even today. These are still open questions. The escrow amounts are not being held by the Seller. Lastly, the personal information concerning the divorce decree was public record and available to all to review and Complainant and the Buyers were well aware the original agreement set forth that one of the Sellers was responsible for the payment of the closing costs due to the impending divorce.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

5. 2021017211

Opened: 3/16/2021

First Licensed: 8/18/2003

Expires: 2/27/2022

Type of License: Principal Broker

History: 2017 Consent Order for Failure to Exercise Reasonable Skill and Care; 2019 Consent Order for Failure to Supervise an Affiliate due to Affiliate's lapse in E&O insurance

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

The Complainant alleges the Respondent listed a property as coming soon for over a month. The Respondent has not shown the property and has not brought any offers to the Sellers and claims the listing is not active. There is an active MLS listing for the property.

The Respondent provided a response and stated on January 30, 2021, the Exclusive Right to Sell Listing Agreement was signed by the Sellers stating a "Coming Soon" sign would be placed on the property for three weeks to allow time for renovations. There was also going to be an estate sale and the property was being cleaned out by the Sellers. On February 12, 2021, the Respondent received an e-mail about a Buyer that wanted to place an offer on the home and the Respondent relayed the offer to the Sellers and this offer was \$25,900 below the list price. The Sellers could not show the property until it was an active listing. The listing went active on March 5, 2021. The Complainant's Buyers made another offer of \$345,000, however, the Sellers accepted a cash offer with no appraisal contingency for \$360,000 and a back-up offer of \$360,000.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

6. 2021017801

Opened: 3/16/2021

First Licensed: 8/18/2003

Expires: 2/27/2022

Type of License: Principal Broker

History: 2017 Consent Order for Failure to Exercise Reasonable Skill and Care; 2019 Consent Order for Failure to Supervise an Affiliate due to Affiliate's lapse in E&O insurance

The Complainant is an anonymous Tennessee real estate agent. The Respondent is a licensed Tennessee Principal Broker.

The Complainant states the Respondent has not been ethical about the process concerning the listing of this property and other properties. The Complainant alleges the Respondent has not been submitting the offers to the Sellers. It appears the Respondent waits to present the offers all at once allowing the Sellers to pick the best offer. The Respondent waited to let everyone know that the Sellers picked the offer until the next day and states the property is under contract.

The Respondent provided a response and stated on January 30, 2021, the Exclusive Right to Sell Listing Agreement was signed by the Sellers stating a "Coming Soon" sign would be placed on the property for three weeks to allow time for renovations. There was also going to be an estate sale and the property was being cleaned out by the Sellers. On February 12, 2021, the Respondent received an e-mail about a Buyer that wanted to place an offer on the home and the Respondent relayed the offer to the Sellers and this offer was \$25,900 below the list price. The Sellers could not show the property until it was an active listing. The listing went active on March 5, 2021. The Complainant's Buyers made another offer of \$345,000, however, the Sellers accepted a cash offer with no appraisal contingency for \$360,000 as well as a back-up offer of \$360,000.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

7. 2021016731

Opened: 3/16/2021

First Licensed: 6/17/2020

Expires: 6/16/2022

Type of License: Real Estate Firm

History: None

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

The Complainant alleges the Respondent is not abiding by the Commission's advertising rules. The Respondent only listed the Complainant's name and company of the Respondent's listing. The Respondent did not list an office phone number or any phone number, which is a requirement in any advertising according to the Commission's advertising rules.

The Respondent provided a response to the complaint. The Respondent is a listing service and was formed to provide listing services to certain new construction home builder clients and has only recently started operations in the State of Tennessee. The Respondent is a subsidiary of a larger entity and the Respondent does not control or operate the larger entities listings. The Respondent subsidiary contacted the larger parent corporation and advised them that there should be a phone number with the listing brokerage information on all Tennessee listings. The Respondent believes this was a temporary error with the site. The phone numbers of listing agents are visible on listings.

Recommendation: Letter of warning about the Commission's advertising rules concerning listings.

Commission Decision: The Commission voted to close this complaint.

8. 2021015501

Opened: 3/22/2021

First Licensed: 5/12/1987

Expires: 9/9/2021

Type of License: Affiliate Broker

History: None

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

The Complainant worked with the Respondent as the listing/transaction coordinator from the end of 2019 until June 2020. The Complainant had problems keeping the Respondent's listing in compliance. The Complainant alleges the Respondent repeatedly requested the Complainant engage in unethical activity such as altering executed documents, listing property, reducing the price of a property without the Seller's permission and without obtaining the signed paperwork.

The Respondent provided a response and stated the incident in question referred to by the Complainant concerning the change in the commission percentage amount was related to a transaction involving a close friend that listed a property for sale with the Respondent. There was a standard pre-printed contract with the standard 6% commission and the Respondent agreed to reduce the commission to 5%. The commission was changed on the form with the Seller's permission. The Respondent did not list a home on MLS prior to obtaining the necessary documents from the Seller. The Seller wanted to list the property immediately and was on her way to sign the documents. The property was listed on MLS. The Respondent stated the Complainant was to serve as the Respondent's assistant. The Complainant held a secretarial position and was responsible for relaying telephone and other messages to the Respondent and performed secretarial tasks. The Complainant was never involved in explaining contract documents to any individual(s). The Respondent has been a licensed real estate agent for 28 years and is aware of the responsibilities and duties of a real estate assistant and never asked the Complainant perform any functions involving drafting documents or to act as a broker or provide real estate services to any individual. The Respondent never asked the Complainant act in an unethical manner. The Respondent has filed a civil lawsuit against the Complainant for submitting fraudulent invoices and believes this complaint was filed against the Respondent in retaliation for the filing of the lawsuit against the Complainant.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

9. 2021017321

Opened: 3/22/2021

First Licensed: 10/4/2006

Expires: 10/3/2022

Type of License: Affiliate Broker

History: None

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

The Complainant stated the Respondent was the real estate agent on a transaction involving the sale of real property in January 2021. On February 24, 2021, the Complainant requested the Respondent list a property the Complainant was selling. There were several things discussed during this meeting by the Complainant and the Respondent. Some of the matters discussed were personal and confidential concerning investments and future real estate purchases and plans. The Complainant alleges the Respondent divulged this information to other individuals without the Complainant's permission. The Complainant alleges this was done in a derogatory manner and violates the client/agent relationship. The Complainant alleges the Respondent did this purposefully and maliciously this led to decisions being made by others in the HOA and caused monetary damages to the Complainant. The Complainant alleges the Respondent breached the trust and confidence of the Complainant. The Complainant requests the Commission issue a formal reprimand to the Respondent. The Complainant claims personal financial information is one of the most important items and it is unfathomable a licensed real estate agent would freely share this information with other individuals.

The Respondent provided a response to the complaint. The Complainant contacted the Respondent about selling a lot in Tennessee. The Complainant wanted the listing and the contract for sale to be in his girlfriend's name when the property was sold. The Respondent had the property listed and was the designated agent for the Seller. The Complainant was not a party to the transaction. The home was sold by the Complainant's girlfriend. The Respondent has been a licensed real estate agent for fifteen years and has never had a complaint filed against her and never been sued in any real estate transaction. The Respondent had a total volume of sales of \$32,000,000. The Respondent did not have an agency relationship with the Complainant in the transaction. Also, the Respondent denies providing or divulging any of the Complainant's financial information to any other individual in a derogatory or indecorous manner. There was no agency relationship between the parties and the Respondent did not have a fiduciary duty to the Complainant.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

10. 2021017711

Opened: 3/22/2021

First Licensed: 3/31/1992

Expires: 8/23/2022

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent shows up at various properties owned by the Complainant's clients and attempts to meet with the client and drop off written material that contains false and slanderous material about the Complainant in order to gain the business of the client. The Respondent is also a singer/songwriter and is attempting to meet the Complainant's music industry clients. During a recent transaction, the Respondent behaved in a demeaning manner, lacked professionalism and attempted to manipulate the client with written slander against the Respondent. The Complainant alleges the Respondent has violated several laws, rules and policies of the Tennessee Real Estate Commission and the Association of Realtors®.

The Respondent provided a response and alleges the Complainant filed this complaint in retaliation to the complaint filed by the Respondent against the Complainant. The Respondent alleges the Complainant made an error and sent an e-mail apologizing to the Respondent about the "hiccup" concerning the signing of an amendment to the contract. The Respondent claims the Complainant is trying to shift the focus away from the Complainant's own unethical behavior in a transaction and trying to "save face" with the Complainant's client. There were three major concerns in the transaction the Complainant handled: (1) the Complainant never provided a signed property disclosures or agency disclosure; (2) the MLS sub-agency fee was 2% and posted on the MLS along with the all the Respondent's required disclosures and the Complainant refused the 2% commission stating the Complainant only works for 3% commissions; and (3) the Complainant failed to do the proper due diligence, never viewed the property, or had an inspection done on the property. The architect called the City Manager to determine if warehouse space was allowed at the property location. The Respondent claims the amendment the Complainant was attempting to get signed was an attempt to allow the Buyer to walk away from the closing. The Complainant's motives were to get an extension from the Respondent's client for \$5,000 non-refundable earnest money and allow the Buyers to walk away from two deals. The Complainant needed to find a way to cancel the contracts when her client was told that they could not build what they wanted to on the property. The Complainant claims her client wanted a 60-day feasibility study and sent the Respondent an amendment. The Seller refused to extend the feasibility period. The Complainant was trying to sabotage the deal. It was not until the Buyer realized the extension would be granted, the Complainant sent an e-mail to the Respondent and stated the closing would be held the following day and sorry for the "hiccup."

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2021018731

Opened: 3/22/2021

First Licensed: 11/3/2014

Expires: 11/2/2022

Type of License: Affiliate Broker

History: None

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

The Complainant met with the Respondent to see homes in particular subdivision. The Respondent told the Complainant the lots were being purchased extremely fast and the it would be necessary to pay a deposit as soon as possible if the Complainant was interested in purchasing a lot. The Complainant was interested in purchasing the lot to build upon and went to the bank to obtain a Cashier's Check. The Complainant needed to move at the end of September 2021 and the Respondent advised that to close during that period it was important to immediately place a deposit on the lot. The Respondent advised the Complainant would have to quickly begin the process to build a home immediately. The Complainant took the deposit monies to the Respondent and the Respondent stated the earliest closing date would be at the end of Fall 2021 (December 2021) or early Spring 2022. The Complainant could not afford to lease premises in the interim period after vacating the current premises and pay \$1,700 for rent and pay a mortgage of \$2,800. The Complainant contacted the Respondent and requested a full refund for the lot and the Respondent stated it was too late to obtain a refund and a refund for the lot deposit would be credited at the closing of the new home build. The Complainant alleges the Respondent was unprofessional and misled the Complainant and his wife with false closing dates. The Complainant claims the Respondent "duped" them into submitting a lot deposit and signing a contract to build a home with misleading and incorrect information.

The Respondent provided a response and stated the he initially met the Complainant and his wife on February 6, 2021. The Complainant and his wife were interested in Lot 112. On February 8, 2021, the Respondent again met the Complainants and they wanted to purchase the lot and were eager to get the process underway because they had to vacate their current premises by September 2021. The Respondent indicated the deposit for the lot was payable to the Builder and provided the necessary information of the Builder. On February 10, 2021, the Respondent sent the Complainants the lot deposit receipt stating the lot deposit is nonrefundable until the closing. This was also explained to the Complainant when they were initially looking at the lots in the subdivision. The Respondent included all the forms and messages sent to the Complainant and the semi-threatening message from the Complainant. The Respondent never guaranteed a closing

date for the home in October 2021. The Respondent also told the Complainants that the closing date could change since the home build contract had not been signed with the builder. On March 8, 2021, the Complainant contacted the Respondent and stated they could not bring \$13,000 to \$15,000 down payment to the closing table and their mortgage broker quoted them a monthly payment of \$3,100 to \$3,300 for the home build. These amounts were more than the Complainant had expected. The Respondent did not behave unprofessionally with the Complainant and was not rude to the Complainants. The Respondent did not “make up” the closing dates. The Builder decides the closing dates and it revolves around the building schedule. The Complainant was not “duped” into signing documents and the Respondent even sent the documents via DocuSign and the Complainant should have read and reviewed all the documents. The Complainants signed the documents willingly to secure the lot. Lastly, a refund cannot be paid by the Respondent because the deposit for the lot is in the possession of the Builder. The Respondent has nothing to do with the lot purchase transaction.

There is no evidence the Respondent violated any of the laws or rules of the Tennessee Real Estate Commission. This is a contractual dispute between the Complainant and the Builder concerning a refund of the lot deposit.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

12. 2021019571

Opened: 3/22/2021

First Licensed: 8/29/2016

Expires: 8/28/2022

Type of License: Affiliate Broker

History: None

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

On March 11, 2021, the Complainant drove to check on the condition of a residence. The previous evening, the son-in-law to one of the owners asked if the Complainant had been to the home and asked if photographs were taken of the permanent alterations made by the soon to be Buyers. The Buyers had removed all the kitchen cabinets, started painting them, painted the countertops, painted the fireplace mantle, staged their personal items on the shelves, replaced lighting, painted walls, retiled one of the bathroom floors, hung family photos, had clothes hanging in the closet, applied epoxy to the basement floor, and completed some other small renovation projects. For two weeks prior to the closing, the Respondent’s Buyers were working on the home. On February 28, 2021, the son-in-law went to do the required VA repairs on the home and the Respondent’s Buyers were already in the home. The Buyers wanted to store some boxes in a closet. The son-in-law gave the Buyers permission and told them it was going to be their home and they could leave the items in the home. The Respondent indicated the Buyers had contacted the Respondent about dropping off a ceiling fan and the Respondent gave them the code. The Complainant advised

the Respondent it would be necessary to enter into a Temporary Occupancy Agreement of \$100 per day until the closing to cover the Sellers insurance, electric, water and gas charges. The Buyers verbally agreed to do so with their agent. The Buyers felt they had the permission of the son-in-law, but there was no permission to begin renovations on the home prior to the closing. The Buyers even hired a contractor to come to the home on March 13, 2021 which was nine (9) days prior to the closing to do repairs at the home.

The Respondent provided a response and stated on February 28, 2021, the Respondent contacted the Complainant to find out if they could leave some boxes in the home. The Complainant agreed and granted permission. The Buyers went to the home and met with the Seller's son-in-law who was making some VA repairs to the home for the appraisal. The son-in-law gave the Buyers a letter stating they could do whatever they wanted to do to the home because it was going to be their home. The Complainant was not aware the Buyers and the son-in-law had met and made this agreement and the Complainant was also unaware the son-in-law and the Buyers were at the house working on it at the same time. On March 11, 2021, the Complainant contacted the Respondent and stated that the Buyers were not authorized to be in the home and her Broker had told her to throw all the belongings of the Buyers outside of the home and change the lockbox code on the home. The Buyers and the son-in-law had come to an agreement without either the Complainant or the Respondent having knowledge of the arrangement made between the parties. The Respondent learned of the agreement later. The Complainant demanded \$100/day and this was suggested by the Complainant and not at the request of the Seller.

Recommendation: Authorize a contested case proceeding for failing to diligently act with reasonable skill and care by providing the Buyers to enter the home unaccompanied and providing the lockbox code to the Buyers and allow settlement by Consent Order and payment of a \$1,000 civil penalty for the violation of Tenn. Code Ann. 62-13-403(4).

Commission Decision: The Commission accepted counsel's recommendation.

13. 2021017831

Opened: 3/22/2021

First Licensed: 1/16/2013

Expires: 1/15/2023

Type of License: Real Estate Firm

History: 2021 Consent Order for failure to exercise reasonable skill and care in property management services

Complainant is a Colorado resident and owns real property in Tennessee. The Respondent is a licensed Real Estate Firm.

On February 23, 2021, the Complainant advised the Respondent the Complainant would be taking back possession of the three remaining properties managed by the Respondent. All the property records, property information, leases, ledgers and all the keys were requested from the Respondent. The Respondent refused to release any of the requested items and is holding these items and will not turn them over to the Complainant. Additionally, the Respondent has spent funds without the

owner's permission and is not distributing rent to the owner and taking income without the owner's permission. Also, the Respondent is not properly reporting owner distributions that were not received by the owner. The Respondent is also commingling funds and the ledgers are showing incorrect accounting.

The Respondent provided a response and stated a full ledger with detailed notes is attached. Each item can be backed up by a vendor invoice or a charge allowable under the signed Property Management Agreement. All work completed by the Respondent was either under an approved scope, work order, or eviction from the Owner, or due to marketing or rehab efforts allowable per the Property Management Agreement Section 1.1 and Section 8. The Owner disputed amounts charged to the ledger regarding approved rehabs. The Respondent provided the itemized transactions for each rehab and has offered a credit for amounts that were over originally approved scope. Other amounts were for work performed due to vandalism or items necessary to market the property per Section 1.1 and Section 8 of the Property Management Agreement. The owner signed Property Management Agreement with Owner for a 1-year term beginning on 3/12/2020 per Section 1.2. Owner has not provided sufficient termination notice per Section 17 of the signed Property Management Agreement. The Respondent has fulfilled all terms of the signed Property Management Agreement and is not in default per Section 14 of signed Property Management Agreement. Rent is being collected per Section 3 and Section 15 of the Property Management Agreement signed on March 12, 2020. Income is not being distributed to Owner at this time due to the outstanding balance of (-\$4,089.32) on the account as of 3/10/2021, per Section 15 of the signed Property Management Agreement. While (-\$3,168.46) amount is currently being disputed, there remains an undisputed balance of (-\$920.86) on the account as of 3/10/2021 due to Work Orders that were approved and completed by the Respondent, utility bills paid by the Respondent, and legal bills pertaining to approved evictions that were paid by the Respondent. The Complainant has confirmed receiving distributions of \$30.67 sent 4/30/2020 and \$3,899.98 sent on May 29, 2020. There have been draws of \$500.00 and \$200.00 on 5/6/2020 and these were Security Deposits. The ledger has been updated to record these as Owner Expenses rather than Owner Draws. There is no change to the Balance of the Portfolio. All funds the Owner submitted via their Owner Contributions is accounted for in the ledger and Portfolio balance. The Respondent does not commingle funds and the Respondent maintains one trust account for property owners, which contains their rent income and owner contributions, and another trust account at a different bank for tenant security deposits. The Respondent has their own checking account for business operations and there is no commingling of client or tenant funds with the Respondent's funds. The earnest money escrow account is a separate account for real estate transactions and is rarely used and is never commingled with its own funds. All bank accounts are reconciled each month by a Senior Accountant. The full ledger with detailed notes was provided on March 5, 2021. A full ledger with detailed notes is attached and each item can be backed up by a vendor invoice or a charge allowable under the signed Property Management Agreement.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

14. 2021015211

Opened: 3/22/2021

Licensed since: 09/16/2020

History: None

The Complainant is an Ohio resident and the Respondent is a Vacation Lodging Service.

The Complainant rented a home for a family vacation in Orlando, Florida. The Complainant paid extra for the heated pool and propane for the grill. Upon checking into the home on December 26, 2020, there was no heated pool and no propane for the grill. The Complainant texted someone to let them know the pool was not heated and the property manager responded and stated it would be turned on in the morning and would be heated by December 27, 2020. The few televisions in the home did not work because the backs of the remotes were missing and the batteries were also missing. The karaoke system was not what was described or pictured on the listing for the home. There was a stand for the machine, but it was not what was pictured in the listing for the home. The microphones were also supposed to be wireless and were not. The foosball table was broken and the air hockey table cord was taped. The Complainant also found roaches when the Complainant opened the oven door. The Complainant reached out to the Respondent the next morning and explained the situation with the pool, propane, bugs, the other amenities. The Respondent agreed to refund the money if the Complainant left the property. Upon finding a new place, the Respondent told the Complainant she would talk to her accountant on Monday morning to obtain the refund since it was the weekend. The Complainant and the entire family stayed another night in the rental home. The next morning, the Complainant sent a text asking for an update and she stated she was working on it. Later, the Respondent stated the accountant was out of the office and the Complainant stated she could Paypal or Venmo the refund and she stated she could not because that is not the way they conduct business. The Respondent would provide a refund and stated the Complainant and his family could leave. The Complainant did not have the extra money to secure another house and had no place to go. The Respondent stated she would send someone over to fix the pool because there were small children that wanted to swim in the heated pool. The pool repair person told the Respondent the Complainant was rude and the Respondent suddenly declared to the Complainant that no refund would be provided. The Respondent agreed to send over an exterminator and propane. The Complainant stated they needed a new grill because the bottom was missing from the grill. The Respondent agreed to replace the grill. Another pool person was sent to fix the pool because the first pool person was unable to repair the pool. The pool could not be fixed and was broken. The jets in the pool were not working either.

The Respondent provided a response. The contractual agreement states that if the amenities are not working, the Respondent will not provide a refund. However, they will do whatever is necessary to get the amenity working again. The rental fee is for the home not the amenities. The Respondent was in contact with the Complainant since the Complainant first checked in and all issues were being addressed. The pool heater was fixed and working, however, not heating as much as the Complainant wanted it to be heated. The Complainant was very hostile with the Respondent since the first contact until check-out on January 2, 2021. The Respondent did allow

them to leave if they wanted and provide a refund for the other nights. An exterminator was sent to the property. Also, a propane tank was dropped off for the Complainant's use. The TVs were working when the guests checked in and the housekeeping supervisor inspected the property before the guests checked into the property. It appears the cable boxes were unplugged from the television. The Complainant and his guests used foul language and were very hostile. The Respondent told the employees that this was a hostile work environment and informed the customer service department.

This is a contractual dispute between the parties concerning the rental of the property. There is insufficient evidence of a violation of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2021018501

Opened: 3/29/2021

First Licensed: 4/24/2018

Expires: 4/23/2022

Type of License: Affiliate Broker

History: None

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

The Complainant contacted the Respondent on January 16, 2021 about viewing a property for which the Respondent was the listing agent. On January 17, 2021, the Complainant spoke to the Respondent after viewing the property with one of the Respondent's associates. The Complainant advised the Respondent she was going to the bank to discuss financing the following week and advised the Respondent the asking price was high. On January 28, 2021, the Complainant spoke to the Respondent and indicated there would be no problem obtaining financing and asked whether an offer of \$78K or \$79K would be acceptable. The Respondent contacted the Complainant on February 18, 2021 and met with the Complainant in her office. The Respondent advised the Complainant that no offer under \$80K would be accepted. The bank president reached out to the Respondent to see if an offer of \$78,500 would be accepted. The bank President was planning to relocate to the area where the home was located and would rent it from the Complainant and work on remodeling it for the Complainant. The Respondent informed the bank president by the text that the offer would be accepted. On February 23, 2021, the Respondent e-mailed the contract and provided the code to the door so the Complainant could go look at the property again and take measurements for the planned remodel. The Complainant spoke with the Respondent on February 24, 2021 and explained that the Complainant would feel more comfortable signing the contract in person. The Complainant met with the Respondent on February 26, 2021. Another possible Buyer had come to the office the day before and had an appointment to view the same property. When the Complainant arrived at the Respondent's office on February 26, 2021, the Respondent advised

the other Buyer from the previous day had submitted a higher offer. The Complainant advised the Respondent she had an appointment with the bank on March 1, 2021 to complete the financing and obtain the cash for the agreed upon financing and obtain the cash for the agreed upon purchase price and would return on March 4, 2021 to sign the contract. The Respondent advised the Complainant the Respondent would no longer accept the Complainant's offer as the Respondent had received two higher offers and accepted on of them.

The Respondent provided a response and stated the Respondent spoke with the Complainant on January 16, 2021 about a property. The Respondent was the owner/agent of the property. The Respondent discussed with the Complainant a time to view the property and a showing was scheduled the following day. Respondent's broker initially showed the Complainant the property. The Respondent followed up with the Complainant about the property the following day. The Complainant did not agree to the asking price and stated she would be contacting her bank to discuss financing options. On January 20, 2021, the Respondent contacted the Complainant to find out about her visit to the bank and the Complainant advised she had spoken with the bank president and the bank would begin the refinancing process on the Complainant's primary residence and it would allow the Complainant to purchase the property and it would be a cash purchase. On January 28, 2021, the Respondent and the Complainant met at the Respondent's office and the Complainant made a verbal offer of \$75,000. The Respondent stated she would not accept an offer less than \$78,000. Another meeting was scheduled on February 18, 2021. Later, the Respondent advised the Complainant she would not accept anything less than \$80,000. On February 23, 2021, the Respondent spoke with the Complainant by telephone and she wanted to make an offer of \$78,500 and it would be a cash purchase. The Respondent indicated she would accept the offer and the terms. On February 23, 2021, the Respondent contacted the Complainant and e-mailed the written offer. The Complainant accepted the Terms of Service and the Consumer Consent Disclosure on February 24, 2021, however, the Complainant did not complete the electronic signing procedure. On February 23, 2021, the Complainant contacted the Respondent by telephone and asked for permission to enter the property to take measurements for a bathroom vanity. The Respondent gave permission to access the property and sent the combination code by text message. The Complainant did not contact the Respondent. On February 24, 2021, the Respondent contacted the Complainant and asked about the offer that had been e-mailed to the Complainant. The Complainant later responded and indicated the Complainant would come the next Friday and sign the paperwork in-person. The Respondent had been contacted by another potential Buyer on February 24, 2021 to view the property and wanted to see the property the same day. The property was shown by an associated. The Buyer wanted to make an offer the same day and all terms were verbally discussed. The Buyer indicated the Complainant was at the property taking measurements and informed the potential Buyer the Complainant was under contract to purchase the property. The Respondent stated they were not under contract because the Complainant had not signed the contract and it was still an active listing. Also, the Complainant did not have the Respondent's permission to enter the property on this occasion. The Complainant also advised the Complainant that it would be necessary to obtain financing and as such, the contract would have to have a financing contingency. The Respondent advised the Complainant she would have to reconsider the offer. The Complainant had not even begun the refinancing process. The Respondent declined to accept the Complainant's offer and also advised the Complainant that if another offer was made, the Respondent would accept it. The Respondent was not willing to hold the property off the market to wait for the Complainant to decide and complete

the necessary financing documents. On March 4, 2021, the Respondent informed the Complainant she had accepted another higher offer. The Complainant became very adversarial and accusatory.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

16. 2021019551

Opened: 3/29/2021

First Licensed: 4/4/2014

Expires: 4/3/2022

Type of License: Affiliate Broker

History: None

The Complainant is a Tennessee resident and Buyer of real property. The Respondent is a licensed Tennessee Affiliate Broker and was the Complainant's real estate broker during the transaction at issue in the complaint.

The Complainant closed on a property on October 20, 2020 and the Respondent was the Complainant's real estate agent for the transaction. The Complainant alleges the Respondent is looking for a quick payday. The Respondent failed to advise the Complainant, he could have backed out of the home purchase if the inspection results were not satisfactory and that the Complainant could request the Seller make certain repairs before proceeding with the contract. The day before the Complainant was to close on the home, there was as strong urine smell in one of the rooms and it had not been present during previous walk throughs. The Complainant told the Respondent and the Respondent stated there was nothing the Complainant could do because it was the day before the closing and stated it was just a smell and was not there before. There was no damage to the walls or the floors from the Sellers moving out of the home. After the closing, the Complainant was forced to replace the carpet in the entire home for a total cost of \$3,500 because the carpet was filthy from pet urine that was not visible to the naked eye. There was even urine found on the walls. The Complainant had to repaint the entire home which cost the Complainant \$8,500.

The Respondent provided a response and stated the Complainant was a referral from an Internet real estate listing service. The Complainant indicated he wanted to sell his home and move to a bigger home. The Respondent prepared the listing presentation and met with the Complainant and discussed comparable sales and other information. The Complainant wanted to list the home with the Respondent. The listing agreement was fully explained and reviewed by the Complainant. The Complainant received two cash offers even before the listing went active and the Respondent presented both to the Complainant with a net proceed sheet in hand. The Complainant agreed to the \$223K cash offer and did not want to show the house if he did not have to. The Respondent also began assisting the Complainant with the search for a larger home. The Respondent found

the Complainant a home and the Complainant decided to make an offer on the property after discussing comps with the Respondent. The offer was submitted and accepted. An inspection date was set up and the Complainant used an inspector referred to by the Respondent. The Complainant began to ask the Respondent random questions concerning the contract and inspection rights. On the day of the inspection, the Complainant was scouring the home and the Respondent was concerned about the Complainant's actions. The Respondent asked the Complainant if he would like to see the step system down the street and they both took a walk and after explaining the inspection process to the Complainant, the Complainant explained he did not like what he was seeing in the home. The Respondent explained the repair proposal process and the termination clause again. Upon returning to the home, the Respondent proceeded to resume going through the home and inspecting every little item. The Complainant indicated the inspector missed a turned-up shingle over the door and the inspection was not done correctly. The home was only six years old and needed very few repairs. The home inspection report was issued stated this in writing. The Complainant agreed to write up a repair proposal for 14 items and the Respondent made sure it was detailed. The Complainant signed the proposal and it was submitted to the listing agent. The next day quotes were obtained for the repairs and it would be necessary to obtain an extension for the closing date. The Complainant also began to make accusations against the Respondent at this time and stated the Respondent never stated the Complainant could walk away from the house after the inspection. The Complainant stated the Respondent was "crooked" and claimed he should have never hired a real estate agent and just used an attorney and stated it was all the Respondent's fault and the Respondent did not have the Complainant's best interest in mind. The Respondent was shocked and appalled by these sudden allegations by the Complainant and defended himself. The Complainant wanted out of the sale and wanted to cancel the contract. The Complainant indicated he had laid off 250 people the week before and it was freaking him out. The Respondent advised the listing agent the Complainant has refused to sign the extension and did not want to move forward with the transaction. Suddenly, the Complainant contacted the Respondent and decided he wanted to go through with the purchase. The Respondent contacted the listing agent and found the Seller had only offered \$1,000 towards the repairs and said take it or leave it because of the actions by the Complainant. The contract was cancelled. The Complainant began to look at more houses with the assistance of the Respondent. The Complainant found another home. The Complainant made an offer \$1,500 over asking price to stave off multiple bids. The Seller accepted the offer and the contract was bound. At the inspection time, the Complainant wanted to use the same inspector. There were a few things that came up with the home. The termite guy found a planted termite 45 feet down the fence and put it in the report. The repair proposal and termite treatment were submitted to the Seller. The Seller agreed to the repairs and termite treatment. Suddenly, the Complainant began to question everyone about the repairs and the termite treatment and demanded that Terminix be used. It was the Seller's choice to decide on the termite service used and so long as it satisfies the lender, the Buyer cannot decide on the service provider used. The Respondent contacted the listing agent and told them to use Terminix and the Respondent would pay for half of the treatment with a commission reduction of \$530 to be paid by each side. After the termite treatment was completed, the Complainant began to question the Respondent about the completion of the repairs and when they would be completed. The Respondent would forward pictures of the completed repair work as they were being done. The walkthrough for the repairs was completed and the Seller had most of the belongings already removed from the home. At the final walkthrough, the Complainant looked over the entire home again. The Complainant suddenly claimed there was a smell of dogs in the back bedroom. The

inspection did not note any smell of dogs or stains. The Complainant read every single page during the closing and it took over one hour and all the documents were simultaneously being explained to the Complainant. The Complainant closed on the property and when he arrived at the property on the day of the closing, he contacted the Respondent and stated the house was hot, there was no electricity or water. The Complainant had failed to switch the utilities in the home. The Respondent had advised the Complainant to switch the utilities over two weeks prior to the closing and the Complainant alleged the Respondent never told him to do such a thing. Later, the Complainant contacted the Respondent stated that the house smelled like urine. The listing agent produced a receipt stating the carpets had been cleaned professional with dog treatment. The Respondent advised that he could call the carpet cleaning service and ask if they would come out again and redo the carpets and the Complainant declined and stated he would replace all the carpeting in the home. The Complainant even asked the Respondent for the Sellers new address. The Respondent refused to obtain or furnish this information to the Complainant. Three months later the Complainant gave the Respondent a no star review on multiple Internet real estate sites.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

17. 2021019931

Opened: 3/29/2021

First Licensed: 2/9/2018

Expires: 2/8/2022

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 several colleagues had advised the Complainant there were several posts on social media by a local realtor spreading false and malicious information about the Complainant's building company and the real estate team. The Respondent had publicly defamed an upcoming development the Complainant was spearheading and spread false claims that the Complainant had stolen the Respondent's custom plans. The Respondent also stated the Complainant's company is not as good as the Respondent's current company. The Complainant has never done any business with the Respondent's company and publicly shamed the quality of the Complainant's product and the integrity on public social media following. The Complainant alleges the Respondent was unprofessional and unethical.

The Respondent provided a response and deeply regrets making the posts on social media. The Respondent spent many weeks tweaking the design for an elevation at one of the spec homes and worked hard on the project. When the Respondent saw the ad for the other home builder, the

elevations appeared to be very similar and the Respondent admits to acting out of haste without thinking about the consequences of the Respondent's actions. The Respondent admits to lashing out at someone else without considering the ramifications of those acts. The Respondent is apologetic for the actions and had a lapse in judgment. The Respondent has submitted an apology letter and mailed the letter to the Complainant and asks for forgiveness of the behavior.

Recommendation: Authorize a contested case proceeding against the Respondent and allow settlement by Consent Order and payment of \$1,000 civil penalty for conduct that constitutes improper, fraudulent or dishonest dealing in violation of Tenn. Code Ann. § 62-13-312(b)(20).

Commission Decision: The Commission accepted counsel's recommendation.

18. 2021023471
Opened: 3/29/2021
Unlicensed
History: None

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

The Complainant alleges he was contacted from an individual from Indianapolis, Indiana on March 22, 2021 and the individual stated that he had been contacted the Complainant for several weeks to purchase a property in Mexico. The individual provided all the information that had been given to the individual including the Complainant's license number. The individual even had the Complainant's license number. The Complainant had never spoken to the individual and was surprised about all the information the individual had about the Complainant. The Complainant googled the phone number and it came to a number that was listed as the phone number. The Complainant contacted the number and got the voicemail message for the Complainant. The Complainant alleges the Respondent is using the Respondent's license.

The Respondent did not provide a response to the Complaint.

Recommendation: Authorize a contested case proceeding and settlement by Consent Order with payment of a civil penalty in the amount of One Thousand Dollar (\$1,000.00) for engaging in or conducting real estate business without a license in violation of Tenn. Code Ann. § 62-13-301.

Commission Decision: The Commission accepted counsel's recommendation.

19. 2021014811

Opened: 4/5/2021
First Licensed: 9/3/2020
Expires: 9/2/2022
Type of License: Affiliate Broker
History: None

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

The Complainant alleges he receives numerous robo calls from the Respondent and it involves a sale or lease of a carwash property. The return number is a Tennessee number for the Respondent. The Respondent resides in California but has a Tennessee Real Estate agent.

The Respondent and Respondent's firm provided a response and denies the allegations. The Respondent does not make any robo-calls to any clients or individuals. The Respondent does not know the phone number of the Complainant and cannot check the phone records of the Respondent. The Respondent's firm believes the Respondent may have called the Complainant concerning the availability of investment property opportunities.

The Tennessee Real Estate Commission does not have jurisdiction in this matter since there is no real estate transaction. This matter involves solicitation of real estate investment opportunities by the Respondent and there is insufficient information to indicate the Respondent has violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2021018861
Opened: 4/5/2021
First Licensed: 6/25/2018
Expires: 6/24/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and Buyer of real property in Tennessee and the Respondent is a licensed Tennessee Affiliate Broker and represented the Complainant in a real estate transaction.

The Complainant alleges the Respondent did not make the Complainant Buyer aware that the house they were buying had major water damage and there were no property disclosures provided even though the Respondent was specifically asked about water damage to the home.

The Respondent provided an extensive response to the Commission. The Respondent has been licensed since 2018 and has no prior disciplinary action. The Respondent had been working with

the Complainant and her husband for about six weeks to find a new home. The Respondent showed multiple properties and the Complainant and her husband found a home and made an offer the same day. The Respondent e-mailed the Complainant and her husband a Tennessee Residential Property Condition Disclosure form for review and signature. The Seller indicated on the form there was prior flood damage. The Seller further explained that fifteen months prior to the sale of the property, a supply line broke and caused flood damage to the middle and bottom level of the home. The Complainants signed the form without asking any questions via Dotloop and acknowledged receipt of the copy of the property condition disclosure form. The Complainants also went back to the property after making the offer and viewed it the same day. The Seller was present and walked the property with them again and the Complainants did not ask them any questions concerning the water damage to the home. The Complainants closed on the property on February 26, 2021. Also, the Complainants never asked the Respondent any further questions about the water damage to the property.

The Respondent provided all required property disclosures and has not violated any of the laws or rules of the Tennessee Real Estate Commission and made all necessary property disclosures.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

21. 2021020061

Opened: 4/5/2021

First Licensed: 9/13/2002

Expires: 12/7/2021

Type of License: Principal Broker

History: None

Complainant is a licensed real estate agent and the Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent did not allow the Complainant to perform her duties as a real estate agent and did not allow the Complainant to show properties. The Complainant alleges the Respondent told clients/customers not to work with the Complainant and the Respondent would assist them. The Complainant also alleges the Respondent has violated her fiduciary duties. The Complainant also stated the Respondent's office sign is incorrect at her office location. The Complainant did not identify the problem with the office sign and elaborate in detail in the complaint filed with the Commission concerning the details of the other allegations.

The Respondent provided a response and state the signage for the office is correct and there are no issues with the office sign. The Respondent uses the showing time to set appointments for showings. Also, any agent can call the office and speak to our office administrator or e-mail or text message to set an appointment for a showing. No agents are turned away. The Complainant was terminated by the Respondent's firm and the Complainant has left several phone messages

and texts that were not polite and the Respondent decided to block the Complainant's phone number to discontinue receipt of those voicemails and text messages.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. This matter arises from an employment dispute between the parties.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2021021291

Opened: 4/5/2021

First Licensed: 3/22/2007

Expires: 3/21/2023

Type of License: Principal Broker

History: None

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

The Complainant alleges the Respondent failed to remit a tenant's security deposit monies in a timely manner and there was a misrepresentation concerning the condition of real property. The Complainant signed a contract for the purchase of property as a real estate investment to be rented out. The property was already tenant occupied and the tenant was to stay after the purchase by the Complainant. The Seller provided a copy of the lease that was signed with the tenant on October 30, 2020 with a monthly rental amount of \$1,150 for a one-year term. The transaction closed on January 6, 2021. On the day of the closing, the Seller stated the tenant had paid the January 2021 rent and the security deposit monies were in the possession of the Seller. In mid-February, 2021, the property manager indicated the tenant had not made a payment for the February rent and the security deposit monies had not been received. The Seller finally transferred the security deposit on March 13, 2021. The Complainant also requested the Seller send the prorated January 2021 rent which the Seller stated would be transferred on the closing date. The Seller stated that the tenant had only paid 50% of the December rent and payment was late and the Tenant never paid the January 2021 rent. The Seller had represented the tenant had been current on rent payments previously. This misrepresentation by the Seller has caused financial hardship on the Complainant in paying the mortgage on the property. The Complainant estimates the damage caused to be minimum of \$4,600 and this includes the January, February and March 2021 rental payments from the tenant. The Complainant alleges the Respondent withheld material information from the Complainant in the real estate transaction.

The Respondent provided a response to the complaint. The Respondent stated on January 6, 2021, the date of the closing, the Respondent contacted the Buyer's new property manager and told them the January 2021 pro-rated rental payment and the security deposit would be delivered. The investor payments are sent on the 15th of each month. When this payment was to be made, the Respondent realized that the tenant had only paid half of the December 2020 rent and had not paid

the January 2021 rent. The tenant was contacted and indicated due a COVID-19 illness, the tenant had not worked in a few weeks and would be catching up on the rent. The Respondent advised the tenant to make the payment to the new property manager. The new property manager was advised of the situation and the information was relayed. Since the January 2021 rent had not been paid by the closing date, the new property manager was responsible for collecting these outstanding amounts. The security deposit was sent to the Complainant. The Complainant called and it was relayed that the monies had already been sent. After about a month, the property manager contacted the Respondent again and stated the security deposit had not been received. After checking with the bank, there was proof it was processed and delivered. The Complainant insists the security deposit never arrived and the Respondent sent the security deposit by Venmo since the Complainant insisted on the payment of the monies. The Respondent was going to check with the bank and if the property manager did receive it, they would provide a refund of the security deposit to the Respondent. The property manager later stated the first check from the bank for the security deposit was received. The January and February 2021 rental amounts were to be collected by the property manager.

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.

23. 2021022561

Opened: 4/5/2021

First Licensed: 2/28/2018

Expires: 2/28/2022

Type of License: Affiliate Broker

History: None

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

The Complainant alleges the home purchased was not listed on the MLS and the Respondent kept the listing as a "pocket listing." A couple of days after the Complainant approached the Respondent to sell the home, the Respondent mentioned she had a family friend interested in the property. The Complainant entered into an agency agreement with the Respondent to sell the home. The Respondent was to act as a facilitator in the transaction. After the Buyer had the property inspected, a contract was signed, it was necessary for the Complainant to complete certain repairs. The Respondent also insisted on allowing the Buyer to move-in early into the home. The Complainant agreed and signed a contract allowing for early occupancy of the home. Two days before the move-in, there was a final walkthrough. After the walkthrough, the Respondent advised the Complainant, the Buyer was very upset about issues with the home that were not on the repair contract and that should have been fixed. The Respondent indicated to the Complainant these other items should have been fixed. The repair period had expired. Also, the Buyer wanted the

Complainant to hire an electrician to fix some outlets and pay \$3,000 in cash to hire professionals to repair the items that needed to be repaired. The Respondent indicated to the Complainant this could be paid in three installments of \$1,000 a week for three weeks. The Respondent also advised the Buyers were looking at other listings. The Respondent sent long texts to the Complainants pressuring the Complainant to accept this offer and pay the Buyer or the Complainant would lose the new house that the Complainants were in the process of purchasing. The Respondent even stated the Buyer could sue the Complainant for not accepting the offer and not making the repairs to the home outside of the contract. The Respondent also contacted the Complainant's mother and insisted the Complainant should accept the offer and the Complainant's Mother agreed to meet with the Respondent and the Buyer at the property to further discuss the matter. After the meeting, the Buyer agreed to accept the home as is and proceed with the transaction. The property finally closed on March 17, 2021.

The Respondent provided a response and stated the Complainant filed a complaint in response to the representation provided as listing agent in the sale of a home. The Respondent also represented the Complainant and his girlfriend, as their agent on the potential purchase of their new home. The Respondent met the Complainant through the Complainant's girlfriend's Mother who is his neighbor and close friend. The Respondent's family often spends holidays with the Complainant and his girlfriend at his girlfriend's mother's home. The Respondent was the owner of the home. The Respondent denies this was a "pocket listing" and was listed on MLS. The Respondent provided a copy of the MLS listing and the listing agreement was signed and uploaded onto MLS on December 15, 2020 and the home was under contract on December 17, 2020. There was a price change to increase the price by \$75,000 on January 16, 2021 and to combine and purchase the additional acreage. On January 26, 2021, the status was changed to "Under Contract-Not Showing-Financing" The reason the home took so long to close was due to the additional land purchased needed to be surveyed and combined back to one parcel for one loan. The VA appraisal also came back as a "Tidewater" appraisal and required the Sellers to make certain repairs before the appraisal would be signed off. The appraisal also came back \$11,000 less than the list price reducing the sale of the home/land to \$274,000. The Respondent did not have a family friend that was interested in the property. The Respondent first met the Buyer on September 29, 2020 after the Respondent had listed and sold the Buyer neighbor's home. The Confirmation of Agency status was signed by all parties concerning the Respondent's role in the transaction. The Respondent also decided to do a new build and asked the Respondent to be the real estate agent in the transaction. This also resulted in a sense of urgency by the Complainant to close on the property and have it "Under Contract." The Exclusive Right to Sell Listing Agreement had been signed on December 12, 2020 and the property was uploaded onto MLS on December 15, 2020. The Buyer made a full asking price offer and paid her own closing costs with an additional contingency of Appraisal and Inspection. The Complainant accepted the offer. The inspection was completed on December 22, 2020 and the repair proposal was made by the Buyer on December 23, 2020 and agreed upon by the Sellers. The Respondent did not agree to make any repairs and the Complainant decided on which repairs would be done to the home. There were some items that required a qualified electrician to repair. The Complainant understood this and agreed to it. At the final walkthrough, the repairs had not been done properly. As a result, the Buyer wanted \$3,000 cash to fix the issues and the Buyer no longer trusted the Complainant to handle the repairs. The Respondent advised the Buyer that the price of the home would have to be reduced by \$3,000 and there could not be monies paid outside of the closing for the repairs. At this point, the

Complainant declined to reduce the price of the home and would not do any repairs. The Complainant stated the Buyer could buy the home "AS IS." The Respondent advised the Complainant there was a legally binding contract and the Complainant had agreed to make the repairs to the listed items and the Complainant could be sued for breach of contract if the repairs were not made to the property. At this point, the Complainant refused to communicate with the Respondent any further and would not respond to any communications. Several friends and relatives of the Complainant had contacted the Respondent and asked about the problems and what had happened between the Complainant and the Respondent. They all were seeking to help and resolve the issues and politely and professionally asked about the situation and the trouble with the sale of the property. The friend had all the repairs completed per the contract and picked up all the trash left at the home. All parties agreed to a Temporary Occupancy Agreement on March 2, 2021 and the Buyer took possession on March 9, 2021. The closing date was on March 17, 2021 and the Complainant even later requested per day rent back fee after the Temporary Occupancy Agreement was signed from March 9, 2021 to March 17, 2021. The Buyer agreed to pay the per day rent back fee.

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

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

24. 2021023791

Opened: 4/5/2021

First Licensed: 5/10/2019

Expires: 5/9/2023

Type of License: Affiliate Broker

History: None

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

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

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

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for the advertising violation of the Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that "[a]ll advertising shall be under

the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of the licensee or the name of any team, group, or similar entity.”

Commission Decision: The Commission accepted counsel’s recommendation and voted to increase the civil penalty to \$1000.00 and open a complaint against the Principal Broker.

TIMESHARES

25. 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 ground 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.

26. 2021003561

Opened: 2/22/2021

First Licensed: 8/23/2017

Expires: N/A

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

History: None

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

The Complainant alleges the Respondent engaged in deceptive acts and practices in the sale of the timeshare to the Complainant. The Complainant alleges the Respondent sold the timeshare to the Complainant fraudulently and wants a full refund. The Complainant first purchased the timeshare from the Respondent in 2013 and made a second purchase in 2019. The Complainant wanted to cancel the second purchase the next day and was denied the right to cancel the contract the next day. The Complainant is a Stage IV Breast Cancer survivor and wants to focus her life on more important things than paying money for the timeshare the Complainant never really wanted to purchase. The Complainant attended a sales presentation. The Complainant had been recently diagnosed with breast cancer. The salesperson told the Complainant if the Complainant was not satisfied the company would buy back the timeshare and the Complainant could walk away. The Complainant alleges the Respondent failed to advise of many details of the timeshare such as booking 12 months in advance and transferring the points to the vacation exchange network so they would not be lost each year. The Complainant learned about the need to transfer the points to vacation exchange network in the third year of owning the timeshare. This was never told to the Complainant during the sales pitch. In August 2019, during a family vacation at the timeshare resort, the Complainant attended another meeting and was sold a timeshare upgrade. The Complainant repeatedly tried to explain it was too expensive and the Complainant would not be able to afford the cost of the timeshare, however, the salesperson continued to persist and the Complainant made the purchase. The next day, the Complainant went to see the salesperson and wanted to cancel and the salesperson stated he would get a lower interest rate for the Complainant

from a different bank and needed a few more days. The Complainant never heard back from the salesperson. The Complainant would like to cancel the contract and receive a refund and close all personal loans associated with the timeshare.

The Respondent provided a response and stated because of the time period that has elapsed and the nature of the allegations it is difficult for the Respondent to substantiate the allegations made by the Complainant. The Respondent has fully investigated this matter and takes all such complaints seriously. The Respondent has reviewed the complaint on its own merit to determine if the allegations can be substantiated. Often it is difficult to substantiate because there is no proof to corroborate the Complainant's allegations in these types of situations and the Respondent has to rely on the Complainant's signatures acknowledging the allegations and the signatures at the time of the purchase acknowledging the Complainant's understanding and agreement. The Complainant has been an owner since 2013. On March 13, 2018, the Complainant upgraded the purchase to receive an annual allocation of 210,000 points. The payment was drafted on April 23, 2018 in the amount of \$340.23 for the purchase. On February 15, 2019, the Complainant was in contact with the Financial Services Department because the Auto Pay of the monthly payments had been declined. The Complainant did not advise the Financial Services Department at that time that there was no knowledge of this purchase and had been making the payments during this period. On August 4, 2019, the Complainant agreed to an equity trade agreement and addendum and traded the existing contract to utilize the equity towards the purchase of another contract. The Complainant voluntarily entered into this agreement also. The Complainant received a 336,000 point allocation. The contract documents signed and received by the Complainant fully disclosed the agreement between the Complainant and the Respondent. The Ownership Review, Exhibit to Ownership Review Buyer's Acknowledgment and Quality Assurance review which were also signed and received by the Complainant. These documents are provided to avoid misunderstandings and to aid timeshare owners to understand the products being purchased. There are specific written disclosures provided regarding ownership, discounts, trade equity, down payment, monthly loan and club assessment payments, programs, resale assistance, rental income, investment and tax benefits. Purchasers are also given rescission rights that provide them the opportunity to carefully review and reconsider all provisions in the contract. After the rescission period, however, the contract becomes legally binding. On March 31, 2020, she expressed concerns that she was unable to make payments because she had lost her job due to Covid-19. Based upon the information received, the documentation Respondent did not find any information to substantiate the allegations by the Complainant or to warrant a cancellation of the contract. The Respondent is unable to grant the request to cancel the purchase. The Complainant may be eligible for a financial hardship program.

The Complainant made the timeshare purchase in 2013 and a second purchase in 2019. 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 of the second purchase, if they choose. Therefore, Legal Counsel recommends this matter be closed.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2021014801

Opened: 3/9/2021

Unlicensed

History: None

Complainant is a Tennessee resident and the Respondent is a Tennessee Vacation Lodging Service.

The Complainant alleges the Respondent is an unlicensed real estate firm and using the Complainant's real estate broker license number to solicit the sale of timeshare. The Complainant has previously advised the Commission of this Respondent that was using a different name and using the Complainant's license number.

The Respondent did not provide a response.

Recommendation: Authorize a contested case proceeding and allow settlement by Consent Order and payment of a \$1,000 civil penalty for operating as an Unlicensed Vacation Lodging Service firm in Tennessee in violation of Tenn. Code Ann. § 62-13-104.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2021011341

Opened: 3/22/2021

First Licensed: 1/25/2013

Expires: 1/24/2022

Type of License: Time Share Registration

History: None

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

The Complainant and his late wife purchased a timeshare from the Respondent. The Complainant was first approached about the purchase while on vacation. The Complainant alleges there have been multiple occasions where they have arrived at the resort and the rooms have been filthy, there were broken appliances, cancelled reservations and a host of other issues. The Complainant regularly made these issues known and the Respondent took no action. There has even been occasion where the Respondent has double booked a room when the Complainant arrived for their stay at the resort. The Complainant was also evacuated during wildfires and received no assistance for his disabled wife during the evacuation. The Complainant has requested to cancel and been

advised to contact the third-party from who the purchase was originally made about cancellation. The Complainant has also filed a complaint with the Better Business Bureau and the issues were not addressed.

The Respondent provided a response and states the Complainant owns a total three timeshare weeks. The one week was purchased in 1990 and the Complainant enrolled in the timeshare exchange program in 2008. Another week was purchased in 2014 and enrolled in the timeshare exchange program in 2015 and the other week was purchased in 2008 and enrolled in the timeshare exchange program in 2015. In June 2020, the Complainant contacted the Respondent concerning selling back one week. The Respondent does not buy or sell weeks and provided the Complainant with information on marketing the week for sale. The purchases were made through a third-party and the Respondent suggested the Complainant should contact the third-party for resale of the timeshare weeks. The Complainant signed all the necessary documents when the Complainant made each purchase and was provided with all disclosures and the Public Offering Statement. The Respondent does not have specific information concerning the specific allegations made concerning the condition of the resort itself and has no way to follow-up on if these occurrences were addressed or not and the details of the occurrence. The resort was evacuated when there the fires and the Respondent did their best to evacuate and assist all guests at the resort on that tragic night and sincerely apologize to the Complainant for any difficulty concerning the evacuation of the property and the inconvenience experienced by the Complainant. The paramount concern was to get all guests to safety and make sure there was no harm to any guest. The Respondent has provided information concerning selling, using, renting or transferring the timeshare. The Respondent has also provided information about the condominium association, homeowner's association and other possible ways to exchange the week owned by the Complainant.

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 all of the timeshare contracts.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2021015861

Opened: 3/29/2021

First Licensed: 8/23/2017

Expires: N/A

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

History: None

The Complainant is an Oregon resident and timeshare purchaser and the Respondent is a Tennessee licensed Time-Share Registrant.

The Complainant stated several years ago the Complainant had a heart attack and this was a “game-changer” for the Complainant’s family and life-altering event. The Complainant promised to spend better quality time together by going on vacation. The Complainant purchased a timeshare because, at the time, it was perfect for them. The salesperson told them it would be a great investment, a great opportunity and provide instant equity. The sales rep stated it would be easy to sell and there would be no problem. The sales rep even stated it could be rented to make money for paying the maintenance fees. The high-pressure sales talk was affecting the Complainant and the anxiety was not good for the Complainant’s health condition, so the Complainant purchased the deal to get out of the sales meeting. A year and half later the Complainant attended an owner update meeting and the salesperson stated the timeshare purchased would be obsolete and worthless and it was best to upgrade to VIP status for 300,000 points. This would cost \$52,000. The salesperson was upset when the Complainant refused to purchase and stated there would be additional payments due for the timeshare already owned like a transfer fee, housekeeping fee and other fees that were going to suddenly be imposed. Also, the salesperson indicated that with the Complainant’s lower point structure, the Complainant would not be able to book trips very easily because more points got priority in the reservation system. The Complainant was concerned the previous purchase of \$18,000 was now worthless within a year and a half. The Complainant alleges the Respondent sold them a timeshare that would quickly be obsolete and the original sales representatives lied to the Complainant about the value of the product. The Complainant seeks cancellation of the contract and a refund.

The Respondent provided a response and stated it appears the Complainant may have received information by a third-party on the procedure or process to cancel a timeshare contract. Nevertheless, the Respondent takes all complaints seriously and has investigated this matter. The Respondent indicated it is difficult to substantiate the complaint and its validity because of the length of time that has passed between the transaction and the filing of the complaint. It is almost impossible to verify the discussion that took place during the sales transaction because it is not video or audio recorded. Sometimes, the Respondent has discovered a timeshare owner may be experiencing financial hardship and it is unrelated to the initial purchase, the sales presentation or service issue. On June 25, 2019, the Complainant purchased a membership interest in the vacation ownership club and were granted an annual allocation of 126,000 points. The Complainant also received a one-time allocation of 174,000 points to be used by June 30, 2021. This entitled them to temporary Silver/Emerald VIP status until the end of their bonus points use period. The Complainant also applied for the visa credit card and the Complainant signed the sales charge receipt authorizing the charge of \$3,002.25 for the down payment and fees. All terms and conditions were provided to the Complainant at the time of the credit card charge. The Complainant also signed and received the Pre-Authorized Auto Pay Plan Set-up form that authorized the Respondent to charge and pay their monthly loan payment of \$228.60 monthly plus the assessment of \$75.81 and annual membership renewal of \$59.95. All reservations are confirmed on first-come, first-serve basis and are based on availability. The usage of their membership is optional and subject to the rules, regulations, terms and conditions which are explained in greater detail in the Member’s Directory, website, Extra Holiday website, Directory of Affiliated Resorts, Rewards website. Additionally, the amount of vacation usage depends on the number of points allocated to a member’s ownership interest and how they choose to use their points. The contract documents signed and received by the Complainants fully disclose the agreement the parties. There are also specific written disclosures concerning ownership, discount, down payment, monthly assessment and loan

payments, programs, resale assistance, rental income, investment and tax benefit. Additionally, purchasers are given rescission rights that provide them the opportunity to carefully review and reconsider all provisions in the contract. After the rescission period, however, the contract becomes legally binding. There is no record the Complainants have made any prior complaints concerning the sales presentation and the timeshare purchase. On February 1, 2021, our Owner Solution & Strategy Department received a complaint and there were no grounds to merit the cancellation of contract. Please be advised the assessment and loan accounts are severely delinquent, which consider them in breach of their contract. The Respondent denies the cancellation request.

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.

30. 2021018721

Opened: 4/5/2021

First Licensed: 8/23/2017

Expires: N/A

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

History: None

The Complainant is a North Carolina and timeshare purchaser. The Respondent is a licensed Tennessee time share registrant.

The Complainant was approached by salespeople when on vacation and was offered free tickets in exchange for attending a timeshare sales presentation. The meeting was a high-pressure sales campaign and the tickets for the show were held until the Complainant agreed to sign to make a timeshare purchase. The Complainant declined to make the purchase, but the salespeople persisted and even offered a trip to Las Vegas. The Complainant made a purchase and later discovered that in addition to the \$20,000 mortgage for the timeshare purchase, there are undisclosed fees including high interest loans and maintenance fees. The Complainant alleges the high fees associated with the time share are not disclosed upfront so the consumer later becomes stuck in debt and is threatened with credit reporting when payments are not made. The Complainant has attempted to return the title to the Respondent and the Respondent will not accept the title. The Complainant was previously told during the sales presentation this was an option and is one of the reasons the Complainant decided to purchase the timeshare. The Complainant also advised the Respondent about financial hardship due to COVID-19 and the Complainant lost employment. The Complainant also had a co-signer, her Mother whose health is in peril because of the pandemic. The Complainant's Mother is also the sole caregiver to her own mother, the

Complainant's grandmother. The Complainant seeks to cancel the contract and wants the Respondent to cease all negative credit reporting.

The Respondent provided a response and stated a guest is invited to a timeshare sales presentation and usually receives a gift as an incentive for attending. A potential purchaser is only obligated to attend the sales presentation for the designed period of time based on the terms and conditions of the agreement. A person may leave as desired and at their own discretion. On June 3, 2018, the Complainant and her Mother made a timeshare purchase and received an annual allocation of \$126,000 points and a one-time allocation of \$174,000 points for use by September 30, 2020. This entitled the Complainant to Silver VIP membership status until the end of the bonus points use period. The Complainant and her Mother applied for and were issued a Visa credit card to pay the \$3,500.00 towards their down payment. They also signed and received the *Pre-Authorized Auto Pay Plan Set-up Form* that authorized the Respondent to charge and pay their monthly loan payment of \$257.78, monthly assessment payment of \$73.06, and annual membership renewal of \$59.95. The Complainant and her Mother received full disclosure of the agreement between the parties and the *Buyer's Acknowledgement*, *Ownership Review*, and *Quality Assurance Review*, which they also signed and/or received at the time of purchase, are documents used to assist a purchaser in avoiding misunderstandings and to aid them in understanding the product they are purchasing. There are also specific written disclosures concerning ownership, discount, down payment, monthly assessment and loan payments, programs, resale assistance, rental income, investment and tax benefit. There was also a timeshare closing meeting with the Respondent's Quality Assurance Officer who is trained to ensure customers are comfortable with their purchase and understand the financial obligations within the contract. Additionally, purchasers are given rescission rights that provide them the opportunity to carefully review and reconsider all provisions in the contract. After the rescission period, however, the contract becomes legally binding. There is no record of a history of past complaints by this Complainant. On August 6, 2018, our New Owner Engagement Department called to welcome them to the program, assist with any questions, online registration and reservation; however, the Complainant was not ready to book a reservation for the timeshare. On September 13, 2018, the Complainant called our Consumer Finance Department requesting to cancel their contract and was advised they were not within their rescission period and no longer had any rights to exercise that option. On September 14, 2018, our Owner Resolutions & Strategy Department received a complaint indicating that the Complainant no longer able to make payments, and was advised they were past their rescission period; however, if there was a major change to their circumstances since their purchase, they may be eligible for financial hardship. The Respondent did not find information substantiating the allegations set forth in the complaint and denied the Complainant's cancellation request. The Complainant's assessment and loan accounts are severely delinquent, which consider them in breach of their contract. The Complainant can pursue a review of their account for financial hardship by contacting the Respondent.

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 of the second purchase, if they choose. Therefore, Legal Counsel recommends this matter be closed.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

REPRESENTS
SHILINA BROWN

31. 2020063421
Opened: 9/28/2020
First Licensed: 1/24/2006
Expires: 5/15/2011
Type of License: Affiliate Broker
History: None

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

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

The Respondent did not provide a response to the complaint. Respondent's attorney was to provide a response and requested an extension of time in mid-October 2020. The Respondent's attorney indicated the matter has been settled and the Complainant will be withdrawing the

complaint. There was no information received confirming settlement of all claims and no withdrawal of the complaint was submitted by the Complainant.

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

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Respondent did provide a response and the attorney for the Respondent provided a supplemental response indicating the Complainant withdrew the complaint and indicating the parties have settled the matter and resolved all issues. The Complainant submitted a letter requesting withdrawal of the complaint and no longer interested in pursuing this matter.

New Recommendation: Close

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

New Information: The Respondent was granted an extension of time to respond to the initial complaint and did provide a response. The confirmation and withdrawal of the complaint by the Complainant was in a voicemail from the Complainant and TREC Legal Counsel did not receive the voicemail and there was a delay in the delivery of the voicemail due to an issue with the voicemail system. The voicemail was received a few days later. The Complainant also submitted a written withdrawal of the complaint requesting the Commission to withdraw the Complaint since the parties have settled the matter and resolved the issues in the complaint.

New Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and assessment of a \$1,000 civil penalty for the advertising violation.

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

32. 2020041411

Opened: 6/22/2020

First Licensed: 11/12/2008

Expires: 11/11/2020 (Retired)

Type of License: Affiliate Broker

History: None

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

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

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

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

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

New Information: Respondent's license expired in November 2020 and has not renewed.

New Recommendation: Close and Flag.

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

33. 2020043501

Opened: 7/20/2020

First Licensed: 6/25/2003

Expires: 8/5/2020

Type of License: Real Estate Firm

History: 2017 Consent Order for Failure to Respond and Fraudulent or Dishonest Dealing; 2018 Consent Order for Refusal to Cancel a Contract

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

The Complainant owns and time share property with the Respondent purchased eight years ago and the Complainant has had to attend timeshare updates at the Respondent's property where the Respondent engages in high pressure sales tactics and lies and attempts to get the Complainant to buy more of an interest in the timeshare property. The Complainant had to attend a 60-minute update during the Memorial Day weekend which included an extensive explanation about how the members were helping guests during the COVID-19 pandemic. The Respondent told the Complainant the points could be saved up to five years. The Complainants were enticed by the points and the Complainant purchased a package of 2,500 points. The Complainant's signature was recorded on a tablet and the Complainant was not provided in anything in writing until the presentation was concluded. On the way home, the Complainant began to read through all the documents. There were many things the Respondent failed to explain to the Complainant. The Complainant is tired of being lied to and does not want to do business with a company that deceives consumers. The Complainant contacted the Respondent's offices the next morning and got a voicemail message and no one returned the call. The Complainant e-mailed the Respondent and did not receive a response. The Complainant also called the corporate office in Tennessee and were told the Complainant would have to wait five days to rescind. The Complainant drafted the paperwork to rescind and advised the Complainant. The Complainant's representative indicated that once the rescission was received, the Complainant's credit card would be refunded. The Complainant received an e-mail confirmation but did not receive the refund on the credit card. The Respondent has sent a letter indicating the Respondent cannot fulfill the Complainant's cancellation requested because the sampler membership is not a timeshare purchase and the rescission rules do not apply. The Complainant would like a full refund.

The Respondent failed to provide a response to the Complaint.

Recommendation: Authorize a formal hearing and assess a civil penalty in the amount of \$1,000 for failure to respond to the complaint pursuant to Tenn. Code Ann. § 62-13-313(2).

Commission Decision: The Commission accepted counsel's recommendation, but also voted to open a complaint against the Principal Broker of the firm for failure to supervise.

New Information: The Respondent provided response by e-mail. The response was provided directly to Legal Counsel and it went into a junk/spam e-mail folder unbeknownst to Legal Counsel. As such, during the drafting the complaint summary, the response was not available or known to Legal Counsel and the Recommendation was for the violation of failure to respond to the Complaint.

New Recommendation: Close.

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

34. 2021006971

Opened: 2/8/2021

First Licensed: 4/19/2012

Expires: 4/18/2022

Type of License: Affiliate Broker

History: None

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

The Complainant was a former affiliate broker with the Respondent's firm and the Respondent asked the Complainant to partner with the Respondent in an investment project for a property renovation. The Respondent is engaged in various property renovations projects and indicated if the Complainant partnered with the Respondent on the project that if the investment was \$30,000, that within 20 days the third draw of the construction loan was \$35,000 and the Complainant would be repaid. On July 26, 2018, the Complainant signed an agreement with the Respondent. The Complainant alleges the Respondent breached the contract by not paying back the initial investment. The Complainant stated the Respondent engages in nonethical real estate practices, such as offering non-licensees monetary rewards if individuals bring the Respondent a Seller.

The Respondent provided a response and stated the Respondent works with investors on purchasing properties and the Respondent relayed an investment deal to the Complainant. The Respondent entered an investment transaction with the Complainant and used the funds to complete a project. The Respondent claims the IRS suddenly came in and threatened to take all the profits after the proposed closing. The Respondent informed the Complainant and the Complainant wanted the return of the amounts loaned. The Respondent attempted to settle with the IRS and pay all the loans. The other investors understood the Respondent's hardship. The Respondent claims his credit is ruined. The Respondent claims there were a series of events that hit the Respondent and created financial problems for the Respondent. The Respondent sold the property and did not take advantage of building a second home on the property. The IRS made an agreement with the Respondent, however, two days before closing the IRS changed their mind because the title company made a mistake which created a red flag and the IRS took all the money from the closing and almost resulted in the Respondent going bankrupt. The Respondent's home went into foreclosure and the Respondent could no longer float the real estate office and moved the office to a commercial home office in North Nashville and the Respondent has been trying to rebound since this happened. The Respondent lost over \$150,000 in cash and everything the Respondent has worked for during the past decade. The Respondent divorced and lost everything. The Respondent lost his life, his wife, his storage unit, his valuables, his reputation, his pride, etc. The issues related to the money have nothing to do with the real estate business or the affiliate license. The Respondent alleges this is a lost wage issue and the Respondent will make it right.

Recommendation: Authorize a contested case proceeding for violations of Tenn. Code Ann. § 62-13-312 (1) making any substantial and willful misrepresentation; (5) failing to account for or to remit any moneys coming into the licensee's possession that belong to others; (20) any conduct, whether of the same or different character from that specified in this subsection (b) that constitutes improper, fraudulent or dishonest dealing; and Tenn. Code Ann. § 62-13-403(7)(A) Not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction; and assess a civil penalty in the amount of \$4,000 with authority to settle by Consent Order and payment of the civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Complainant contacted our office and has resolved all issues related to this complaint against the Respondent and settled the matter in its entirety with the Respondent. The Complainant has been made whole and does not want to proceed with the complaint against the Respondent.

New Recommendation: Authorize a contested case proceeding for a violation of Tenn. Code Ann. § 62-13-403(7)(A) Not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction and authorize settlement by Consent Order and payment of the civil penalty.

New Commission Decision: The Commission voted to continue with the original discipline assessed by the Commission.

NEW MATTERS
PAMELA VAWTER

35. 2021015641
Opened: 3/16/2021
First Licensed: 3/2/2018
Expires: 3/1/2022
Type of License: Affiliate Broker
History: None

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

Complainant states that Respondent represented him in the purchase of a new-build home. Complainant alleges he had many questions and Respondent was available and understanding in the beginning but later became upset over Complainant's continual questions and late-evening communications. Respondent responded to a 9:30 p.m. email by stating "after business hours." At one point, Respondent allegedly told Complainant the following in reply to a question: "We have already communicated a lot this week. And I've already addressed the constant communication in our last telephone conversation."

Complainant alleges he asked if they could complete an amendment asking the builder to provide an additional \$1,000.00 on top of a return of earnest money if the builder did not meet a new closing date. Complainant states Respondent declined to add the condition to the amendment. Complainant contends Respondent's behavior violated her ethical duties and amounted to a failure to act her client's best interest.

Respondent submitted an answer to the complaint denying allegations of unethical behavior and/or wrongdoing. Respondent contends that she was in continuous contact - nearly every day - with Respondent, including phone calls, emails, and texts messages. Respondent wanted to be updated on the status of the construction and had ongoing questions about the construction. Respondent states that each time Complainant contacted her, whether by phone call, email, or text, Respondent always responded and got the answers to the questions from the listing agent. Respondent states that each time Complainant would make a visit to the property, they would contact Respondent with concerns about lack of work being done and requests to meet with the builder. The builder, however, refused to meet until it was time to make decisions about the home. Once the builder consented to meet, Respondent met with him to try to get answers to Complainant's questions because Complainant was not happy with the builder's progress,

Respondent states that one evening she sent Complainant a document to sign electronically around 9:15 p.m. It did not require an immediate response. Complainant sent the document back, and Respondent replied: "I got it, thanks!" Complainant then initiated a new conversation, and Respondent responded that it was "too late to discuss business" and would respond in the morning, which she did.

Respondent states she did have to have a conversation with Complainant to address the constant communication and did state in a text after the conversation that they had already communicated a lot that week. Respondent states that at the time of that conversation and text, she had spoken to Complainant nearly every day by call, email, or text. During one of those calls, Respondent states she addressed, in a calm and professional manner, the constant communication because there were no new updates, as there had been no further progress and there was nothing new to discuss. She communicated in the text that there was no new information at that time. Respondent states Complainant admitted he had too much time on his hands and begged her to stick with them if they decided to extend the closing dates.

Regarding the amendment, Respondent states Complainant sent an email asking if it "was legal or otherwise" to type up an amendment stating the home must be at least 90% complete on or before February 12. Respondent states she told Complainant that she would ask her broker and stated the language was not typical. She explained that the language was too vague as his interpretation of

90% complete could be different from the builder's. After speaking with the listing agent, the builder would not agree to the extension that was being requested with the amendment.

Respondent states she answered every question Respondent had and remained in constant communication over the course of the five months. Respondent states she remained professional with Complainant and did act in his best interests. Throughout the transaction, Respondent gave updates to her broker and asked for guidance if anything came up that she was not sure about. Respondent states the buyer decided to use another agent and her broker signed a mutual release. Respondent states Complainant is no longer with that agent and is now working with a third agent.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

36. 2021016161

Opened: 3/16/2021

First Licensed: 1/11/2008

Expires: 8/10/2022

Type of License: Real Estate Broker (Retired)

History: None

Complainant is a licensed affiliate broker. Respondent is an inactive licensee whose license is in retirement status.

Complainant alleges that Respondent improperly withdrew an offer that she made on property which had only been active for a few hours. Complainant contends that Respondent made the offer directly to the client instead of to Complainant as the listing broker. When Complainant called Respondent to confront her, he did not believe Respondent's answer as to why she did not know the property was listed. Complainant states he explained that the seller had a contract with him for selling the home. Respondent called back to withdraw the offer thirty minutes later.

Respondent submitted a response stating that she was the buyer in this transaction and was trying to purchase the property as a home for herself and her family. She found out about the home through someone who had messaged her on Facebook stating their neighbor was wanting to sell their home. The neighbor gave the seller Respondent's number, and the seller called Respondent. Respondent's husband returned the call. The seller had stated they had talked to an agent but were not sure if they had agreed to list the home. Respondent sent an offer clearly stating that she was not sure if they had an agent but to include the agent if they did.

Based on the information provided, Respondent did not violate any rules or statutes of the Commission. Moreover, it appears the Respondent, who is the buyer, was not acting as a "broker"

within the definition set forth in Tenn. Code Ann. § 62-13-102(4)(A) and/or the transaction is exempt. Therefore, Counsel recommends that this matter be closed.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

37. 2021016801

Opened: 3/22/2021

First Licensed: 6/22/2018

Expires: 6/21/2022

Type of License: Affiliate Broker

History: None

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

On October 1, 2020, Complainant entered into contracts to purchase multiple lots from Respondent. Respondent and his partner owned the property. Complainant contends that the amount of earnest money was higher than Complainant had desired. Complaint alleges Respondent assured him, "Dude were[sic] no[sic] going to keep your money." Complainant contends that on November 5, 2020, a member of congress asked him to become a "professional witness" in voter fraud cases across multiple states. Complainant alleges he then made a verbal request for a 60-day extension on the closing dates for the properties, and it was granted. Complainant alleges that he was recently informed by other the other seller (i.e., Respondent's partner) that he would lose \$30,000.00 in escrow deposits. Complainant contends this was "thieving and slothful behavior."

Respondent provided an answer to the complaint, advising that he and his partners are the owners/sellers of the properties at issue. Respondent states he discussed the earnest money amounts that would be required to purchase multiple lots, which were set in order to keep imposters from tying up the lots for long periods. Respondent advised Complainant it was his choice whether to buy the lots, but the earnest money would have to be paid. Respondent denies ever having stated that the earnest money would be refunded or reimbursed. Complainant executed the contracts, which stated in bold letters that the earnest monies were "Non Refundable Deposit[s]." Respondent provided a copy of the contracts, which confirm the nonrefundable status. There were no financing or appraisal contingencies.

Respondent states that Complainant would not respond to anyone on the week of the closing. He later requested an extension to November 13, 2020, which Respondent and his partners granted with a mutually executed closing extension. On November 13, 2020, there was again no response from Complainant. At that point, Respondent and his partners felt that Complainant had overextended himself financially. Respondent and Complainant cancelled the contract and mutually executed an extension of the contract for one of the other lots to January 29, 2021, at Complainant's request. Complainant responded on the day of that closing that he needed another week to provide proof of funds, which Respondent granted. Complainant failed to ever provide

the proof of funds. On February 21, 2021, Complainant was sent an email stating the sellers would be requesting a release of earnest money with the title company. The letter set forth the reasons and Complainant's defaults on the contract. On March 5, 2021, the title company's lawyer sent Complainant an email setting out all of the facts and defaults by Complainant and gave Complainant until March 12, 2021, to provide proof of funds, or she would release the earnest money to the sellers. As of the date of Respondent's answer on March 12, 2021, no proof of funds was received, and Respondent and his partners had not taken any of the earnest money.

Based on the information provided by the parties, this appears to be a contractual dispute. None of the earnest monies were ever held by Respondent or his partners. Rather, they were paid into the title company, who is making the decision regarding disbursement. Additionally, Respondent and his partners are the owners of the lots, which exempts the transaction at issue.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

38. 2021017681

Opened: 3/22/2021

First Licensed: 8/9/2013

Expires: 8/8/2021

Type of License: Affiliate Broker

History: None

Complainant is anonymous. Respondent is a licensed affiliate broker.

Complainant alleges that Respondent's name appears larger than the company name on a sign. Complainant contends the sign violates the Commission's rules on advertising. Complainant did not provide a photograph or any further information in support of the allegation.

Respondent submitted an answer, stating that the group's logo was displayed prominently on the sign in lettering larger than the licensee's name. Since receiving the complaint, Respondent has had the group name's lettering further enlarged. Respondent provided a photo of the current sign, which appears in compliance with Tenn. Comp. R. & Regs 1260-02-.12(3)(b).

Because the anonymous Complainant did not provide any evidence of the alleged violation, and Complainant has provided proof that the current signage is compliant, Counsel recommends a letter of instruction regarding the Commission's rules on advertising.

Recommendation: Letter of instruction regarding the Commission's advertising signage rules, Tenn. Comp. R. & Regs 1260-02-.12(3)(b).

Commission Decision: The Commission accepted counsel's recommendation.

39. 2021018141
Opened: 3/22/2021
First Licensed: 11/16/2017
Expires: 11/15/2021
Type of License: Affiliate Broker
History: None

Complainant is anonymous. Respondent is a licensed affiliate broker.

Complainant alleges that Respondent has changed firms but still has billboard advertising depicting Respondent with his former firm. Complainant also later anonymously submitted a photograph of a bench in a shopping center which depicts Respondent as affiliated with his former firm.

Respondent provided a response stating that his TREC 1 transfer form was submitted on February 25, 2021. Respondent provided copies of correspondence with the advertising companies demonstrating that he had requested on February 25, 2021, that his advertising be updated. Respondent provided a letter from the advertising company confirming that the billboard artwork had been ordered for his three billboards before changing firms, but that the advertising company was behind on posting due to the snowstorm. Respondent provided photographs of the billboards demonstrating updates have been completed.

Respondent provided an update from the advertising company this is in the process of changing the benches. Several have already been updated, and the advertising company is in the process of changing the others and getting to the jobs as quickly as they can be processed along with their other customers. Respondent provided a copy of the correspondence with the advertising company.

Respondent states he has changed out his commercial signs, real estate signs, ads on social media. He has followed up with the required advertising companies regarding the status of all benches and is at the mercy of their timing and ability to complete those jobs. Respondent states he is being targeted by agents inside the real estate community over this issue, which he has made every effort to address.

It appears that Respondent took action to changeover his advertising on the same day he was broker released and continues to work diligently with the ad companies to ensure that all advertising updates are being processed as quickly as possible. Therefore, based on the information and documentation provided, there appears to be insufficient evidence that Respondent has violated the rules/statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

40. 2021019531

Opened: 3/22/2021

First Licensed: 9/27/2017

Expires: 9/26/2021

Type of License: Affiliate Broker

History: 2019 Letter of Instruction regarding interference with agency relationships

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

Complainant alleges that Respondent represented Complainant's neighbors in listing their home. Complainant states Respondent listed the home below market value and created so much interest on the property that it resulted in buyers parking in Complainant's yard and making ruts. Complainant contends she reached out to Respondent about the damage, and he said his firm would take care of it. Complainant contends nothing was ever done.

Complainant contends that her neighbors were away from the home during the showings due to health issues and asked Complainant to check on the house at the end of the day. Complainant contends Respondent loaded up the day with appointments but was not on the property. Complainant contends that the lights were left on at the end of the day, the back door was unlocked, and dirt and was tracked into the house. Complainant contends she checked on the house again three days later and found a large cooler bag filled with prescription drugs open in the middle of the bedroom floor. Complainant contends that the elderly homeowners had hidden the bag at the direction of Respondent. Complainant speculates that the bag was found and gone through by people who were looking at the house.

Complainant states the homeowners released Respondent and his firm. Respondent came by the home to remove the sign and stated they may be filing a police report concerning the medicines. Complainant contends they did not mention having her property repaired.

Respondent submitted a response stating he represented the seller. Respondent states that the Complainant/neighbor began to interject herself after about a dozen showings. When the Complainant contacted Respondent's firm about ruts, Respondent personally followed up and apologized multiple times. Respondent provided a photo of the alleged ruts, which appear minor. Respondent states his broker talked to the Complainant and offered to pay any damages and asked her to send an invoice for any landscaping necessary. Respondent states Complainant told the broker not to worry about it and they just wanted the broker to aware. Complainant never sent any invoice.

In the afternoon, the wife/seller called Respondent to say the husband/seller had slipped on ice and was in the emergency room with a broken hip. She encouraged Respondent to continue showing the house. Respondent states Complainant repeatedly contacted the sellers over the next couple of days while they were staying at the hospital with a surge of anxious communications about a "circus" going on at the listing. The sellers later notified Respondent that the husband would be staying in recovery for months, and so their plans to move would be on hold indefinitely. The listing was withdrawn.

Respondent states at no point did the sellers ever make him aware of any prescription drugs in the house. When the sellers told Respondent about what the neighbor alleges they found, Respondent used the lock access log and proactively called all the agents who had shown the property that day to ask if they or their clients had witnessed a bag filled with prescriptions open in the bedroom floor, and they responded they had not. Respondent states the only person who states they saw this was the Complainant. Respondent offered to file a police report, but the seller asked him not to do so, stating it was just vitamins.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

41. 2021020791

Opened: 3/22/2021

First Licensed: 7/29/1992

Expires: 10/4/2021

Type of License: Affiliate Broker

History: None

Complainant is anonymous. Respondent is a licensed affiliate broker.

Complainant alleges that Respondent is in violation of the Commission's rules for online advertising. Complainant submitted a copy of an online listing posted by Respondent which does not identify Respondent as a real estate agent or state an office name and number.

Respondent submitted an answer to the complaint, acknowledging that she did post the house on Facebook Marketplace one weekend. Respondent states she got carried away on the personal post and forgot to include the company name and other information. Respondent states she normally does not handle her own advertising and made an honest mistake. Respondent states that she sells a lot of real estate every year and has a target on her back with other real estate agents. Respondent apologized and states she will ensure this never happens again.

The Facebook post appears to have been removed, and the firm advertises the listing as sold. Counsel recommends a letter of warning concerning the Commission's rules on social media advertising set forth in Tenn. Comp. R. & Regs 1260-02 .12(6)(b).

Recommendation: Letter of warning concerning the Commission's rules on social media advertising set forth in Tenn. Comp. R. & Regs 1260-02 .12(6)(b).

Commission Decision: The Commission voted to authorize a \$500.00 civil penalty for violation of the Commission's rules on social media advertising.

42. 2021011241

Opened: 3/22/2021

Unlicensed

History: None

Complainant is an out-of-state resident. Respondent is an inactive corporate entity that was not licensed with the Commission.

Complainant contends that he purchased a home from Respondent and then entered into a contract to have them manage the property. Complainant states the contract guaranteed that rent would be covered for two years if the property was vacant. Complainant claims the property has been vacant since December of 2019. No payments were ever made, and Complainant switched to another property management company.

The complaint was forwarded to Respondent at the address provided by Complainant with no response. Upon further research, the entity was administratively dissolved in 2020 after Respondent failed to file an annual report with the Tennessee Secretary of State in 2019. Its principal business address on file with the Secretary of State had previously been changed in 2019 from Tennessee to another state.

The Respondent is not a currently existing entity in Tennessee or otherwise. Therefore, Counsel recommends this matter be closed and flagged. Complainant may attempt to pursue legal remedies for contractual and other damages.

Recommendation: Close and flag

Commission Decision: The Commission accepted counsel's recommendation.

43. 2021011141

Opened: 3/22/2021

Unlicensed

History: None

Complainant is anonymous. Respondent is a Tennessee citizen.

Complainant has submitted an anonymous complainant alleging that Respondent is operating a property management company and does not have a real estate license or business license. Complainant provides no specific allegations or other information.

Respondent acknowledged that she operates a property management business as an independent contractor serving five counties. Respondent states she does contract work for local and overseas investors, real estate companies, and attorneys which includes inspection of properties interior and exterior inspections of properties (pictures and reports), bids on rehab/ repairs, referral, posting notices, mail outs, collections, marketing, book keeping. Respondent is sometimes involved in collecting rent and deposits and I place them in the owners account. Respondent states she does market rentals for some clients and others have her show the properties. Respondent states she

does mail outs/ email blasts to real estate companies if owners do not want to wholesale their properties and want to use an agent. If they are selling their property, Respondent states she “help[s] them get it out to wholesalers.” Respondent mails out pay or quit notices for tenants who are late on rent and represents the owners in court if they are out of town.

Based on the information provided, Counsel recommends authorizing a \$1,000.00 penalty for engaging in unlicensed activity in violation of Tenn. Code Ann. § 62-31-312.

Recommendation: Authorize \$1,000.00 penalty for unlicensed activity.

Commission Decision: The Commission accepted counsel’s recommendation.

44. 2021016121

Opened: 3/29/2021

First Licensed: 4/21/2015

Expires: 4/20/2021

Type of License: Affiliate Broker

History: None

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

Complainant is the seller of a home. Respondent represented a potential buyer. Complainant was represented by an agent. Complainant contends Respondent submitted an offer to Complainant’s listing agent on behalf of a buyer. Complainant states she accepted the offer, which she included a provision for a \$2,000.00 earnest money deposit. Complainant states she was later told that the buyer was unable to obtain financing. Complainant states she was presented with a release form from her agent that stated she would release the buyer in consideration for Complainant keeping the earnest money. Complainant states, however, that no earnest money had been collected from the buyer. Complainant believes she was duped into signing a release and wants to receive the \$2,000.00 in earnest money.

Respondent submitted an answer to the complaint via her attorney. Respondent states that she did not have any communication with the Complainant/seller and communicated only with their agent in the transaction. Respondent provided the text and email correspondence relating to the transaction.

Respondent states the buyer advised her on January 13, 2021, that she wished to make an offer and provided Respondent with a pre-approval letter from a lender. The buyer made an offer on January 13, 2021. The earnest money was to be paid within five days after the binding agreement date. Respondent had provided the pre-approval letter with the offer, but the sellers requested that buyer use a local lender. Respondent advised the buyer, who agreed to use a local lender. The binding agreement date was January 13, 2021.

Respondent emailed the buyer on January 14 with next steps and provided instructions where to send the earnest money pursuant to the contract. On January 15, 2021, at 1:27 a.m., Respondent received a message from the buyer stating that her work was not going to transfer her to the area where the home is located after all, and that she could no longer purchase the property. Respondent responded via text message at 8:19 a.m. stating that she would advise the other agent and that the buyer may need to provide a letter from her employer because she was under a binding contract. At 9:15 a.m., Respondent received a notification from Zillow that the buyer had saved another property in the same area, and it was marked pending the same day. Respondent attempted to reach the buyer, who did not respond. Respondent immediately informed the sellers' agent about the buyer's statement and that earnest money had not been paid yet.

The buyer texted Respondent later admitting that she had made an offer on another property and had believed it would cancel the contract with no consequences if she did not deposit the earnest money. Once Respondent explained the contractual issue at that point, the buyer indicated she was willing to pay the earnest money to the sellers. Shortly thereafter, Respondent began receiving threatening messages from the buyer stating that she would sue Respondent if she messaged the buyer again. Respondent updated the sellers' agent and notified her principal broker, who asked Respondent to keep reaching out to the buyer. The sellers' agent sent Respondent a release on January 15, which Respondent forwarded to the buyer. The buyer executed the release on January 16. Respondent and her broker continued to reach out to buyer to send the earnest money until January 25, when the buyer asked Respondent and her broker to immediately cease all contact and threatened to file legal action if Respondent did not completely discontinue contact. Respondent then passed on the buyer's contact information to the sellers' agent and informed the agent that she would no longer be communicating with the buyer.

Respondent states she never had the earnest money from the buyer, and it is the buyer's obligation to deliver the earnest money to the sellers. Respondent states she fulfilled her duty to treat all parties to the transaction honestly and fairly. Respondent has been advised from the sellers' agent that the sellers know Respondent does not hold any earnest money, and that sellers have been advised of their right to pursue legal action to recover the earnest money from the buyer.

This appears to be a contract dispute matter. The sellers have the option to pursue legal remedies to recover the earnest money in dispute. Based on the information provided, there is insufficient evidence that Respondent violated the rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

45. 2021019181

Opened: 3/29/2021

First Licensed: 8/24/2004

Expires: 2/25/2022

Type of License: Affiliate Broker

History: None

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

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

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

Respondent states the appraisal was done on 2/4/21, but she was not notified that it came in short until 3/10/21. Respondent then immediately notified the listing agent. On 3/10/21 Respondent was informed by the lender that the appraisal came in at \$315,000. Respondent tried to re-negotiate. The listing agent insisted seller was upset and required the buyer to pay the \$340,001.00. On the same day, the listing agent sent Respondent the release to the contract. The buyer did not sign immediately because she was still under contract. The buyer was in the process of making arrangements to come up with the balance of the money since the contract did not expire until the 3/17/21, and all other conditions on the loan were cleared.

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

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

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

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

46. 2021019671

Opened: 3/29/2021

First Licensed: 11/9/1984

Expires: 8/22/2022

Type of License: Principal Broker

History: None

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

On March 4, 2021, Complainant states she saw two cars pull into the driveway of her neighbor's property. A couple exited one of the cars and walked to the porches of the home and looked in the window. Complainant states the owner of the property had passed away on February 20, 2021. Complainant states her husband walked over to inquire if he could help them. The couple told Complainant's husband they were looking for a home. Complainant states the Respondent was sitting inside the other car in the driveway. Complainant contends the owner's daughter called the couple and advised the house was not on the market. Complainant contends Respondent's behavior was unethical.

Respondent submitted a response stating that her clients have a close friend who lives in the neighborhood of the home in question. He advised the clients there were three homes in the neighborhood that might be coming under market and suggested they go see them. The friend advised the clients that the owner of the home had passed away, and he believed the home was going to be on the market. The clients asked Respondent to go see homes in the neighborhood with them.

Respondent met with the clients and looked at several homes in the area and drove by the home in question. The clients drove separately. Respondent states they stopped in front of the house because they could not see the home very well as the driveway appeared very steep. Respondent and the clients drove down the driveway to see if the driveway was too steep. The clients liked the home and walked to the back of the home and knocked on the door. Clients looked in the window. Respondent stayed in the car. Complainant's husband walked over to the clients as Respondent was in the car trying to find contact information for the owners of the home. Respondent got out and gave Complainant's husband her card and asked him to give it to the owners and to express how sorry she was.

Respondent also submitted a statement from the clients confirming the events. The clients state they had a brief conversation with Complainant's husband and told him the owner's daughter could contact Respondent if she ever decided to sell the home. They then left the property.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

47. 2021020531

Opened: 3/29/2021

First Licensed: 6/29/1984

Expires: 2/15/2022

Type of License: Affiliate Broker

History: None

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

Complainant contends that his parents owned a condo which was part of an HOA managed by Respondent and her husband. The condos were severely damaged by fire in 2016. Complainant contends that Complainant and her husband were operating a Vacation Lodging Service ("VLS") at that time without a license. Complainant is also concerned that the dues paid by condo to the HOA were used by Respondent and her husband to operate a VLS.

Respondent submitted a response stating that the company owned by she and her husband had made an income renting and selling condos for profit. The company had also been employed by the HOA as a property manager from 1986 until 2016 when a wildfire destroyed the condos. After the fire, a complaint was filed against the company alleging they did not have the proper license to operate the vacation lodging service. The company (via Respondent and her husband) executed a consent order in which they were required to pay a \$1,000.00 civil penalty and cease and desist the unlicensed activity until they became licensed with the Commission. Respondent states they paid the \$1,000.00 penalty and ceased and desisted. The condos were destroyed by fire and have not been in operation since 2016.

Respondent states that part of their property management responsibilities for the HOA included billing and collection of HOA dues from the unit owners. Respondent states that the treasurer of the HOA was in charge of finances. All dues were deposited to the HOA account and never used to supplement Respondent, her husband, or their company's finances. The company was paid a monthly management fee that was set at each annual meeting for administration, paying bills, taking care of maintenance, etc. Respondent supplied a letter from the accounting firm that did an audit/review of the books each year,

Respondent and her company have ceased all unlicensed activity since the fire of 2016, before the prior consent order was entered by Respondent's company. Based on the information provided, it does not appear that Respondent is in violation of Commissions rules or statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

48. 2021022671

Opened: 3/29/2021

First Licensed: 9/29/2005

Expires: 4/18/2023

Type of License: Real Estate Broker

History: 2017 Consent Order for Failure to Supervise an Affiliate due to Affiliate's lapse in E&O insurance

Respondent is a licensed principal broker. This complaint was administratively opened against Respondent concerning a complaint against a former affiliate broker of Respondent's current firm. Complainant had contended that the left his employment with the former firm on March 9, 2018, but that there was still existing advertisement existing online associating the affiliate with the former firm's web address. The complainant had attached the alleged misleading and untruthful advertising, which was a link from a website used by real estate professionals.

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

At the time of report concerning the complaint against the affiliate, the old domain still linked the affiliate with the former firm and its web address. Because removing the link to the old domain is within the control of Respondent's former principal broker, the affiliate received a letter of warning concerning online advertising rules and a complaint against the principal broker for Respondent's previous firm was authorized for violation of Tenn. Code Ann. § 62-13-312(b)(4) and/or Tenn. Comp. R. & Regs 1260-02-.12(3)(f). The complaint was opened against the present Respondent.

Respondent submitted an answer stating that he left the affiliate's former firm on February 28, 2019. Respondent stated he had no interaction with the affiliate at any level during his tenure at the former firm. Respondent states he never received any correspondence from the affiliate requesting approval on any of advertising. Respondent also advises that the complainant in the complaint against the affiliate is, in fact, the principal broker of the affiliate's former firm.

The old domain link at issue no longer seems to work, and the affiliate's name and former firm information appear to have been removed. Respondent states he has no knowledge of the issue. Therefore, counsel recommends closing this matter.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

49. 2021017261
Opened: 4/5/2021
First Licensed: 4/2/2001
Expires: 1/16/2022
Type of License: Affiliate Broker
History: None

Complainant is anonymous. Respondent is a licensed principal broker.

Complainant alleges that Respondent is requiring offers be submitted for a certain listing that are not on TREC forms. Complainant contends that if an offer comes in on a TREC form, it will not be submitted. Complainant provides no further details or information.

Respondent provided an answer to the complaint, stating that he, as the agent, is not setting any requirements. Rather, the seller who has requested that offers be submitted on the seller's forms. Respondent states that the seller sells properties in multiple states and requests that their own purchase and sale agreement be used rather than working through multiple variations of contracts and contract language. Respondent states that all offers, however, are submitted to the seller regardless of what form was used. Respondent states they do submit TREC forms and use TREC forms when they write up direct sale properties.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

50. 2021019621
Opened: 4/5/2021
First Licensed: 11/1/2017
Expires: 10/31/2021
Type of License: Affiliate Broker
History: None

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

Respondent was the listing agent for certain property. Complainant viewed the property on March 10, 2021, as a prospective buyer. After walking the property, Complainant alleges he had several text exchanges with Respondent indicating he was leaning toward making an offer. Complainant contends he advised Respondent on March 11, 2021, that he needed more time to decide about making an offer. Respondent stated she would have to let other potential buyers view the property. Complainant states he responded stating he would let Respondent know by 4:00 p.m. whether he was prepared to make an offer, but Respondent did not respond. Around 3:00 p.m., Complainant

alleges he notified Respondent that he was prepared to make an offer, but Respondent stated that an offer had already been made and accepted. Complainant contends Respondent took an offer to the seller even though she knew Complainant was considering making an offer, and Complainant believes this was “fishy.”

Respondent’s principal broker submitted a response on the Respondent’s behalf. Respondent’s broker states that Complainant called Respondent from the sign on the listing asking to see the property. Respondent walked the property with Complainant and answered questions. Respondent asked Complainant if he was represented by another agent, and Complainant stated he was not. Respondent made it clear she represented the seller and that Complainant had the option of obtaining representation at any time if he wished. Respondent’s broker states that Respondent did not ever represent Complainant in any capacity. Respondent fulfilled her duty to present all offers to the seller, her client. Respondent notified the seller there was another potential offer to see if the seller wished to enter into a multiple offer situation; however, the seller was happy with an offer that was presented and wished to accept. Respondent followed her client’s instructions and was under no obligation to advise Complainant about another offer coming in. Respondent called Complainant back after he texted her to let him know an offer had already been accepted.

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.

51. 2021020551

Opened: 4/5/2021

First Licensed: 5/16/1988

Expires: 12/1/2022

Type of License: Principal Broker

History: None

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

Complainant contends that his parents owned a condo which was part of an HOA that was managed by Respondent and her wife. The condos were severely damaged by fire in 2016. Complainant contends that Respondent and his wife were operating a Vacation Lodging Service (“VLS”) without a license. Complainant is also concerned that the dues paid by condo to the HOA were used by Respondent and his wife to operate a VLS.

Respondent submitted a response stating that the company owned by he and his wife had made an income renting and selling condos for profit. The company had also been employed by the HOA as a property manager from 1986 until 2016 when a wildfire destroyed the condos. After the fire, a complaint was filed against the company alleging they did not have the proper license to operate the vacation lodging service. The company (via Respondent and his wife) executed a consent order

in which they were required to pay a \$1,000.00 civil penalty and cease and desist the unlicensed activity until they became licensed with the Commission. Respondent states they paid the \$1,000.00 penalty and ceased and desisted. The condos were destroyed by fire and have not been in operation since 2016.

Respondent states that part of their property management responsibilities included billing and collection of HOA dues from the unit owners. Respondent states that the treasurer of the HOA was in charge of finances. All dues were deposited to the HOA account and never used to supplement Respondent, his wife, or their company's finances. The company was paid a monthly management fee that was set at each annual meeting for administration, paying bills, taking care of maintenance, etc. Respondent supplied a letter from the accounting firm that did an audit/review of the books each year,

Complainant later supplemented his complaint with a copy of a purchase offer signed by Respondent in 2001 on behalf of a firm for which Complainant states he cannot find a current license. This transaction occurred 20 years ago and is outside the statute of limitation set forth in Tenn. Code Ann. § 62-13-313(e)(1).

Respondent and his company have ceased all unlicensed activity since the fire of 2016, before the prior consent order was entered by Respondent's company. Based on the information provided, it does not appear that Respondent is in violation of Commissions rules or statutes.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

52. 2021022431

Opened: 4/5/2021

First Licensed: 10/9/1990

Expires: 5/9/2022

Type of License: Affiliate Broker

History: None

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

Complainant contends that early on the morning of March 22, 2021, Complainant's agent scheduled a showing on a property listed by Respondent. Complainant states they were scheduled to view the property on March 22, 2021, at 5:30 p.m. Complainant states the house became pending at approximately 1:00 p.m. Complainant believes Respondent must have knowingly allowed the buyer to enter into a contract without permitting Complainant to see the home. Complainant states he was told there would be multiple offers. Complainant believes that Respondent must have had his own buyer and did not wish to share the commission with his agent. Complainant contends Respondent engaged in unethical behavior.

Respondent submitted an answer stating that he and a co-lister listed the home on March 14, 2021, at 2:00 p.m. The sellers requested that the home not be shown until Monday, March 22, 2021, but Respondent was given permission to add the listing to the MLS using the 'coming soon' program. On Wednesday, March 17th, an agent from another company told Respondent she would be sending an offer for the property. The offer was made without the agent's clients seeing the property. The offer was received at 4:24 p.m. on March 17 with an 8:00 p.m. deadline to respond. The sellers reviewed the offer and countered back to the potential buyers at 6:37 p.m. on the evening of the March 17. The sellers gave the potential buyers until noon the following day, March 18, to accept the counteroffer. The prospective buyers accepted the counteroffer at 11:24 a.m. on March 18 and the offer/contract was bound at 1:00 p.m.

The Pre-Marketing Addendum that was signed by the sellers stated "should a Seller accept an offer on a 'coming soon' listing, the participant must change the listing to a status other than 'coming soon' within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays" The listing was changed to pending on Monday, March 22, 2021, at approximately 12:30 p.m., as required.

Respondent states there was never any mention of multiple offers to Complainant's agent. Complainant's agent never called and spoke with either listing agent about this property. Respondent states the sellers were happy with the offer they received on March 17, and it was their decision to accept that offer. presented to the sellers via phone. The sellers were going to counter back on the backup offer. The co-listing agent canceled the Complainant's scheduled showing because there was an accepted offer on the property and another offer that was going to be accepted as the backup offer. When the appointment was cancelled, it was stated that an offer was accepted and there was a back-up offer on the table. On March 22, another agent had informed Respondent and the co-listing agent that they would be submitting a backup offer on the property. The backup offer was also submitted without the buyers or their agent viewing the property. This backup offer was submitted at 3:26 p.m.

Respondent denies there was ever any unethical practice. He states the offer was received, countered, and accepted by all parties. As for the commission on the property, the buyer's agent requested the commission split be 50/50, and the selling agent agreed.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

53. 2021023331

Opened: 4/5/2021

First Licensed: 12/1/2000

Expires: 10/8/2022

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee citizen. Respondent is a licensed affiliate broker. Complainant was the seller of a home, and Respondent represented the buyer.

Complainant alleges that that he entered into a contract for the sale of his home on February 7, 2021. Complainant states Respondent subsequently notified Complainant's agent of the buyer's intent to withdraw from the contract and forfeit the earnest money because the buyer's employer would be transferring him to another state. Complainant states he execute a conditional release of the buyer on March 1, 2021, and his agent requested the title company holding the \$5,700.00 earnest money release it to the Complainant. Complainant states the title company notified Complainant's agent that they had not received the funds. Complainant states his agent then demanded that Respondent, his company principal broker, pay \$5,700.00 to Complainant, but they have failed to do so.

Respondent submitted a response stating the earnest money was to be held by the title company. On February 7, 2021, the buyer was provided with timely and accurate information and instructions on where and when to send the funds and to email a copy of the check. On February 8, 2021, the buyer confirmed by email and provided a copy of the check for the earnest money made out to the title company. The buyer stated in the email that the check was mailed to the title company. The lender was notified that they were under contract. Buyer accepted the home as is and signed the inspection release.

Respondent states he received an email on March 1, 2021, from the buyer stating his employer had transferred him, and he wanted to pull out of the contract. Respondent called the buyer as requested and informed him he could call his mortgage company and give them the information and that, in all likelihood, he would be denied financing and under the financing contingency and should receive his earnest money back. But Respondent told him he would have to call them and get a denial letter. Respondent states the buyer failed to do so and agreed to give up the earnest money. The buyer signed the release, and it was signed by all parties and sent to the title company. The title company then informed Respondent that they had never received it.

Respondent states he tried to reach the buyer and received no answer to calls, text or emails after many attempts. Respondent and his office were not the holders of the earnest and that they were not responsible to pay earnest money to the seller. Respondent states it should have fallen upon the seller's agent to confirm the earnest money deposit.

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

Recommendation: Close

Commission Decision: The Commission voted to issue a Letter of Warning to Respondent regarding failure to exercise reasonable skill and care regarding the receipt of earnest money.

54. 2021023801

Opened: 4/5/2021

First Licensed: 4/13/2016

Expires: 4/12/2022

Type of License: Affiliate Broker

History: None

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

Complainants contend that Respondent failed to provide them with all information that could affect their buying decision on a home. Specifically, Complainants allege they asked for the CCRs and a plat map of the property that showed actual boundaries. Complainants contend Respondent told them the items could be ordered, and they could pay for a survey after “the close of escrow.” Complainants contend they performed their own research and were told a survey would be six to eight weeks out.

Complainants state they wanted out of the contract at that point. Complainants contend Respondent told them the inspection period had lapsed and they would be in default and lose their earnest money. Complainants allege Respondent told them “too bad,” and sided with the sellers and their agent. Complainants contend Respondent did not respond to them for days and told them a week later they might get half of their deposit back. Complainants state they requested on 3/12/21 that Respondent prepare cancellation forms and they had not received their deposit back as of the date of the filing of the complaint on March 25.

Respondent submitted a response, stating that he advised Complainants during the initial walkthrough that he believed the lot lines went to the fence, and they would need to obtain a survey to discover the exact lot lines if they were going to install a fence. Respondent states Complainants acknowledged his advice to obtain a survey and stated they may not install a fence off the back of the home.

Respondent states Complainants did not make any requests for CCRs or plats until after the inspection window was over on March 3. At that point, repairs had been agreed and signed off on by both parties. Respondent states he nevertheless tried to get the information once Complainants requests and concerns were made known to him. Respondent provided all of the plat information he was able to obtain. Respondent provided her with all the documentation and information that he was able to access without a survey being performed. Respondent states Complainants refused to pay for a survey, although the sellers were willing to allow one even after the inspection period had expired. Respondent states Complainants were determined to that if they obtained a foundation survey from six years ago, they could match it up with the plat to ascertain where the lines were. The city, however, only kept foundation surveys for five years. Respondent checked with the city, the builder, the seller, and the HOA.

Respondent denies ever having told Complainants “too bad.” Once Complainants notified Respondent that they wished to terminate the contract, Respondent states he worked with diligence to get their money back in full, which was being held by the sellers’ agent. A release was executed and timely forwarded to sellers’ agent. Respondent states that Complainants has suggested he pay

them half of the earnest money out of his own pocket, which Respondent declined. Complainants reached out to Respondent on March 24 and stated they had not yet received the earnest money. Respondent immediately contacted the sellers' agent to follow up on the status and was advised the sellers' broker had not signed off on the release yet. The sellers' broker then promptly signed and a check was mailed out to the Complainants on March 24. Respondent provided messages from Complainants confirming his account of the communications with Complainants and sellers' agent. The messages indicate that Complainant's allegation that Respondent did timely respond to them is inaccurate.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

55. 2021021371

Opened: 4/13/2021

First Licensed: 3/17/2016

Expires: 1/12/2022

Type of License: Real Estate Broker

History: None

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

Complainants contend they contacted Respondent to assist them in a rural land purchase so they could retire to Tennessee. Their goal was approximately 15 acres at \$100,000.00. Complainants allege that Respondent texted them several videos and information for a certain parcel. Complainants contend Respondent told them she could help them buy the property before it went on the market at a listing price of \$140,000.00. Complainants state they agreed to offer \$135,000.00, which was accepted on January 19, 2021. Complainants allege Respondent messaged them on February 10, 2021, stating the seller had signed. The sale closed on March 5, 2021.

Complainants contend that when they arrived at the closing, a young man and his father-in-law were present, and they did not have the name Complainants had recalled from the seller. After the sale closed, Complainants researched the property at the Registrar of Deeds and discovered it had been sold to the young man and his wife on February 24, 2021, for \$95,000.00. Complainants questioned Respondent about this and was informed that one of the sellers works in Complainant's office. The co-worker had some interest in the property and had bought it then sold it Complainants, netting \$40,000.00. Complainants are concerned that this transaction was not legal because they already had a contract on February 12, 2021. They are concerned that Respondent misrepresented information to them.

Respondent submitted a response, stating that she began working with Complainants to find vacant land a couple of months back. They had looked at several properties. Respondent state that

Complainants had made an offer on a property that was listed at \$125,000.00, but the sellers did not agree to the price. Complainant then sent additional properties to Complainants, including the one they eventually purchased.

One of Respondent's agents had come to Respondent about a property to ask what she could list it for, and Respondent suggested \$150,000.00 after viewing the property and pulling the comparables. A few weeks later, the agent said she would be listing that property, and that her dad and husband had partnered together to buy it. At that point, Respondent took videos and photos to send to Complainants. They were interested. Respondent asked the agent what it would be listed for, and the agent stated \$149,000.00. Complainants offered under the asking price, cash, and requested a 30-45 day closing date. The sellers agreed to the terms.

Respondent states she had no knowledge of the seller's purchase amount or when they took possession of the property because she had no part in that transaction. Respondent states the property was never put on the market because Complainants made an offer beforehand. If they had not, it would have been listed for \$149,000.00. Respondent states she did not benefit in any way from Complainants purchasing that property versus anything else on the market.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

56. 2021023271

Opened: 4/13/2021

First Licensed: 2/17/2005

Expires: 9/1/2022

Type of License: Principal Broker

History: 2019 CO for failure to supervise affiliate's E&O insurance; 2019 CO for failure to supervise affiliate's E&O insurance; 2019 CO for failure to supervise affiliate's E&O insurance; 2019 CO for failure to supervise affiliate's E&O insurance

Complainant is a Tennessee citizen. Respondent is a licensed principal broker. Complainant was the seller of a home, and Respondent's affiliate broker represented the buyer.

Complainant alleges that that he entered into a contract for the sale of his home on February 7, 2021. Complainant states Respondent's affiliate subsequently notified Complainant's agent of the buyer's intent to withdraw from the contract and forfeit the earnest money because the buyer's employer would be transferring him to another state. Complainant states he execute a conditional release of the buyer on March 1, 2021, and his agent requested the title company holding the \$5,700.00 earnest money release it to the Complainant. Complainant states the title company notified Complainant's agent that they had not received the funds. Complainant states his agent

then demanded that Respondent and his company pay \$5,700.00 to Complainant, but they have failed to do so.

Respondent submitted a response stating the earnest money was to be held by the title company. On February 7, 2021, the buyer was provided with timely and accurate information and instructions on where and when to send the funds and to email a copy of the check. On February 8, 2021, the buyer confirmed by email and provided a copy of the check for the earnest money made out to the title company. The buyer stated in the email that the check was mailed to the title company. The lender was notified that they were under contract. Buyer accepted the home as is and signed the inspection release.

Respondent states that his affiliate broker received an email on March 1, 2021, from the buyer stating his employer had transferred him, and he wanted to pull out of the contract. The affiliate called the buyer as requested and informed him he could call his mortgage company and give them the information and that, in all likelihood, he would be denied financing and under the financing contingency and should receive his earnest money back. But the affiliate told him he would have to call them and get a denial letter. Respondent states the buyer failed to do so and agreed to give up the earnest money. The buyer signed the release, and it was signed by all parties and sent to the title company. The title company then informed Respondent that they had never received it.

Respondent states that the affiliate broker tried to reach the buyer and received no answer to calls, text or emails after many attempts. Respondent and his office were not the holders of the earnest and that they were not responsible to pay earnest money to the seller. Respondent states the buyer lied to everyone and also failed to pay for the home inspection.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

57. 2021024651

Opened: 4/13/2021

First Licensed: 3/18/2008

Expires: 3/17/2022

Type of License: Affiliate Broker

History: None

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

Complainant purchased residential property in Tennessee in 2019. Respondent represented the seller. Complainant contends that he submitted a repair list to Respondent after receiving an inspection report. The list included the replacement of the rain cap on the chimney. Complainant

states the repairs were performed. On 2/19/21, he had the fireplace checked by a chimney sweep, who told Complainant that rain cap was the wrong type and should not have been installed. Complainant is having to now replace it.

Respondent submitted a response stating that this complaint was the first notification of any issues with Complainant's chimney cap. Respondent called Complainant's agent after receiving the complaint who advised that he was unaware of any issues and had never been notified of Complainant's claim.

Respondent states that the seller had hired the contractor who performed the repairs. The seller could not purchase the rain cap locally, and so had ordered it online from the manufacturer for the specific size to fit the chimney. It was installed along with all other repairs. All receipts had been forwarded to Complainant's agent, and the TN Residential Property Condition Disclosure Update was prepared, listing all items that were repaired/replaced. Complainant was not present to do the final inspection, nor did he attend the closing.

Respondent states that Complainant's agent has spoken to Complainant, and they agreed on a reasonable settlement. Complainant has since notified us that the matter is being resolved, and that wished to withdraw the complaint.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

58. 2021025801

Opened: 4/13/2021

First Licensed: 6/25/2020

Expires: 6/24/2022

Type of License: Affiliate Broker

History: None

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

Complainant contends she submitted an offer to purchase a home on 12/22/20. Complainant alleges that Respondent (listing agent) reached out to Complainant's agent on 12/20/20 and disclosed the contract sales price of the previous offer. Complainant contends her agent resubmitted the offer on 12.29.20 because the seller had not responded. The offer was accepted, and the closing was set for 2/13/21 with inspection scheduled for 1/4/21. Complainant contends Respondent notified them that the seller was a relative, but they were not provided a RF305 form regarding the personal interest.

Complainant states they received the inspection report on 1/5/21 and submitted the repair/replacement proposal the same day. Complainant states the seller did not respond until 1/11/21, which was outside the five-day resolution period. Seller requested to extend the resolution period an additional three days. Complainant received the appraisal report and drafted an additional repair/replacement amendment on 1/29/21 to reflect what the appraiser required for the FHA. Complainant contends seller did not respond.

On 2/2/21, Respondent advised that the seller was not going to be able to complete repairs before the 2/13/21 closing date and requested to extend the closing to 3/30/21. Complainant contends her agent drafted the amendment on 2/5/21, but the seller did not sign it to provide to the lender. Complainant alleges the seller did not sign the 1/29/21 and 2/5/21 amendments until 2/11/21.

Complainant alleges there was an email to Respondent on 3/16/21 with a checklist of repairs, which was not provided. On 3/18/21, Complainant's agent went to the property and discovered repairs had not been completed. On 3/27/21, Complainant's agent forwarded an email from Respondent stating that the roof would be finished on 3/29/21 because of the storm. On 3/28/21, Complainant contends Respondent forwarded a certificate from a roofing company, stating the roof was completed on 1/5/21. Complainant alleges the contractor's license had expired.

Respondent submitted an answer to the complaint, stating that she was contacted by Complainant's agent to be a backup offer on the listing. Respondent denies ever having discussed the contract sales price of the previous offer with Complainant's agent or anyone. Respondent states her client was under contract with another buyer that fell through, so reached out to Complainant's agent again to submit the offer.

Respondent states that her client moved very slowly with everything in the transaction, Respondent states she could not control the seller's actions, but that she did her part to ensure all offers and information was presented to her client in a timely manner. Respondent states the parties were under contract and the seller agreed to do certain repairs prior to closing. The seller was not able to complete certain items, and this information was conveyed to Complainant's agent with a request for an extension to complete the repairs. Respondent states Complainant did not agree to the extension and the contract was terminated with the closing dated passing. Respondent states the repairs were finally completed on 3/30/21 and communicated to Complainant's agent, but Complainant decided to walk away from deal on the following day as they had not agreed to extend the closing date for the seller to complete the repairs Respondent states she did everything she could within the scope of her duties to all parties and denies any alleged violations.

Respondent states that she advised Complainant's agent that the seller was a relative and Personal Interest Disclosure & Consent form was signed. The form was on MLS under the documents tab along with the Tennessee property condition disclosures at the time Complainant's agent wrote the offer.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

59. 2021023481

Opened: 4/13/2021

First Licensed: 4/26/1993

Expires: 9/10/2022

Type of License: Real Estate Firm

History: None

Complainant is a Tennessee citizen. Respondent is a licensed real estate firm. Complainant was the seller of a home, and Respondent's affiliate broker represented the buyer.

Complainant alleges that that he entered into a contract for the sale of his home on February 7, 2021. Complainant states Respondent's affiliate subsequently notified Complainant's agent of the buyer's intent to withdraw from the contract and forfeit the earnest money because the buyer's employer would be transferring him to another state. Complainant states he execute a conditional release of the buyer on March 1, 2021, and his agent requested the title company holding the \$5,700.00 earnest money release it to the Complainant. Complainant states the title company notified Complainant's agent that they had not received the funds. Complainant states his agent then demanded that Respondent pay \$5,700.00 to Complainant, but they have failed to do so.

Respondent submitted a response via its principal broker stating the earnest money was to be held by the title company. On February 7, 2021, the buyer was provided with timely and accurate information and instructions on where and when to send the funds and to email a copy of the check. On February 8, 2021, the buyer confirmed by email and provided a copy of the check for the earnest money made out to the title company. The buyer stated in the email that the check was mailed to the title company. The lender was notified that they were under contract. Buyer accepted the home as is and signed the inspection release.

Respondent states that the affiliate broker received an email on March 1, 2021, from the buyer stating his employer had transferred him, and he wanted to pull out of the contract. The affiliate called the buyer as requested and informed him he could call his mortgage company and give them the information and that, in all likelihood, he would be denied financing and under the financing contingency and should receive his earnest money back. But the affiliate told him he would have to call them and get a denial letter. Respondent states the buyer failed to do so and agreed to give up the earnest money. The buyer signed the release, and it was signed by all parties and sent to the title company. The title company then informed Respondent that they had never received it.

Respondent states that the affiliate broker tried to reach the buyer and received no answer to calls, text or emails after many attempts. Respondent was not the holder of the earnest and that they were not responsible to pay earnest money to the seller. Respondent states the buyer lied to everyone and also failed to pay for the home inspection.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

60. 2021025291

Opened: 4/13/2021

First Licensed: 6/26/1990

Expires: 12/17/2022

Type of License: Real Estate Firm

History: None

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

Complainant is a tenant of an apartment townhome complex who alleges his last day to reside in the unit was supposed to be March 31, 2021. Complainant contends the landlord changed the locks prematurely on March 30, 2021 and turned the lights on all day. Complainant contends this deprived him from accessing the unit and taking some belongings for a day. Complainant also contends it caused his electric bill to increase.

Respondent submitted a response stating that Complainant had signed a twelve-month lease at his apartment complex beginning 11/1/21 and ending 10/31/21. On 1/27/21, Complainant submitted a written notice of his intent to terminate the lease early and vacate on 3/31/21. On 3/29/21, complainant called the resident property manager to advise that he had moved all of his belongings out of the apartment, but still needed to do a few things. The property manager advised him where to leave the keys. On March 30, 2021, the property manager asked the maintenance supervisor to do an inspection to see what supplies would need to be ordered to get the apartment ready for the next tenant when the keys were returned. The maintenance supervisor inspected the apartment, and found only two bottles of Hershey's syrup, a hair scrunchie, doorknob covers, and two framed business licenses. Respondent states the maintenance supervisor misunderstood the request and mistakenly changed the locks on the unit, thinking the tenant had already returned the keys.

On 3/31/21 at approximately 4:30 p.m., Complainant's father-in-law came to the property office upset and informed the manager that he had come to the apartment to clean it, but the locks had been changed. The property manager was not aware until that point that the maintenance supervisor had changed the locks the day before. The property manager called the maintenance supervisor at that time, who confirmed. The manager apologized for the misunderstanding and informed Complainant's father-in-law that Respondent would charge the tenants for not cleaning the apartment and offered to unlock the apartment so Complainant could retrieve anything that was left. Complainant's father-in-law refused, became angry, and started hitting and kicking the door. The police had to be called because the manager and staff were afraid he was going to hurt them.

Based on the information provided, it does not appear that the Respondent is exempt under Tenn. Code Ann. § 62-13-104(a)(1)E). Complainant has the option to pursue what rights and remedies are available to him under the lease agreement.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES

61. 2020091891
Opened: 12/28/2020
First Licensed: 2/20/2018
Expires: 2/1/2022
Type of License: Time Share Salesperson
History: None

Complainant is an out-of-state resident. The Respondent is a licensed timeshare sales agent who has been impersonated.

Complainant alleges that he and his wife received a call in August of 2019 from someone who identified himself as the named Respondent. The person claimed to represent a certain vacation trading group. The person persuaded Complainant's wife to enter into a contract to invest \$2,820.00 in a timeshare in Mexico with instructions to pay the funds into a Mexican bank. Complainant contends they were defrauded.

The complaint was forwarded to the named Respondent, who submitted a response denying any knowledge of the Complainants or the transaction, and further denying having ever been affiliated with the alleged vacation trading group. The company with whom Respondent is affiliated also submitted a response stating they had no knowledge or records of the Complainants or the transaction, and that the Respondent was affiliated with them at the time the Complainant's transaction occurred. Respondent states his signature on the purchase offer Complainant provided was forged.

An investigation was completed which confirmed that the named Respondent was being impersonated. The alleged vacation trading group could not be located and appears to be fake. The vacation trading group's physical office address listed on the purchase offer does not exist.

Based on the above information and investigation, there is insufficient evidence to indicate that the named Respondent was involved in any violation of the Commission's rules or statutes. Therefore, counsel recommends the matter be closed/flagged and referred to the District Attorney's office.

Recommendation: Close and flag; refer to District Attorney's office.

Commission Decision: The Commission accepted counsel's recommendation.

62. 2021005241

Opened: 2/16/2021

First Licensed: 3/11/2018

Expires: 3/10/2020

Type of License: Time Share Salesperson

History: None

Complainant is an out-of-state resident. The named Respondent is an inactive timeshare sales agent who has been impersonated.

Complainant states she was contacted by someone identifying himself as the named Respondent about selling her timeshare located in Mexico. The person stated they were with a property management company. Complainant agreed to sell her timeshare and was told she would have to pay \$4,000.00 in taxes, which she did. Complainant was told that the buyer would reimburse her for all the money she sent to Mexico and referred her to an out-of-state title company to close the transaction. Complainant states the alleged buyer set up a trust account at a Mexican bank where Complainant wired several large sums of money totaling over \$400,000.00. Complainant states she was defrauded and is trying to recoup her money. The alleged company has asked for an additional payment of \$10,000.00 to release the funds.

After we were unable to locate the named Respondent, an investigation was completed. The investigator located and interviewed the Complainant and Respondent and was able to confirm that the named Respondent had been impersonated. Respondent is no longer engaged in timeshare sales and has let his license expire without intent to continue. Respondent denied having any knowledge of Complainant, the transactions at issue, or the alleged company. The company appears to be fake, and its physical office address is a parking lot.

Complainant has reported this matter to the FBI and alerted the Better Business Bureau.

Respondent was an active licensee during part of the time period in which the alleged transactions occurred. Based on the above information and the investigation, however, there is insufficient evidence to indicate that Respondent was involved in any violation of the Commission's rules or statutes. Therefore, counsel recommends the matter be closed/flagged and referred to the District Attorney's office

Recommendation: Close and flag; refer to District Attorney's office.

Commission Decision: The Commission accepted counsel's recommendation.

63. 2021013311

Opened: 3/22/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

Complainant is an out-of-state resident. Respondent is a licensed timeshare registrant. Complainants allege that Respondent's sales representatives made a number of false misrepresentations and material omissions which induced them to purchase a timeshare interest, warranting the cancellation and refund of their account. Specifically, they allege the following: (1) they were not advised they would be required to pay maintenance and tax fees; (2) the 90-minute sales presentation exceeded this time; (3) they were advised they could rent the property to make money, but were not advised they would utilize their week in doing so; (4) they were not given time to review the documents prior to signing; (5) they were not told about the additional cruise and travel membership; (6) they were told that the price was good for that day only; (7) they were not told about exchange fees and how they work; (8) when they visited the resort, they are bombarded with sales trying to get them to upgrade; (9) they were not advised that Interval International was a third-party company; (10) when he last visited the resort, they advised that he could sign up for a MasterCard; however, they did not mention that they would run his credit; and (11) they were advised that each time they visit they could get dinner and a movie.

Respondent submitted a response denying that it engaged in any improper actions or wrongdoing or that any misrepresentations or material omissions were made, which Respondent states are refuted by the fully-executed purchase documents, which Respondent provided. Respondent states both the Purchase Contract and the Acknowledgment of Representations cover the cited maintenance fee. Additionally, it is stated that they are merely an estimate, which is thus subject to change. Respondent states owners were only required to attend a 90-minute sales presentation in order to claim their gift but were under no obligation whatsoever to remain at the resort past this timeframe. However, in the event consumers elect to purchase a timeshare interest, they often remain at the resort on their own volition to review all relevant closing documents.

Respondent states it was is a correct statement that owners can rent out their week; however, Respondent does not assist in renting for them. Respondent states that Complainants agreed to this statement in their Acknowledgment of Representations, Paragraph 5, which states that Respondent has no form of resale or rental program and no salesperson is authorized to make any representations to the contrary. Complainants were given time to review each document prior to signing; however, if no questions were brought up the document signing would continue. Respondent states it would have been Complainants' responsibility to determine if they had questions about the document prior to signing. Additionally, they were given a 10-day rescission policy to further review their documents and purchasing decision.

Respondents state the Incidental Benefit Acknowledgment and Disclosure Statement emphasizes that the fulfillment of the incidental benefit is not provided by Respondent.

Respondent states it does offer price incentives that are good for the date of the sales presentation. Respondent states that Complainants signed and initialed an Acknowledgment of Representations wherein they affirmed that all exchanges are subject to availability and an additional fee.

Respondent states its Owner Update Meetings are intended to provide owners with an opportunity to voice their recommendations on changes they would like to see, special requests they may have, and/or report any concerns. These meetings are not mandatory, and if Owners are not interested in attending, they may simply notify the Front Desk of their wish not to be contacted by any representatives during their stay.

Respondent states that, as with any credit card, prior to approval, they run credit. Moreover, the MasterCard is maintained by a third-party company. If Complainants have any disputes, they would need to contact them directly. Respondent states it does give Owners incentives to attend the Owner's Update Meetings. However, there is no guarantee what may be offered on each visit.

Respondent maintains that the Purchase Contract is valid and legally-binding. As Complainants did not seek to cancel the Purchase Contract in accordance with the mandatory terms of rescission disclosed therein, they are not entitled to a cancellation or refund of their account.

Based on the information provided there is insufficient evidence that Respondent violated any of 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 claim regarding a contract dispute.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

64. 2020089391

Opened: 3/29/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

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

Complainant alleges they purchased a timeshare in 2009 and were given 3 CD-ROMs by Respondent. Complainant states that two of the CD-ROMs did not have a public offering statement, which Complainant argues renders their contract legally voidable. Complainant want her money refunded.

Respondent submitted a response stating that Complainant purchases a timeshare interest in their resort on March 23, 2011. Respondent states that Complainant has alleged that she received a total

of three (3) Public Offering Statements at the time of sale and only one worked. Respondent states the screenshot provided for what is claimed to be a POS CD-ROM for her purchase with Respondent, however, was in fact for another entity and not her home resort. Respondent denies the allegations and asserts that Complainant received a copy of their true and correct POS CD-ROM in accordance with Respondent's strict policy on this matter.

Respondent states their research found Complainant had multiple purchases and none were in 2009 as she advised. Respondent states the purchase contract is valid and legally-binding. As Complainant did not seek to cancel the contract in accordance with the mandatory terms of rescission, they are not entitled to a cancellation of their account.

Based on the information provided, this matter is strictly a contractual dispute. There is no allegation that Respondent violated any of 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 expired.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

65. 2021017511

Opened: 3/29/2021

First Licensed: 4/20/1999

Expires: 12/31/2021

Type of License: Time Share Registration

History: None

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

Complainant entered into a contract to purchase a timeshare on May 11, 2016. Complainant contends they were told to attend an owner's meeting as part of their vacation stay. Complainant states they were told at the meeting that they needed to upgrade to continue their membership. Complainant states they felt pressured to make a decision. They believed they were purchasing a piece of real estate and that it was an investment that would increase in value. Complainant states they were not made aware of maintenance fees or their right of rescission. Complainant seeks to be released from the contract.

Respondent submitted a response stating that owner's update meetings are all voluntary and that Complainant had the right to choose not to attend and/or to end a presentation whenever she chose. Respondent denies that anyone is required to attend, stay, or purchase an upgrade. Respondent states that once the rescission period has expired, they are unable to cancel Complainant's account upon request. The rescission rights and maintenance fees are addressed in the contract documents Complainant signed. Respondent advises that Complainant may contact their Contract Mediation Department if they are suffering financial hardships.

There is insufficient evidence that Respondent violated any of 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 claim regarding a contract dispute.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

REPRESENTS
PAMELA VAWTER

66. 2021011561

Opened: 3/1/2021

First Licensed: 10/17/2018

Expires: 10/16/2022

Type of License: Affiliate Broker

History: None

Complainant is a licensed broker. Respondent holds an affiliate broker license in retired status.

Complainant alleges that he received an email from Respondent on February 10, 2021, advertising a property for sale. Respondent identified himself in the email as an Acquisitions Director for a company. Complainant contends that Respondent's license was retired at the time, and he is concerned that Respondent may be engaging in unlicensed activity.

Respondent provided an answer denying that he is engaging in unlicensed activity. Respondent states his company buys and sells investment properties. The property in the email is one in which there is an executed contract between Respondent and the seller. Respondent states the company is not looking to sell the property but rather to assign the contract rights to an end buyer.

Respondent acknowledges that his license is retired but states there is a personal interest disclosure clause in the purchase agreement that states, "Seller understands Buyer is a licensed real estate [sic] in Tennessee. Buyer is not acting as a transaction broker or facilitator and is not an agent for either party." Additionally, there is a disclaimer at the bottom of the email that states the company "is marketing our equitable interest in the property."

Based on the information provided, it appears this matter falls under the exemption set forth in Tenn. Code Ann. § 62-13-104(a)(1)(F).

Recommendation: Close

Commission Decision: The Commission voted to defer this matter to the next Commission meeting.

New Information: At the request of the Commission at the last meeting, the legal division has further reviewed the legal issue regarding whether the allegations in this complaint amount to unlicensed activity. Upon additional investigation, review, and consultation with legal division management, the facts of this matter do not amount to unlicensed activity. Respondent is acting as an Acquisitions Director of a corporation on behalf of a corporate purchaser that is exempt. See Tenn. Code Ann. § 62-13-104(a)(1)(F). Additionally, the corporation is not seeking to sell the real estate but to assign its contract rights to purchase.

New Recommendation: Close

NEW COMMISSION DECISION: The Commission accepted counsel's new recommendation.

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