



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

The September 8, 2021 board meeting agenda was submitted for approval.

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

Minutes for the August 11, 2021 board meeting were submitted for approval.

Motion to approve the August 11, 2021 minutes was made by Vice-Chair Franks and seconded by Commissioner Smith. Motion passed unanimously.

INFORMAL CANDIDATE APPEARANCE

Alyssa Berry and Principal Broker Steven Sharpe appeared before the Commission to obtain approval for Ms. Berry's Affiliate Broker license.

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

Kevin Flynn and Principal Broker Paul Bullington appeared before the Commission to obtain approval for Mr. Flynn's Affiliate Broker license.

Motion to deny Mr. Flynn was made by Commissioner Farris and seconded by Commissioner Diaz. Motion passed unanimously.

WAIVER REQUEST

Director Maxwell presented Armenda Earleen Helton to the Commission seeking a testing waiver request. Motion to deny Ms. Helton's waiver request was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

EDUCATION REPORT

Education Director Ross White presented the Education Report to the Commission.

Motion to approve courses S1-S23 was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed 8-0 with Commissioner Farris absent for the vote.

Education Director Ross White presented the Instructors Biography to the Commission.

Motion to approve instructor's biography was made by Vice-Chair Franks and seconded by Commissioner Torbett. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Director Maxwell updated the Commission on the topics below.

- **Meeting Quorum:** Director Maxwell advised the commission that TREC must have a five (5) member quorum at each meeting or that meeting will have to be cancelled.
- **ARELLO:** Director Maxwell advised that Commissioner Guinn would be travelling to the annual ARELLO conference. The meeting will be held September 15-19th in Orlando, Florida.
- **MISCELLANEOUS:** Director Maxwell advised the Commission that our October meeting will be a one (1) day meeting with no formal hearing. The meeting will be held in Johnson City/Kingsport area. The meeting will be Thursday, October 14, 2021.

AUDITOR

Meagan Barisich, an auditor who works for the Department and with the Commission, appeared to discuss the audit process and answer questions for the Commission. Conversation covered topics regarding the current audit process, how audits are used with complaints, and a general discussion pertaining to what types of findings Ms. Barisich may or may not encounter.

CONSENT AGENDA

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

A motion was made to accept Counsel's recommendation for cases 1-57 with exception of the following cases, which were pulled for further discussion: **2021042851, 2021052331, 2021052421, 2021052451, 2021051941, 2021054541, 2021054581, 2021054831, 2021051171, 2021013421**. This motion was made by Commissioner Begley and seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2021042851, Commissioner Diaz made the motion **to dismiss this complaint**. motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021052331, Commissioner Guinn made the motion **to accept counsel's recommendation and to open a complaint against the principal broker.** The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021052421, Commissioner Tobett made the motion to **authorize formal charges with the authority to issue a Consent Order with a \$500.00 civil penalty for failure to exercise reasonable skill and care in providing services to all parties in a transaction pursuant to Tenn. Code Ann. §62-13-403(1).** The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021052451, Commissioner Begley made the motion **to close the complaint and did not authorize that a new complaint be opened against Respondent's former principal broker.** The motion was seconded by Commissioner Farris. Motion passed unanimously.

After further discussion by the Commission on complaint 2021051941, Vice-Chair Franks made the motion **to accept counsel's recommendation and voted to open a complaint against the Respondent's son for unlicensed activity.** The motion was seconded by Commissioner Farris. Motion passed unanimously.

After further discussion by the Commission on complaint 2021054541, Vice-Chair Franks made the motion **to accepted counsel's recommendation and voted to also include that Respondent take the CORE class within 180 days of the execution of the Consent Order, with the required class not to count toward CE needed for renewal.** The motion was seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021054581, Commissioner Farris made the motion **to defer this matter to the November Commission meeting.** The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021054831, Vice-Chair Franks made the motion **to issue a Letter of Warning regarding unlicensed**

activity. The motion was seconded by Commissioner Smith. Motion passed unanimously.

After further discussion by the Commission on complaint 2021051171, Vice-Chair Franks made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021013421, Commissioner Farris made the motion **to issue a Letter of Warning regarding reasonable skill and care and advertising.** The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

COMPLAINTS

NEW MATTERS

DENNIS GREGORY

1. 2021042851
Opened: 7/13/2021
First Licensed: 2/26/2013
Expires: 5/27/2022
Type of License: Real Estate Broker
History: None

The Complainant is the attorney-in-fact for one of the sellers. The Respondent is the listing broker. As some background, the subject property was owned by two individuals-a grandmother and her granddaughter. The Complainant, apparently, is the son and sole attorney-in-fact for the grandmother (Complainant's mother). The grandmother/mother lives in Florida.

The crux of the complaint is the status of the power of attorney (POA) used for the grandmother/mother. The Complainant alleges the Respondent accepted a listing agreement using a POA that was revoked in 2019 (well before the subject transaction). The property was also listed (the granddaughter signed for the grandmother/mother) and received an offer via the POA and initial listing agreement. The sale, however, fell through due to the buyer and seller not coming to terms regarding inspection repairs.

In the meantime, the title company found there was a problem with the POA, discovering that the POA had been previously revoked with the revocation on record in the local register of deeds. Consequently, the title company advised that either the grandmother/mother would need to execute a new POA or she would need to personally sign. Up to that point, the Respondent had not spoken with or met the grandmother/mother. Ultimately, the property sold with a new POA, listing agreement, and sales contract. The Respondent remained the listing broker for the property.

The Complainant alleges that neither he nor his mother knew about the proposed sale of the property until the mortgage company informed them. At this point, the Complainant got involved in the matter and secured a new POA, acting as the attorney-in-fact. The Complainant then called the Respondent telling her that he needed \$250.00 in order to be reimbursed for the cost of an attorney in Florida who drafted the new POA and associated work. This complaint was later filed as part of his overall grievance with the Respondent.

The Respondent says that she had worked with the Complainant's sister (who is also a Florida real estate broker) before on two other properties. The Respondent believed that the old POA was still valid as the Complainant's sister told her it was. The granddaughter also signed the original listing agreement using the revoked POA, although the revoked status was not known to the Respondent at the time. While the granddaughter and the Complainant's sister may have known the status of the POA, they did not disclose that to the Respondent.

Recommendation: **DISCUSSION.**

Commission Decision: The Commission voted to dismiss this complaint.

2. 2021048131
Opened: 7/13/2021
First Licensed: 11/27/2013
Expires: 11/26/2021
Type of License: Affiliate Broker
History: None

The Complainant is a licensed TN home inspector. The Respondent is the buyer's broker.

The Complainant said he performed an inspection at the Respondent's request. The inspection was completed on March 8, 2021 with closing taking place roughly three weeks later. The Complainant alleges the bill was not paid for over 90 days.

The Respondent says that in his past experiences, the buyer pays for the inspection. Once he found out the inspector had not been paid, he paid the amount plus all late fees.

The Respondent either did not communicate who was going to pay the inspector or the buyer got confused. Either way, the Respondent paid the inspector as of July 7, 2021.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

3. 2021051021
Opened: 7/13/2021
First Licensed: 7/3/2013
Expires: 7/2/2023
Type of License: Principal Broker
History: None

The Complainant is part of an organization that buys and sells homes, although they claim not to be a licensee of any sort. They own a home located in a homeowners' association (HOA) run by the Respondent. The Respondent manages the HOA in which the Complainant resides.

The Complainant alleges the HOA does not have unit insurance coverage and the "organization is not in good standing with the Secretary of State." The Complainant claims they cannot sell the subject home until these things are addressed.

The Respondent admits that they manage the subject HOA; however, they have not had HOA insurance for more than a year. According to the

Respondent, the controlling HOA board is attempting to get insurance. This, however, appears out of the Respondent's personal control. The Respondent also says the Complainant has not paid any HOA dues and was aware that the HOA had no insurance coverage at the time of purchase. Arguably, if the HOA dues include insurance coverage, then there should be coverage. This appears to be more of a contractual dispute between the HOA residents and the Board.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

4. 2021051511
Opened: 7/13/2021
First Licensed: 4/23/2012
Expires: 4/22/2022
Type of License: Affiliate Broker
History: None

The Complainant is a co-owner of a property that was the subject of a court-ordered sale stemming from a divorce proceeding. The Respondent and a co-Respondent (complaint summary below) are the licensees that were contacted by the parties' respective attorneys in an effort to list the property.

In September 2020 an order of sale was obtained from the court. At that point, the Respondent was contacted in order to list the property. The Complainant eventually signed the listing documents after a court appearance in February 2021. Up to that stage, the Complainant had refused to sign any listing agreement as he was intent on obtaining refinancing in order to buy back the house from his ex-spouse.

The Complainant believes the Respondent engaged in some form of malfeasance because, based on his theory, if he were given more time to obtain refinancing (which he did not ultimately qualify for), the Respondent would not receive a commission from the auction. Therefore, the Respondent conspired with everyone else to force a sale so they could receive a commission from the auction.

The home sold in May 2021 to the highest bidder at auction. The Complainant was not eligible to bid at the auction. The Complainant could also not obtain financing until June 2021-well after the sale date in May.

Recommendation: **Close**

Commission Decision: The Commission accepted counsel's recommendation.

5. 2021051521
Opened: 7/13/2021
First Licensed: 11/26/2014
Expires: 11/25/2022
Type of License: Affiliate Broker
History: None

This complaint is directly related to complaint #2021051511 above. There is no change in the Complainant's position relative to this Respondent. The Respondent was a co-listing agent with the Respondent in the above complaint. The Respondent's response to the complaint is virtually identical as the one in #2021051511 above.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

6. 2021051601
Opened: 7/20/2021
First Licensed: 4/16/2013
Expires: 3/18/2023
Type of License: Principal Broker
History: 2016 Consent Order for Substantial and Willful Misrepresentation, Misleading or Untruthful Advertising, and Improper or Dishonest Dealing

The Complainant is the buyer located out of state. The Respondent is a license but is the sole owner/seller in this transaction.

The Complainant alleges the subject property was still under construction at the time the property was listed on MLS. The Complainant also claims the Respondent's TREC license was expired at the time. Finally, she alleges the Complainant failed to pull permits for the on-going construction. The Complainant provides some screenshots from texts, but none of them corroborate any violations.

The Respondent's attorney says the home was not under construction at the time of the MLS listing. The attorney says the Respondent purchased the home from a contractor who had previously completed the home. The extra work, according to him, was minor finishing that did not require a permit. As to the TREC license, he says it was always in good-standing and was not expired at the time. Finally, the parties are in the process of working out an amicable resolution with the Complainant who has retained an attorney as well.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

7. 2021053131
Opened: 7/20/2021
First Licensed: 8/5/2008
Expires: 8/4/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the seller's broker.

The Complainant says only that the "broker refuses to release earnest monies after cancellation."

According to the Respondent's attorney, the Complainant made an offer to buy the subject property. A counteroffer was made and accepted by the Complainant who then tendered earnest in the amount of \$5,000. The Complainant's broker then notified the Respondent that the Complainant wanted out of the contract. The Respondent notified the Complainant's

broker that, under the terms of the agreement, the seller would keep the earnest money and release the Complainant from any obligation to buy.

The contract attached to the Response provides no special circumstances in which the Complainant could receive the earnest money back under the facts. The “Default” section of the contract is clear that the earnest money is forfeited as damages to the seller.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel’s recommendation.

8. 2021053321
Opened: 7/20/2021
First Licensed: 10/29/2020
Expires: 10/28/2022
Type of License: Affiliate Broker
History: None

The Complainants are the sellers. The Respondent is the sellers’ broker.

The Complainants say the Respondent failed to keep them abreast of offers; asked them to commit fraud on a “legal document regarding upgrades to the home;” and did not conduct the open houses in a way that satisfied the Complainants. The Complainants provided some screenshots; however, they do not evidence any violations.

The Respondent says the open house “was always a fluid arrangement and is not a ‘contract.’” She explains that each property has to be marketed differently, depending on the owner’s schedule, location, etc. Regarding the disclosure of the offers, the Respondent recounts how many prospective buyers visited on the day in question. After five, separate groups came through, only two made offers. The Respondent says the Complainants thought they should have received more offers than they did.

As to asking the Complainants to commit fraud, that issue arose over the appraisal. The Complainants’ home appraised lower than expected. The Respondent explains that one of the buyer’s was applying for a VA

mortgage and that the appraiser “was initiating Tidewater.” The Respondent spoke with her principal broker and set about creating a report with similarly sold properties to the one being sold. One of the Complainants then wanted to file a complaint against the appraiser. The Complainant alleged the appraiser never viewed the inside of the house.

The Appraiser advised the Respondent that a list of upgrades would help. The Respondent explains that she was not aware of what upgrades the Complainants had made up to that point. The house had been purchased from a previous owner. This “legal document” may be what the Complainants are referring to as there is no evidence of any other document being executed. Ultimately, the appraisal was accepted by the mortgage company, although the Complainants hired a new broker. There is no evidence of a breach of any duty to the Complainants.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel’s recommendation.

9. 2021054331
Opened: 7/20/2021
First Licensed: 7/11/2013
Expires: 6/17/2022
Type of License: Principal Broker
History: 2018 Consent Order for failure to exercise reasonable skill and care to all parties in a transaction

The Complainant is the tenant. The Respondent is the property manager.

The Complainant had \$350 deducted from his security deposit after vacating the subject premises. The Complainant, of course, is not particularly pleased with the deduction; however, he also says the Respondent failed to provide a list of the damages and allow him to inspect the premises in order to “verify her claims.” Additionally, the Complainant says the Respondent would not provide the account where the security deposit was held.

The Respondent says the premises were dirty following the Complainant’s departure. The Respondent did provide some photographic evidence to

support this. The notice of deduction; however, was not provided until after the complaint was lodged with the Board. The Uniform Residential Landlord Tenant Act (URLTA) requires that the landlord/property manager, provide notice of the damage prior to retaining any part of the security deposit unless the Respondent abandoned the property or was removed by detainer action (court order). This can be waived, however, depending on the language of the lease.

The landlord/property manager is not mandated to disclose the bank account where the security deposit is located-only that it be in an account limited to security deposits. The Respondent appears to have complied with this requirement.

Recommendation: Letter of Warning for failing to provide notice to the tenant regarding the damages to the residence and deduction from the security deposit (TCA 62-13-403(6)).

Commission Decision: The Commission accepted counsel's recommendation.

10. 2021049541
Opened: 7/27/2021
First Licensed: 2/17/2021
Expires: 2/16/2023
Type of License: Affiliate Broker
History: None

The Complainant is anonymous and likely a TREC licensee. The Respondent is a new affiliate broker. The Complainant says the Respondent has posted a sign with the team name being larger than the real estate broker's name. The Complainant is concerned as the Respondent is (at that time) a few months into the business and already breaking rules.

The Respondent admits to the mistake and says that the sign was up for less than 24 hours and was then taken down. His principal broker pointed out the mistake in previous emails before the complaint was lodged. The Respondent either did not understand or did not pay close enough attention.

There was no photograph of the sign and the Complainant is anonymous. The relative inexperience of the Respondent may also be taken into consideration. The principal broker seems to have taken reasonable steps to prevent this.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500.00 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.

11. 2021050561
Opened: 7/27/2021
First Licensed: 3/13/2013
Expires: 3/12/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyers and the Respondent is the sellers’ broker. The Complainants say they had a contract to purchase a residential property. There was a repair/replacement amendment in which all parties agreed for certain items to be repaired prior to closing. During the final walk through, they discovered rotten wood on two doors, dirty gutters, and the jet tub controls were inoperable in the bathroom. The gutters and the jet tub controls were part of the repair/replacement amendment. The Complainants wanted to walk from the contract; however, the Respondent told the Complainants’ broker that they would not get their earnest money back.

Ultimately, the parties agreed to split the earnest money. The Complainants appear to have lodged this complaint due to their dissatisfaction with that result.

The Respondent's attorney says the sellers were more than willing to make some of the repairs so that the deal would go through. However, following the final walk through, the Complainants' broker sent them a mutual release and disbursement of earnest money agreement. The sellers also offered to leave some money in escrow to cover some of the costs. That offer, however, was declined. A few days later, the buyers and sellers executed a release in which the earnest money was split-\$2,500 to each party.

While it is arguable whether or not the sellers complied with the terms of the repair/replacement amendment (the gutters and the jet tub controls), the Respondent had no means to force the sellers to make the repairs. Furthermore, the release the Complainants signed released the sellers from any liability. The Complainants likely now feel the only party to pursue is the sellers' broker.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

12. 2021051451
Opened: 7/27/2021
First Licensed: 2/5/2008
Expires: 2/4/2022
Type of License: Affiliate Broker
History: None

The Complainant is the ex-spouse of an individual that hired the Respondent to sell his house (ex-husband). The ex-husband received physical possession of the house in the divorce; however, pursuant to the divorce decree, if the home were to be sold the wife would receive a portion of the equity described in the decree. The Respondent only represented the ex-husband.

The crux of the complaint appears to be that the Complainant believes she was asked to pay for "expenses" associated with the sale that she was not obligated to pay. Ultimately, she did not have to pay for anything. These "expenses" were items related to the repair of the home after the initial offer

was made. The Respondent got a copy of the divorce decree and provided it to the law firm handling the closing.

Throughout the process, the Respondent advised the Complainant to consult with her divorce attorney and not to rely on her for guidance. At the end of the day, the Complainant got her money, and the Respondent attempted to guide the Complainant as best she could in her role.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

13. 2021052261
Opened: 7/27/2021
First Licensed: 5/1/2007
Expires: 1/19/2023
Type of License: Principal Broker
History: None

The Complainant is the former principal broker for three affiliate brokers that left her office. The Respondent is the new principal broker for these same affiliate brokers. The Complainant is accusing the Respondent of making false accusations and bullying. She alleges the Respondent has made unprofessional phone calls to her office.

The Respondent admits to calling the Complainant's office; however, she says the reasons for those calls were to obtain a signature on one of the affiliate broker's TREC 1 and to inquire about obtaining a hardcopy of the affiliate's license as it had gone missing. Likely, there were words exchanged at some point about these brokers, particularly given the fact that all three left the Complainant's firm to join the Respondent's real estate firm.

This appears to be a dispute between competing brokers and raises no issues for discipline.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

14. 2021053591
Opened: 7/27/2021
First Licensed: 10/14/2016
Expires: 10/13/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer and the Respondent is the Complainant's broker or former broker. The Complainant alleges that the Respondent does not communicate with him about making offers and that he, ultimately, sells the properties to his friends or family. The Complainant provides no information or documentation to support the latter.

The Respondent says he wrote two offers for the Complainant; however, he says the Complainant could never get his wife's signature on the offer soon enough before the property was already under contract. The Respondent's principal broker also states that his office will try and keep the Respondents apprised of any new listings. He concurs that the Complainants simply did not act fast enough before the subject listings were off the market.

Recommendation: **Close**

Commission Decision: The Commission accepted counsel's recommendation.

15. 2021053881
Opened: 7/27/2021
First Licensed: 1/24/2020
Expires: 1/23/2022
Type of License: Affiliate Broker
History: None

The Complainants are buyers that were not represented by a broker at any time relevant to this complaint. The Respondent is a TREC licensee;

however, he personally owned the subject property and listed it through MLS.

The Complainants say they contacted the Respondent about his on-line listing in June 2020. The Respondent was noted as the listing agent and owner. According to the Complainants, the property was advertised as a “subdivided lot, a turnkey vacation rental and a place to park your camper.” The lot has a very small house and sits only several feet from a lake. The Complainants intended to use the lot for personal use, but also as a vacation rental/Air B&B. The Complainants allege the Respondent made no mention of any restrictions on the property. The closing on the property occurred July 27, 2020. The Complainants appear to have been given all the required disclosures that the Respondent owned the property along with the appropriate property disclosures.

The Complainants contend that on the day of the closing, they were “accosted” by two neighbors that told them to move their camper and shut down the vacation rental. They apparently had copies of restrictive covenants that forbid any use the Complainants purchased the lot for. The neighbors filed suit against the Complainants by the end of the next month, alleging that the lot is part of a subdivision in which the restrictive covenants apply. The Complainants claim the neighbors had given the Respondent warnings about subdividing the lot or any vacation rental use.

The Respondent says that he had operated the lot off and on as an Air B&B for seven years without any hinderance from the adjoining property owners. He claims he told the Complainants he was not aware of any restrictions to operating an overnight rental business (The Respondent marked “NO” to any knowledge concerning restrictive covenants on the disclosure form). He also says he received approval from the local county zoning board to subdivide the lot. He admits the neighbors disapproved of the action; however, he denies that any “legal action” was taken to stop the rental.

The Respondent says he has not heard from the Complainants for almost a year. He also claims to know that the Complainants have had regular bookings through VRBO since purchasing the lot. In his response, he also claims he will buy back the property at the full purchase price.

The Complainants chose not to have any title search or other research on the property. The Respondent’s listing only says, “[t]his lot is unrestricted and

well maintained.” The other portions of the listing only speak to the size of the lot and amenities.

Recommendation: **Close**

Commission Decision: The Commission accepted counsel’s recommendation.

16. 2021053901

Opened: 7/27/2021

First Licensed: 4/15/2015

Expires: 4/14/2023

Type of License: Affiliate Broker

History: None

The Complainant is the buyer and the Respondent is the seller’s broker. The Respondent was acting on behalf of a developer, selling homes/lots within the development.

The root of the complaint is the Complainant’s earnest money (\$5,000). The earnest money was retained by the seller after the Complainant backed out of the contract. The contract was signed in March 2021 and the complaint was lodged in July 2021. The Complainant says the reason he pulled out of the contract was because of the health concerns caused by potential Electromagnetic fields (EMF) associated with power lines located near the home. Based on the photographs provided with the complaint, the high-power lines appear to be within 100 yards of the home. While he admits the purchase agreement contains disclosures about the power lines, he says they did not explain how dangerous they could be. Apparently, the Complainant did some research after he signed the agreement and thought the power lines were too much of a risk to his health.

The purchase agreement expressly includes information about the power lines. The disclosures provided in the agreement appear to be quite adequate for purposes of selling the property. The Respondent appears to have no ability or obligation to provide scientific data in the disclosures to quantify what the potential health risks are to EMF exposure.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

17. 2021054251
Opened: 7/27/2021
First Licensed: 3/6/1997
Expires: 1/02/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer and the Respondent is the seller's broker. The Complainant alleges the Respondent misrepresented a residential property listing. Additionally, the Complainant says the Respondent "misrepresented facts related to that home, attempted to coerce prospective buyers into paying \$20,000 cash, nonrefundable, after an offer was made." The Complainant was working with a broker.

The Complainant says that the house was listed with 3,600 square feet but, the tax assessor records say "2,561 finished living space." There is also some disagreement about "who" finished the basement in the home. The Complainant says the owner told him that a neighbor finished the basement after they moved in (this may explain the discrepancy in the square footage). Finally, he says that the Respondent lied about the status of the sellers. He contends that the Respondent told him the owners were in their 80's, however, the Respondent claims they are not. It is possible either the Respondent misspoke or the Complainant's broker misspoke about the age.

The Respondent denies that he misrepresented any part of the subject listing. He says the \$20,000 earnest money was made as a counteroffer to the Complainant's offer. The original purchase agreement only called for \$1,000 in earnest money. The Respondent claims the reason for the increase in earnest money was due to the fact the offer was "site unseen." The Respondent says due to the Complainant being out of state and only doing a "virtual" walk through, the sellers wanted more in earnest money in the event the Complainant wanted out after physically seeing the house for the first time. Also, he says that the \$20,000 would only have been due after a

home inspection. If the buyer found the home unacceptable following inspection, then it would not be due.

At the end of the transaction, the Respondent was unable to get the sellers to sign a rejection letter to the Complainant's offer as one of the sellers was in the hospital and the hospital staff would not let permit the Respondent into the room due to Covid restrictions. Ultimately, the buyer withdrew from the deal with no earnest money lost.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

18. 2021056381
Opened: 8/2/2021
First Licensed: 9/14/2018
Expires: 9/13/2022
Type of License: Real Estate Firm
History: None

The Complainant appears to be an anonymous TREC licensee. The Respondent is a real estate firm. The Complainant alleges the Respondent is advertising their realty services on a Tennessee real estate continuing education (CE) course web page. The Respondent's logo is along-side the information about the CE course. The Complainant included a screenshot of the website. The Respondent alleges the conduct constitutes a violation of 1260-05-.06.

The Respondent says the website does not belong to their realty firm and that their logo was uploaded without their permission. The Respondent contends that their logo was placed on the website by the manager of the website, not the Respondent's firm. The Respondent says they have recently sent a demand letter in order for their logo to be removed immediately. The logo has, apparently, since been removed.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

19. 2021050181
Opened: 8/2/2021
First Licensed: 9/29/2009
Expires: 9/28/2021
Type of License: Real Estate Firm
History: None

The Complainants purchased a timeshare from the Respondent in August 2019. The Respondent is the timeshare company. The Complainants allege they were offered a four-day stay at one of the Respondent's hotels in Tennessee. The allege they were told if they attended a 90-minute presentation, the cost of the stay would be refunded to them.

The Complainants say they were "convinced" to buy the timeshare but now cannot use it given the way in which the timeshare's availability works. The Complainants are looking to get out of the timeshare.

The Respondent says the Complainants may use their "points" at any of the Respondent's resort locations. The Respondent takes the position that the Complainants are bound to their agreement and will not release them from the same. Considering both sides stories, there does not appear to be any violations of TREC statutes or rules.

Recommendation: **Close.**

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

20. 2021051851
Opened: 8/2/2021
First Licensed: 8/23/2017
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: None

The Complainants purchased a timeshare from the Respondent. The Respondent is a nationally recognized timeshare company. The Complainants say they have owned other timeshares, but that they are being financially burdened with this particular organization. They claim the timeshare has very little availability, therefore, they are unable to get any real use out of the timeshare. They also allege they were forced to sit through a long presentation which led to them signing the current contract. In short, the Complainants want out of the timeshare.

The Respondent says the Complainants first purchased with them in 2016 at a Florida location and then later traded that contract. They say they have no history of complaints and have regularly used their membership. The Respondent is unwilling to relieve the Complainants of their obligation. Considering both sides stories, there does not appear to be any violations of TREC statutes or rules.

Recommendation: **Close**

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED:

- 21. 2021045841**
Opened: 6/22/2021
First Licensed: 4/4/1996
Expires: 12/14/2022
Type of License: Principal Broker
History: None

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

development of the marina easier with her assistance.” The Complainant then jumps to the Respondent not returning the \$1,000 earnest money.

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

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

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

Recommendation: Close.

Commission Decision: The Commission voted to authorize a contested case proceeding and issue a Consent Order with a \$1,000.00 civil penalty for failure to disburse earnest money.

New Information: Since the last meeting, counsel spoke with the Respondent. The Respondent says the earnest money check she received from the Complainant was without sufficient funds. When the bank was contacted, they informed her it was “fraudulent.” A TBI agent as well as the local Sheriff advised her not to return the check as they may need it for evidence.

If the check was no good at the time it was received by the Respondent, then there was no earnest money. Therefore, the 21-day rule was not violated.

New Recommendation: Close.

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

22. 2021042881

Opened: 6/28/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration Time Share Exempt

History: None

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

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

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

Recommendation: Close.

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

New Information: The credit cards mentioned above were part of the agreement the Complainants signed. They got the rewards/points along with the credit cards.

New Recommendation: Close.

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

NEW MATTERS
PAMELA VAWTER

- 23. 2021051961**
Opened: 7/13/2021
First Licensed: 7/29/2016
Expires: 7/28/2022
Type of License: Affiliate Broker
History: None

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

Complainant entered into a contract to purchase a condominium on or about June 15, 2020. Respondent was the listing agent for the property the

Complainant purchased. Complainant states that Respondent had been aware of the poor condition of the driveway and sidewalk in front of the property and had a duty to disclose to the complainant or their agent the condition of the driveway and sidewalk. Complainant also states that when they discovered that the garbage disposal did not work at the time of the final walk through, their realtor informed Respondent who led the Complainant to believe the garbage disposal would be fixed.

Respondent states that Complainant was represented by her own agent in the transaction, who scheduled a viewing, which Complainant attended in person on or about May 17, 2020. Respondent states that Complainant had the opportunity to view the condition of the sidewalk and the driveway and walked on both multiple times throughout the transaction. Complainant decided to proceed with the purchase without seeking any repairs nor claiming any value change. Respondent said that if the Complainant was concerned over the condition, then they could have stated so in the offer made. Respondent also claims that the Buyer's Appraisal would have determined if the driveway had a negative impact on the value of the property. Respondent further states that in their professional opinion the condition of the driveway did not have a negative impact on the value of the property. Therefore, Respondent claims they did not have a duty to disclose the condition of the driveway and sidewalk to the Complainant.

Respondent states that when the Complainant's realtor contacted them about the garbage disposal, the Respondent told them that she would check with the sellers but that they no assurances were given to the Complainant about fixing the garbage disposal. The sellers claimed they were not obligated to fix the garbage disposal because the Complainant waived her right to ask for repairs when the Complainant waived the right to an inspection.

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.

Opened: 7/13/2021

First Licensed: 4/11/2013

Expires: 8/23/2022

Type of License: Real Estate Broker

History: 2019 Consent Order for failure to provide complainant with a copy of client's specific list of objections as well as the notification of termination of the PSA

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

Complainant alleges that Respondent did not take action to ensure that buyers were not already under an Exclusive Buyers Representation with another firm prior to acting as their agent.

Complainant states that he entered into a buyer's representation agreement with a couple on or about May 1, 2021. Complainant states that this agreement was signed when Complainant was submitting an offer on the couple's behalf. When Complainant contacted the couple on May 25, 2021, to discuss future viewings, the couple informed Complainant that they had bought a home through Respondent. Complainant contacted Respondent on or about May 25, 2021, with no resolution.

Respondent's attorney contacted Complainant to try to resolve the issue by offering a \$1,000 settlement. Complainant came back with a \$5,000 settlement proposal. Respondent rejected this offer. Complainant contends that Respondent's conduct violated the NAR Code of Ethics, which the Commission does not adjudicate.

Respondent submitted a response denying any alleged wrongdoing. Respondent claims that the buyers did not inform the Respondent that they had been working exclusively with another real estate agent. Respondent states that the buyers in question were a referral sent by a family friend.

The buyers at the heart of this dispute submitted a letter explaining that they signed the Exclusive Buyer's Representation Agreement in an offer packet that was completed at the time of submitting their first offer for a home through the Complainant's services. The buyers were under the impression that the buyer's representation agreement was exclusive to that sole offer. The buyers further allege that Complainant failed to provide any sort of

explanation on the relevant details of the exclusive buyer's representation agreement, including the effective dates of the agreement and the basic terms of the agreement.

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 and also voted to open a complaint against the Complainant's agent.

25. **2021052401**
Opened: 7/13/2021
First Licensed: 5/9/2006
Expires: 5/8/2022
Type of License: Affiliate Broker
History: None

Complainant is a licensed affiliate broker representing the buyers in this complaint. Respondent is a licensed affiliate broker; however, they are acting as owner of the property that is being sold in this complaint.

Complainant alleges that Respondent has engaged in unseemly business practices by failing to provide Complainant a closing date and increasing the sale price of the home from the original price listed on the contract dated March 6, 2021.

Respondent has submitted a response stating that the complaint does not implicate any act or omission in Respondent's capacity as a licensed affiliate broker. The property was listed as "For Sale by Owner," which is documented on the contract dated March 6, 2021. Respondent also states that they were under no legal obligation to sell the property to Complainant under the expired March 6, 2021 contract as the Complainant failed to satisfy the financial contingencies of securing a loan of 90% of the value of the property by the closing date of April 30, 2021. Both parties acknowledge that Complainant did not have a signed extension of the March 6, 2021 contract.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

26. 2021052421

Opened: 7/13/2021

First Licensed: 3/14/2014

Expires: 3/13/2022

Type of License: Affiliate Broker

History: None

Complainant is a licensed affiliate broker who is acting as the listing agent for the builder in this complaint. Respondent is a licensed affiliate broker who is acting for the sellers in this complaint.

Complainant states that closing was set for June 15, 2021. During the week of June 14, 2021, the builder went out of town, and Complainant stated the closing could not occur. Complainant and Respondent had engaged in conversation about the possibility of an early occupancy and a reduced per diem. On June 16, 2021, the Respondent did a blue tape walkthrough with the buyers. When Respondent talked to Complainant the following day, Complainant learned that Respondent had already given the buyers the key to the home. Complainant states that Respondent claimed the buyers were not living in the home but had just moved some belongings into the home.

Complainant expressed concerns over the cost of utilities, insurance coverage, and liability for damages sustained during the period that buyers occupied the home prior to the completion of filling out the proper forms and receiving documented approval of the early occupancy. Complainant states that the situation was resolved, however, and the builders signed the early occupancy form.

Respondent submitted a response and acknowledged that it was a mistake to hand the keys over to the buyers prior to affirmatively establishing an early occupancy agreement. Respondent states that the final approval by the lender was given on or about June 15, 2021. Respondent believed this was the only information the Complainant was waiting on prior to allowing the early occupation to take place, which was why the Respondent handed the keys over to the buyers on or about June 16, 2021. Respondent covered the additional \$50 per day from the Respondent's commission in consideration of the price of utilities and insurance coverage for the buyer's early occupancy of the home.

Respondent has acknowledged that she gave the buyers a key to the home prior establishing an early occupancy agreement. It appears, however, that parties have resolved all issues regarding this matter. Respondent acted promptly to mitigate any damage to the builder. Therefore, based on the information provided, Counsel recommends the Commission issue a letter of warning concerning diligence in exercising reasonable skill and care in providing services to all parties.

Recommendation: Letter of warning concerning the diligent exercise of reasonable skill and care in providing services to all parties in a transaction pursuant to Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission voted to authorize formal charges with the authority to issue a Consent Order with a \$500.00 civil penalty for failure to exercise reasonable skill and care in providing services to all parties in a transaction pursuant to Tenn. Code Ann. §62-13-403(1).

27. **2021052451**
Opened: 7/13/2021
First Licensed: 3/1/2019
Expires: 2/28/2023
Type of License: Affiliate Broker
History: None

Complainant is a licensed broker and managing broker for a Tennessee brokerage firm. Respondent is a licensed affiliate broker. Respondent previously worked for the firm that Complainant manages. Respondent

departed this firm on or about April 1, 2021, and transferred his license to another Tennessee brokerage firm.

Complainant alleges that on or about June 18, 2021 an associate saw an online advertisement made under the Respondent's name. The posting advertised property that Complainant claimed his firm had agreements for the exclusive right to sell, and the posting included the Complainant's firm's branding. Complainant states that this use of branding suggests that the Respondent is still affiliated with the Complainant's firm, which he is not.

Complainant states that he asked Respondent to remove the firm's branding from three of Respondent's advertisements. Complainant identified six more social media listings from Respondent with the Complainant's firm's branding. These advertisements were dated between June 19, 2021, and June 27, 2021. Complainant states that Respondent did not receive written authorization to advertise listings represented by the Complainant's firm and is, therefore, in violation of the Commission's rules

Respondent submitted a response and stated that while employed with Complainant's firm Respondent was signed up for an automated service through the Complainant's firm that posted listings on the Respondent's professional pages. Respondent states that he did not have control over the postings. Respondent states that when he left Complainant's firm, Respondent's account with this service was terminated, removing Respondent's access to these accounts, including the ability to log on to the accounts.

Respondent states he has attempted to contact Complainant about the issue and has not received a call-back. Respondent also claims that he attempted to contact the listing services, who explained to the Respondent that because Respondent has no way to access his account, he may not make any changes to the account. Respondent stated the listing service advised Respondent to contact the previous broker about addressing the issue, because they had set up the Respondent's account and, therefore, has the account authorization and ownership.

Respondent stated that since receiving the notice of the complaint, he has hired a social media advisor to remove all postings made with the Complainant's firm's branding. The Respondent claims he was unaware that

the listing company made posting through Respondent's twitter, until the social media advisor found those posts.

Respondent has taken numerous steps to address the advertisements that have been posted through his various social media platforms to the extent he has the ability to do so. Based on the information provided, there is insufficient evidence that Respondent has violated the Commission's rules or statutes. Counsel recommends this matter be closed and that a complaint be administratively opened against Respondent's former principal broker concerning the Commission's rules on social media advertising, Tenn. Comp. R. & Regs. 1260-02-.12(6)(c).

Recommendation: Close and open a complaint against Respondent's former principal broker regarding the duty to maintain current and accurate social media advertising, Tenn. Comp. R. & Regs. 1260-02-.12(6)(c).

Commission Decision: The Commission voted to close the complaint and did not authorize that a new complaint be opened against Respondent's former Principal Broker.

- 28. 2021052951**
Opened: 7/13/2021
First Licensed: 12/16/2015
Expires: 12/15/2021
Type of License: Affiliate Broker
History:

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Respondent was the listing agent, representing the sellers in this transaction. Complainant was a buyer, represented by their own agent.

Complainants signed a one-year warranty on their newly purchased home on or about August 7, 2020. Complainants state that three days after closing there was a major water leak from the ceiling. Complainants claim that two weeks after closing there was a sewage leak in the backyard, and two months after closing there was an interior water leak. Complainants state that the Respondent is not abiding by the warranty contract.

Respondent has submitted a response and states that the Complainants worked directly with their agent throughout this transaction. Respondent sent a copy of the warranty on behalf of the seller to the Complainant's agent. Respondent states that they have assisted the buyers in their warranty claims by connecting them with the sellers, to properly address the needed repairs. Further, the Respondent states that the water leak from the ceiling was repaired and the sewage leak was addressed by the city.

Respondent is not a party to the warranty contract and therefore is not responsible for addressing the Complainant's warranty repairs. Based on the information provided, Counsel does not find that Respondent violated any rules/statutes of the Commission.

Recommendation: Close

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

29. **2021053691**
Opened: 7/13/2021
First Licensed: 5/28/2014
Expires: 5/27/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Complainant was a potential buyer for a property where the Respondent represented the sellers.

Complainant states that she was scheduled to view a house on July 5, 2021 at 3:00 p.m. Complainant contends she was contacted by her agent and informed that the sellers were giving her an opportunity to view the house early because the sellers had received an offer that would be retracted in an hour. Complainant states she was told by her agent that she only had an hour to make an offer because the sellers would go with the other offer after an hour.

Complainant alleges she made an offer within the one-hour timeframe. Complainant states she was then informed after the deadline that the sellers were reviewing all offers the following day, which Complainant states was

over 24 hours after Complainant's offer. Complainant states the seller rejected her offer for a cash offer. Complainant claims her offer was held unethically.

Respondent submitted a response with a timeline of the events relevant to this complaint. The home in question was listed on or about July 4, 2021, and the first offer was received on or about July 5, 2021, with a 4:00 p.m. deadline for a response. Respondent claims that she notified all agents with scheduled showings of this offer, including Complainant's agent, of the July 5, 2021 4:00 p.m. deadline to submit an offer on the listed home. Respondent states Complainant's offer was submitted and presented to the sellers. Because the sellers had two offers at this time, they notified both of the prospective buyers of the multiple offers on the property. Respondent states that Complainant's agent understood that Complainant was in a multiple offer situation at this point and was sent a multi offer notification signed by the sellers. Respondent states she informed the Complainant's agent of the possibility to update the Complainant's offer or to extend the deadline if the Complainants did not want to change their offer at this time. Complainant chose to update her offer after receiving the multi offer notification. Respondent states that she informed all potential buyers that the sellers would review all the offers submitted by July 6, 2021 at 5:00 pm. Respondent states the sellers ultimately chose a cash offer without contingencies over Complainant's offer.

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

Recommendation: Close

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

- 30. 2021047741**
Opened: 7/13/2021
First Licensed: 11/24/2015
Expires: 11/23/2021
Type of License: Real Estate Firm
History: None

Complainant is an out-of-state resident. Respondent is a company that owns rental property.

Complainant began leasing property owned by Respondent in January of 2020. Complainant contends the Respondent's rental home had unsafe and uninhabitable living conditions due to alleged mold growth caused by unaddressed flooding in the home.

Complainant provided a timeline of events that go to show the Respondent's alleged lack of action in regard to the rental conditions that the Complainant claims resulted in the mold growth, and unsafe living conditions. On or about February 21, 2020 the Complainants state they made a service request for a water leak that was coming from the kitchen sink and leaking into the wall connected to the next room. On or about February 23, 2020 the Complainants state they made another service request to investigate the floor for water damage sustained by the water leak that originated from the kitchen sink. Complainants state that a technician was finally sent out on or about February 24, 2020 to address the water leak that was initially reported on February 21, 2020. On or about October 13, 2020 the Complainants state they requested another service to address the same water leak that was first reported on February 21, 2020. On or about October 15, 2020 the job was completed by a technician. On or about November 13, 2020 the Complainant states that the kitchen pipe that had been leaking burst and caused flooding in the living room, hallway, and part of the kitchen.

Around January of 2021 the Complainant claims to notice health symptoms that involve shortness of breath, and lightheadedness. The Complainant sent the Respondent a notice of unhealthy and unsafe living conditions to the Respondent on February 28, 2021. On March 4, 2021 the Complainant received an email from the Respondent informing them of an inspection of the Complainant's kitchen to address the notice of unhealthy and unsafe living conditions. The Complainant states that after questioning the technician dispatched on March 5, 2021 to complete the mold inspection, the Complainants did not get a straightforward response on whether the technician was a mold specialist.

On or about March 24, 2021 the Complainant claims water began leaking from the backyard into the side of the home, which allegedly cause flooding in the master bathroom, part of the master bedroom, the master closet, and a part of the kitchen. The Complainant states a technician responded and replaced the water spigot which was the source of the flooding.

Around April 1, 2021 the Complainant states that their health symptoms consisting of shortness of breath and lightheadedness persisted. On or about April 18, 2021 the Complainant submits a notice to move out, at first with the date of June 9, 2021, but Complainant fixed the request to reflect a June 18, 2021 move out date. Another move out request was submitted on April 23, 2021. Complainant claims that between the dates of April 25, 2021 through June 5, 2021 they received conflicting procedures on the next steps for the move-out process. On June 5, 2021 the Complainant sent the Respondents another email asking for clarification on the next steps for moving out, the Respondents failed to provide a timely response. On or about June 9, 2021 the Complainant informed the Respondent that they were looking into legal representation on the matter.

The Respondent submitted a response to the complaint stating that all work orders requested by the Complainant were completed professionally and efficiently from the time the requests were made. The Respondent states that the technician that was dispatched on March 5, 2021 to inspect the home for mold, confirmed that there was no mold or other growth present in the Complainant's home.

The Respondent states that the Complainant's reason for moving out was listed as "relocation to Miami." The Complainant submitted a rebuttal to the Respondent's response and clarified that because there was no mold issue option to select when completing the move-out reason they selected a random option. The Complainant states that the sole reason for the move was due to the suspected mold in the rental that the Complainant believed was causing concerning health symptoms. Complainant states that due to Respondent's failure to timely address these concerns, they decided to terminate their lease with the Respondents early.

This matter involves a contractual dispute between the parties. Moreover, the transaction appears exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(F). Based on the information provided, Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

31. 2021051501

Opened: 7/13/2021

First Licensed: 7/21/2011

Expires: 7/20/2023

Type of License: Real Estate Firm

History: 2016 Consent Order for failure to exercise reasonable skill and care; honesty and good faith

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

Complainant alleges that Respondent is seeking to make Complainant's life "as difficult as possible." This complaint rose out of the Complainant's ex-wife initiating a partition suit against the Complainant, which encompassed the property that both the Complainant and his ex-wife held an interest in. Complainant's ex-wife wanted to remove her financial obligations towards the mortgage of the home that Complainant occupied with their nine-year-old child. Complainant did not buy out the ex-wife's interest in the property, so an order for the sale of the property was entered on or about September 1, 2020.

Respondents were chosen by the court to put the Complainant's property on the market. On or about December of 2020 the Complainant claims that he allowed agents of the Respondent to enter his home for a walk-through. Complainant states that he disclosed to the Respondent that the home was in disarray due to moving his mother's belongings into the home as well as moving his recently closed office belongings into the home.

Complainant states that he refused to sign the listing documents because Complainant believed the 6% commission rate was too high. Complainant claims that shortly after this conflict the Department of Human Services (DHS) was dispatched to his home because of an alleged unfit home environment. DHS cleared the Complainant's home after moving some belongings to make a clear path through the home.

Complainant states that in May of 2021 they were able to secure a loan with a closing date of June 16, 2021, to make an offer on the property. Complainant claims that shortly after informing the court of his intention to purchase the property, the local codes department visited the Complainant at his home

about potential issues. Complainant is under the belief that because Respondent is the only one to have viewed his property recently, that they contacted both the DHS and the local codes department to keep the Complainant from being able to purchase the property with ease.

Respondent submitted a response stating that work completed by their agents on behalf of this property and Complainant was handled according to the court order. Respondents claim that after viewing the property, Complainant refused to sign the listing documents because Complainant stated he would be able to purchase the property from his ex-wife. The listing documents were finally signed in February of 2021 after Complainant and his ex-wife met in court.

After performing the walk-through of the Complainant's home, the Respondents stated that the home needed repairs, renovations, and cleanup. Respondent also claims that they saw animal feces, garbage, food, and mold in the home.

Respondents claim that the Complainant continued to refuse to cooperate and would not allow the Respondents to show the property. The parties were forced to return to court, and the Clerk & Master intervened to mandate an auction of the property.

Respondents state that the Complainant was unable to qualify for a refinance loan on the home because of missing payments on the home. Respondents claim that the Complainant was unqualified to make a bid on the property at the auction.

Respondent states that it's agent had been contacted by Complainant's neighbor concerned about safety and wellbeing on the day of the auction. The neighbor asked if there would be a sheriff on the premises and stated that Complainant had added trash and a "junk yard" at the front gate to keep buyers out. Respondent state that the sheriff's department was present at the auction as well as the clerk & master's office. Respondent states that neither of its agents reached out to local codes. Respondent suspects that the complaint arose from Complainant's neighbors. Respondent states that it has no knowledge about DHS.

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.

32. **2021051941**
Opened: 7/13/2021
First Licensed: 1/1/1991
Expires: 1/12/2023
Type of License: Real Estate Firm
History: None

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

Complainant contends to have entered into a purchase contract for a home with Respondent on or about May 14, 2020. Complainant claims that the contract agreement was handled by the Respondent's owner's son. Both parties admit that Respondent's owner's son is unlicensed. Complainant alleges that the owner's son informed Complainant that the property needed major repairs prior to closing on a mortgage loan, including a roof replacement and repairs to the pool house and the pool. Complainant states the owner's son told him the repairs would have to be started upon execution of the purchase agreement. Complainant contends that he spent over \$30,000 on repairs to the home at the instruction of the owner's son.

Complainant claims that once the repairs were completed, the owner's son entered into a contract with another buyer on the home without the Complainant's knowledge. The Complainant states that they never received a copy of the purchase contract that they entered into with the Respondent. The Complainant claims that the Respondent has duped other buyers into completing major repairs on a home and executing purchase contracts with different buyers.

Respondent's owner submitted a response on Respondent's behalf stating that the purchase contract was not handled by his son. Respondent claims that the son acts as his assistant, but that the purchase contract was handled by the owner.

Respondent states that this transaction was initiated by the Complainant after seeing the for-sale sign in the yard of the property, and the Respondent contacted the owner's son. Complainant offered \$150,000 for the property, which was amended on January 21, 2020 to an "As Is" price of \$178, 947.35 with the closing date of March 2, 2020. Respondent claims that the lenders were the parties who required the repairs to be completed prior to closing. Respondent highlights a Memorandum of Understanding that was signed by the Complainant on or about May 15, 2020 which contains a clause titled "Mutual Disclaimer," that states, "It is mutually agreed that the buyer is taking the risk of this renovation prior to taking title to the property... [T]he benefit of the repair will be for the exclusive enjoyment of the seller with no further recourse from the buyer."

The dispute between the parties appears to be a contractual matter. Based on the information provided, however, the owner's unlicensed son appears to have been engaged in activity in this transaction that is regulated by Tennessee Real Estate Broker License Act in violation of Tenn. Code Ann. § 62-13-302(a) (employing or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by the Tennessee Real Estate Broker License Act)

Recommendation: Assess a civil penalty in the amount of \$1,000.00 for violation of violation of Tenn. Code Ann. § 62-13-302(a) and open a complaint against the owner/principal broker.

Commission's Decision: The Commission accepted counsel's recommendation and voted to open a complaint against the Respondent's son for unlicensed activity.

- 33. 2021054351**
Opened: 7/20/2021
First Licensed: 1/19/2017
Expires: 6/16/2023
Type of License: Real Estate Broker
History: None

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

Complainant alleges that Respondent engaged in unprofessional conduct when representing buyers who were interested in the Complainant's extended family's home. Complainant claims that the Respondent received the Complainant's family's phone number through Respondent's principal broker, in order to get information on the Complainant's family's unlisted home. Complainant claims that the Respondent said the buyers did not know what they were doing and did not understand the process of buying a home.

Complainant contends that the Respondent belittled his extended family on the phone. Complainant claims that his wife set up the house showing with the Respondent's buyers because of the friendship that his wife and the buyers shared. Complainant states that the Respondent was not responsible for finding this home for the buyers.

Both the Respondent and the Respondent's principal broker submitted a response to this complaint. Respondent's principal broker states that Respondent and the homeowners successfully closed on the home on July 9, 2021. Respondent went to his principal broker when he believed that an agent was trying to double end a deal on the home at issue in this complaint. According to Respondent's principal broker, the agent who was allegedly trying to double end the deal was not providing the Respondent and the Respondent's principal broker with answers about information surrounding the home at issue in this complaint. Respondent's principal broker gave Respondent the phone number of the family who were the sellers of the home, and Complainant's extended family, so that Respondent could find out if there was a listing agreement signed.

Respondent claims that this complaint arose out of the confusion on whether or not there was a signed listing agreement, as the sellers stated there was, and the seller's agent said no agreement had been signed. Respondent states that he called the Complainant's extended family to get clarification about the listing of the family's home to make sure that he was handling the transaction properly for the buyers. Respondent states the phone conversation he had with the sellers was polite and courteous.

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

Recommendation: Close

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

- 34. 2021054821**
Opened: 7/20/2021
First Licensed: 6/11/2021
Expires: 6/10/2023
Type of License: Affiliate Broker
History: None

Complainant is a licensed Tennessee Real Estate Broker. Respondent is a licensed affiliate broker.

The Complainant states that in June of 2021 Complainant's firm received two licenses for the Respondent. Complainant sent these licenses back to the Tennessee Real Estate Commission because he did not know who the listed licensee was. Complainant states that again in July of 2021 the firm received two more licenses for the Respondent. Complainant called the Tennessee Real Estate Commission to inform them that he did not know who this licensee was.

An employee of the Tennessee Department of Insurance and Commerce sent the Complainant a copy of the license applications they received from Respondent., Complainant states that they did not sign the application for the Respondent.

Respondent submitted a response stating that the license applications were signed at the Complainant's real estate firm on or about June 10, 2021. Respondent submitted the proper signed documents to the Tennessee Real Estate Commission for licensure approval shortly after. Respondent states he has not engaged in any real estate functions under the firm because he is waiting for the firm to make contact about the Complainant's next steps.

Respondent states that he was made aware of this complaint on or about July 14, 2021. The Respondent claims that on the evening of July 14, 2021 the firm clarified the miscommunication between the Complainant and the managing broker/ trainer. The Respondent states further that the Complainant submitted a request to withdraw the complaint made to the Tennessee Real Estate

Commission. Respondent claims that the Complainant invited him to their office for new agent training on or about July 16, 2021.

Complainant emailed the Tennessee Department of Insurance and Commerce on July 15, 2021, requesting to withdraw the complaint he made against the Respondent on July 14, 2021. Complainant states that the Respondent had met with the majority owner of the real estate firm, who is listed as the principal broker, while the Complainant was out of town. Complainant states the whole foundation of the complaint was a miscommunication between members in the Complainant's real estate firm.

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

Recommendation: Close

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

35. **2021051711**
Opened: 7/20/2021
First Licensed: 1/01/1991
Expires: 2/7/2023
Type of License: Real Estate Firm
History: None

Complainant is a licensed affiliate broker. Respondent is a licensed Tennessee real estate firm.

Complainant alleges Respondent contacted Complainant's clients, who are under an active listing agreement with the Complainant's firm. Complainant states that on or about September 24, 2017, Complainant and seller entered into a listing agreement for a large tract of land. Complainant claims she had an extended listing with a signed and current extension agreement.

Complainant alleges that Respondent has repeatedly attempted to make contact with this seller. Complainant claims she contacted an agent of the Respondent and requested them to stop contact with the seller. On or about June 2, 2021, Complainant received an email from another agent of the Respondent stating that they had the listing. Complainant reached out to the

MLS Board, who advised the Complainant to work out the issue with the other agent.

Complainant states that they brought an offer to their seller and another interested party to the property brought the offer to the Respondent. Complainant claims that the Respondent told the seller that the Complainant's listing is illegal because there are not two signatures on the property that is listed for sale.

The Complainant contends that their seller has the most interest in this property, that there is no longer a Limited Liability Company as it was abolished six years prior, and that all partners have passed away. Complainant contends that the Respondents have broken all codes of ethics by contacting the Respondent's client and listing a property that already had a bound listing agreement.

Respondents submitted a response providing background on the property at issue and explaining that the seller with whom Complainant had a listing was a dissolved LLC. Some members of the dissolved LLC were forming a limited partnership. One of the partners and co-owner of the property at issue approached a few agents of the Respondent to list the property. This partner advised Respondent's agent that the previous listing expired, and several partners wanted to use a different agent when the property was relisted.

When the partners met with the Respondent, they provided the Respondent's agents with a copy of the property deed and minutes to the limited partnership meeting. The minutes stated that three partners were to sell the property and two of the three partners needed to agree in order to sell the property. Respondent claims that after conducting some research into the property, they did not find any listings for the property.

This listing agreement between the Respondent and two partners was signed by two partners of the LLC and the Respondent on or about May 20, 2021. When the Respondent's agents went to photograph the property, they saw no listing sign at the front of the property but did see a sign in the middle of the property. Respondent's agents looked into the name and company on the sign, which they assumed was the previous listing agent, but later determined that this company was from a prior listing from at least four years ago.

Respondents contend that they were informed by authorized property owners that the property was not listed. Respondents also could not find property tied to the CRS parcel in MLS after conducting research into other potential listings on the property.

Respondent has included minutes from the partnership meeting that establish the procedures to liquidate the partnership and the sale of the property at issue. The Respondent abided by those procedures and did not find any other listing agreement that controlled the sale of the property at issue. 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.

- 36. 2021054541**
Opened: 7/27/2021
First Licensed: 2/18/2021
Expires: 2/17/2023
Type of License: Affiliate Broker
History: None

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

Complainant alleges that Respondent is advertising that she will pay cash to individuals in the public for referrals. Complainant provided a copy of an internet/social media post in which Respondent states: "I'm currently offering \$100 for referrals. If you know anyone looking to buy or sell real estate send me their contact and your Venmo and I'll send you \$100!"

Respondent submitted a response acknowledging the post and stating that she is a new real estate agent and is still learning. She states she did not seek approval from her principal broker. Respondent states that as soon as she made the post, she became concerned and removed the post shortly after it was posted. Respondent provided proof that the post was removed. Respondent states she has learned a lesson and will seek the input of her principal broker in the future.

Based on the information provided, Respondent recommends a civil penalty in the amount of \$500 for violation of Tenn. Code Ann. § 62-13-302(b) (“A real estate licensee shall not give or pay cash rebates, cash gifts or cash prizes in conjunction with any real estate transaction.”).

Recommendation: Authorize a \$500 civil penalty for violation of Tenn. Code Ann. § 62-13-302(b).

Commission Decision: The Commission accepted counsel’s recommendation and voted to also include that Respondent take the CORE class within 180 days of the execution of the Consent Order, with the required class not to count toward CE needed for renewal.

37. 2021054581

Opened: 7/27/2021

First Licensed: 7/8/2019

Expires: 7/7/2023

Type of License: Affiliate Broker

History: None

Respondent is a licensed affiliate broker. In his application for license renewal, Respondent disclosed that he had been disciplined by the Financial Industry Regulating Authority (“FINRA”) since his last license renewal. This complaint was

Respondent entered into a settlement of a disciplinary matter with FINRA on May 20, 2019, via a Letter of Acceptance, Waiver and Consent (“AWC”), which Respondent has provided. FINRA took action against Respondent by issuing the AWC suspending him from association with any FINRA member firm in all capacities for 18 months. The action was based on FINRA’s finding that, between 2013 and 2015, Respondent made approximately 273 unauthorized purchases and sales in a customer’s brokerage account by exceeding the scope of authority granted by the customer. According to the AWS, the customer gave Respondent verbal authorization to buy new CD issuances upon maturity of prior CD issuances. Respondent exceeded the scope of authority, however, by selling the CDs prior to their maturity and using the proceeds to purchase new CDs, nearly always at a loss. This resulted

in a loss of approximately \$100,572.00 of interest and caused the customer to pay \$4,268.73 in unnecessary commissions.

FINRA found that the unauthorized purchases and sales violated FINRA Rule 2010, which requires that a registered representative “in the conduct of his business ... observe. high standards of commercial honor and just and equitable principles of trade.” Pursuant to the AWS, Respondent consented to the imposition of an 18-month suspension, disgorgement of \$4,268.73 in commissions, and a \$10,000.00 fine.

In his response to the complaint, Respondent states that he neither admitted nor denied FINRA’s findings in executing the AWC. He states that his suspension concluded on December 2, 2020. Respondent also agreed via consent order to a suspension of his license with the Department of Insurance in another state which ran concurrently with the FINRA suspension and has now expired. Respondent states that his affiliate broker license has already been renewed. Respondent states he has also applied to renew his securities license in Tennessee, and the application was initially denied by the Securities Division due to the FINRA AWC. Respondent states a hearing is scheduled in which he is challenging the ruling. (Update: The hearing was recently held, and the judge took the matter under advisement. Proposed findings of fact and law are due to be submitted on October 7, 2021.)

Based upon the information provided, Respondent was first licensed by the Commission on July 8, 2019, after having entered into the FINRA AWS on May 20, 2019. It does not appear that Respondent disclosed or provided copies of the FINRA disciplinary action nor appeared before the Commission during his initial licensure application as required by Tenn. Comp. R. & Regs. 1260-01-.01(6). Respondent states he was informed by someone at his brokerage that he should answer “no” to the application question concerning disclosure of disciplinary action in his initial application because it was not related to real estate. Respondent has now provided the disclosure and documentation upon his application for renewal.

Recommendation: Discuss

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

38. 2021054831
Opened: 7/27/2021
Unlicensed
History: None

Complainant is a licensed real estate agent. Respondent is a professional photographer.

Complainant alleges that Respondent has been hired by real estate agents to photograph homes they intend to list. Complainant contends that, prior to the homes being listed, Respondent has posted photographs on Facebook and stated the homes are “coming soon.” Complainant states Respondent named real estate agents in his posts on two occasions.

Respondent submitted a response stating that he is a professional photographer and videographer who recently added real estate HDR photography to his business model. He is a licensed FAA drone pilot. Respondent states he has placed photo examples on his Facebook page promoting his photography business. Placed on the photos themselves are the name of his business and a caption that reads “drone and real estate photography.”

Respondent’s attorney submitted a supplemental response denying that Respondent has directly or indirectly engaged in any broker activity as defined in Tenn. Code Ann. § 62-13-102.

The snapshots submitted by Complainant are posts with sample HDR photographs of home interiors. The homes are not identified or marketed, and no description is provided. The photographs are marked with Respondent’s business logo. Based on the information provided, there is insufficient evidence that Respondent is engaged in unlicensed activity as defined by Tenn. Code Ann. § 62-13-301.

Recommendation: Close

Commission Decision: The Commission voted to issue a Letter of Warning regarding unlicensed activity.

39. 2021055051

Opened: 7/27/2021
First Licensed: 8/11/2015
Expires: 8/10/2021
Type of License: Affiliate Broker
History: None

Complainant and Respondent are both licensed affiliate brokers.

Complainant represented the buyers in the purchase of a home. Respondent represented the sellers. Complainant contends Respondent engaged in unethical practices by withholding information or providing false information and communicating in an unprofessional manner. Complainant contends that the property records showed the seller's ex-husband as co-owner of the property. Respondent stated her client was the owner pursuant to the divorce, and the ex-husband quitclaimed the property. Complainant was friends with the ex-husband on Facebook and messaged him to inquire about the seller, her new husband, and his knowledge of the property sale. The ex-husband did not know his name was still on the tax records. Complainant contends that the title company later had the ex-husband execute a quitclaim prior to the closing. Complainant states this was mentioned at the closing table. Complainant again contacted the ex-husband on Facebook after the closing to ask for more information, and the ex-husband confirmed he was asked by the title company to sign the quitclaim.

Complainant and Respondent appeared to disagree about numerous issues throughout the transaction. Complainant submitted copies of emails and messages in which Respondent and Complainant appeared to bicker with one another. Complainant complained to the title company and others in attached correspondence about how difficult the deal was and working with Respondent.

After the complaint was filed, Complainant's principal broker submitted a statement that, after discussions with Complainant, Respondent, and Respondent's principal broker, he and Complainant request that the complaint be withdrawn. The principal broker states the matter has been mutually resolved between the agents and brokers.

Respondent submitted a response stating that all parties have agreed that tensions were high during the transaction and that it put excess stress on everyone. Respondent denies any violations of the Commission's rules or

statutes. Respondent states all parties have spoken and are in agreement that it was a misunderstanding that should have been talked out amongst themselves. She states that Complainant and her principal broker have attempted to call to request that the complaint be dropped.

Based on the information provided, there is insufficient evidence that Respondent violated any rules or statutes of the Commission. The parties appear to have resolved all issues and misunderstandings.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 40. 2021055311**
Opened: 7/27/2021
First Licensed: 11/20/2012
Expires: 11/19/2022
Type of License: Affiliate Broker
History: None

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

Complainant states he was approached by Respondent on July 13, 2021, about purchasing a home Complainant owned. Complainant states Respondent did disclose he was a licensed real estate agent. Complainant and Respondent agreed on a sale price and entered into a contract for the purchase and sale of the home on July 13, 2021. Complainant alleges he was notified on July 18, 2021, that his property was being advertised for sale on MLS. Complainant alleges that he did not sign any listing agreement giving Respondent permission to market the property.

Respondent submitted a response stating that he was purchasing the property as an investment. The purchase and sale agreement Complainant executed allowed for Respondent to advertise the property and have access to the home during the length of the contract. Respondent provided copy of the contract. Respondent states that he withdrew the property from MLS as soon as Complainant called unhappy about it.

Based on the information provided, Respondent entered into a contract to purchase the Complainant's property, and, therefore, the transaction appears to be exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1). Moreover, the contract Complainant signed expressly provided that the buyer may advertise and show the property during the length of the contract.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

41. **2021050701**
Opened: 7/27/2021
First Licensed: 12/19/2003
Expires: 2/14/2023
Type of License: Real Estate Firm
History: None

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

Complainants are the sellers of a home. Complainants contend they accepted an offer on from a prospective buyer represented by an agent with Respondent's firm. Complainants allege the contract provided that the property would remain listed on MLS as under contract/still showing and that the Complainants would accept backup offers. When Complainant's agent advised Complainant's about a cash offer for \$15,000.00 more than the contract price, Complainants contend that Respondent's agent then referred to a due diligence form and stated that a contingency in the contract meant that only backup offers could be received from potential purchasers. Complainants contend this cost them money. They request that the agent's license be revoked.

Respondent's principal broker submitted a response along with a statement from Respondent's agent. Respondent's principal broker states that the agent acted legally and appropriately at all times, and that the Complainants did not understand what a backup offer means.

The agent stated that Complainants were hesitant to tie up the property with her clients' inspection, appraisal, and financing contingencies after the property had already been under contract for several weeks with another buyer who had terminated. The agent suggested that Complainants keep the property on MLS as under contract/showing, enabling them to accept backup offers. The parties jointly decided to include the provision in the contract. The home went under contract on May 28, 2021. The buyers proceeded through inspections successfully. On June 18, 2021, the listing agent informed Respondent's agent that Complainants received a cash offer higher than the buyer's offer. Respondent's agent told the listing agent they were still under contract, and the buyers wanted to close pending final loan approval. Complainants believed their contract included a kick-out clause, but Respondent's agent states it did not. Respondent's agent states the listing agent was a first-time agent and misunderstood the contract provision due to inexperience.

Based on the information provided, this matter appears to be a contractual dispute between the parties. Counsel does not find evidence that Respondent or its agent violated any rules or statutes of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

42. **2021052461**
Opened: 8/17/2021
Unlicensed
History: None

Complainant submitted the complaint under an apparent fictitious name. Complainant alleges that Respondent is a company that manages short term rentals without a license. The name of the alleged Respondent company submitted by Complainant was incorrect. The owner of Respondent company submitted a response providing the correct name (which is similar but not identical to the name Complainant provided).

The owner of Respondent company states that the only property his company manages is owned by him. He owns another property that is under

construction and will be managed by Respondent. In preparation for expanding to management of properties not owned by him, the owner submitted an application vacation lodging service license in April of 2021, naming himself as the designated agent. Respondent has met all the requirements except the required class for the designated agent, which the owner is scheduled to take in late August.

Based on the information provided, there is insufficient evidence that Respondent has violated any rules or statutes of the Commission. The property currently being managed by Respondent would not fall within the requirements of Tenn. Code Ann. § 62-13-104(b) because a 'vacation lodging service' refers to rental units owned by others. See Tenn. Code Ann. § 62-13-104(b)(1)(C). Moreover, the transaction is exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(F).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 43. 2021054341**
Opened: 7/27/2021
Unlicensed
History: None

This complaint appears to be the same as Case No. 2021052461 but submitted by "anonymous." Complainant alleges that Respondent is a company that manages short term rentals without a license. The name of the alleged Respondent company submitted by Complainant was incorrect. The owner of Respondent company submitted a response providing the correct name (which is similar, but not identical to, the name Complainant provided).

The owner of Respondent company states that the only property his company manages is owned by him. He owns another property that is under construction and will be managed by Respondent. In preparation for expanding to management of properties not owned by him, the owner submitted an application vacation lodging service license in April of 2021, naming himself as the designated agent. Respondent has met all the

requirements except the required class for the designated agent, which the owner is scheduled to take in late August.

Based on the information provided, there is insufficient evidence that Respondent has violated any rules or statutes of the Commission. The property currently being managed by Respondent would not fall within the requirements of Tenn. Code Ann. § 62-13-104(b) because a 'vacation lodging service' refers to rental units owned by others. See Tenn. Code Ann. § 62-13-104(b)(1)(C). Moreover, the transaction is exempt pursuant to Tenn. Code Ann. § 62-13-104(a)(1)(F).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 44. 2021054081**
Opened: 8/2/2021
First Licensed: 5/4/2009
Expires: 10/21/2021
Type of License: Principal Broker
History: None

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

Complainant states he contacted Respondent to make an offer on a vacant lot that Respondent had listed. He alleges that Respondent confirmed the property had utilities, electric and water. Complainant made an offer of \$25,000.00, which the seller accepted. Complainant met with Respondent to execute the contract and brought the down payment. Complainant provided a copy of an internet listing for the property which describes the availability of electric and public water. Next to the listing, Complainant wrote: "Well cost \$14,000.00. Please help!" No other details about this were provided.

Respondent submitted a response to the complaint stating that he asked the property owner prior to listing the vacant parcel if it had electric and water. The owner stated he did not know. Respondent states he checked the tax records which stated that the property had public water and electric.

Respondent also checked the records for the properties on either side of the vacant lot, which also stated the properties had public water and electric. Respondent provided a copy of the records with his response.

Respondent states that Complainant called him to make an offer on the property, which the seller accepted. Complainant went to Respondent's office on February 22, 2021, to sign the paperwork and provide the down payment. Complainant took possession at that time. Respondent did not hear from Complainant again until he received notice of this complaint. Respondent states Complainant also called his home at 2:00 a.m. seemingly drunk and talking incoherently.

Respondent provided a copy of the records he reviewed and relied upon for the listing. Moreover, the contract executed by Complainant included a disclaimer that "[t]he availability, adequacy, connection and/or condition of . . . water supply, electric . . . need to be verified by the appropriate sources." 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.

45. **2021054271**
Opened: 8/2/2021
First Licensed: 7/10/2020
Expires: 7/9/2022
Type of License: Affiliate Broker
History: None

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

Complainant made an offer to purchase a home listed by Respondent. Complainant contends that neither the seller nor Respondent made any efforts to alert Complainant that the upstairs HVAC was not working. Complainant states he heard Respondent tell a prospective buyer during the showing that the HVAC unit was turned off. Complainant states he does not know if this

was a false statement. Complainant believes Respondent should have made an additional effort to verify the condition of the HVAC or update the property disclosure. Complainant contends that the property disclosure form proved incorrect when the inspection report noted small holes found in the walls and cracks in a retaining wall. Complainant contends he sent a request to for a change in price a week before closing based on an agreement to accept \$10,000 over appraised value, which the seller did not honor.

Respondent submitted a response stating that he and the seller were open and transparent about the house. Prior to taking the listing, Respondent did a walkthrough with the seller. The seller told Respondent that he only utilized the first floor of the house and that the upstairs HVAC unit had been turned off for some time since his family had moved out several months earlier. Respondent stated he had no reason to doubt the seller. According to a quote from the HVAC company, the upstairs HVAC unit was operational and merely needed to be serviced to be in working order. Respondent states that information did not require an updated disclosure because the seller would be able to easily have the service completed. Respondent states the Complainant wanted a new unit, but the quote did not state a new unit was necessary.

Respondent states the buyers had the right to investigate and inspect items and exercised their right by having an inspection done. The seller completed the property disclosure form to the best of his knowledge and was not required to hire a home inspector to complete the form. Complainant had a 10-day inspection and 2-day resolution period. Complainant submitted a repair/replacement proposal to the seller during the resolution period. The seller was not willing to repair all of the items, and the parties were not able to reach resolution.

Respondent states Complainant was upset that the appraisal came back lower than the purchase price. The contract provided that Complainant would pay difference up to \$10,000.00 if the home did not appraise. Respondent states Complainant believed that the seller would automatically drop the purchase price to the appraised value, but the contract did not require the seller to lower the price. Complainant incorrectly believed he would pay the appraised value plus \$10,000.00 under the contract. The contract was terminated pursuant to the appraisal contingency.

Based on the information provided, there is no evidence that Respondent violated any rules or statutes of the Commission. Moreover, the disagreement appears to be a contractual dispute between the parties.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 46. 2021054901**
Opened: 8/2/2021
First Licensed: 2/9/2007
Expires: 10/1/2021
Type of License: Affiliate Broker
History: None

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

On March 5, 2021, Complainant purchased a home listed by Respondent. Complainant contends she began having problems with the air conditioning unit on in May of 2021. Complainant states she had the unit inspected and the unit was leaking freon and the coils and condenser were faulty. Complainant alleges she asked Respondent repeatedly if there was a warranty on the unit. A contractor who had performed work on the unit was scheduled twice to come out and did not show up. Complainant states she is having to board her dog and rent a hotel room due to the heat.

Respondent submitted a response stating that Complainant emailed him on May 7, 2021, stating she was having issues with the HVAC unit. Respondent forwarded the email to the seller and the contractor whom the seller had hired to do rehab work on the home. The seller responded stating that she thought the HVAC unit was replaced. The contractor stated all the ductwork and ducts were new, but not the furnace and condenser. He stated the person who did the HVAC work on the home warranted everything for 12 months parts/24 months labor. The contractor gave Respondent the HVAC person's contact information, which Respondent forwarded to Complainant. Respondent states Complainant and her agent tried to reach the HVAC person with no luck. Respondent told Complainant he would try to assist in reaching the HVAC person. He called and texted the HVAC person many times. The HVAC

person agreed at one point to go out to property but did not. Respondent called him many times without being able to reach him. Respondent provided copies of numerous text messages and emails in which he corresponded with and attempted to assist Complainant.

After the HVAC person stood Complainant up twice, Respondent reached out again to the seller and seller's contractor. They both stated they were not going to do anything else. The seller stated the home was fine during the final walkthrough with the buyer. The contractor stated everything worked fine at closing.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 47. 2021055661**
Opened: 8/2/2021
First Licensed: 6/20/2001
Expires: 8/31/2023
Type of License: Affiliate Broker
History: None

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

Complainant alleges Respondent called her on July 16, 2021, and stated she was taking Complainant's house off the market. Complainant contends Respondent told her she would be better off with a white realtor whom Respondent knew and who Respondent believed could help Complainant sell her home and purchase a home. Complainant states she texted Respondent and told her not to call her anymore. On the following day, the police came with Respondent to get the key box on the house. Complainant contends Respondent stated in the listing that she had sold Complainant's house. Complainant alleges this was fraudulent advertising.

Respondent provided a response denying any false statement about selling Complainant's house. Complainant provided a copy of the online listing which stated the status was "withdrawn released." The purchase of Complainant's home was contingent on Complainant purchasing and closing on another home, which the updated listing also stated. Complainant thanked Respondent for the release and referral in the copy of messages provided. There was no mention by Respondent in the messages provided regarding the race of the new agent.

Respondent states the police were called per her broker to accompany Respondent on July 17, 2021, to pick up the key box as a safety precaution because of Complainant's threatening text message on July 16, 2021. Respondent submitted a copy of Complainant's text, which threatened legal action against Respondent for any contact and stated Complainant would call law enforcement if Respondent contacted Complainant further.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 48. 2021055781**
Opened: 8/2/2021
First Licensed: 11/16/2017
Expires: 11/15/2021
Type of License: Affiliate Broker
History: None

Complainant and Respondent are licensed affiliate brokers.

Complainant submitted this complaint alleging that Respondent has transferred firms, but the sign on a certain park bench has not been updated since the transfer. This complaint follows prior anonymous complaints alleging that Respondent had billboard and park bench advertising which had not been updated. Respondent previously provided copies of correspondence with advertising companies from the same date of his transfer requesting that

his advertising be updated. Respondent provided an update from the advertising company at that time that it is in the process of changing all of the benches and getting to the jobs as quickly as possible. Respondent provided updated copies of communications with the advertising company demonstrating that the company has continued to change out all of the signage. Respondent has provided correspondence and photographs from the advertising company demonstrating that the park bench complained about in this complaint has already been changed out.

Respondent states that he has worked diligently with the advertising company to change out all bench signage and is at the mercy of the timing and ability of the advertising company to complete those jobs. Respondent states he is being targeted and bullied by agents inside the real estate community over this issue.

It appears that Respondent took action to changeover his advertising on the same day he was broker-released and has continued to work diligently with the ad company to ensure that advertising updates are being processed as quickly as possible. It appears the park bench signage at issue in this complaint has been updated. 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.

49. 2021056751
Opened: 8/2/2021
Unlicensed
History: None

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

Complainant contends that Respondent has listed properties on social media to help people selling their homes. Complainant alleges Respondent paid a

flat rate listing service to list a property on MLS using Respondent's own email and phone number for contact.

Respondent submitted a response stating she did help her sister-in-law sell her house. Respondent had invested funds in the remodel and had knowledge about the home, which had been a rental. Respondent states her sister-in-law is a teacher and was teaching summer school. Respondent states her schedule was better, and so she helped field calls and would drive over to open the door and describe the remodel work.

Because Respondent was already fielding calls about her sister-in-law's house, she agreed to also help out a friend who was living out-of-state concerning a nearby property. She helped create a FSBO listing and would open doors at times for people to view the home. The owner later decided to list the home with a real estate agent at Respondent's encouragement, and the home is now under contract.

Respondent states she did not receive nor expect any compensation. Based upon the information provided, there is insufficient evidence that Respondent engaged in unlicensed activity as defined by Tenn. Code Ann. § 62-13-301.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

- 50. 2021051241**
Opened: 7/13/2021
First Licensed: 4/4/2018
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: 2016 Consent Order for failing to timely issue refunds

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

Complainant purchased a timeshare on or about June 14, 2014. Complainants state that they were “lured” to a sales presentation hosted by the Respondent with the offer of a free night hotel stay in exchange for ninety minutes of their time. In this presentation, the Complainants claim that they were told their purchase of a timeshare would be a great investment and they would save money on yearly vacations. Complainants state that their purchase of a timeshare was supposed to allow them to rent out their timeshare and make a profit. The Complainants state they have never used their timeshare and were ultimately misled by the Respondent.

The Respondent submitted a response stating that the Complainant’s allegations of misrepresentations in the sales presentation made by the Respondents are untrue. The Respondent highlights a clause in the contract, that the Complainants entered into with the Respondent, that states the transaction entered into by the Complainants was governed only by the written contract, and not by any other written or oral representations.

The Respondent also refutes the Complainant’s statement that they were told a timeshare purchase would be an investment opportunity. The Respondent highlights a clause in the contract that states, “Purchaser further acknowledges, agrees and represents that ... membership in the Capital Resorts Club are being purchased only for Purchaser’s personal use and not for any investment potential.”

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

Recommendation: Close

Commission Decision: The Commission accepted counsel’s recommendation.

51. **2021050691**

Opened: 7/20/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

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

Complainants have owned timeshares with the Respondent for about ten years. On or about June 6, 2019, Complainants traded their existing contract with Respondent for the purchase of another contract with Respondent to receive more annual points and receive Gold VIP status with the Respondent.

Complainants state that with this contract upgrade they were expecting to reduce their ownership fees and have more flexibility and preference in planning their vacations. Complainants state that they were promised that they Gold status would virtually eliminate maintenance expenses and if they used the Respondent's credit card, they would earn bonus points for maintenance fees. Complainants stated that an agent of Respondent told them that they "should be treated like VIP's" because they had already paid the amount to be treated with VIP status.

In anticipation of upgrading their existing contract with the Respondents, the Complainants attended an owner orientation. The Complainants state that the meeting lasted more than five hours and they were surrounded by Respondent's personnel who were telling the Complainants that "they needed to make the right decision." The meeting ended with a lot of electronic documents that they signed with the end goal of reducing their ownership costs.

When the Complainants returned home, they printed off the eighty-plus page contract to read over the papers that they signed. The Complainants realized their costs would be higher with the new contract within 15 days of them initially signing the contract, over the rescission period of 10 days. Since this time the Complainants have suffered numerous family health emergencies and home repairs that have resulted in a financial strain on their savings. Complainant's timeshare contract has resulted in another financial burden that they are no longer able to afford.

The Respondent submitted a response stating that all documents signed by the Complainant when purchasing the new upgraded contract contained the relevant information to assist the purchaser in avoiding misunderstandings and to aid the purchasers in understanding the product they bought. Regarding

the financial hardships the Complainants are experiencing, the Respondent stated that the Complainants could have their account reviewed by the hardship department for assistance.

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

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

52. 2021051051

Opened: 7/20/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

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

Complainants purchased a contract with Respondent on or about April 20, 2015. On or about October 1, 2016 Complainants traded in their current contract for an upgraded contract with the Respondent. Complainants state that each time they were on a scheduled vacation through the Respondents they would be told that there was a mandatory owner update meeting. Complainants state that at these meetings Respondent engaged in high-pressure sale pitches for their members to buy more points, and often they would claim their membership was in jeopardy if more points were not purchased. Complainants believe that they have been taken advantage of by the Respondent's business practices.

Respondent submitted a response and stated that the format of the complaint made them believe that the Complainants are attempting to cancel their contract with Respondent without a real cause of action to merit cancellation. Respondents addressed the owner update meetings and stated that the Complainants could have left at their own discretion. Further, the

Respondents state that the Complainant's attendance was only mandatory in accordance with the terms and conditions of the agreement they entered into with the Respondent.

Respondents state that all documents signed by the Complainant when purchasing the new upgraded contract contained the relevant information to assist the purchaser in avoiding misunderstandings and to aid the purchasers in understanding the product they bought. This included written disclosures addressing ownership, discount, trade equity, down payment, resale assistance, rental income, and rescission rights of the purchaser.

Based on the information provided, this is a contract dispute between the parties, and there is insufficient evidence that Respondent violated the laws and rules of the Commission. Moreover, the rescission/cancellation period for the contract has expired, and the complaint is outside the two-year statute of limitation set forth in Tenn. Code Ann. § 62-13-312(e)(1).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

53. 2021045571

Opened: 7/27/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainants are out-of-state resident. Respondent is an out-of-state timeshare exempt company.

Complainants contend they have purchased multiple timeshares with Respondent. Complainants allege they were coerced into a purchase under the guise that they would be saving money for their vacations. Complainants contend an agent with Respondent put Complainant's down payment on their credit cards without their knowledge. Complainants have reevaluated their finances with the impact of COVID-19 and have decided they can no longer afford to pay for the timeshare.

Respondent submitted a response denying that Complainants were coerced into any purchase. Attendance at sales presentations is not mandatory. Complainants received and signed the Purchaser Information and Credit Authorization form. Respondent states Complainants signed and received the sales charge receipt utilizing their Visa account toward the down payment. The contract documents Complainant signed and received disclosed all terms of the agreement, and Complainants were given rescission rights. The rescission period has passed, and the contract is binding. Respondent states it is not required to cancel the contract. Respondent states Complainants may contact financial services regarding Respondent's hardship program if they have experienced an adverse financial change since the date of their last purchase.

According to the contract documentation provided by Respondent, Complainants last time share purchase occurred on November 26, 2018. Complainants' rescission period has expired, and the complaint is outside the two-year statute of limitation set forth in Tenn. Code Ann. § 62-13-312(e)(1). Based on the information provided, this is a contract dispute between the parties, and there is insufficient evidence that Respondent violated the laws and rules of the Commission.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

54. 2021047291

Opened: 7/27/2021

First Licensed: N/A

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainants are Tennessee residents. Respondent is a timeshare exempt company.

Complainants own a timeshare with Respondent. Complainants contend they were pressured into a making the purchase. They have sent a letter to the

company explaining that they were told lies and asking for cancellation of the contract, but the request was denied. Complainants seek help in cancelling their agreement.

Respondent submitted a response stating that no misrepresentations were made to Complainants. Complainants' financial obligation and rescission rights were disclosed in their purchase documents, which were reviewed with them during the sales process. Their rescission rights were written directly above their signature in capital letters on the purchase agreement. Respondent states that a review of Complainants account shows they are delinquent on the loan and can be referred for foreclosure.

Respondent submitted a supplemental response stating that a deed in lieu of foreclosure was offered to Complainants, and they accepted. Complainants' account will be cancelled after the executed deed is returned and recorded.

Based on the information provided, this is a contract dispute between the parties, and there is insufficient evidence that Respondent violated the laws and rules of the Commission. Moreover, the parties appear to have resolved the Complainants' contract cancellation request via execution of a deed in lieu of foreclosure.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

- 55. 2021049011**
Opened: 7/27/2021
First Licensed: 10/2/2003
Expires: 12/31/2016
Type of License: Time Share Registration
History: None

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

Complainant contends that she purchased a timeshare from Respondent in 2014. She states that the IRS values her timeshare as worthless. Complainant

alleges that Respondent refuses to take back her timeshare. Complainant believes she was misled during the presentation. She believes Respondent has breached an implied covenant of good faith and fair dealing.

Respondent has not been a licensed in Tennessee since 2016. Moreover, Complainant has provided no information to indicate that the transaction at issue from 2014 has any ties to the State of Tennessee. Regardless, this is a contractual dispute matter, and the complaint is outside the two-year statute of limitation set forth in Tenn. Code Ann. § 62-13-312(e)(1).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

56. 2021051171

Opened: 7/27/2021

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

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

Complainants contend they purchased a timeshare with Respondent 30 years ago. Complainants' mother purchased an additional timeshare in 2001 in Florida. They were told they would be able to vacation anywhere, anytime, but they have not been able to do so. Complainants have raised their concerns with Respondent, but Respondent will not let them out of the contract. Complainants are not traveling like they used to due to COVID-19. They wish to have their contracts cancelled.

Respondent submitted a response stating that Complainants purchased a timeshare while in Florida in 1996, 2000, and 2003. In 2014 and 2018, Complainants agreed to trade the contracts to apply the equity to apply toward the purchase of new contracts while in Tennessee. Complainants signed and received a Buyer's Acknowledgment, Ownership Review, and Quality

Assurance Review, and copies of the agreements at the time purchases. The documentation includes written disclosures concerning ownership and use. Complainants were given rescission rights, and the contracts became binding after the rescission period expired.

Based on the information provided, there is insufficient evidence that Respondent violated the laws and rules of the Commission. This is a contract dispute matter between the parties. Complainants' rescission period has expired, and the complaint is outside the two-year statute of limitation set forth in Tenn. Code Ann. § 62-13-312(e)(1).

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED:

57. **2021013421**
Opened: 3/1/2021
First Licensed: 3/5/2007
Expires: 4/23/2021
Type of License: Affiliate Broker
History: None

Complainant is an out-of-state resident seeking to purchase a home in Tennessee. Respondent is a licensed affiliate broker.

Complainant made an offer on a home that Complainant contends was listed as 2,600 sq. ft. with 4 bd/3.5 ba. Complainant made an offer for \$399,900.00, which seller accepted. Complainant contends that the appraisal report stated the house was 2,168 sq. ft. and 3 bd/3.5 ba. The house only appraised for \$323,000.00. Complainant rescinded the purchase and sale agreement on the appraisal contingency.

Complainant states that she provided Respondent with a copy of the appraisal report, but Respondent relisted the home at \$399,900.00 without changing the square footage or bedroom number. Complainant alleges that Respondent

knowingly relisted the home under false specs, which Complainant believes is fraudulent advertising.

Respondent provided an answer to the allegations, denying any fraudulent activity. Respondent states that the specs provided in the listing were taken from information provided to Respondent by the sellers. The seller provided a sketch of the home, including dimensions, which Respondent used in the listing. The sketch was also provided to the buyer's agent. Buyer's agent contacted Respondent on February 12, 2021, about a discrepancy in builder's sketch regarding 385 sq ft. of garage space, which had been included as livable square feet. The discrepancy was disclosed to all parties of the transaction. Respondent states she'd had no reason to question the measurements provided by the seller, as he was a professional builder.

A copy of the appraisal report was emailed to Respondent at 9:08 p.m. on February 17, 2021. On February 18, 2021, Respondent discussed the findings with the buyer's agent. Shortly thereafter Respondent received a call from a member of the appraisal team informing Respondent that the measurements in the report could be inaccurate because the team had erroneously omitted one of the baths from the measurements. The appraisal team member requested photos of the omitted bath, which Respondent immediately provided.

On February 18, 2021, Complainant opted out of the contract because the appraised value on the report, \$323,000.00, did not meet the purchase price of \$399,900.00. Complainant's FHA loan would not finance anything above the appraised value, and the seller would not lower the asking price to the appraised amount. Respondent did a quick edit on MLS that evening, changing the status from "UC Not Showing" to "Active" and reducing the list price from \$419,000.00 to \$399,900.00. When Respondent arrived at the office on the following morning, she provided the breakdown of square footage (total versus livable) in the remarks section of MLS. She also added a note that the rec room "could" be used as a fourth bedroom. Respondent based the measurements on the dimensions the seller provided. At that time, Respondent had not yet received a corrected appraisal. Respondent requested a corrected appraisal from the buyer's agent. Respondent states all of this was done before any other agent or buyer inquired about the listing or viewed the home. Complainant had already filed the instant complaint on February 18, 2021. On February 20, 2021, Respondent received an offer on the listing with the detailed square footage breakdown boldly displayed on MLS, and the

home went under contract. Respondent believes the complaint was an emotional reaction about Complainant losing the desired house.

Respondent allowed a brief number of hours to pass overnight before making an adjustment to the MLS listing regarding the measurements. Respondent relied on the information provided and confirmed by the seller and timely sought out the information from the corrected appraisal report for the listing. Therefore, Counsel recommends a letter of warning concerning the Commission's advertising rules about keeping listing information current and accurate.

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

Commission Decision: The Commission voted to authorize a formal hearing and issue a Consent Order with a \$1,000.00 civil penalty for failure to exercise reasonable skill and care.

New Information: After receiving a proposed consent order, Respondent retained counsel. Respondent, through her attorneys, has provided additional information and Tennessee case law concerning this matter.

On or around November 19, 2020, Respondent listed the property for a client she had previously represented. Her client is a professional builder. Before she listed the property, the builder/client informed Respondent that the square footage of the home was 2,600 square feet and also informed her that he had worked closely with the tax assessor's office during the remodel to determine the property's square footage. Because of the client's profession and experience in the industry, Respondent states she reasonably believed the information he provided was accurate. Respondent stated on the MLS listing that the source of the square footage was her client; the MLS listing indicated the information was "owner supplied."

In addition to informing potential buyers of the source for the information, the MLS contained a disclaimer which states: "Information believed to be accurate but not guaranteed. Buyers should independently verify all information prior to submitting an offer to purchase." An additional disclaimer was contained in the Purchase and Sale Agreement

that was executed on or around January 28, 2021, between the parties. That disclaimer states:

Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to...square footage or acreage of the Property.

The Tennessee Court of Appeals has upheld these types of disclaimers in cases in which licensees were alleged to have breached a reasonableness standard of care. In The Cadco, LLC v. Barry, 2006 WL 140412, at *3 (Tenn. Ct. App. 2006), the court held that a home buyer could not reasonably rely on the square footage information contained in an MLS listing because the MLS listing “expressly provided that the information was not guaranteed.” The Cadco court also held that the Purchase and Sale Agreement “specifically informed [the purchasers] that they were not to rely on representations by the agent and that [the purchasers] must conduct their own inspection.” Id.; See also Glanton v. Bob Parks Realty, 2005 WL 1021559 (Tenn. Ct. App. 2005). The court found that the facts and disclaimers in Cadco could not form the basis of an actionable case under a negligent (or intentional) misrepresentation standard. The facts and disclaimers in Cadco are almost identical to the facts and disclaimers in this matter pending before the Commission (with the exception that MLS in the pending matter gave more information to potential buyers in that it stated that the owner was the source of the square footage information).

The purpose of the above-referenced disclaimers contained in the MLS listing and Purchase and Sale Agreement is to provide protection to real estate licensees in situations like the situation presented in this complaint. Under applicable Tennessee case law, Respondent could not be liable for negligently misrepresenting information regarding square footage when disclaimers put the buyer on notice that the information is not guaranteed to be accurate. One of the elements that must be established in a negligent misrepresentation claim is that the defendant “did not exercise reasonable care in obtaining or communicating the information.” Homestead Group, LLC v. Bank of Tennessee, 307 S.W. 3d 746 (Tenn. 2008). The Tennessee Real Estate Broker License Act, Tenn. Code Ann. § 62-13-403, sets out the duty of care owed by a licensee to all parties in a transaction. A finding of a violation of the duty to “[d]iligently exercise reasonable skill and care in providing services to all parties in a

transaction” can form the basis of a negligence per se against a licensee. In this matter, such an outcome would not be compatible with the court’s ruling in Cadco. Moreover, a finding of a violation of the licensee’s failure to exercise reasonable care under the facts of this case, in light of Cadco, could raise legal issues regarding the validity of the disclaimers and could potentially result in eroding the protection.

Respondent states that she acted reasonably even if the MLS and Purchase and Sale Agreement did not contain the referenced disclaimers. Respondent states that the builder, with whom Respondent had a prior professional relationship and who knew how to calculate livable square footage, had superior knowledge of the property, and had told Respondent that he worked closely with the tax assessor’s office to determine the square footage and was a reasonable (and arguably best) source of information. Respondent specifically informed all potential buyers that the information in the listing was owner sourced.

Respondent states that the contract was contingent on an appraisal, and the Complainant had an appraisal performed. On or around February 8, 2021, Respondent obtained a sketch of the property from the seller to provide to the appraiser; however, when she emailed a copy to the appraiser, it bounced back. Therefore, Respondent forwarded a copy of the sketch to the buyer’s real estate agent. On February 12, 2021, the buyer’s agent and Respondent had a telephone conversation, and they discussed the possibility of a discrepancy in the square footage listed on the MLS compared to the sketch. Respondent states that, based on the conversation with the buyer’s agent, Respondent did not believe the discrepancy was of significant concern to the buyer, as the buyer’s agent suggested they wait for the results of the appraisal. As such, Respondent states the buyer’s agent was fully aware, as of February 12, 2021, that there may be a discrepancy in the square footage.

Respondent states she received a copy of the appraisal report on or around February 18, 2021. This appraisal valued the property at \$323,000, which was \$76,900 below the contract price. The appraisal confirmed that the property’s square footage was 2215 square feet. At that time, the seller offered to have an independent appraisal conducted, as he thought the appraisal was incorrect and the value was too low. Instead of having the property re-appraised at the owner’s expense, late in the afternoon on February 18, 2021, the buyer exercised her right to

terminate the contract. On the morning of February 19, 2021, Respondent updated the square footage information on the MLS. Before making the change on the MLS, however, Respondent first reached out to the appraiser and the seller to confirm that the appraisal was correct. She then discussed the matter with her principal broker. The update was made (1) within less than twenty-four (24) hours of Blair having received the appraisal report; (2) the day the property was re-listed; and (3) prior to receiving any other offers on the property. Respondent states that she acted reasonably by confirming the information before updating the listing.

New Recommendation: Close

New Commission Decision: The Commission voted to issue a Letter of Warning regarding reasonable skill and care and advertising.

Chairman John Griess adjourned the meeting at 11:20 A.M. CDT