



**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 August 29, 2022, at 9:30 a.m. CST at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243 in Conference Room 1-A. In addition, the meeting was streamed electronically via Microsoft Teams meeting platform. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission members were present: Commissioner Joe Begley, Commissioner DJ Farris, Commissioner Joan Smith, Vice-Chair Marcia Franks, Commissioner Kathy Tucker, Commissioner Jon Moffett, Commissioner Geoff Diaz, Commissioner Steve Guinn, and Commissioner Stacie Torbett. Quorum Confirmed. Others present: Associate General Counsel Anna D. Matlock, Associate General Counsel Dennis Gregory, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The August 29, 2022, board meeting agenda was submitted for approval.

Approval of the agenda passed unanimously.

Minutes for the June 8, 2022, board meeting were submitted for approval.

Approval of the agenda passed unanimously.

INFORMAL APPEARANCE

Ashley Ramos appeared before the commission with her manager, Gary Mochizuki, to receive approval for Acquisition Agent license.

Motion to approve Ashley Ramos was made by Commissioner Torbett and seconded by Commissioner Begley. Motion carried unanimously.

Joseph Minor appeared before the commission with his Principal Broker Christopher Clabough to receive approval for his TimeShare Salesperson license.

Motion to approve Joseph Minor was made by Commissioner Guinn and seconded by Commissioner Torbett. Motion carried unanimously.

Tabitha Davis appeared before the commission with her Principal Broker Cindy Justice to receive approval for her Affiliate Broker license.

Motion to approve Tabitha Davis was made by Commissioner Diaz and seconded by Commissioner Smith. Motion carried unanimously.

Christopher Saunders appeared by the commission with his Principal Broker Dagan Greene to receive approval for his Affiliate Broker license.

Motion to approve Christopher Saunders was made by Commissioner Torbett and seconded by Commissioner Diaz. Motion carried unanimously.

Kimberly Union appeared before the commission with her Principal Broker Kimberly Moyer to receive approval for her Affiliate Broker license.

Motion to approve Kimberly Union was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion carried unanimously.

Lauren Gregory appeared before the commission with her Principal Broker Misty Hargis to receive approval for her Affiliate Broker license.

Motion to approve Lauren Gregory was made by Commissioner Diaz and seconded by Commissioner Begley. Motion carried unanimously.

Fallon Sheahan appeared before the commission with her Principal Broker Kelly Baggett to receive her Affiliate Broker license.

Motion to approve Fallon Sheahan was made by Commissioner Smith and seconded by Commissioner Moffett. Motion carried unanimously.

Tanyell McGregor appeared before the commission with her Principal Broker Louise Percer to receive approval for her Affiliate Broker license.

Motion to approve Tanyell McGregor was made by Commissioner Tucker and seconded by Commissioner Moffett. Motion carried unanimously.

APPEARANCE

Nick Rhoad, CEO of ARELLO, appeared before the commission. Mr. Rhoad was in town for the 2022 annual ARELLO conference being held in Nashville, TN. In addition, Mr. Rhoad, offered a brief synopsis of ARELLO, and informed the Commission of the future 2023 ARELLO meetings.

WAIVER REQUEST

Director Maxwell presented Mr. Brian Pesterfield to the commission seeking a waiver request for retesting.

Motion to deny the request was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion carried 7-2 with Commissioner Torbett, and Commissioner Farris voting against the motion.

Director Maxwell presented Mr. Kanzi Takayama to the commission seeking a Medical Waiver request for late penalty fees.

Motion to deny the request was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed 5-4 with Commissioner Farris, Commissioner Torbett, Commissioner Moffett, and Commissioner Begley voting against the motion.

EDUCATION REPORT

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

Motion to approve courses J1-J30 was made by Commissioner Farris and seconded

by Commissioner Torbett. Motion passed unanimously.

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

Motion to approve instructor's biography was made by Commissioner Diaz and seconded by Commissioner Torbett. Motion passed unanimously.

Motion to approve courses A1-A33 was made by Commissioner Diaz and seconded by Commissioner Smith. Motion carried unanimously.

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

Motion to approve instructor's biography was made Commissioner Smith and seconded by Commissioner Begley. Motion carried unanimously.

Education Director Ross White presented the commission with the option of keeping or changing the 2023 TREC CORE course.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Maxwell updated the Commission on the topics below.

- **120 POST BROKER CE:** Discussion to give brokers impacted by the software error 90 days to fulfill the CE requirement. If not, the license would be downgraded to affiliate.
- **CE BROKER:** Is open for licensees to register an account and start reviewing CE. Systems will connect the renewals upon the System Upgrade.

COMMISSION DISCUSSIONS:

Commission discussed nomination for Chair and Vice-Chair roles. The Commission voted Commissioner Marcia Franks to serve as Chair and Commissioner Geoffrey Diaz to serve as Vice-Chair.

Proposed 2023 meeting dates were presented to the commission for review.

CONSENT AGENDA

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

A motion was made to accept Counsel's recommendation for complaints 1-67 with the exception of the following complaints, which were pulled for further discussion: **2022013661, 2022013941, 2022015781, 2022013321, 2022018701, 2020095901.**

Motion was made by Commissioner Torbett and seconded by Commissioner Smith. Motion carried unanimously.

After further discussion by the Commission on complaint 20220136961 motion was made by Commissioner Moffett to **Letter of Warning for Tenn. Code Ann. § 62-13-302(b) and Tenn. Comp. R. & Regs. 1260-02-.33.** motion was seconded by Commissioner Diaz. Motion carried unanimously.

After further discussion by the Commission on complaint 2022013941, Commissioner Torbett made the motion **to assess a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity. However, should Respondent be licensed within thirty (30) days of receipt of the Consent Order, the civil penalty shall be reduced to Five Hundred Dollars (\$500.00).**

The motion was seconded by Commissioner Diaz. Motion carried unanimously.

After further discussion by the Commission on complaint 2022015781, Commissioner Diaz made the motion **to accept counsels' recommendation** motion was seconded by Commissioner Begley. Motion carried unanimously.

After further discussion by the Commission on complaint 2022013321, Commissioner Torbett made the motion **to assess a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity. However, should Respondent**

be licensed within thirty (30) days of receipt of the Consent Order, the civil penalty shall be reduced to Five Hundred Dollars (\$500.00).

Motion was seconded by Commissioner Moffett. Motion carried unanimously.

After further discussion by the Commission on complaint 2022018701, Commissioner Diaz made the motion to **defer this matter to the October meeting** motion was seconded by Commissioner Moffett. Motion carried unanimously.

After further discussion by the Commission on complaint 2020095901, Commissioner Smith made the motion **voted to issue a Letter of Warning for Tenn. Code Ann. § 62-13-403(1)**. Motion was seconded by Commissioner Farris. Motion carried unanimously.

**Dennis Gregory:
New Complaints:**

- 1. 2022013291
Opened: 4/25/2022
First Licensed: 10/28/1994
Expires: 2/22/2023
Type of License: Principal Broker
History: None**

The Complainant is an affiliate broker. The Respondent is a principal broker.

This complaint appears to be a dispute between the Complainant and Respondent over commissions and advertising. The Complainant contacted the Respondent to discuss the possibility of placing her license with the Respondent. The Complainant was moving to TN from IL and was seeking a new principal broker. The crux of the complaint is a disagreement over commissions listed on the Complainant's advertising. The Complainant alleges the Respondent approved mailers and business cards that contained "4.75%" as a commission rather than "5%" as was the normal practice for the area. The Complainant claims she spent \$22,000 on this marketing material only to have the Respondent later ask her to change the stated commission on the material.

The Respondent says that after the "mailouts" were sent, she began receiving complaints from agents regarding the reduced commissions. The Respondent says that she told the Complainant they could "live with the fallout from the 4.75%

mailouts and change the rate on the next mailing.” After this discussion, the Respondent says the Complainant opted to retire her license as opposed to go to a different firm. The Respondent goes on to explain that she offered to reimburse the Complainant for her signs and business cards; however, the Complainant apparently declined.

This is a dispute better handled by a realtor’s association or privately if the Complainant believes she has a breach of contract.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

2. 2022013611
Opened: 4/25/2022
First Licensed: 4/5/2019
Expires: 4/4/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the seller/listing agent.

The Complainant says they purchased the subject home in February 2022 for \$1.5 million. The Complainant says the home was “renovated” by the Respondent. The Complainant alleges the home has problems related to the water heater, a leaky shower, incorrectly installed toilet, damaged sewer line, and missing columns along the roofline that may cause sagging.

The Respondent says the Complainant had an inspection and VA appraisal that resulted in nothing being requested. The Respondent goes on to say that no issues were discussed with the Complainant’s agent that related to any of the items mentioned above. A repair/replacement amendment was included with the response that indicates that the shower was to be repaired, but there is no mention of any other items also included in the complaint.

There is no evidence the Respondent either failed to disclose or even knew about the items the Complainant points out. Although the Respondent owned the home, she, apparently, never resided there and only can speak to what she was aware of. An inspection was performed, although the inspection would likely have only discovered items that were visible to the eye.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

3. **2022013661**
 Opened: 4/25/2022
 First Licensed: 3/5/2020
 Expires: 3/4/2024
 Type of License: Affiliate Broker
 History: None

The Complainant is not a current buyer or seller of real estate. The Respondent is an affiliate broker.

The Complainant says she received a call from the Respondent who claimed to offer cash in exchange for hiring him as her realtor. The Complainant feels this was a scam.

The Respondent's attorney explains that the Respondent works for a company that "pays homeowners money to purchase the contractual right to list their property in the future should they ever choose to sell their homes during the term of the contract." The attorney claims the call was in response to an inquiry made by the Respondent. This was the reason for the call as opposed to a random solicitation. Explaining the business model, a bit more, the attorney says the company offers cash to a homeowner who agrees to "promise to use [company name] as the listing agent if the homeowner...ever decides to sell his or her home during the term of the Agreement."

In summary, the Respondent's phone call was not random and apparently, not a scam. Admittedly, the Respondent's employer's business model appears somewhat novel; however, it does not appear to violate any applicable statutes or rules.

Recommendation: Close.

Commission Decision: The Commission voted to issue a Letter of Warning for Tenn. Code Ann. § 62-13-302(b) and Tenn. Comp. R. & Regs. 1260-02-.33.

4. **2022013861**
 Opened: 4/25/2022

First Licensed: 1/7/2020
Expires: 1/6/2024
Type of License: Affiliate Broker
History: None

The Complainant is not a buyer or seller of real estate. The Respondent is an affiliate broker.

The Complainant says he received a phone call from the Respondent that stated the Respondent was looking for a home for a buyer and was curious if the Complainant was interested in selling. The Complainant says he is on the “Do Not Call” list and believes this is an FTC violation. The Complainant included an audio file with the complaint. The call is in furtherance of realty brokerage and does not sound misleading.

The Respondent says that he did purchase a list of phone numbers for the particular area in which the Complainant resides. He says the list was “scrubbed” against the DNC list by the company he purchased it from. The Respondent also claims he used a “Ringless Voice Mail Service” that leaves a voice mail but does not ring through.

The applicable statutes and rules do not appear to apply to this situation except where a broker acts in a misleading fashion. Here, the Respondent’s message was not false or misleading.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

5. 2022015691
Opened: 4/25/2022
First Licensed: 10/14/2013
Expires: 10/1/2023
Type of License: Principal Broker
History: None

*The Respondent is the principal broker for an affiliate broker that was previously disciplined for an advertising violation. This complaint was opened at the Commission’s request for failure to supervise.

The prior complaint contained a photograph of a sign belonging to the affiliate broker. The firm name was larger, in part, and the same size, in part, as the affiliate broker's name.

Recommendation: Authorize a formal hearing and assess a civil penalty in the amount of \$1,000 for violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) for failure to supervise.

Commission Decision: The Commission accepted Counsel's recommendation.

6. 2022015741

Opened: 4/25/2022

First Licensed: 4/17/2002

Expires: 4/29/2024

Type of License: Principal Broker

History: 2020 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

*This complaint was opened against the Respondent as the principal broker for a time share sales company. The Complaint against the time share sales company is in "Cases to be represented" below.

In the original complaint, the Complainant said the Respondent hires new employees and allows them to work without an acquisition license. The Complainant said they do this work off site, according to him, inside a nationally-recognized store chain.

A TDCI investigator went to all the locations identified in the Complainant's initial complaint. The investigator found one time share salesperson who was not licensed at the time of the investigator's visit to the site. This individual; however, had a license application pending and was later granted a license effective February 24, 2022. The other two individuals possessed valid licenses at the time of the visit.

The Respondent is the principal broker for this particular time share location. The Respondent has responsibility for the assigned time share salespeople.

Recommendation: Authorize a formal hearing and Consent Order with a \$1,000 civil penalty for a violation of Rule 1260-01-.04 (Licenses).

Commission Decision: The Commission accepted Counsel's recommendation.

7. **2022014981**
Opened: 4/25/2022
First Licensed: 3/26/2004
Expires: 10/28/2022
Type of License: Real Estate Firm
History: None

The Complainant is a tenant. The Respondent is a property management entity.

The Complainant says the Respondent is trying to “steal tenants/my deposit money.” The Complainant alleges the Respondent told her she would only be getting back half of the security deposit. According to the Respondent, there were problems with the flowerbed, scuffs on the wall, and carpet damage.

The Respondent says they have since refunded the full security deposit despite the fact they believe the Complainant is responsible for some of the damages. The implication appears to be that it was just easier to return the deposit instead of engaging in further argument. There were no photos included with either party’s response.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

8. **2022013941**
Opened: 4/25/2022
Unlicensed:
History: None

The Complainant appears to be a TREC licensee. The Respondent is an unlicensed out-of-state entity.

The Complainant says the Respondent is “undercutting licensed VLS service providers.” The Complainant claims that the Respondent’s corporate counsel told her that they feel they are exempt from licensure in TN as they “do not have W2 employees in Tennessee.” The Respondent’s website says the Respondent provides “vacation rental management and booking services to over 540 action homeowners in TN.” In addition, the Complainant alleges the Respondent has over 250 listings in their control.

The Respondent's corporate counsel responded by pointing out that a 2019 TREC complaint was closed after a similar complaint (the complaint was, in fact, similar). The Respondent, however, goes on to say that they are "considering expanding its activities in Tennessee, and to avoid future complaints, [Respondent] is considering pursuit of a broker's license in Tennessee." The Respondent provides no real substance and largely relies on what it stated in its response in 2019, which was more robust. That response was the following as summarized by the disciplinary counsel in 2019:

The definition of "vacation lodging service" is "any person that engages in the business of providing the services of management, marketing, booking, and rental of residential units owned by others as sleeping accommodations or furnished for pay to transients or travelers staying no more than fourteen (14) days." T.C.A. 62-13-104(b)(1)(C). Respondent states they do not meet this definition for the following reasons:

- *Respondent's primary business is the operation of an online booking platform which allows homeowners to list and market their own rental properties, but Respondent does not transact on the property owner's behalf. Respondent can provide consulting and distribution services—they will assist homeowners with copywriting, photography, and dissemination of ads on their own website and similar platforms—and will also connect property owners to local businesses that can provide on-the-ground services, but they do not provide any maintenance or management.*
- *Respondent does not provide check-in/check-out services or inspect the properties.*
- *Respondent does not transact with any clients; their platform allows renters to transact directly with the property owner.*
- *If services are needed Respondent connects the property owner to a local company that can assist them, but Respondent does not collect any referral fee or other compensation for recommending those providers.*
- *The property owners maintain control over their rates, availability, and property policies.*

The Respondent says they provide "booking" services, which falls within the definition in T.C.A. 62-13-104(b)(1)(C). Apparently, the Respondent does not provide any of the other mentioned services.

Recommendation: Letter of Instruction to obtain a license pursuant to T.C.A. 62-13-104(b)(1)(C).

Commission Decision: The Commission voted to assess a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity. However, should Respondent be licensed within thirty (30) days of receipt of the Consent Order, the civil penalty shall be reduced to Five Hundred Dollars (\$500.00).

9. 2022012871
Opened: 5/2/2022
First Licensed: 5/24/2006
Expires: 5/23/2024
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent.

The Complainant purchased a home from a builder whom the Respondent sells homes for. The gist of the Complainant's complaint is a list of construction problems related to the build. The Respondent was also the foreman of the particular home the Complainant purchased. The appropriate disclosure of such fact was made to the Complainant. It is a complaint that should be directed to the Contractors Board and not this Commission.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

10. 2022014211
Opened: 5/2/2022
First Licensed: 9/14/2007
Expires: 9/13/2023
Type of License: Principal Broker
History: None

The Complainant is anonymous. The Respondent is the listing agent.

The complaint contains a copy of the MLS which indicates the subject house has two bedrooms; however, in the MLS notes it states the home “has a one-bedroom septic system.” The home appears to be a cabin in a rural area of the state.

The Respondent admits it was a typo. He says that he had marked “2 Bedroom” and included a copy of the septic layout being a one bedroom. The Respondent goes on to explain that he contacted the MLS and found out how to correct the listing. The listing was ultimately corrected. According to the Respondent, the home was not shown during the time in which the listing was incorrect.

Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted Counsel’s recommendation.

11. 2022015081

Opened: 5/2/2022

First Licensed: 2/24/2010

Expires: 1/2/2024

Type of License: Principal Broker

History: None

The Complainant is a Minnesota resident and senior citizen that owns a vacation time share in Mexico. The Respondent is a TN principal broker.

The Complainant says she was contacted by “a male” going by a nearly-identical name belonging to the Respondent. The person wanted to know if the Complainant and spouse were interested in selling their 50-week vacation membership located in Mexico for \$37,500. The initial email appeared legitimate, with an email signature block showing a physical address in East TN.

The Complainant found what she believed to be the Respondent’s license information on “verify.tn” after the person eventually provided a license number. The person refused to provide a “selfie” next to a copy of his driver’s license as he said that violated “company policy.” The Complainant sent \$5,000 to the person as a “transfer fee,” but then later the person asked for more money. The Complainant eventually cut off communication and filed a complaint with the TN Attorney General’s Office/Consumer Affairs Division. That office then referred the matter to the Commission. From the documents provided, the person used two different TREC

license numbers-one belonging to the Respondent and the other belonging to the Respondent's firm.

The Respondent, who is assigned the referenced TREC license number, says he has never had any dealings with the Complainant or her spouse. Unfortunately, the Complainant appears to have been scammed by way of the fraudulent use of the Respondent's TREC license number.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

12. 2022015471

Opened: 5/2/2022

First Licensed: 2/13/1990

Expires: 4/9/2024

Type of License: Real Estate Broker

History: None

The Complainant is the buyer's agent. The Respondent is the co-listing agent.

The Complainant says his buyer was looking to purchase a rental property. The buyer went under contract on December 1, 2021 with the subject property. According to the Complainant, the buyer's offer was accepted the day it was made. The Complainant says the "Declaration of C.C.R, Homeowner Manual and Guidelines and Procedures" were uploaded on the MLS at the time of the offer. Closing occurred December 14.

The Complainant says that a few weeks after closing the buyer put a renter in the property. Later, the Complainant says his buyer got a letter in the mail saying that renting was not permitted under the HOA. Along with this letter, the buyer received a Master Deed and Amendment in which the prohibition against renting was included. The Complainant says these documents were not on the MLS.

The Respondent says that the Master Deed is not and was not required at the time to be included in the MLS. Apparently, the Respondent also contacted a local realtors' association and they advised her that no such requirement existed. The Respondent also says that she contacted the HOA prior to listing and was given the website in order to download the CCRs, which were uploaded to the MLS. The Respondent also explains that the Complainant never asked whether it could be used as a rental.

She says the buyer never mentioned anything about wanting to use the property as a rental either. The Respondent closes by explaining that the Complainant and buyer were aware that an HOA governed the property, and they should have exercised the appropriate due diligence regarding renting.

The buyer signed a “Disclaimer Notice” that puts the buyer on notice that any condition that may impact the property, including HOA restrictions, should be verified through the “appropriate sources.” In this case, the appropriate source was the HOA itself. Further, neither the buyer nor the Complainant communicated the desire to use the home as a rental property. The Respondent exercised reasonable skill and care given the circumstances.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

13. 2022015561

Opened: 5/2/2022

First Licensed: 6/18/1990

Expires: 4/9/2023

Type of License: Principal Broker

History: 2014 for alleged delay in disbursement of earnest money

The Complainant is the daughter of two tenants. The Respondent is the listing agent.

The Complainant says her mother and father lived in a duplex home that was put up for sale. Both, apparently, are disabled with health issues. They are also on a month-to-month rental agreement. The Complainant alleges the Respondent did not provide sufficient time prior to each showing. Eventually, the mother had a stroke, which the Respondent tried to work around but it was not to the Complainant’s liking. According to the Complainant, one showing took place while the mother was on the couch trying to rest.

The Respondent says they have showed the subject duplex many times since September 2021. The Respondent says that each showing was always preceded by notice and always monitored by a licensed agent. When the issue of the stroke arose, the Respondent says the mother told her assistant, “I think I have had a stroke. No one better step [*sic*] foot on my property until I know if I’m going to live or die.” The Respondent then said she contacted the owners who told her to show the unit anyway. From that day forward, the parties have then engaged in a good deal of

argument regarding showings, with one incident involving the Complainant calling the police when a showing was about to take place.

There is no good solution here. The Respondent appears to have made reasonable steps to accommodate the tenants by giving notice of showings. The tenants clearly have health conditions that have made showings a challenge, and likely that caused the Respondent and her sellers to act impatiently. Overall, the Respondent acted with reasonable skill and care given the circumstances.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

14. 2022015861
Opened: 5/2/2022
First Licensed: 12/19/2019
Expires: 12/16/2023
Type of License: Affiliate Broker
History: None

The Complainants are the sellers. The Respondent is an affiliate broker.

The Complainants allege the Respondent (who is not the listing agent of record) posted a video on Facebook that they claim negatively depicted their home (the video was not included). The Respondent was covering for the listing agent of record. There is no information as to why the listing agent was not available for the open house.

The Complainants say the Respondent “attempted to deter a potential buyer by saying things such as ‘I turned the light on but will not go upstairs because it is creepy.’” Apparently, the source of this information came from some next-door neighbors that went to the open house and then reported back to the Complainants. Again, there is no details on how the Facebook video was negative. The Complainants have since moved on to another listing agent from a different firm.

The Respondent says she was asked by her fellow agent to conduct the open house. She explains that the Facebook video was designed to market the house and has no idea how it depicted the house in a negative fashion. She says that she did not take the two gentlemen that came to the house upstairs as she did not feel comfortable being alone in the house with them. She claims they refused to give her any

information and therefore made her feel a bit uneasy. The Respondent's principal broker also responded, explaining that he was aware of the arrangement and that the Respondent only acted as she would for any other open house.

The named Respondent did nothing wrong. Arguably, the listing agent could have advised the Complainants that another agent in his office was going to conduct the open house. Ultimately, however, the fact he did not tell them this had no negative impact on the open house.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

15. 2022016171
Opened: 5/2/2022
First Licensed: 6/2/2021
Expires: 6/1/2023
Type of License: Real Estate Firm
History: None

The Complainant is a tenant. The Respondent is a property management entity.

The Complainant claims that since the Respondent has taken over management of his apartment complex, utilities are not being paid on time (certain utilities are covered), and the Complainant alleges the online portal is "maliciously designed to block payments until a late fee is then assessed." The Complainant believes the Respondent should be investigated for "malicious billing practices."

The Respondent says that following the transfer of the management duties, there was a disconnection of services that occurred. The Respondent says now; however, those issues are resolved. As to the online portal, the Respondent says that rent is due by the 1st but not considered late until the 5th. He says that the payment came back as "NSF" on April 7; however, they waived the Complainant's late fee. There was no response as to the allegation regarding the website's apparent ability to block payments. The Respondent does say that payment by check or auto-draft is also available. If this is a wide-spread problem, it would appear it is more a result of a technical issue than an intentional act on the Respondent's part.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

16. 2022014151
Opened: 5/9/2022
First Licensed: 10/29/2014
Expires: 10/28/2022
Type of License: Principal Broker
History: None

The Complainant is anonymous; however, they are a seller. The Respondent is the listing agent.

Apparently, the Complainant is going through a messy divorce where the husband and Complainant are both represented by the Respondent. The Complainant appears to want the contract for sale voided/cancelled; however, the husband (who is under a conservatorship) does not. The rationale for the desire to cancel is a bit hard to follow.

The Respondent says the divorce has been a contentious one with a number of things stalling the sale. He says that all parties are now on the same page and wanting to move forward. It appears the Respondent has handled the matter as well as possible given the husband's condition.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

17. 2022015781
Opened: 5/9/2022
First Licensed: 4/29/2022
Expires: 4/28/2024
Type of License: Real Estate Broker
History: None

The Complainant appears to be the general counsel for an out-of-state trucking company that is the corporate tenant. The Respondent is an out-of-state real estate broker. *The Respondent was not licensed in Tennessee at the time of the relevant events.

The Complainant says that in August 2021 the corporate tenant entered into a “Tenant Buyer Exclusive Representation Agreement” with the Respondent. At the time, the Respondent was only licensed in Georgia. In January 2022, the Complainant claims that the Respondent began searching for a commercial office rental space in Tennessee. The corporate tenant and the landlord’s brokerage firm executed a Letter of Intent to rent the target property in late January. Also in January, the landlord’s brokerage firm and the Respondent entered into a co-broker commission agreement whereby the Respondent would receive a 4% commission. The Complainant alleges the corporate tenant was not advised of this commission agreement until March 18, 2022. The corporate tenant then sent a notice of termination to the Respondent on March 23 as the corporate tenant’s CEO believed the Respondent “had done zero work on the deal.”

After the termination, the Complainant says the corporate client tried to find a Tennessee broker; however, they were unable to do so because of the Respondent’s “refusal to aid in any transition or communicate with [the corporate client] in any way.” Due to the danger of losing the property, the Complainant says they executed the lease without a licensed broker. According to the Respondent, the landlord’s broker intended, at least, to pay the commission to the Respondent. In his view, this violates T.C.A. 62-13-302, prohibiting the unlawful compensation to any person not licensed as a broker. Further, he believes the Respondent should have engaged a licensed Tennessee broker and then only received a referral fee as opposed to a commission.

The Respondent’s attorney says this is largely due to a somewhat personal dispute between the CEO and the Respondent. According to the attorney, the CEO’s wife, a licensed Georgia realtor, was involved in the location of the rental space in Tennessee. Apparently, the wife was also unlicensed in Tennessee. The attorney contends that it was the CEO’s wife, not the Respondent, who was engaged in the process of procuring the Tennessee property. When it became known to the CEO that a commission agreement existed, the CEO wanted the Respondent cut out of the deal. The attorney concludes by saying that the Respondent, in fact, did none of the negotiating for the Tennessee property and as of the date of the response, has received no compensation from the commission agreement.

T.C.A. 62-13-302 states that, “A licensed broker may pay a commission to a licensed broker of another state if the nonresident broker does not conduct in this state any of the negotiations for which a commission is paid.” Given this language, the Respondent could have accepted a commission if the work performed was in Georgia. As to any claim the Respondent was engaged in unlicensed activity in

violation of T.C.A. 62-13-301, it appears the Respondent did no real negotiating that could be considered brokering in Tennessee. The August 2021 agreement is the closest the Respondent came to attempting to engage in brokering without a Tennessee license. However, if the CEO's statement is true that the Respondent "had done zero work on the deal," then the impact of this activity was minor at best.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

18. 2022016491
Opened: 5/9/2022
First Licensed: 9/16/2011
Expires: 9/15/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent.

The Complainant, while working with his own agent, purchased a house in February 2022 sight unseen. The Complainant says the Respondent's MLS photos were misleading. He contends that the photos and the property disclosure did not accurately reflect the true condition of the home. Specifically, he claims the floor has water damage and is sinking in spots, the home has only a partially-fenced back yard as opposed to a fully-fenced one, and that trash was left in the front yard after closing. Of more significant concern is the mold remediation he says will now have to be done as a result of the water damage.

The Respondent says the listing was a difficult one as the sellers were in the midst of a divorce, which contributed to the lack of updated photos in the MLS. According to the Respondent, the photos were from 2019 when the sellers had purchased the house. The Respondent goes on to say that the Complainant waived all inspections despite his agent's direction. The sellers were largely uninformed about the condition of the floor, leading them to mark the property disclosure form the way they did. As to the debris in the yard, the Respondent explains that the sellers tried to accommodate the buyer's early move-in date. Consequently, she says the sellers simply did not have time to get all the trash picked up before the Complainant moved in. Closing took place on March 22 and the trash was removed on April 8.

The Respondent's principal broker also provided a response. She says that when she asked for details concerning the older photos, the Respondent explained that the buyer's agent was informed that the MLS photos were from 2019. The principal broker says she advised the Respondent to always note in the remarks section that the listed photos are not current. The principal broker also agrees that the buyer could have taken his agent's advice and gotten an inspection or simply pulled out of the deal altogether.

Given the age of the photos placed on the MLS, the Complainant might have had a better idea of the true condition of the home. At the same time, most of the items that now need attention, except the fence, would have still been unknown even with up-to-date photos. The trash issue is a matter completely on the sellers.

Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted Counsel's recommendation.

19. 2022016781

Opened: 5/9/2022

First Licensed: 10/5/2020

Expires: 10/4/2022

Type of License: Affiliate Broker

History: None

The Complainants are the buyers. The Respondent is the listing agent. #20 and #21 below are related to this complaint.

The Complainants say they entered into a purchase and sale agreement for the subject property using their own agent. The Complainants claim the property was listed as having no HOA or deed restrictions and was not in a planned unit development. The Complainants closed in September 2021 and took possession shortly thereafter. The Complainant husband went to the county building department to obtain a permit for a storage shed and discovered that the property had a deed restriction that would not allow for the shed's construction. The Complainants allege they would never have bought the property had they known about the restrictions (believe it decreases the value). There is no discussion about whether or not any due diligence was conducted by the Complainants or their agent. The title company also did not alert either party to any deed restrictions.

The Respondent says there was no request for any information related to deed restrictions. The Respondent explains that it was not known until after the complaint that the subdivision had a “Volunteer HOA that did not require payments or participation.” The deed restrictions, apparently, were more than 20-years old and had an automatic renewal clause unless voted out. The sellers also were not aware of any deed restrictions.

If the Respondent or her sellers were not aware of these restrictions, then they would not have reported such on the property disclosure form. Generally, title companies would research this issue and report the matter as opposed to the listing agent. Further, the buyers had the opportunity to research the matter as well.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

20. 2022016751
Opened: 5/9/2022
First Licensed: 7/26/2002
Expires: 10/30/2022
Type of License: Real Estate Firm
History: None

The Complainants are the buyers. The Respondent is the listing agent’s realty firm.

*The facts in #19 are identical to those in this complaint. There is no evidence of any lack of supervision related to the affiliate broker.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

21. 2022017361
Opened: 5/16/2022
First Licensed: 6/19/2019
Expires: 6/18/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' agent. *This complaint is related to #19 and #20 above.

The Complainants say they entered into a purchase and sale agreement for the subject property using the Respondent as an agent. The Complainants claim the property was listed as having no HOA or deed restrictions and was not in a planned unit development. The Complainants closed in September 2021 and took possession shortly thereafter. Later, the Complainant husband went to the county building department to obtain a permit for a storage shed and discovered that the property had a deed restriction that would not allow for the shed's construction. The Complainants allege they would never have bought the property had they known about the restrictions (believe it decreases the value). There is no discussion about whether any due diligence was conducted by the Complainants or the Respondent. The title company also did not alert either party to any HOA or deed restrictions.

The Respondent says the MLS did not mention anything about an HOA or deed restrictions. Further, the property disclosure statement did not mention an HOA or deed restrictions either. As to the Complainants' desire to build a storage shed, the Respondent says that the county will permit a shed; however, they will not permit the style or size the Complainants want to build. He contends that at no time did the Complainants make any mention of wanting to avoid an HOA or deed restrictions. The Respondent says they looked at many homes prior to the subject one. Recently, the Respondent claims he was looking into the matter for the Complainants after he spoke with them on April 25 and 27. Then on April 29 he received the subject complaint.

If the sellers or the listing agent were not aware of the HOA or deed restrictions, then they would not have reported such on the property disclosure form. Generally, title companies could research this issue and report the matter as opposed to the listing agent. The Complainants apparently never made their decision to purchase contingent on the absence of an HOA or deed restrictions.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

22. 2022016891
Opened: 5/9/2022
First Licensed: 2/17/2011
Expires: 3/12/2024

Type of License: Principal Broker
History: None

The Complainant is not a buyer or seller of real estate. The Respondent is a principal broker.

The Complainant states the Respondent was charged with perjury and two counts of voter registration fraud. The Complainant says the Respondent's license should be suspended immediately.

The Respondent and his attorney both responded to the complaint. The Respondent says he does not recognize the Complainant (assuming the name is real); however, he does admit to being indicted for voter registration fraud and perjury. He goes on to say that "this is a political attack stemming from my 2nd term as a city councilman and mayor pro temp for [city]." His attorney confirms much the same by saying that the Respondent was indicted in August 2021 for perjury as well as two counts of voter registration fraud. The attorney says the charges are pending and the Respondent has entered "not guilty" pleas on all charges. There is presently no conviction. Per the Respondent's attorney, the Respondent's spouse was also indicted who is a licensed real estate broker as well.

The current status does not require the Respondent to report anything to the Commission. In the event the Respondent does accept or is found guilty, he will then need to request an appearance before the Commission within 60 days of the conviction becoming final pursuant to T.C.A. 62-13-302(f).

In counsel's opinion, this does not warrant a summary suspension informal conference. The charges do not relate to the real estate brokering profession and, consequently, there does not appear to be a threat of immediate harm to the public.

Recommendation: Litigation Monitoring. Additionally, open a complaint against the Respondent's spouse.

Commission Decision: The Commission accepted Counsel's recommendation.

23. 2022017781
Opened: 5/9/2022
First Licensed: 3/12/2021
Expires: 3/11/2023
Type of License: Affiliate Broker

History: None

The Complainants are the sellers. The Respondent is the buyers' agent.

The Complainants say the buyers put an offer in on their house for \$30,000 more than asking price. According to the Complainants, the offer was made without seeing the house. The Complainants additionally claim the Respondent did not view the property either. The buyers also allegedly refused a home inspection. On April 30, 2022, the buyers did a final walk through with closing set for May 2. On or about April 30, the buyers backed out of the deal and asked for the earnest money back. The Complainants say they had already moved out by this time. The Complainants now blame the Respondent for her clients' decision to terminate the contract as they claim the Respondent did not do her job and relied on her listing agent to do most of the work. They close by saying they are contacting an attorney to file suit against the buyers.

The Respondent says that her buyers contacted her to make an offer on the Complainants' home located on several acres. According to her, she says her buyers were very "driven" to get the home based on the land and the home itself. The Respondent goes on to say that her buyers did not want her to go to the home as they were satisfied with what they saw on-line and were afraid any time on site would cause them to lose out on the opportunity. As some additional background, the Respondent was located roughly 1.5 hours from the subject property. Contrary to what the Complainants say, the offer was only \$23,000 over list price.

The Respondent says her buyers wanted to make an offer sight unseen. They had seen the photos and received a video tour of the property prior to making the offer. As to the inspection, the Respondent says the buyers wanted to waive the inspection given the fast nature of the market. They were satisfied with a final inspection at the walk through. The Respondent explains that although the sellers moved out when they did, it was not required that the Complainants be completely out at the final walk through.

The Respondent contends that the buyers' decision to back out was due, largely, to "disclosure discrepancies that involved the exterior walls..." There was also a copy of an email with the response where the buyers told the Respondent that the pond located on the property "looked very opaque and a bit swampy. Not like a pond should." They also found a PVC duct drain that appeared to dump into the subject pond, making them believe there was runoff from the adjacent poultry farm.

The buyers appear to have accepted the property “as is” and likely are not entitled to the return of the earnest money. In any event, the Respondent appeared to have guided her clients in a correct fashion and have further explained the ramifications of walking away from the contract. There is no evidence the Respondent advised the buyers to withdraw from the purchase at the eleventh hour.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

24. 2022017771
Opened: 5/9/2022
First Licensed: 1/20/2021
Expires: 1/19/2023
Type of License: Real Estate Firm
History: None

The Complainant is the principal broker for the listing firm. The Respondent is the real estate firm for the buyer’s agent.

The Complainant says that after reviewing a settlement statement for one of their firm’s listings, she noticed that the selling firm was paid only “\$99.00” in commissions and the buyer’s agent was paid “\$15,651.00” directly. The Complainant’s understanding is that only a realty firm can pay agents, as opposed to the agent being paid from the proceeds at closing.

The Respondent relies on the 2021 TN Attorney General’s Opinion which explains how commissions can be disbursed. The opinion states that a principal broker may contractually delegate the disbursement of commissions to a third party. In this instance, the principal broker delegated the authority to the title company. As the opinion explains, such an arrangement is permissible so long as the title company is acting “at the direction of the principal broker...”

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

25. 2022013281
Opened: 5/16/2022
First Licensed: 3/8/2007

Expires: 3/7/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' agent. *The Complainants previously lodged a complaint against the listing agent which was closed with no action at the May meeting.

The Complainants feel they paid more than they should have as they were under the impression that the property was "dockable" as it related to the lake behind the home. The Complainants went 10% over list price with no appraisal contingency.

The Respondent says she informed the Complainants that the property was not dockable after the listing agent explained that it was not. The owners, apparently, had a floatable dock that they were willing to sell. The Respondent goes on to explain that the deal was a multiple offer situation with a couple other very competitive offers. After the appraisal came in lower than expected, the Respondent's co-listing agent prepared an appeal of the appraiser's decision.

The Respondent denies that she and the listing agent "colluded" to make more money. The Respondent explains that in order for the Complainants to have had a shot at the property, they were best to increase their offer. The Respondent closes by explaining that this was the third real estate transaction she had worked with the Complainants on. According to her, she represented them in the purchase of an April 2021 property and then the sale of the same property four months later. She claims the Complainants made a profit of \$55,000.

Based on the knowledge from the prior complaint, the Complainants misunderstood whether the property was not dockable due to the sellers having never applied for a permit versus having applied but then were denied a permit.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

26. **2022017981**
Opened: 5/16/2022
First Licensed: 11/25/2003
Expires: 7/1/2023

Type of License: Principal Broker
History: None

The Complainant is an out-of-state individual who owns property in TN. The Respondent is the principal broker.

The Complainant lives in California but owns a house in TN. He claims the Respondent's firm sent him a mailer saying they would purchase his home for \$457,799.18 contingent on inspection. After he called them, the Complainant says the offer was reduced to \$250,000. The Complainant thinks this is false advertising. The mailer says the following: "Sell fast, for the highest price, without doing a single repair! Call or text XXX..." The mailer includes a clearly fake check with the aforementioned offer amount with the words "This is not a check. But this can be a real offer! Our proposed purchase price of \$457,799.18 reflects our inspection-contingent offer for the following properties:..."

The Respondent says a partner in another company regularly sends out direct mail in an attempt to buy properties. In this instance, he says the partner found the value on Zillow and then auto populates a price that is reasonable based on the Zillow value. The advertisement does state it is "contingent upon our inspection" as well. The Respondent claims they went to the Complainant's house and found that it needed a good deal of work. Consequently, he says, the offer was later reduced to \$250,000.

The advertising rules in Tenn. Comp. Rules & Reg. 1260-02-.12(7) permit such advertising so long as it discloses all "pertinent details on the face of such offer or advertisement." Here, the mailer provides the details that make an inspection of the property contingent on a potential offer.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

27. **2022018341**
Opened: 5/16/2022
First Licensed: 12/11/2018
Expires: 12/10/2022
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the listing agent.

The Complainants say they made an offer at \$30,000 over list price with no contingencies and proof of funds. The Complainants were working with their own agent. The Complainants explain they were aware that it was a multiple offer situation. The Respondent supposedly told their agent that the sellers “wanted highest and best offer, and the sellers will try to respond to the offers by 8pm 3/28/22.” The Complainants say the Respondent did not respond to their agent about receipt of their offer until 7pm on March 28. According to the Complainants, no response was ever forthcoming. The next day, the listing was marked as “pending.” When the Complainants’ agent called the Respondent, she apologized for not reaching out but said her assistant had “18 agents to notify.” The Complainants’ agent texted the Respondent later saying that she wished she had let them know as the Complainants might have been a back-up offer. The Respondent replied that there was, basically, no competing with the offer that was ultimately accepted. The Complainants feel that their offer was not presented at all.

The Respondent starts by explaining that the Complainants’ offer was “ranked 15th of the 16 received.” The Respondent goes on to say that she does not believe the Complainants realized “what they were up against with this home.” She does say that her assistant failed to notify two of the 16 offers-one of which was the Complainants. The Respondent claims she met with the sellers and took hard copies of the best two, a primary and a backup. Ultimately, the offer the was accepted was one in which the buyer’s agreed to pay “up to \$100,000 above appraised value, not to exceed \$565,000.”

It is up for debate as to whether or not the Complainants would have made a better offer. Having not received a notification from the Respondent, they were not in a position to know whether or not they should have made a second offer. Ultimately, the Respondent’s first duty was to the sellers in this situation.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

28. 2022018591
Opened: 5/16/2022
First Licensed: 2/6/2009
Expires: 2/5/2023
Type of License: Affiliate Broker

History: None

The Complainant is a real estate investor. The Respondent is an affiliate broker.

The Complainant says that the Respondent is “acting for more than (1) party in a transaction...” and soliciting him. He claims the Respondent told “a neighbor” that he was looking for an investment property. There is no other information with the complaint.

The Respondent says her affiliated firm uses a system called “Quantum Mailings.” According to the Respondent, when a home is listed or sold within a community, the system can send out postcards to the surrounding areas. The Respondent says she recently sold a home in the Complainant’s area and now he is receiving automated postcards. She has recently asked the corporate marketing department to cease any mailings to the Complainant’s address. As to the allegation of telling a third-party about the Complainant’s investing plans, she denies telling anyone anything.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

29. 2022019371

Opened: 5/16/2022

First Licensed: 7/15/2020

Expires: 7/14/2022

Type of License: Affiliate Broker

History: None

The Complainant is the seller. The Respondent is the listing agent. *The Complaint below in #30 is directly related.

The Complainant says the Respondent took no photographs of his house and listed the house incorrectly (built in 1998 but listed as 2017). According to them, the Respondent’s principal broker took the photos that were ultimately placed on the MLS. Very soon, a buyer was found; however, the title company found a lien/liens on the property. The deal fell through as the lien/liens were not cleared in time before closing. The Complainant does not mention what the liens stemmed from. The Complainant claims the Respondent told him that he had known about the lien/liens for “two weeks” but did not say anything. The Complainant theorizes the lien/liens could have been satisfied in that time had he known about them. The Complainant

fired the Respondent and now wants to keep him from a commission. Apparently, the Complainant still wants to sell to the same buyer but without an agent.

The Respondent says his principal broker took the photos as she has many more years in the business and has sold many properties. The Respondent goes on to say that many offers were made within hours of the property going on the MLS. He says the incorrect information on the MLS was not up for long. As to the liens, the Respondent claims that he does not recall how long he knew about them; however, he and the title company were trying to sort out each one. It was during this time, he says, that the buyer's agent started contacting the Complainant behind his back. Apparently, the Respondent told the buyer's agent to cease all communication with his client. As to the listing agent's commission, the listing agreement spells out that the Complainant would still be obligated to pay if the property sells within the stated period in the agreement.

The issue of how long the Respondent knew about the liens is not certain. Further, the Respondent had no reason to know about them prior to when he did as that is not a broker's duty. Overall, the Respondent utilized reasonable skill and care during the course of the transaction. As to the commission, that is a contractual dispute between the parties.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

30. 2022019251
Opened: 5/16/2022
First Licensed: 1/5/2006
Expires: 1/4/2024
Type of License: Real Estate Firm
History: None

The Complainant is the seller. The Respondent is the listing agent's affiliated realty firm.

*The Complainant's facts are identical to those in #29 above.

The Respondent says her affiliate broker did nothing unreasonable in this transaction. She feels the buyer's agent has instigated much of this but has no first-hand proof. She admits the listing had an incorrect date at first; however, the

Respondent says that was cleared up within a reasonable time. The initial offer was received within a week with, unfortunately, the liens being discovered a few weeks later. The Respondent does not want to release the Complainant from the listing agreement.

The Respondent appears to have been quite involved in this transaction and did not fail to exercise supervision over the affiliate broker.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

31. 2022013321
Opened: 5/16/2022
Unlicensed
History: None

The Complainant is a Tennessee resident. The Respondent is unlicensed.

The Complainant claims she contacted the Respondent about renting a house. The Respondent then sent her a rental application, requesting bank account information.

The Respondent says that her out-of-state friend "asked me to list" certain properties for rent but says little else. The Respondent does not deny that she sent the Complainant a rental application or that she manages more than one rental property. It is unknown if the Respondent is managing the subject properties for some form of payment or consideration (statute requires it). In this instance, asking for bank account information may be moving more beyond what a resident manager is limited to in the statutory exemption.

Recommendation: Letter of Instruction regarding resident manager limitations under unlicensed activity in violation of Tenn. Code Ann. § 62-13-104(a)(1)(E)

Commission Decision: The Commission voted to assess a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity. However, should Respondent be licensed within thirty (30) days of receipt of the Consent Order, the civil penalty shall be reduced to Five Hundred Dollars (\$500.00).

32. 2022019411
Opened: 5/16/2022

First Licensed: 9/21/2020
Expires: 9/20/2022
Type of License: Vacation Lodging Service
History: None

The Complainant is a VLS customer and a North Carolina real estate licensee. The Respondent is a VLS licensee.

The Complainant says they rented a cabin for themselves and several other guests in February 2022. The Complainant claims the cabin was first viewed on Instagram. The cost of the rental was \$1,906.71 for four days. Upon arrival, the Complainant says that the basement had 2-3 inches of water in it from the heavy rains at the time. Later, the living room ceiling leaked due to the main shower plumbing. Additionally, the cabin's floor and baseboards were dirty; the hot tub was not sufficiently clean; and the cabin had some number of cockroaches. The Respondent's maintenance service response was also, apparently, less than responsive. The Complainant believes the Respondent falsely advertised the cabin given the condition of the same.

The Respondent sent proof of a full refund to the Complainant with no other information or explanation. While it is a bit of stretch to classify the Respondent's activity as misrepresentation, the cabin clearly had maintenance problems. A refund was warranted.

Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted Counsel's recommendation.

33. 2022014851
Opened: 5/23/2022
First Licensed: 3/3/2021
Expires: 3/2/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent.

The Complainant alleges the Respondent misrepresented the "percability tests and soil absorption rates" performed on the subject property. The Complainant claims

the Respondent told him that a preliminary study had been performed but was unable to be completed due to weather.

The Complainant purchased the property and then later hired his own soil scientist. That soil scientist supposedly then told the Complainant that he had already performed a perc study on the property and had concluded that no septic system could be used. The Complainant now contends the Respondent willfully withheld the scientist's findings in order to sell the property.

The Respondent says the subject property belonged to her parents. The Respondent's parents hired one soil scientist to see if the land would perc *before* listing it. The soil scientist supposedly ran out of daylight and was only able to test one area of the property, which resulted in a negative test. The soil scientist was unable to return in order to test the remainder of the property due to weather. He advised the parents to get a second opinion.

The parents listed the property with the Respondent on May 12, 2021. The Respondent claims that she noted in the "private remarks" that the land "does not perk at this time." In the meantime, the Respondent says she contacted a second soil scientist who told the parents that the property resulted in a negative test. The Respondent attempted to get the test information from the second soil scientist; however, she was unable to do so after a number of attempts. A few weeks later, the Complainant's agent contacted the Respondent with an interested buyer. The agent asked about the perc situation to which the Respondent claims she told her that it did not perc per the comments in the MLS. She also informed the agent that she had not yet received the documentation from the second soil scientist; however, the interested buyer was free to get his own opinion.

The Respondent was on notice of the land's percability in the MLS through his agent. Further, there is no other evidence that supports the Complainant's contention that the Respondent withheld any information. The first soil test was inconclusive and the second was negative with the second test results never provided by the soil scientist.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

**34. 2022016661
Opened: 5/23/2022**

First Licensed: 9/23/1998
Expires: 9/23/2023
Type of License: Affiliate Broker
History: None

The Complainants are the sellers. The Respondent is the buyers' agent.

The Complainants say the Respondent turned off the Complainants' wi-fi camera during the home inspection. A few weeks later during an inspection of the home's chimney, the Complainants claim the Respondent "coaxed" the inspector to report that the crack in the chimney was due to water damage rather than settlement. The Complainants are adamant there was no water damage related to the chimney. Ultimately, the house closed and the buyers took possession.

The Respondent says she did unplug the security camera from the electrical outlet for roughly 20 minutes in order to give the inspector and the buyers' uncle (buyers were out of state) privacy to discuss the findings. The Respondent claims that one of the Complainants was actively listening in through their phone. She believes this as during the inspection, the home inspector could not locate the electrical panel. Out of the blue, the listing agent got a call from the Complainant who told them where to find it. This, then, prompted the Respondent to temporarily unplug the camera as the Complainant was eavesdropping. The Respondent says the cameras were promptly plugged back in after the inspection concluded.

As to attempting to persuade the home inspector to make certain findings, the Respondent says the chimney cinder blocks on the outside wall were "completely deteriorating, creosote was running down the interior wall." She claims she did mention to the home inspector that there "might" be moisture entering through the chimney, causing the wall to swell. The inspector, ultimately, did not address this in his report. She says that neither side wanted a large repair, so she was not motivated to try and make a big issue out of it.

The Respondent's actions were reasonable as it related to the home inspection. While the Complainants were within their rights to listen in, a home inspection, ideally, should be conducted without the sellers interfering.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

35. 2022016921
Opened: 5/23/2022
First Licensed: 7/17/2020
Expires: 7/16/2022
Type of License: Affiliate Broker
History: None

The Complainant is anonymous and claims not to be a TREC licensee. The Respondent is an affiliate broker.

The Complainant says the Respondent displayed a “picture of a flyer that he and his father distribute saying they buy homes, but nowhere on the flyer does it say they are licensed agents or affiliated with a brokerage.” The picture was supposedly posted on Facebook; however, the posting has since been taken down. The posting was also on the Respondent’s personal Facebook page and not on one dedicated to buying or selling real estate.

As there is no way to now confirm any of the Complainant’s allegations, a letter of warning may be more appropriate as opposed to a civil penalty.

Recommendation: Letter of Warning for alleged violation of Tenn. Comp. Rules & Regs. 1260-02-12(3)(b)

Commission Decision: The Commission accepted Counsel’s recommendation.

36. 2022018731
Opened: 5/23/2022
Unlicensed:
History: None

The Complainant is a tenant. The Respondent is an unlicensed property management entity.

The Complainant, generally, says the property he leases from the Respondent is unsafe. According to him, there are few security lights, and the laundry room does not lock. Additionally, there are a number of maintenance issues. The Complainant makes no mention of the Respondent’s apparent unlicensed status.

The Respondent says they are working on correcting the security light timers. Apparently, there are security lights installed, but they have defective timers, causing them to shut off early. There the issue of the license is not discussed.

Recommendation: Authorize a formal hearing with authority to settle by Consent Order with a \$1,000 civil penalty for a violation of Tenn. Code Ann. § 62-13-301 for unlicensed property management.

Commission Decision: The Commission accepted Counsel's recommendation.

37. 2022018841

Opened: 5/23/2022

First Licensed: 10/2/2014

Expires: 10/1/2022

Type of License: Affiliate Broker

History: None

The Complainant is the prospective tenant and a realtor in Colorado. The Respondent is the listing agent.

The Complainant says she was searching for a rental through the Respondent. She claims the Respondent advised that there were two other applicants for the property. She further alleges that the Respondent told her she was the "strongest application" given all the relevant factors (credit score, income, etc.). On April 18, 2022, the Complainant claims that she received a text from the Respondent saying that "she did not realize that my co-applicant was [my]child." The next day, the Respondent then notified the Complainant that the owner had selected another applicant. According to the Respondent, the applicant offered more money. The Complainant asked for the return of her application fee, which appears to be \$60.00. The Respondent also believes she was denied the listing because of her familial status as part of the Fair Housing Act. The Complainant's daughter, however, is 20 years-old.

The Respondent says this was not a familial status situation. She says it is "purely her lack of qualifying for this home..." The Respondent explains that there were two other applicants that were also highly qualified. Their website also clearly states that the application fee is non-refundable. The Respondent goes on to say that the applicant who as selected offered to pay more rent. Their application requires that anyone over the age of 18 has to fill out an application.

The decision to go with the other applicant appears to be more a result of income than family status. Further, the familiar status portion of the Fair Housing Act requires that the subject child or children be under the age of 18. Here, the daughter is 20.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

38. 2022018871

Opened: 5/23/2022

First Licensed: 1/24/1996

Expires: 8/27/2022

Type of License: Principal Broker

History: 2022 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

The Complainant is a time share salesperson. The Respondent is the Complainant's former principal broker.

The Complainant says the Respondent "is" her principal broker. The Complainant says that the time share company she used to work for is permitting agents to sell based on "business needs working 2 different locations back and forth on a daily basis..." She goes on to say that the Respondent allowed her E&O to lapse which eventually led to her license being suspended.

The Respondent says he transferred the Complainant to another principal broker and real estate company in February 2020. His position, then, is that all of the Complainant's complaints arose *after* she was broker-released. He claims that he provided her with all the information necessary in order to renew her E&O prior to any suspension.

The Respondent goes on to say that the Complainant filed two different worker' compensation claims. While he does not say if the alleged injuries were valid, the third-party insurance carrier gave the Complainant a "return to work" date. Apparently, the Complainant also filed a complaint with OSHA, which was later dismissed. The time share sales company also provided a response. They say the Complainant has been on "extended leave" since January 2021 and, to their knowledge, has not been engaging in sales.

As to the Complainant's E&O lapse, the Respondent provided the Complainant with the information she needed prior to the policy's lapse. Further, the Respondent had broker-released the Complainant prior to the lapse. As to how the salespeople worked in different locations, none of those actions appear to violate any statute or rule.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel's recommendation.

39. 2022015141
Opened: 5/31/2022
Unlicensed:
History: None

The Respondent is a real estate appraiser. The Respondent is unlicensed.

The Complainant says the Respondent is operating a vacation rental service without a VLS license.

The Respondent says that both this complaint and a related 2020 complaint are from the same competitor. He says his clients went with him after a long stint with the Complainant and now the Complainant is upset as he lost the business. In any event, the Respondent is in the process (if not already) of submitting his VLS application. The Respondent also has verbally agreed through a telephone call with counsel that he wants to settle the 2020 complaint and pay the associated \$1,000 civil penalty. Given that both complaints stem from the same facts, counsel recommends closing and flagging this complaint and allowing the Respondent to settle the 2020 complaint by Consent Order.

Recommendation: Close and Flag.

Commission Decision: The Commission accepted Counsel's recommendation.

40. 2022018701
Opened: 5/31/2022
First Licensed: 12/8/2008
Expires: 9/6/2022
Type of License: Real Estate Broker
History: None

The Complainant is a real estate investor and builder who also claims to own part of the subject realty business. The Respondent is a real estate broker.

The Complainant alleges that the Respondent took \$10,000 from a realty firm in which the Complainant's mother is the majority owner. The Respondent was the broker for the subject realty firm and was in the process of closing down the subject firm. Apparently, the mother gave the Complainant a power of attorney to conduct some of the day to day business activities of the firm. According to the Complainant, a local bank informed him that the Respondent had made a check out to herself from the firm escrow account. Additionally, the Complainant claims that the Respondent retained a security deposit and first month's rent at one of the properties managed by the firm. The monies were not turned over the realty firm either.

Since the Respondent's firing on March 16, 2022, the Respondent had also failed to turn over files and records related to real estate transactions. The Respondent was broker-released by the principal broker on May 11. The Complainant filed a police report with local authorities on May 6. The Respondent was later charged with one count of forgery-there is presently no conviction. The principal broker claims to have had no knowledge of how the Respondent "handled anything relating to the closing of that business."

The Respondent, largely, denies all the Complainant's allegations. Regarding the \$10,000 withdrawn from the escrow account, the Respondent says she discovered that the firm's operating account had numerous unauthorized transactions to "CashApp." The Respondent then claims she went to the bank to report these and have the app shut off. Apparently, the root of the transactions was an HVAC technician that had been given permission from the Complainant to make charges to the firm's account for repairs. Therefore, it is possible the account was run dry by the HVAC guy and not the Respondent.

In rebuttal, the Complainant says the entire story about the HVAC technician is a fabrication. The Complainant also claims to have hired an accounting firm to go over the books since the firm's closure and the Respondent's firing. He says the firm found an additional \$25,000 missing. The Complainant, of course, attributes the missing money to the Respondent. As of late June, the Complainant claims to have filed an additional police report for theft.

This Respondent also has an open 2019 complaint that is currently in litigation monitoring. The allegations in that complaint are similar to the ones in this complaint.

Recommendation: Discussion.

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

41. 2022021191
Opened: 6/14/2022
First Licensed: 4/3/2008
Expires: 4/2/2024
Type of License: Time Share Salesperson
History: None

The Complainant is a time share owner. The Respondent is a time share salesperson.

The Complainant says he and his spouse were approached by the Respondent while on vacation. He claims the Respondent offered to help them with maintenance fees through the use of points. In exchange, the Complainant and spouse were to receive “a package” in the mail about obtaining “36 nights per year” from the time share company. The real crux of the complaint appears to be that the Complainant has a high interest rate on the purchase of the points.

The Respondent says she offered the Complainant the option of applying for a Barclay Bank MasterCard that is affiliated with the time share company. The Complainant; however, insisted on using their existing Barclay card. As to the 36 nights, the Respondent says that package was a “Directory of Affiliated Resorts” and an information letter that provided directions on setting up an online account. The Respondent says she did what she could to encourage the Complainant to apply for a second credit card with a lower interest rate, but he declined.

The complaint is based primarily on the verbal discussion the parties had at the resort with little way to determine who said what.

Recommendation: Close.

Commission Decision: The Commission accepted Counsel’s recommendation.

CASES TO BE REPRESENTED

42. 2021072411

Opened: 1/5/2022

First Licensed: 8/23/2007

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

The Complainant is one of the Respondent's former employees and not a TREC licensee. The Respondent is a time share company.

The Complainant says the Respondent hires new employees and allows them to work without an acquisition license. The Complainant says they do this work off site, according to him, inside a nationally-recognized store chain.

The Respondent says the new agents completed a two-week training course and then are instructed on how to obtain the Tennessee acquisition license. The Respondent does not categorically deny that the agents are working prior to gaining a license; however, the Complainant provides no time period in which these events have allegedly occurred or any specific sales agents.

Recommendation: Letter of Warning for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301

Commission Decision: The Commission voted to defer this matter to the April meeting in order for counsel to send this matter for investigation.

New Information: A TDCI investigator went to all the locations identified in the Complainant's initial complaint. The investigator found one time share salesperson who was not licensed at the time of the investigator's visit to the site. This individual; however, had a license application pending and has since been granted a license effective February 24, 2022. The other two individuals possessed valid licenses. Based on the wording of the rules, any violation is against the principal broker as opposed to the time share company.

New Recommendation: Authorize a formal hearing with authority to settle by Consent Order with a \$1,000 civil penalty for a violation of Tenn. Code Ann. § 62-13-301 for unlicensed timeshare sales.

New Commission Decision: The Commission accepted counsel's recommendation and also voted to open a complaint against the principal broker for violation of Rule 1260-01-.04.

New Information: The complaint against the principal broker resulted in the Commission recommended a \$1,000 civil penalty and an offer to settle by consent order. By the applicable rule, the violation extends to the principal broker rather than the time share company.

New Recommendation: Close.

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

43. 2020056331
Opened: 8/3/2020
First Licensed: 4/21/2003
Expires: 7/5/2022
Type of License: Principal Broker
History: None

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

The Complainant stated the property shows the home is a five (5) bedroom home, however, the home's septic system can only accommodate a three (3) bedroom home. A potential buyer would not have knowledge of this fact unless the buyer's agent told a potential buyer. The price reflects a five (5) bedroom home based on the comparables. The price and number of bedrooms of the home is misleading to potential buyers.

The Respondent provided a response and stated in rural areas, there are often many buyers that want to know if there are other rooms outside of the septic system certification that can be used for bedrooms. The information provided by the Respondent makes it easily searchable for those looking for the number of rooms actually in a home. The information is also important to a buyer's agent and often there are details included in the remarks section of a listing. There are often several listings with COVID-19 information listed in the private remarks or even what appliances or fixtures will or will not be remaining with the home. There is also information on disclosures that are either attached to the MLS a buyer cannot access

and the buyer's agent is always aware of the exact property details. The Respondent did not understand why the Complainant did not contact the Respondent directly. The Respondent indicated the Complainant has misled the public by not using the proper name in listings, etc. Also, the Respondent checked on several of the Complainant's MLS listings and there was a home on a city sewer system, however, in the private remarks section, the Complainant stated the home was on a septic system and the home was being sold "AS IS." This is misleading to the general public. Also, there was another home listed by the Complainant where in the MLS listing it stated the storage building would remain with the home, however, in the private remarks section it states the storage building would not remain with the home. This is also misleading. Also, the price on the home listed by the Respondent is not based on the five (5) bedrooms, the home was priced on the square footage of the home. The home was not misrepresented as the Complainant alleges and if there was an issue with the listing the Complainant could have easily contacted the Respondent by the telephone to further discuss or seek clarification.

Recommendation: Authorize a formal contested case against the Respondent with informal settlement by Consent Order and payment of \$1,000 civil penalty for making substantial and willful misrepresentations in violation of Tenn. Code Ann. § 62-13-312(1).

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Complainant is anonymous, although likely a licensee. Whatever the Complainant saw is no longer up as the subject home is no longer on the MLS. With the passage of time, there is now an evidentiary problem for any formal hearing as the Complainant's identity is unknown. Further, this complaint is one that might have been better addressed through a local realtors association when it occurred over two years ago.

New Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1).

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

44. 2020072351
Opened: 9/28/2020
First Licensed: 12/27/2005
Expires: 12/26/2021
Type of License: Affiliate Broker
History: None

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

The Complainant alleges the Respondent is an affiliate broker and uses a website which makes it appear that it is the Respondent's brokerage firm. The Complainant alleges this is an unauthorized use of a web domain to make it appear the Respondent is a brokerage because of the term "realty" is used in the name of the website. The website domain is listed as citystaterealty.com and will take an individual to the Respondent's team site. The team site does state the brokerage firm; however, the Respondent's team is listed on the website.

The Respondent provided a response and stated the Respondent believes the word "realty" could not be used in a team's name, however, it could be used in a domain name. When the new TREC rules were released for teams/groups, the Respondent took immediate action to change the name to ensure compliance with the rules. The domain that uses the word "realty" is only used by the Respondent's marketing company to host blogs and listings that are posted on Facebook. It is very clear which firm the Respondent works for and it is not misleading to the public. It is prominent on the website and Facebook which is the only place the domain is referenced. The Respondent's firm name is prominent on all advertising and on the domain and it does not appear as if the Respondent has his own brokerage firm or is operating independently of the firm. The sole purpose of the domain is to let the public know that the website relates to real estate in a city in Tennessee. The Respondent has used the domain for over five years and there has never been a single call or inquiry with anyone expressing any confusion. The Respondent discontinued using the domain on Facebook in order to avoid any further issues related to the complaint.

Recommendation: Authorize a contested case proceeding and civil penalty in the amount of \$500 for violations of the Tenn. Comp. Rules & Regs. 1260-02-.12(f) [No licensee shall advertise in a false, misleading, or deceptive manner]. The website domain leads the public to believe that the licensee is offering brokerage services independent of a firm and principal broker and

authorize informal settlement and the word “realty” is in the domain name of the website which is considered a form of advertising.

Commission Decision: The Commission accepted counsel’s recommendation.

New Information: The Respondent’s website has been down for quite some time. He is now working for a different firm. Looking at the screenshots of the former website, the website appears to have taken the viewer to the page in which the Respondent’s firm was located. This, arguably, complied with Tenn. Comp. Rules & Reg 1260-02-12(6)(b) in which the “firm name and firm telephone number listed on file with the Commission must be no more than one click away from the viewable page.”

New Recommendation: Close.

New Commission Decision: The Commission accepted Counsel’s recommendation.

**45. 2020095901
Opened: 12/21/2020
First Licensed: 11/7/2016
Expires: 11/6/2022
Type of License: Principal Broker
History: None**

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

The Complainant alleges on December 7, 2020, the Complainant conducted a final walk through of the property for a client. The Sellers did not make the property available until after dark on the date of the final walk through. When the Complainant arrived at the property, it was a mess and there were lots of personal items that were left in the home. The Complainant called the agent regarding several issues. The Sellers had also left a swing set that the Buyer did not wish to assume. The Complainant’s Buyers did not want the swing set. The Complainant checked on December 12, 2020 and there was no response and again on December 16, 2020. The Complainant thought the swing set had been removed, but instead the Seller’s agent advised the Complainant the Seller would not remove the swing set because it was not part of the contract or repair amendment. The Complainant explained the swing set was a personal item and not an item addressed in the contract or repair

amendment. The Complainant stated the Respondent has been difficult in communicating with the Complainant and was dishonest with the Respondent. The Respondent had previously indicated the swing set and other items would be removed and everything would be removed. Later, the Respondent expected the Complainant would hire someone to clean up and remove the swing set. Later, the Respondent had the Sellers pick up the personal items left in the home after the Complainant sent pictures of the items to the Respondent.

The Respondent provided a response and stated the swing set that was to be removed at the property is cemented into the ground and pursuant to the Purchase and Sale Agreement, it was intended to be included with the property. The attached fixture was not requested to be removed from the property by the Buyer. On November 24, 2020, a Purchase and Sale Agreement was bound and did not include an amendment by the Seller to remove the cemented down swing set. The closing date occurred on December 7, 2020 without any amendments to remove the playground equipment. On December 16, 2020, an e-mail was sent by the Complainant to the Respondent requesting the removal of the swing set at the cost of the Seller.

The swing set was not affixed in cement and is considered personal property. The Respondent misrepresented that the swing set was a fixture of the property. The Respondent had specifically stated the swing set would be removed and assured the Complainant the swing set would be removed. This swing set is NOT set in concrete. Each leg of the swing set is sitting in grass. Each leg is easily picked up and moved. This swing set is a personal belonging that should have been moved.

Recommendation: Authorize a contested case proceeding and assess a civil penalty in the amount of \$2,000 for violations of Tenn. Code Ann. § 62-13-312 (1) making any substantial and willful misrepresentation and (20) any conduct, whether of the same or different character from that specified in this subsection (b) that constitutes improper, fraudulent or dishonest dealing and authorize settlement by Consent Order and payment of the civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Photos contained in the complaint file indicate that while the swing set was not set in cement, the swing set's legs were several inches in the ground. The photos show a shovel being used to excavate the legs of the swing set (roughly five inches below the surface). Arguably, the swing set was more fixed in the ground than originally thought. Further, the Purchase and Sale Agreement did not include an amendment by the parties to remove the swing

set. It is, therefore, somewhat a stretch to characterize the Respondent's actions as "willful."

New Recommendation: Close.

New Commission Decision: The Commission voted to issue a Letter of Warning for Tenn. Code Ann. § 62-13-403(1).

**Anna D. Matlock:
New Complaints:**

**46. 2022015341
Opened: 5/2/2022
First Licensed: 7/30/2015
Expires: 7/29/2017 (Expired)
Type of License: Affiliate Broker
History: None**

Complainant is a principal broker. Respondent is an expired affiliate broker. Complainant alleges Respondent is facilitating the sale of real estate unlicensed. Complainant states an owner contacted them to serve as a property manager for their property and Respondent's company currently served as property manager and along with another individual, sold this property to the owner. Upon arrival at the owner's property, Complainant noticed the utilities were stolen and later found from the utility company no permits were pulled since the property's previous fire. After this discovery and major renovations, Complainant learned the owner purchased the property from Respondent's company. Complainant states Respondent is not the owner of this property and therefore conducting unlicensed activity. Complainant also provides four (4) separate property addresses where Respondent's company is listed as the seller where Complainant is now property manager.

Respondent answered the complaint stating they did not act as an agent in procuring the sales of the named properties and only performed administrative duties as a transaction coordinator for investors that have sought Respondent's services. Respondent states as a previous affiliate broker they understand when a real license is required and have not held themselves out to be an affiliate broker. Respondent explained for one (1) of the properties in question Respondent helped coordinate the inspections, made sure the closing attorney had and closed on the contract, and that the buyers and sellers met the contract criteria. Respondent stated both parties to the

properties were investors and have acquired properties without licensees. However, Respondent did advise the purchaser of the property to seek a licensed property manager(s). Respondent states they only assist buyers and sellers in the coordination of their acquisitions once they have identified their potential properties. Respondent admits to working for Complainant previously as their COO and office coordinator until they were dismissed by Complainant in April of 2021, due to downsizing. Respondent concludes by stating it is their desire to provide the service of teaching and coordinating transactions for investors and do not charge any type of commission based on price or any other method to seller, but a coordination fee of Five Thousand Dollars (\$5,000.00) to the seller for coordination services rendered.

Complainant submitted a rebuttal stating the Five Thousand Dollar (\$5,000.00) coordination fee mentioned by Respondent sounds very similar to a commission and that Respondent's investors are mostly out of state and engaging the services of a non-licensed person to purchase real estate. Complainant further reiterated that anyone acting on behalf of someone else to buy or sell real estate they do not own to receive a fee, commission, or other type of compensation is engaged in the practice of real estate. Tenn. Code Ann. § 62-13-102(9)(A) defines "facilitator" as someone who "assists one (1) or more parties to a transaction who has not entered into a specific written agency agreement representing one (1) or more of the parties." While a written agency agreement does not exist for either party; ultimately, subsection 102(9)(B) does not apply, as a licensee is not involved in the transaction. Further, Tenn. Code Ann. § 62-13-104(a)(1) provides the exemptions in which a license is not required to sell real estate. Based on the facts and information provided, Respondent does not fall into any of these categories. While the investors that Respondent works for may be considered owners (Tenn. Code Ann. § 62-13-104(a)(1)(A)) or fall into the corporate exemption (Tenn. Code Ann. § 62-13-104(a)(1)(F)), these exemptions do not apply to Respondent.

The definition for "broker" can be found in Tenn. Code Ann. § 62-13-102(4). Specifically, Tenn. Code Ann. § 62-13-102(4)(A) defines "broker" as "any person who, for a fee, commission, finders fee or any other valuable consideration or with the intent or expectation of receiving a fee, commission, finders fee or any other valuable consideration from another solicits, negotiates, or attempts to solicit or negotiate the listing, sale, purchase, change, lease or option to buy, sell, rent or exchange for any real estate or of the improvements on the real estate..." Respondent has defined their work as administrative duties, such as coordinating inspections, making sure the closing attorney has and closes the contract, and that the buyers and sellers meet the contract criteria for a Five Thousand Dollar (\$5,000.00) fee no matter purchase price. Ultimately, all these actions combined amount to the

exchange of real estate between Respondent's investors with the intent or expectation of receiving a fee. Without the exchange of the real estate, or the fee, Respondent's services are not rendered, and the real estate sale does not move forward. Therefore, Counsel recommends that Respondent be assessed a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for unlicensed activity.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty.

Commission Decision: The Commission accepted Counsel's recommendation.

47. 2022016561
Opened: 5/2/2022
First Licensed: 9/20/2021
Expires: 9/19/2023
Type of License: Affiliate Broker
History: None

Complainant is anonymous. Respondent is an affiliate broker. Complainant alleges Respondent is posting listings without permission on Facebook and Instagram. Complainant also alleges that Respondent may be using a designation they do not possess and accuses Respondent of unprofessionalism.

Respondent answered the complaint stating they do not believe the information to be true, especially since they are a new agent and at the time of their response did not have any listings. Respondent believes Complainant is an individual that is harassing Respondent and the same person behind unknown letters sent to their home address. Respondent has since filed a police report and firmly denies all claims of this complaint. Complainant has submitted no information to support any of the claims alleged in their complaint and Counsel is unable to contact Complainant for further questions or supporting documentation. Respondent's social media postings do not appear to be in violation of the rules or statutes of the Commission. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss

Commission Decision: The Commission accepted Counsel's recommendation.

48. 2022016631
Opened: 5/9/2022
First Licensed: 6/11/2014

Expires: 3/27/2024

Type of License: Principal Broker

History: None

Complainant is an expired affiliate broker. Respondent is a principal broker. Complainant states a few days prior to their license expiration Respondent informed them to complete their final class for their CRE [sic] course and their license would be renewed. Complainant states since then they have paid monthly agent fees and fees to a state association. In April of 2021, Complainant decided to move to a new firm and discovered their license was expired. Complainant provides Respondent informed them it would cost at least One Thousand Dollars (\$1,000.00) to renew their license. As they have been paying agent fees to Respondent since October of 2021, Complainant requested a refund of their agent fees and Respondent allegedly refused. Following, Complainant alleges they were then dropped from Respondent's firm. Complainant alleges they never received anything in the mail stating their license expired, have paid \$750+ in agent fees while having an expired license, and were immediately dropped without assistance how to correct the issue. Complainant hopes to ensure this does not happen to someone else.

Respondent answered the complaint stating Complainant was notified via text message their license showed as expired and Complainant replied they had yet to complete their continuing education ("CE"). Respondent further states Complainant was aware that their license was expired, and additional CE was required to renew, that no further attempts were made to reinstate, inquire about the license, and any license must be reinstated if expired. Respondent closes stating the firm cannot renew an agent's license, force an agent to complete CE, and Complainant took no further states to reinstate their license.

Complainant and Respondent provided text message screenshots to support their claims in the complaint and response. Respondent did inform Complainant their license was expired, and Complainant did confirm they needed to complete their CE. Ultimately, satisfying and completing all requirements for licensure renewal is the responsibility of the individual licensee. Respondent is not responsible for Complainant's license expiring. Any settlement of paid or unpaid fees between affiliate brokers and principal brokers is outside of the jurisdiction of the Commission. Therefore, Counsel finds no violation of the rules and statutes by Respondent and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

49. 2022012131
Opened: 5/9/2022
First Licensed: 9/2/1988
Expires: 3/17/2023
Type of License: Real Estate Firm
History: None

This matter was referred by the Division of Consumer Affairs. Complainant is a Tennessee resident. Respondent is a real estate firm. On February 11, 2022, requested their final move out statement and security deposit and have yet to receive either from Respondent after moving out on January 21, 2022. Complainant states they were informed of an outstanding balance and was able to access a move out statement online which detailed late rent charges dating back to 2021. Complainant alleges due to the billing errors of Respondent's; Respondent has requested Complainant to repay invoices with late fees after they no longer live at the property. Complainant further alleges they also have not received their security deposit from Respondent.

Respondent answered the complaint stating this matter has been resolved and Complainant agreed to pay the charges that they were responsible for, and Respondent waived the late fees. Counsel has reviewed the documents submitted by both Complainant and Respondent and it appears this matter is more so related to a landlord tenant dispute. Complainant appears to have settled a portion of this matter with Respondent and is in search of a partial refund. Respondent in this matter explained in emails to Complainant the billing invoices which caused the remaining balance, and the parties came to an agreement. Based on this information, Counsel does not find Respondent in violation of any rules or statutes and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

50. 2022017941
Opened: 5/16/2022
First Licensed: 11/7/2002
Expires: 6/3/2023
Type of License: Principal Broker

History: None

Complainants are Tennessee residents. Respondent is a principal broker. Complainants state they were released from a contract on July 23, 2021, and Respondent is still contacting them to obtain a commission Complainants maintain Respondent did not earn. Complainants state Respondent would not do professional photography, staging, open houses, or placed a sign in the yard. Complainants also state Respondent listed a larger property in the neighborhood for less money per square foot creating more competition. Additionally, Complainants state Respondent appeared to be burned out, did not come to show their home, and subsequently Complainants decided to terminate the contract in July of 2021 and hired another licensee to sell their property.

Respondent answered the complaint stating they were contacted in August of 2019 about listing a first home for Complainants that was subsequently sold. Later, Respondent was contacted about the subject property, and this was ultimately placed on the market. During this process, Respondent states they took pictures of the property and Complainants were unhappy with the photos due to the cleanliness of their home. Respondent also claims Complainants insisted a sign not be placed in the yard as they were often out of the state. As for the other property in the neighborhood, Respondent explains this home was larger, had a basement, older, and several other factors led to the home being listed for a lower price. Respondent states Complainants ultimately wanted release from the listing agreement but agreed to pay Respondent the commission which has now resulted in Respondent filing a complaint against Complainants for breach of contract and outstanding real estate listing commission to be paid.

Some of the facts in the matter between the Complainants and Respondent are in dispute. Though this matter is currently in litigation, the matter relates to a commission dispute and potential breach of contract both of which are outside of the jurisdiction of the Commission. Based on the information provided by Complainants and Respondents, Counsel finds no violations of the rules and statutes by Respondent. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

**51. 2022019161
Opened: 5/16/2022**

First Licensed: 1/11/2019
Expires: 1/10/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant states at the time of signing their lease the company was aware of their dogs. Further, Complainant alleges a pet addendum was never completed, but the confirmation of pet existence was confirmed via email. In April of 2022, the homeowner of Complainant's lease visited and expressed interest in purchasing one (1) of their dogs. Complainant alleges after the homeowner was told the dog's price, soon after Complainant received an email from Respondent stating Complainant violated the lease, demanded a non-refundable Two Thousand Dollar (\$2,000.00) pet deposit, and their rent increased by four hundred dollars (\$400.00) per month. Complainant states they felt harassed by Respondent and the homeowner and believe this is an example of unethical and unprofessional behavior. Complainant states they submitted their notice to vacate to Respondent and never received a response, but Respondent continued to contact Complainant which ended after Complainant threatened to involve law enforcement.

Respondent answered the complaint stating Complainant disclosed five (5) dogs in their initial correspondence with their office, which was approved along with a deposit and pet rent. Later, Respondent states they were contacted by the homeowner regarding allegations of fifteen (15) animals on the property, which led to Respondent contacting Complainant. Respondent states Complainant informed them they had eight (8) six (6) week old puppies in an incubator in a spare room, one (1) in the home, four (4) in the garage, and two (2) additional dogs—an additional ten (10) dogs in the home than initially agreed upon. Respondent then states to accommodate their undisclosed breeding operations they requested an additional Two Thousand Dollar (\$2,000.00) pet deposit for the ten (10) unauthorized dogs and Two Hundred Dollar (\$200.00) per month pet rent. Complainant later agreed to the charges and paid the deposit. Respondent confirmed Complainant chose to break their lease, vacate the property, and maintains the homeowner of the property has the right to make decisions on the number of animals permitted in their home. Complainant submitted a rebuttal stating they are protected from harassment under landlord tenant laws and that they were dog sitting two (2) of the dogs on the premises.

The Commission does not have jurisdiction over unethical and unprofessional behavior, those complaints are reserved for the association level. Additionally, the

Commission does not have jurisdiction over matters related strictly to landlord and tenant issues, as it appears to be the case in this complaint. Complainant possessed more dogs than originally provided to Respondent and their company in the lease. Any additional opinions or comments related to breach of contract, or the lease are not addressed in the rules and statutes for the Commission. Based on all other information provided, Counsel finds no violations of the rules and statutes and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

52. 2022019401

Opened: 5/16/2022

First Licensed: 1/7/2005

Expires: 5/13/2023

Type of License: Real Estate Firm

History: None

This matter was referred by the Division of Consumer Affairs. Complainant is an out of state resident. Respondent is a real estate firm. Complainant placed a bid on a piece of real estate for Three Hundred Seventy-Five Thousand One Hundred Dollars (\$375,100.00) and claims they were the top bid and sent an email to Respondent during bidding. Complainant alleges they were notified via email they were told if they won the bid or out bid. At the end of the bidding, Complainant states they noticed their bid was taken down and replaced with another individual with the same amount who ultimately won the auction. Complainant states the next day they were told by Respondent they attempted to call Complainant, but the number in their profile was incorrect though they emailed the day before. Complainant believes they should have been awarded the property.

Respondent answered the complaint confirming an online absolute auction for the property took place. Respondent states Complainant was the highest bidder at the time; however, Complainant was not an individual Respondent was familiar with or someone who had inspected the property prior to the auction. Attempting to verify Complainant's identity, Respondent was unable to contact Complainant by phone after multiple attempts. Respondent acknowledges they now know this was due to a typographical telephone error in Complainant's profile, but at the time Respondent was concerned of a possible scam. Respondent states they had legitimate concerns as to Complainant's ability to fully execute a high bid and made the decision to reject

the bid, consistent with the terms and conditions for the auction. Respondent closes this complaint stating they fulfilled their fiduciary duty to their seller and acted in their client's best interest under the circumstances. Complainant submitted a rebuttal stating they provided Respondent with all the necessary information including what was required to establish bank and credit card authenticity. Complainant maintains Respondent could have easily verified the accuracy of their information on Google and that it appears one of Respondent's employees was invested in the winning bidder's story for purchasing the subject property. Complainant maintains Respondent's behavior was disingenuous and questions their business practices.

Auctions of real estate are duly licensed by the Tennessee Real Estate Commission and the Tennessee Auctioneer Commission. Therefore, any individual that auctions real estate is required to hold both a license from this Commission and a license from the Tennessee Auctioneer Commission, as does Respondent. Here, Complainant is asking the Commission to award them the property in this auction, an ask that falls outside of the jurisdiction of the Commission. Additionally, most issues raised by Complainant relate to the auction and/or the act of auctioning, not the sale of real estate. Based on all information provided, Counsel has found no violations of the rules and statutes as it relates to sale of real estate and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

53. 2022018571
Opened: 5/23/2022
First Licensed: 9/24/2021
Expires: 9/23/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant declined to extend their lease on March 28, 2022, with a lease expiration date of April 27, 2022. Per the lease, Complainant states it is required to give at least thirty (30) days written notice using a specific form and notice to vacate is effective on the date the notice is received by and receipted for by the property management company. Complainant states the language in the lease does not specify which form is required, nor where the form is located. Complainant alleges their property management company has attempted to charge their account for May and

Respondent informed Complainant they cannot move out without completing a notice to vacate. Complainant states Respondent has informed them Respondent is unable to contact the property owner of Complainant's former rental space. Complainant believes Respondent is unprofessional, has yet to return their security deposit, and ignoring their rights as a tenant and their contract.

Respondent answered the complaint stating Complainant did not contact their office until April 26, 2022, requesting instructions to move out and was not listed on the calendar to move out. Respondent then learned from Complainant their notice was provided on the lease renewal inspection form, not the notice to vacate. Respondent states they then informed Complainant they would need to speak with the property owner to see if they would waive the thirty (30) day notice without additional money as that is not left to Respondent's discretion. Respondent denies charging Complainant's account for rent or withholding the security deposit and provides a copy of Complainant's ledger showing a pending outstanding balance. As they are not the owner of the company, Respondent provides they have acted in the policies and procedures and do not personally handle the security deposit as that is handled through their company's system.

Complainant provided a rebuttal alleging Respondent did not contact the owner. Additionally, Complainant maintains that Respondent and their company were provided adequate notice of their intent to vacate, and the specific form is not legal binding. Lastly, Complainant concludes stating they do not understand what the owner has to do with the security deposit. Based on the information provided by Complainant and Respondent, this matter appears to be more analogous to a landlord tenant dispute, which is a matter where the Commission does not retain Commission. It appears the matter is likely a contractual dispute on the language provided in the lease agreement and what specific document is required to vacate the property, which is again not a jurisdictional matter of the Commission. Counsel finds no violation of the rules and statutes by Respondent and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

54. 2022018861
Opened: 5/23/2022
First Licensed: 9/16/2003
Expires: 4/12/2024

Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. On March 11th, Complainant alleges a property listed by Respondent was listed for 4,536 square feet based upon a tax assessment, but per a tax assessment Complainant discovered by the Comptroller of the Treasury the square footage is listed as 3,416. On April 16th, after an offer was accepted and price agreed upon based upon the larger square footage, the buyers asked for a copy of the floor plans during due diligence. On April 25th, Respondent sent floor plans that reflected the accurate square footage. However, on May 4th, Complainant states the closing continued and an appraisal is ordered by the bank and the appraiser noticed the discrepancy and this resulted in a lower value. The appraiser then informed Respondent the MLS was incorrect. Complainant stated the sellers did not accept the lower appraisal value and the contract was canceled. On May 9th, Respondent relisted the home but failed to update the MLS with the larger square footage despite knowing the error. Complainant alleges Respondent is engaging in misleading advertising and continued and flagrant course of misrepresentation for their failure to correct the square footage error.

Respondent answered the complaint stating the square footage was auto populated by the county's tax accessor's office. Respondent further states they did not make the listing active again, but the office policy is that once a contract fails and is still under a listing agreement, it is made active again on the MLS. Respondent claims this was changed on the same day and as with all listings there are disclaimers made for buyers and buyers' agents to verify all pertinent information. The listing is not back up with the current information, the same disclaimers, and mentions the tax discrepancies. Respondent also states they made the county tax accessor office aware of the discrepancy and states no misrepresentation was made. In this matter the discrepancy between the original listing and what was provided by the Comptroller of the Treasury and the appraisal ordered by the bank is a difference of at least 1,120 square feet, a substantial difference. While Respondent maintains that the original square footage information was provided to them by the county's tax accessor, prior to the appraisal, the correct square footage information appears to be provided elsewhere and Respondent failed to seek sources to confirm the square footage. Additionally, this square footage was posted again in a second listing of the same property. Though this second listing was taken down shortly after posted, Counsel finds the square footage listing to be misleading or untruthful advertising and recommends a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(4).

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty.

Commission Decision: The Commission accepted Counsel's recommendation.

55. 2022008421

Opened: 3/1/2022

First Licensed: 6/25/2015

Expires: 6/24/2023

Type of License: Principal Broker

History: None

On January 29, 2021, Respondent's affiliate broker was suspended for lapsed errors and omissions ("E&O") insurance. On January 31, 2022, Respondent's affiliate broker failed to maintain E&O insurance for a year and was therefore automatically revoked. Subsequently, on or about March 1, 2022, the Commission administratively opened a complaint against Respondent for failing to adequately exercise supervision over the activities of an affiliate real estate broker. Specifically, Respondent failed to ensure that the affiliate real estate licensee maintained continuous E&O insurance coverage. As required by Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(2), if a principal broker's affiliated licensee reinstates his or her license more than one hundred twenty (120) days after suspension, the consent order shall contain a civil penalty of one thousand dollars. Therefore, Counsel sent Respondent a consent order authorizing a One Thousand Dollar (\$1,000.00).

At the June 2022, Respondent's affiliate broker requested a waiver of their re-examination requirement to reinstate their license to an active status. Respondent's affiliate explained that during the mentioned time period they did have E&O insurance, but this information was not updated properly upon their transfer and provided to the Commission in a timely fashion, thus explaining why their license was suspended and then later revoked. As Respondent's affiliate was never without E&O insurance, Counsel believes that the current violation of Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(2) is inappropriate. Instead, Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(16) which states "in the case of a licensee, failing within a reasonable time to complete administrative measures that may be required by the commission upon the transfer or termination of any affiliate broker employed by the broker." Respondent failed within a reasonable time to update the Commission staff with the updated E&O information, a required administrative measure, upon their affiliate broker's transfer to the firm. Had

Respondent updated this information, their affiliate broker would not have been suspended or revoked.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(16).

Commission Decision: The Commission accepted Counsel's recommendation.

56. 2022020681

Opened: 5/31/2022

First Licensed: 6/14/1999

Expires: 2/27/2024

Type of License: Principal Broker

History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker. Complainant is a trustee of an estate, along with their niece, with a cash, no repairs, "as is" offer to sale with a signed contract and Exclusive Right to Seller Listing Agreement with Respondent as the designated agent for the Complainant executed on April 6, 2022. The sale is contingent upon the buyers selling their home. After an offer was accepted on April 7, 2022, later in April Complainant alleges Respondent contacted them that the buyers wanted to take measurements of the yard of the estate and during this, Respondent requested a copy of a key to the home for the buyers. Complainant alleges they denied this request, but states a week later, Respondent's child, a licensee and part of the transaction, provided the buyers a key on or about April 18, 2022. During this time, Complainant alleges the buyers went into a building on the estate and removed tables. Following this, Complainant alleges their niece requested the key be returned, but Respondent and the buyers delayed returning the keys.

Further during the transaction, Complainant alleges the buyers' raised inquiries related to repairs and potentially moving items into the residence on the estate prior to the sale of their home. Again, Complainant alleges they denied this request. Complainant also alleges Respondent called their sibling, the individual subject of the trust and estate, and attempted to "coerce" their sibling into permitting the above-mentioned items of the buyers to be moved into the home. Complainant alleges Respondent told their sibling the buyers' home is cluttered and moving in the items would therefore help the buyers sell the home, thus accelerating the closing of the subject transaction. Complainant further alleges that Respondent informed their sibling that the buyers are willing to begin repairs at their cost prior to closing in the

event they do so for a home loan. Complainant states Respondent should be aware as a licensed professional broker that the contract was a cash “as is” transaction so repairs are not necessary, that Complainant’s sister is not an “authorized seller” and does not have the “capacity or legal competence to consent” to any of Respondent’s requests. Complainant closes stating that Respondent has failed to conduct themselves with “integrity and professionalism” in a transaction with “a vulnerable disabled adult.”

Respondent answered the complaint stating they have been licensed since 1999 and they have no disciplinary history, with this being their first complaint. Respondent stated in March 2022 they received a phone call from Complainant’s sibling, individual subject of the trust and estate, regarding listing a house that had been willed to them by their aunt. Respondent states they have known Complainant’s sibling for over forty (40) years. At this time, Respondent advised Complainant’s sibling to list the estate as “as-is” with either cash or conventional financial if they did not wish to be responsible for making repairs. Later, Respondent states Complainant and Complainant’s niece signed the listing documents as trustees, but Respondent did not have contact with Complainant until May 18, 2022. Respondent states the buyers first viewed the estate on April 6, 2022. On April 18, 2022, Complainant’s niece informed Respondent they could not meet the buyers at the estate to view the property, but Complainant’s niece could drop off the keys at Respondent’s office. Respondent states then they met the buyers at the residence on the estate where they proceeded to take measurements. As the buyers had not completed their measurements, Respondent states it was agreed the keys would be returned at the buyers’ open house on April 24, 2022.

On the day of the open house, Respondent states the buyers were not present the entire day and the keys were not left for Respondent, though Respondent requested the keys be returned on several occasions. On May 1, 2022, Respondent provided a text message from Complainant’s niece to Respondent’s child stating “Hey there, I hate to message you on a Sunday. Just when you get a chance if you will ask the buyers to bring the key back to your office, I need to get some things from out the house next week or weekend that would be great. I don’t have a key.” Beginning May 2, 2022, unsuccessful attempts to contact the buyers began. Respondent states they were unable to receive the keys from the buyers until Friday, May 13, 2022, and Respondent’s child planned to return the keys to Complainant’s niece on May 17, 2022. Respondent states the buyers’ home was not selling and they refused to lower the price, so they decided to get a HELOC in order to close, but then later decided to obtain a VA loan which the sellers did not agree. Respondent states on May 18, 2022, they received a call from Complainant screaming with profanity, but

did not elaborate on the context of the call, and eventually Respondent decided to end the call. Since then, Respondent stated they only communicated with Complainant via email. On May 21, 2022, a Listing/Buyer Representation Mutual Release was executed. Respondent concludes stating they worked well with Complainant's niece and attempted to get all issues resolved, including working diligently to retrieve the key the buyers were in possession of for several weeks. Respondent further denies the allegations that they took advantage of a "vulnerable disabled adult" and failed to act "with integrity and professionalism." Respondent states after the estate was listed with the trustees their conversations were with Complainant and their niece and they acted within the best interest of their client.

It is clear that this is a very contentious situation. While Complainant claims that Respondent was never given permission to provide the buyers the keys to the residence of the estate, it is evident that Complainant and Complainant's niece did know for several days, at least a week, that the buyers were in possession of the keys. Respondent requested the buyers return the keys multiple times and each time this was ignored. However, during this time Respondent and/or their child did take time to communicate with Complainant's niece on the status of the keys. Upon connecting with the buyers, Respondent received a response stating "Awesome! I hope it was no problem for you." It appears the Complainant's version of events may vary from Respondent's. Secondly, Complainant makes several serious allegations against Respondent regarding their professionalism as a licensee and their alleged behavior toward a vulnerable person associated with the transaction. However, Complainant presents no evidence, written or otherwise, to support these accusations or statements. In fact, Complainant is one (1) of two (2) trustees of an estate and it appears by the text messages between Respondent and their child, another licensee, that interactions and relations with the other trustee are not nearly as tenuous or antagonistic. Based on the lack of supporting evidence from the Complainant, and the information supplied from the Respondent, including communications and the transaction files, it does not appear that Respondent violated any of the rules or statutes promulgated by the Commission. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

57. 2022026221

Opened: 7/5/2022

First Licensed: 6/14/1999

Expires: 2/27/2024

Type of License: Principal Broker

History: None

This complaint is related to 2022033481 and referred from the Division of Consumer Affairs. Complainant is a Tennessee resident and one of the prospective buyers. Respondent is the same principal broker from 2022020681. Complainant alleges the subject property was not what they were looking for but did have a building on the property that was of use as Complainant had an upholstery business. Upon seeing the porch and a sign with their spouse's nickname, Complainant knew this must be divine and requested Respondent's firm begin proceedings to purchase the home. Complainant alleges that after their spouse spoke with the sellers, they discovered Respondent had not been honest and Complainant therefore fired Respondent.

Respondent answered the complaint stating this the first consumer complaint they have ever received and believe Complainant to be very misleading. Respondent states they were originally contacted by Complainant about another of their listings and after viewing this one did not believe it would work, and then Respondent recommended the subject property and Complainant agreed to view the subject property. After fully viewing the subject property, Complainant made a cash offer contingent upon selling their current home. Respondent states Complainant's spouse made inappropriate comments toward one of the sellers and two (2) separate occasions. Respondent states that they worked in earnest multiple times over several weeks to obtain the keys from Complainant but encountered many setbacks and delays from Complainant. Respondent denies making any mistruths or dishonesties alleged by Complainant during the transaction.

Based on the information provided by Complainant, Counsel finds no information to support that Respondent had not been honest during the transaction. Additionally, Complainant makes no specific allegations toward Respondent in their complaint, nor are any statements from the sellers supported in Complainant's complaint. Therefore, due to the lack of information provided in Complainant's submitted documentation, and the support provided to refute Complainant's accusations by Respondent, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

58. 2022020991

Opened: 5/31/2022
First Licensed: 11/18/2014
Expires: 11/17/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant states Respondent falsely advertised the water heater of a home listed as new in 2020, but Complainant's plumber stated they found the serial number and were able to find that the water heater was manufactured in 2016 and likely installed in 2017. Complainant concedes this would not have impacted the sale of the home, but it is something they will have to replace sooner than anticipated and allege other issues in their home. Therefore, Complainant believed it important to make it known Respondent provided false information concerning the water heater in the listing. Complainant provides a screenshot of the listing that states "Updates include, new HVAC and water heater in 2020."

Respondent answered the complaint stating in the MLS it is provided the information in the listing was provided by the seller. Respondent further provides the seller unintentionally misinformed them and Respondent subsequently included this information in their listing. Respondent provides that nothing was done intentionally or with malicious intent. Respondent provides text messages with their seller stating the water heater is from 2020. After reviewing the content from Complainant and Respondent, it is clear that Respondent did not intend to misrepresent the information in the listing to potential buyers or to Complainant. Additionally, Complainant states this would not have impacted their sale and it appears from Complainant's response a home inspection was done at the time of sale. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

59. 2022023281
Opened: 6/27/2022
First Licensed: 7/3/2014
Expires: 7/2/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant states they virtually approved a showing of their home and Respondent informed Complainant they were doing a virtual walk through for a client. Complainant states Respondent did not film, speak, or take photos during their visit. However, Complainant did observe Respondent on their hands and knees going through closed boxes and bags of personal belongings hidden below clothing in the master bedroom closet. Complainant then states Respondent opened all drawers in the nightstands, dressers, and disconnected the camera in the room. Complainant then asked Respondent to leave the property. Complainant states Respondent then sent an apology to their real estate agent stating they had a lapse of judgment, and this was not representative of the ethics and standards of REALTORS®.

Respondent answered the complaint stating they did preview the home and admits to looking in the closet of the primary bedroom. Respondent states in retrospect they were looking too detailed than an individual should during a viewing but did not disturb or take any items from the property. Respondent states when the owner arrived home they apologized in person and followed up in email to the listing agent. Respondent closes by sincerely apologizing for the incident.

Ethics and professionalism matters are reserved for the local association level and not of the jurisdiction of the Commission. However, in this matter Respondent requested a showing and intentionally went into Complainant's bedroom without taking any steps to show any of the property to a potential client. Respondent admitted their behavior and despite not taking any items, intentionally and deliberately invaded Complainant's privacy without cause and in direct contradiction of their original intention of arriving on the premises. Counsel finds Respondent in violation of Tenn. Code Ann. § 62-13-403(1), and recommends Respondent be assessed a civil penalty for One Thousand Dollars (\$1,000.00) for failing to diligently exercise reasonable skill and care.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted Counsel's recommendation.

60. 2022020121

Opened: 6/27/2022

First Licensed: 9/3/2004

Expires: 12/31/2022

Type of License: Vacation Lodging Service Firm

History: None

Complainant is an out of state resident. Respondent is a vacation lodging service. Complainant alleges they rented from Respondent and their cabin had a stench of old cigarette smoke when the properties were to be non-smoking. Additionally, Complainant alleges the floor and baseboards were filthy and it was filled with ants. Complainant states they left the property and spoke with the property manager the next day and allege they attempted to convince Complainant to return. Complainant claims they requested to move to a different property and were denied said request and a refund.

Respondent answered their complaint through their property manager and stated once Complainant alleged the cigarette smoke, they stated maintenance would assess and address the problem. Respondent stated Complainant informed them at this time that regardless of the remedy they would not return and had disputed the claim with their credit card company. Respondent states their maintenance technician returned and reported no smell of smoke and states their properties are 100% non-smoking. Additionally, Respondent has a strict no cancellation policy as well as no refunds for early check outs. Respondent closes stating these issues was brought to their attention could have easily been addressed, but Complainant did not allow them to do so or investigate. Based on the information provided by Complainant and Respondent, Counsel finds no violation of the rules and statutes by Respondent and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

61. 2022019181

Opened: 6/6/2022

First Licensed: 9/28/1994

Expires: 6/18/2023

Type of License: Real Estate Firm

History: None

Complainant is a timeshare sales agent. Respondent is a timeshare company. Complainant states they are filing a complaint against their firm for allowing agents to sell and work at two (2) different locations daily. Additionally, Complainant alleges their principal broker has allowed their errors and omissions insurance to lapse because they did not submit the paperwork. Also, Complainant states their

principal broker has assigned them to a firm that is inactive, inhibiting their license renewal. Lastly, Complainant closes that Respondent has allowed their principal broker to permit an unlicensed agent to sell alone while the principal broker collects commissions on a percentage of the sales, unbeknownst to other unlicensed agents.

Respondent answered the complaint through a representative for their corporate office answering the complaint on behalf of the timeshare company and the allegations against the principal broker. Respondent denies all allegations related to knowingly allowing unlicensed selling activity. Further, Respondent states Complainant has been on extended leave from employment since January 31, 2021, and thus not engaging in sales since that date. Respondent states Complainant's license expired, and Complainant forwarded TREC's mailed notice to Respondent's principal broker and a copy of instructions were subsequently sent to Complainant by Respondent. Lastly, Respondent states it was Complainant's responsibility to renew their license while on leave and failure to do so is not the responsibility of Respondent or the principal broker.

Complainant provides no specific information to support their allegations of agents working between two (2) firms daily or the principal broker collecting commissions from unlicensed persons. Additionally, individual licensees are responsible for maintaining both their errors and omissions insurance and the renewal of their license. When a licensee's errors and omissions insurance does lapse, the principal broker is in violation of failure to supervise, but that is a separate complaint that is currently handled in a different matter. Based on what is provided in this complaint, Counsel finds no violations of the rules and statutes and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

TIMESHARES:

62. 2022021791
Opened: 6/20/2022
First Licensed: 4/20/1999
Expires: 12/31/2022
Type of License: Time Share Registration
History: None

Complainant is a Tennessee resident. Respondent is a timeshare company. Complainant states they purchased their timeshare in December of 2018 and due to the cost of their timeshare and the lack of availability they are hardly ever able to use or upgrade. Even during the pandemic, Complainant states they were required to pay the full amount and for this fact they wish to cancel their timeshare, especially since the places they choose to stay are listed online for cheaper. Complainant believes they should be allowed to cancel since they were provided false statements by Respondent's employees, and they were conned into a contract.

Respondent answered the complaint stating Complainant purchased their contract on December 19, 2018, and because they signed and executed their Purchase and Sale Agreement, Complainant is outside of the statute of limitations and their claims are time-barred. Respondent provides Complainant information on how to obtain assistance with utilizing their timeshare and concludes from their research they have uncovered no wrongdoing and that full and failure disclosure of the purchase terms were provided on the day of sale. Respondent concludes by respectfully declining Complainant's cancellation request. Based on the information and documents provided by Complainant and Respondent, Counsel finds Complainant signed the Purchase and Sale Agreement and the rescission period has expired, and this matter is outside the statute of limitations. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

63. 2022022601
Opened: 6/20/2022
First Licensed: 4/20/1999
Expires: 12/31/2022
Type of License: Time Share Registration
History: None

Complainant is a Tennessee resident. Respondent is a timeshare company. Complainant signed a contract with Respondent in 2019 and states they have reached out to Respondent several times to be released. Complainant states nothing is available, they believe they have been conned, their health is in decline, and this timeshare is a financial hardship. Complainant is requesting assistance in hopes to be released from their contract.

Respondent answered the complaint stating Complainant purchased their contract on September 22, 2019. Respondent apologizes to Complainant for any inconvenience and if they felt pressured, but ensures Complainant was not forced to stay or to purchase a timeshare. Respondent provides their research concluded full and fair disclosure was provided to Complainant at the time of sale and that their contract is valid, enforceable and will not be cancelled. However, Respondent reminds that Complainant has a deeded timeshare and therefore Complainant may rent or sell their timeshare. Based on the information and documents provided by Complainant and Respondent, that Complainant signed the Purchase and Sale Agreement, and the rescission period has expired, and this matter is outside the statute of limitations. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted Counsel's recommendation.

CASES TO BE REPRESENTED

64. 2022015321
Opened: 4/25/2022
First Licensed: 12/15/2005
Expires: 7/22/2023
Type of License: Real Estate Broker
History: None

Complainant is anonymous. Respondent is a licensed principal broker. Complainant alleges Respondent has gotten away with many unprofessional real acts and no real estate company wants the liability, warning the public is not safe. Complainant alleges Respondent has people sign agreements binding them in business forever. Complainant provides a copy of an advertisement listing Respondent's name, cellphone number, email address, a possible firm name, and a telephone number. The same information is also listed for two other individuals.

Respondent answered the complaint stating they are not aware of any unprofessional acts and consider themselves to be a professional, considerate, caring, and conscientious person and real estate agent. Respondent denies they have caused any firm liability and also denies having any agreements that require individuals to sign agreements requiring them to work with Respondent forever. Respondent states they are not aware of a requirement to have an address listed on an advertisement for an

agent or agency within the firm. Respondent closes stating the accusations are unfounded and inaccurate.

Complainant provides no information to support the allegations made against Respondent's business practices and there is no way for Counsel to contact Complainant for further information. However, Counsel does find that the advertisement included does violate Tenn. Comp. R. & Regs. 1260-02-.12(3)(b). It is required that the firm name be the same size or bigger than those spelling out the name of a licensee or the name of any team, group, or similar entity. The entire firm name in the advertisement is smaller than a listing of the Respondent's last name, the same as the two other agents with the firm, and the last portion of the d/b/a on file with the Commission. As this is a first-time advertising violation, Counsel recommends Respondent be assessed a Five Hundred Dollar Civil Penalty for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b).

Recommendation: Five Hundred Dollar (\$500.00) civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: While drafting the Consent Order, Counsel discovered Respondent is not the principal broker for their firm. As principal brokers are responsible for all advertising, Counsel recommends the Commission administratively open a complaint against Respondent's principal broker.

New Recommendation: Administratively open a complaint against the firm's principal broker for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b).

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

NOTE REGARDING COMPLAINT NUMBERS 65-77:

- 65. 2021074931
- 66. 2021074961
- 67. 2021074991
- 68. 2021075011
- 69. 2021075031
- 70. 2021075051
- 71. 2021075071

- 72. 2021075091
- 73. 2021075121
- 74. 2021075151
- 75. 2021075171
- 76. 2021075191
- 77. 2021075211

Opened: 11/18/2021

First Licensed: 3/9/1995

Expires: 10/20/2022

Type of License: Principal Broker

History: None

On or about November 8, 2021, the Commission received multiple Transfer, Release, and Change of Status Forms (“TREC Form 1”) from Respondent choosing to broker release thirteen (13) different affiliated licensees. Following this action, the Commission administratively opened thirteen (13) complaints against Respondent for failing to adequately exercise supervision over the activities of these affiliated licensees. Specifically, Respondent failed to ensure that all affiliated licensees maintained continuous errors and omissions (“E&O”) insurance coverage.

In response, on December 1, 2021, as required by Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(2), if a principal broker releases an affiliated licensee more than one hundred twenty (120) days after suspension, the consent order shall contain a civil penalty of one thousand dollars. Therefore, Counsel sent Respondent a consent order authorizing a One Thousand Dollar (\$1,000.00) civil penalty per affiliated licensee, for a total of Thirteen Thousand Dollars (\$13,000.00). On April 19, 2022, Counsel filed a Notice of Hearing and Charges with the Tennessee Secretary of State’s Administrative Procedure Division for these matters to be set for a contested case hearing before an administrative law judge sitting alone on behalf of the Commission.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty.

Previous Information: During proceedings, Counsel for the Commission informed Respondent’s Counsel that they are permitted to anonymously present the matter before the Commission for consideration. Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(4) provides that nothing in the rule shall be construed as limiting the Commission’s authority to authorize a consent order in a different amount than listed herein, seek any other legal discipline—including

revocation or suspension of a license—for failure to supervise an affiliated licensee’s E&O insurance, review an initial order under the *Uniform Administrative Procedures Act*, or not seek discipline against a principal broker for failure to supervise an affiliated broker’s maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter. Counsel has provided a copy of the statement from Respondent’s counsel with all personal identifying information removed. [*see insert*]

In response, Counsel provides the Commission the following information. To date, the Commission contends and maintains that the TREC Form 1s in question were not received. There is no record, through the mail or online for the TREC Form 1s of the affiliated licensees in question. There are no open online CORE transactions related to the affiliated licensees in question. Further, official rosters are with the Commission. It is the responsibility of the principal broker to ensure and maintain this is accurate. Respondent’s counsel also mentions several inaccuracies from the number of individuals allegedly broker released in 2019. Counsel nor the Commission can verify the identity of the Regulatory Board Administrative Assistant or the “individual” that is alleged to be “retired.” As of June 2, 2022, Respondent had one hundred thirty-eight (138) licensees affiliated with their firm. Therefore, due to the significant number of licensees, Counsel and Commission staff were unable to verify this claim made by Respondent’s counsel.

Principal brokers are tasked with ensuring to adequately supervise all activities of affiliated licensees. This includes guaranteeing, at all times, that all licensees affiliated hold E&O insurance as required by the rules and statutes. Additionally, this includes completing all required administrative measures. Supervisory responsibilities of principal brokers do not terminate until the Commission receives the TREC Form 1s through hand delivery, through postal mail, or online submission. Statements accusing Commission staff of incorrectly processing forms are certainly possible, but to present knowledge of all gathered and presented information from the Commission’s staff, Respondent, and Respondent’s counsel thus far this is untrue. The Commission staff corrects errors as the information is presented. Counsel contends it is very unlikely thirteen (13) different affiliated licensees broker released on different dates were due to “the result of an error of the Commission’s own systems or processes.” Based on the information provided in the statement from Respondent’s counsel, Counsel for the Commission finds no specific or material

evidence submitted by Respondent's counsel to support dismissal of the open complaints.

Previous Recommendation: Discuss.

Previous Decision: The Commission voted to reinstate the One Thousand Dollar (\$1,000.00) civil penalties, for a total of Thirteen Thousand Dollars (\$13,000.00).

New Information: Since the last Commission meeting, Counsel and Counsel for Respondent conferred on next steps in the matter and if settlement was still possible. Following direction from the Commission, Counsel informed Counsel for the Respondent since little evidence existed regarding receipt of the TREC Form 1s in question, that if Respondent possessed such documents that these be provided to Counsel. Counsel expressed to Counsel for Respondent that more than possession is required to prove that Respondent made effort to transmit these documents to the Commission.

In response, Counsel for Respondent provided Counsel archived copies of FedEx invoices for each of the thirteen (13) TREC Form 1s. The FedEx invoices match the date of the signed TREC Form 1s, Respondent's mailing address, the address of the Commission, confirm the date and time of delivery at the Commission, and a name of the individual that signed for delivery of the document. While the FedEx invoices do not specify that the documents are the specific TREC Form 1s, Respondent's copy of their FedEx mailing receipt contains the last name of each individual affiliate licensee and the tracking ID and mailing numbers match. Based on the evidence provided thus far, it would be difficult for Counsel to disprove the documents are not what Respondent proports them to be at hearing.

Therefore, Counsel recommends that in lieu of a civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(15) for failing to exercise adequate supervision over the activities of any licensed affiliate broker, Counsel recommends Respondent be assessed a letter of warning including the provisions of Tenn. Comp. R. & Regs. 1260-02-.02(1) which states "...The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form or online submission. The principal broker shall retain a copy of the executed form or confirmation of online submission, which is applicable." While the Commission did receive these forms, it is important for principal brokers to ensure that their rosters are up to date with the Commission. Maintaining the accuracy of this information is crucial to ensure situation such as these do not occur.

New Recommendation: Letter of Warning in an Agreed Order that includes the typical information of General Stipulations, Authority and Jurisdiction, Parties, Stipulated Findings of Fact, Applicable Law, Stipulated Conclusions of Law, and Order.

Commission Decision: The Commission accepted Counsel's recommendation.

Chair Marcia Franks adjourned the meeting at 2:45 P.M. CST