



**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 February 8, 2022, at 8:30 a.m. CST at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243. In addition, the meeting was streamed virtually via Microsoft TEAMS meeting platform. John Griess called the meeting to order and welcomed everyone to the Board meeting. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission Members were present: Commissioner Joe Begley, Commissioner Stacie Torbett, Commissioner DJ Farris, Commissioner Joan Smith, Vice-Chair Marcia Franks & Chairman John Griess. Commissioner Jon Moffett, Commissioner Geoff Diaz, and Commissioner Steve Guinn were absent. 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 February 8, 2022, board meeting agenda was submitted for approval.

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

Minutes for the January 12, 2022, board meeting was submitted for approval.

Motion to approve the January 12, 2022 minutes was made by Commissioner Torbett and seconded by Commissioner Farris. Motion passed 5-0 with Vice-Chair Franks abstaining.

INFORMAL CANDIDATE APPEARANCES

Grace Garretson and Principal Broker Laraine G. Hanson appeared before the Commission to obtain approval for Ms. Garretson's Affiliate Broker license.

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

EDUCATION REPORT

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

Motion to approve courses F1-F26 was made by Vice-Chair Franks and seconded by Commissioner Begley. Motion passed unanimously.

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

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

EXECUTIVE DIRECTOR'S REPORT

Executive Director Maxwell updated the Commission on the topic below.

- **ARELLO**: Dates were given for the Mid-Year ARELLO Conference to be held in Savannah, GA. In addition, Director Maxwell opened for discussion the possibility of combining the August and September meeting to allow for commissioners to attend the ARELLO Annual Conference to be held in Nashville, TN.

CE BROKER PRESENTATION

Marcia Mann addressed the commission on the functionality of a new resource to assist with maintain Continuing Education for licensee's and providers. The commission was able to ask questions, regarding CE Broker.

The commission approved the utilization of CE Broker for Continuing Education maintenance.

LEGISLATIVE UPDATES

HB2864: Permits members to attend by electronic means of communication; 50% physically present less than 50% two (2) consecutive calendar years vacant.

HB2141: Physical quorum once/calendar year combination of in-person or electronic means 62-13-206(c) One (1) meeting in each grand division.

HB1958: defines synchronous and asynchronous. Does not require synchronous ARELLO certification removes requirement for 1 student interaction per 5 hours in which instruction does not take place in a traditional classroom.

HB2288: Increases prohibition for timeshares from sixty (60) to sixty-five (65) days when making a prediction or implying immediate increases prior to date that increases prior to the date including will be placed into effect Tenn. Code Ann. § 62-32-132(4).

HB1889: Creates an exemption allowing brokers that need continuing education for license renewal. Now 1/1/2005 not required to do CE. Would exempt licensees in good standing, licensed 10 years, minimum of 200 hours of CE.

REERA with Roger Thomas:

Mr. Roger Thomas appeared on behalf of his client Ms. Xiaoyun Gao. At the previous meeting, the Commission deferred making a final decision on the number of claims at issue. Following up conversation on this matter, the Commission voted to grant Mr. Thomas' client payment from the real estate education and recovery account of Fifteen Thousand Dollars (\$15,000.00) for each of the five (5) claims for a total of Seventy-Five Thousand Dollars (\$75,000.00). Mr. Thomas stated he would work with Counsel to come to an agreement on Tenn. Code Ann. § 62-13-208(h) on how to effectuate exchanges of funds between the Commission and Mr. Thomas' client.

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 1-44 with exception of the following complaints, which were pulled for further discussion: **21073951, 2021075271, 2021076541, 2021072411, 2021054621, 2021068631, 2021069041, 2021067971, 2021071971**. This motion was made by Vice-Chair Franks and seconded by Commissioner Begley. Motion passed unanimously.

After further discussion by the Commission on complaint 2021073951, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021075271, Vice-Chair Franks made the motion **accepted counsel's recommendation and voted to open an administrative complaint against the Principal Broker for failure to supervise the affiliate due to the advertising violation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021076541, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021072411, Vice-Chair Franks made the motion **Commission voted to defer this matter to the April meeting in order for counsel to send this matter for investigation**. The motion was seconded by Commissioner Begley. Motion passed 5-1 Commissioner Farris voting against.

After further discussion by the Commission on complaint 2021070621, Vice-Chair Franks made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021068631, Vice-Chair Franks made the motion **to accepted counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021069041, Commissioner Torbett made the motion **to accepted counsel's recommendation**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021067971, Commissioner Torbett made the motion **to accepted counsel's recommendation**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2021071971, Commissioner Torbett made the motion **to accepted counsel's recommendation**. The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

Dennis Gregory:
New Complaints:

1. 2021073951
Opened: 11/29/2021
First Licensed: 8/24/2020
Expires: 8/23/2022
Type of License: Affiliate Broker
History: None

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

The Complainant says the "parties" agreed the seller would repair the septic tank per the repair amendment. The Respondent, allegedly, hired a different septic company (amendment does not specify a particular plumber). The work was done, but the Complainant says it was not correct as sewage backed up in the tub and out of the toilet. The Complainant says that a few days later the contractor filed a mechanic's lien on the home for non-payment. The Complainant also alleges the Respondent had a personal interest in the home and did not reveal such. There is a March 31, 2021 Facebook posting in which the Respondent refers to the subject home as his "investment property I am flipping." The plumber who filed the lien named the Respondent on the lien, although it is not clear why unless it was only as a result of him getting the property ready for sale.

In his response, the Respondent denies that he had a personal interest in the property. He says that he represented the property as a local property manager for the seller. The Respondent says he was involved with the renovations as the seller was located out of state. The FB posting may have been an exaggeration or a mischaracterization of the Respondent's real role, although the Complainant latched on to it. The Complainant did not include the full purchase/sale agreement, so there is no way to verify who was on the contract.

The Respondent should have been more aware of what he posted on social media as he gave the impression he owned the property or had some personal interest in it.

Recommendation: Letter of Warning for skill and care related to Tenn. Code Ann. § 62-13-403.

Commission Decision: The Commission accepted counsel's recommendation.

2. 2021075271
Opened: 11/29/2021
First Licensed: 11/30/2020
Expires: 11/29/2022
Type of License: Affiliate Broker
History: None

This is an anonymous complaint regarding an alleged advertising violation. The Complainant says the Respondent's name is much larger than the firm name.

The Respondent says that he measured his name at "5" tall x 11 ½ wide while the [firm name] logo measures 6 1/2" tall x 21 ½" wide." The picture included with the complaint appears to depict the Respondent's name the same size as the branding for the firm; however, the firm's full name does appear somewhat small than the Respondent's.

The branding is not a "DBA," so the firm name is smaller.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that "[a]ll advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of the licensee or the name of any team, group, or similar entity."

Commission Decision: The Commission accepted counsel's recommendation and voted to open an administrative complaint against the Principal Broker for failure to supervise the affiliate due to the advertising violation.

3. 2021074041
Opened: 12/6/2021
First Licensed: 5/30/1997
Expires: 11/13/2023
Type of License: Affiliate Broker
History: None

The Complainants are the buyer, and the Respondent is the affiliate broker acting as a dual agent.

In April 2017, the Respondent was listing agent for the seller. The Complainants were unrepresented when they viewed the subject home. The Complainant proposed a lease/purchase arrangement which the Respondent communicated to the seller. The parties agreed to a lease/purchase in April 2017. The Respondent says the Complainants never expressed any desire to have their own agent representation. Over the course of the four years, the parties struggled with each other, with much of the communicating occurring without the Respondent's involvement. The Complainants did not like the interest rate fluctuation and were dissatisfied with the HOA fees. The contract had an amortization schedule and contained no financing or appraisal contingencies.

The contract stipulated that proof of funds were required 60 days prior to closing in May 2021. When the Respondent did not receive the proof of funds, the Respondent contacted the Complainants to let them know the date was approaching. The Respondent negotiated an extension with the seller and assisted the Complainants in getting an extension in order for them to obtain financing. As a result of fearing the seller would sell the house given the increased value, the Complainants then went to the Respondent's principal broker. After a screaming match ensued, the Complainants asked for a hearing before the local realtors' association ethics hearing panel. The panel found that the Respondent and her principal broker "failed to understand and implement dual agency, including failing to correctly complete the agency form and/or change the form as the agency relationship changed from representing the seller to becoming a dual agent for the buyer and seller." Both Respondents were required to complete a TREC Core class (one standard and the other for managing brokers) by the end of 2021. Both Respondents completed the requisite courses.

As to the property, the parties agreed to a mutual release from the first contract in May 2021 and executed a new agreement. The Complainants, ultimately, got the property; however, they claim they incurred \$2,500 in attorney's fees and \$15,000 in "lost deposits because of the realtors poor writing of the clause." It is unclear from the documentation what "lost deposits" the Complainants are referring to.

There is no evidence the Complainants asked for their own agent. There was a "confirmation of agency status" form that includes a checked box next to "Disclosed Dual Agent" for both parties, so the Complainants knew it was a dual representation. The realtors' association, therefore, likely determined that while a dual agency form was executed, the Respondent did not skillfully represent both parties, namely the Complainants. This may have occurred during the course of the four years during which the Complainants and seller were dealing with each other directly. Conversely, the Complainants should have inquired with a financial advisor or attorney if they were uncomfortable with the amortization schedule. Much of what caused discontent between the Complainants and seller was related to matters outside of the Respondent's scope.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

4. 2021074051

Opened: 12/6/2021
First Licensed: 12/16/1983
Expires: 10/28/2022
Type of License: Principal Broker
History: 2021 Consent Order for Failure to Supervise an Affiliate due to lapse in Affiliate's E&O insurance

This Respondent is the principal broker for the Respondent in complaint #3 above. There is no deviation from the facts as described above in #3.

The Respondent says the affiliate broker went above and beyond her duties as the dual agent. She contends that had the affiliate broker not negotiated an extension for the Complainants, the seller would have sold the house to someone else at a much greater price.

The Complainants say the Respondent was unaware of the contract details that were negotiated in 2017 after a meeting between all parties in May 2021. This fact alone does not necessarily support that the Respondent failed to supervise. The Complainants allege the Respondent made the statement that "had a dual agency existed, another broker from her firm should have handled the buyers." The Respondent does not confirm or deny that she made such a statement.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

5. 2021074471
Opened: 12/6/2021
First Licensed: 9/21/2001
Expires: 1/22/2023
Type of License: Principal Broker
History: 2021 Consent Order for Unlicensed Activity

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

The Complainant says that the Respondent "violated her duties to her client" by allegedly sharing the seller's "financial position," leading to the seller not accepting the Complainant's offer.

The Respondent says that she had her client's permission to provide any details about his financial situation with any prospective buyers. According to the Respondent, the seller had a recent business deal go bad with a partner and had "financial repercussions." The Respondent goes on to say that she and her seller gave the Complainant ample opportunities to buy the house after he became interested.

There are no apparent violations of statutes or rules as it applies to the Respondent's duties to her client. The complaint seems misguided as it is not clear how the seller's financial position would impact the desire to sell the house. In fact, it would seem to have had the opposite impact, if any, with the seller being ready to unload the house.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

6. 2021074631
Opened: 12/6/2021
First Licensed: 7/25/1996
Expires: 5/27/2023
Type of License: Principal Broker
History: None

The Complainants are the buyers, and the Respondent is the seller's broker.

The Complainants say they were "rushed to close" on a parcel of lakefront property after they were advised that they might find themselves in a bidding competition. Closing was contingent on the Complainants' home selling. The appraiser, apparently, returned a lower appraisal, which impacted the sale of the Complainants' home. The Complainants were not able to get the lakefront property and had to buy a different parcel.

The Respondent says they had no control over any of the Complainants' grievances. They represented the seller. The Respondent simply presented the Complainants' offer to the seller. The Complainants were represented by another licensee. The Complainants appear to have lodged the complaint against the wrong licensee.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

7. 2021075261
Opened: 12/6/2021
First Licensed: 3/24/2010
Expires: 3/23/2022
Type of License: Affiliate Broker
History: None

The Complainants are the sellers, and the Respondent is the buyers' broker.

The Complainants say the Respondent was rude and unethical during the time he was representing the buyers. They claim the Respondent entered their home unannounced during the contract period and attempted to “scare” the Complainants into lowering their asking price after his buyers waived an appraisal. Apparently, law enforcement had to be called at some point when the Complainants were moving out of the home.

The Respondent denies all allegations. He says that he rarely spoke to the Complainants, always going through their broker. The Respondent claims that he had to stay on top of the Complainants’ broker as he was many times unresponsive.

As to the incident with the police, the Respondent says that the sellers’ broker informed the Respondent that the sellers had vacated the property and were traveling to their new home in Florida. This was three days after closing with possession due to take place on day four (a day early). The Complainants’ broker then scheduled a time for the Respondent to meet at the property to pick up the keys. According to the Respondent, the broker met him at the home and opened the door and “welcomed [Respondent’s name] and the buyers inside the home.” After being in the property for roughly five minutes, the broker got a call that the Complainants had told him not to give the keys up. Apparently, the Complainants (while on the road) also called the local police. The police asked that everyone leave as the owners had told them the keys were not available until the next day. This latter incident appears to be more the Complainants’ broker’s fault than anyone if he scheduled the buyers to come by a day before possession.

While the parties were at the house prior to scheduled possession, the listing agent was responsible for that mistake. Otherwise, it appears all other issues were simply a result of a difference in personalities.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

8. 2021075681
Opened: 12/6/2021
First Licensed: 11/5/2007
Expires: 3/22/2023
Type of License: Principal Broker
History: None

The Complainant is the seller, and the Respondent is the seller’s listing agent.

The Complainant says they received a solicitation in the mail from the Respondent in June 2021, offering to seller her property. The property, apparently, is a vacant piece of land in a rural part of Tennessee. The Complainant resides in Illinois.

The Complainant's primary problem is that she ended up paying the closing costs and contends she was unaware she was responsible for them. The difference she is now seeking from the Respondent (and the buyer's broker) is \$871.05. She also claims that both the buyer's broker and the Respondent were "representing" her. There is no dual agency agreement anywhere in the documents provided.

The Respondent agrees that the Complainant received a letter as part of a "target marketing area" for new listings. The Respondent says that the land needed to be "cleaned up" with mowing so that it was more attractive before he took the listing. According to the Respondent, he and the Complainant entered into a listing agreement on July 5, 2021 for a price of \$48,000. He says that he never heard a bottom dollar amount the Complainant would accept, only that \$48,000 was sufficient. The Respondent says he got an excavator to clean up the land for \$1,500 and paid \$150 to the person in order to avoid any conflict with the Complainant (there was some disagreement over the bill).

For roughly seven days, the Respondent was out of town. During this time the buyer's broker contacted the Respondent and informed him that his buyer was quite interested. He said he would have an offer to the Respondent during the time the Respondent was out of town. The Respondent says he instructed the buyer's broker to provide the offer to the Complainant, but to explain that he was only the buyer's agent and that the Complainant would need to discuss the offer with him when he returned. The offer was made to the Complainant and she accepted without consulting with the Respondent (the offer was lower at \$45,000). The offer also was good for seven days, which the Respondent says was enough time for him to return to town in order to discuss the offer with the Complainant.

The purchase and sale agreement is explicit as to the seller's duty to pay closing costs. Either the Complainant did not read that or did not understand it. There is also no question as to who was representing who in this transaction. The agency agreement was also clear that the Respondent was the Complainant's agent and the buyer had his own agent. Possibly, the Complainant thought she would lose the offer or thought she could handle the matter without the Respondent.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

9. 2021075701
Opened: 12/6/2021
First Licensed: 11/19/2007
Expires: 11/8/2022
Type of License: Affiliate Broker
History: None

*This is the same Complainant and transaction as in #8 above. The Complainant is the seller, and the Respondent is the buyer's broker. The underlying facts do not deviate from those in #8 above aside from the status of the Respondent.

The Respondent says he was very clear that he was only representing his buyer when he contacted the Complainant with the offer. The Respondent says he made it very clear that she was free to wait until her broker (Respondent in #8) was back in town. The Respondent says the Complainant was eager to accept the offer.

There is no evidence the Respondent attempted to convince or even imply that he was working for both parties-only his buyer. As explained in #8 above, the Complainant was overly-eager to get the offer and sell the property, not waiting for her broker to get back to town. The Respondent committed no violations of skill and care. Further, his duty was to his buyer.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

10. 2021075891
Opened: 12/6/2021
First Licensed: 4/30/2013
Expires: 3/11/2022
Type of License: Principal Broker
History: 2017 Consent Order for Unlicensed Activity; 2019 Consent Order for Failure to Exercise Reasonable Skill and Care to all Parties in a Transaction; 2021 Consent Order for Failure to Exercise Reasonable Skill and Care to all Parties in a Transaction

The Complainant is an affiliate broker in a firm with the seller's agent, and the Respondent is a principal broker at another realty firm.

The Complainant says that one of their agents signed a new listing agreement with a seller on November 20, 2021. A couple of days later, the Respondent allegedly contacted the listing agent's new seller in an attempt to get the client signed with the Respondent.

The Respondent says that she called about a condo for a customer. She claims there was no active listing on the MLS at the time. The owner (Complainant's client) informed the Respondent he had just signed with another agent but could not remember the name as they had only met via video conference. Eventually, the owner gave her a similar name and she searched for it on-line and then texted the agent's picture to the owner. As it turned out, the picture was an older mugshot of the listing agent following an arrest a few years ago. The Complainant believes the Respondent picked the mugshot photo as a means to convince the client to leave the listing agent and go with her. The logic is a bit of a stretch. It appears the Respondent simply sent the first picture that came up in the search.

The Respondent appears to have cut off all further communication with the owner after he told her he was already signed with the Complainant's agent. The Respondent's actions did not constitute a violation of reasonable skill and care or any other portion of 62-13-403.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2021076181
Opened: 12/13/2021
First Licensed: 4/27/2018
Expires: 4/26/2022
Type of License: Affiliate Broker
History: None

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

The Complainants say they purchased the subject property on October 1, 2021 using their own broker. They claim the Respondent "fraudulently advertised" the subject property. According to the Complainants, the seller was retaining part and selling part. They claim that the Respondent's for sale sign was posted on the portion of the property the seller intended to keep. The associated map for the listing did not have the boundaries clearly defined. Now the Complainants are occupying property the seller claims to have retained.

The Respondent attached a map/survey that shows different rights of way going to each tract being sold. The Complainants, apparently, bought the property sight unseen without obtaining a survey. The purchase and sale agreement also contained no contingencies.

The Respondent acted with overall reasonable skill and care. The sign's location, while on the tract to be retained by the seller, was not the sole cause for confusion in this matter nor does it rise to the level of fraud.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation, but also voted to open an administrative complaint against the buyer's agent for failure to exercise reasonable skill and care.

12. 2021076691
Opened: 12/13/2021
First Licensed: 1/30/2018
Expires: 1/29/2024
Type of License: Affiliate Broker
History: None

The Complainants are the buyers, and the Respondent is the sellers' broker. Eventually, the Respondent would become a facilitator for both parties in the transaction. ***The Respondents in #13 and #14 below are directly related to this complaint.**

The Complainants were working with their own broker as part of a move from California to Tennessee. The Complainants fired their broker after a disagreement concerning an offer. Thereafter, the Respondent became the transaction broker/facilitator for both the buyer and seller. The appropriate form was executed by all parties. Following this, the Respondent wrote an offer for the Complainants on the subject property.

After the walk through occurred, the Complainants and sellers began communicating back and forth without going through the Respondent. The sellers told the Respondent they needed an extension in order to get more things out of the house. The Complainants refused and told the Respondent to tell the sellers they would not agree to an extension. After this, the Complainants and sellers then fired the Respondent. Another agent (Respondent in #14) from the Respondent's realty firm represented the sellers through closing. The Complainants blame the Respondent for problems related to the house that they feel the home inspection missed as well as damaged furniture that was in the possession of the movers.

There is also discussion from the Complainants regarding their dissatisfaction with the home inspection and their movers. Basically, the Complainants are lumping everyone together.

The Respondent took on a tenuous job with clients that were, apparently, not familiar with the process of buying a house. The firing of the original agent, the Respondent's facilitator status, and then the Respondent's own firing made everything in this complaint complicated. The Respondent was not responsible for the inspection's outcome, whether the kitchen countertops were granite or the fact the sellers needed a last-minute extension.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

13. 2021077081
Opened: 12/13/2021
First Licensed: 3/12/2012
Expires: 2/5/2024
Type of License: Principal Broker
History: None

The Complainants are the buyers, and the Respondent is the principal broker who eventually became the buyers' broker.

After the Respondent in #12 above was fired by both parties, the Respondent in this complaint became the buyers' broker. The Respondent says the Complainants were not satisfied with the home inspection. At the same time, the sellers wanted to exercise their right to be present for the inspection. The Respondent says this made scheduling quite difficult. Apparently, the Complainants and sellers were friends before this transaction, leading to the parties talking off-line without their brokers.

The Respondent attempted to represent attempted to represent the buyers as skillfully as possible given the circumstances.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

14. 2021077101
Opened: 12/13/2021
First Licensed: 12/6/2006
Expires: 4/5/2022
Type of License: Real Estate Broker
History: None

The Complainants are the buyers, and the Respondent is the agent who eventually became the sellers' broker.

After the Respondent in #12 above was fired by both parties, the Respondent in this complaint became the sellers' broker. The Respondent says much the same as the other two Respondents associated with this complaint in that the Complainants are attempting to blame the licensees in this matter for issues out of their control, such as the home inspection and damaged furniture in the hands of independent movers. The Complainants also allege the Respondent changed information on the MLS. The Respondent says he did not change anything and that the MLS data history shows no changes or edits to the listing.

The Respondent represented the sellers as skillfully as possible given the circumstances.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2021074291
Opened: 12/13/2021
First Licensed: 4/7/2009
Expires: 4/6/2023
Type of License: Real Estate Firm
History: None

The Complainant is an individual who is not a TREC licensee, and the Respondent is a realty firm.

The Complainant appears to have a problem with a number of entities in his general locality. The Complainant says, "I reported tenants on a leased lot living in a firetrap storage building with a chimney through the wall." He continues by explaining that the "developer/owner" refused to take any action, along with the county codes, fire marshal, and regional planning board. He then goes into a narrative saying these locations are "unsafe/untaxed dwellings" and that, again, the local government folks did nothing.

How this allegedly involves the Respondent is that there is what the Complainant calls a "deceptive interstate advertising via the MLS and the Zillow website..." Therefore, it appears the Complainant is simply saying the MLS listing is incorrect. The Complainant also says the Respondent is a part-owner of the entity that owns the property for sale.

The Respondent says he lists many properties "and is involved up until a sale but has no involvement thereafter." The Respondent goes on to say that one of its listings is one tract the Complainant is referring to. The Respondent says it was advertised by the Respondent through an MLS ran by a local realtors' association. The listing was then picked up by Zillow. The Respondent says the listing states all the relevant information about the property and is accurate to the Respondent's knowledge. The Respondent does not address whether or not they have a personal interest in the subject property.

There is no evidence of deception or fraud regarding the known listing.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

16. 2021074171
Opened: 12/20/2021
First Licensed: 6/29/1973
Expires: 2/26/2023
Type of License: Principal Broker
History: None

The Complainant is a TREC licensee and principal broker, and the Respondent is a principal broker affiliated with the subject builder. The Respondent is also the principal broker for the affiliate brokers in #17 and #18. ***This complaint is directly related to #17, #18, and #19 below.**

The Complainant says that one of his agents informed him of the agent's intent to buy a home from a particular builder. The seller's broker supposedly informed the agent that she would need to use one of the builder's preferred lenders as they did not accept any other lenders. The Complainant takes the position that this practice violates the Real Estate

Settlement Procedures Act (RESPA). When the Complainant reached out for clarification from the Respondent, the Complainant was allegedly told that only preferred lenders could be used and that their attorney did not assess that the transaction fell under RESPA. The agent, apparently, never purchased from the builder associated with the Respondent. RESPA, as it applies to business referrals, states, “[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral, or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person” (12 U.S.C.A. 2607(a)).

The Respondent says that while the Respondent builder requires that a preferred lender be used, the Respondents offer a number of lending options—none of which, according to the Respondent, provide a fee or kickback to the Respondents. The Respondents contend the lender is not rewarding them in any way as a result of the relationship.

Given the statutory language in RESPA, the facts in this complaint do not appear to trigger any violation under RESPA. If the preferred lender requirement only facilitates the real estate purchase, then there is no violation so long as there is no compensation given to the builder or broker from the lender (fee, kickback, etc.).

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

17. 2021074191
Opened: 12/20/2021
First Licensed: 3/15/2016
Expires: 3/14/2022
Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee and principal broker, and the Respondent is an affiliate broker affiliated with the subject builder.

***The relevant facts in this complaint are identical to those in #16.**

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

18. 2021074201
Opened: 12/20/2021
First Licensed: 9/3/2008
Expires: 9/2/2022

Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee and principal broker, and the Respondent is an affiliate broker affiliated with the subject builder.

***The relevant facts in this complaint are identical to those in #16 and #17.**

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

19. 2021074211
Opened: 12/20/2021
First Licensed: 12/27/2007
Expires: 12/26/2023
Type of License: Real Estate Firm
History: None

The Complainant is a TREC licensee and principal broker, and the Respondent is an entity with a building arm and a realty arm. The entity also holds a real estate firm license.

***The relevant facts in this complaint are identical to those in #16, #17, and #18.**

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2021079211
Opened: 12/20/2021
First Licensed: 3/20/2015
Expires: 4/24/2023
Type of License: Real Estate Broker
History: None

The Complainant is the seller, and the Respondent is the listing agent.

The Complainant says he closed on his house in October 2019. He claims the Respondent "allowed my contractor, [contractor name], to sign all of the proceeds from the sale of the house into his name without my permission or knowing."

The Respondent says the Complainant's partner (the contractor) had a private promissory note with the Complainant. The contractor (although he says he is not really a contractor) provides the best explanation. He says the Complainant purchased the home as an

investment and could not get it sold. The contractor wanted to help out the Complainant, so the two entered into an “investment agreement.” The deal called for the contractor to invest cash and finish the house so the Complainant could list it and be eligible for conventional financing. Apparently, the Complainant did not like the method in which the contractor was spending the money, so he stopped talking to him two weeks prior to closing. The Respondent was hired to list the home and found a buyer.

At closing, through an agreement mediated by the Respondent, the Complainant and contractor agreed to allow the majority of the proceeds to be paid to the contractor with the remainder going to the Complainant. Apparently, that did not entirely reimburse the contractor, so the contractor recently filed a lawsuit against the Complainant.

The Respondent exercised reasonable skill and care in this transaction. All other items are matters of personal disputes between the Complainant and the contractor.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

21. 2021076541
Opened: 12/27/2021
First Licensed: 4/21/2003
Expires: 7/5/2022
Type of License: Principal Broker
History: None

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

The Complainant says the Respondent “knowingly and willingly misrepresented” a listing the Complainant purchased in September 2021. The Complainant was working with her own agent. The crux of the issue appears to be that the MLS stated the home was a two bedroom when it was a one bedroom. The Complainant theorizes that it was done this way to “get some more traffic looking at her listing.” The copy of the MLS with the complaint documentation shows the property as a particularly rundown home that was likely intended as an investment.

The Respondent says that for this listing she pulled the old MLS and updated the information contained in it. The old listing had the property listed as a two bedroom. The Respondent claims she measured the rooms and changed the room sizes to match her measurements. She says that she wrote “second bedroom” as “bed 2” in her notes. The Respondent talks more about the property’s septic situation rather than the bedrooms, although the Complainant makes no mention of a problem with the home’s plumbing or septic. The Respondent admits to the error regarding the bedrooms and says she needs to be more careful in the future. The property was ultimately sold “as is” to the Complainant.

While the listing may have contained errors related to the MLS, there is no evidence to support intent to do so by the Respondent.

Recommendation: Letter of Warning for failure to exercise reasonable skill and care in providing services to all parties to the transaction as described in T.C.A. 62-13-403(1).

Commission Decision: The Commission accepted counsel's recommendation.

22. 2021077401
Opened: 12/27/2021
First Licensed: 4/11/2005
Expires: 10/23/2022
Type of License: Real Estate Broker
History: None

The Complainant is a property owner and not a TREC licensee, and the Respondent is the listing agent.

The Complainant, apparently, owns land that is adjacent to or near the property the Respondent has listed for sale. The Complainant's position appears to be that the Respondent is travelling over the Complainant's property to get to the listed property and that the Respondent has threatened to bulldoze "roads on private property."

The Respondent says he met the Complainant only once during his initial visit to the subject property in August 2021. The Complainant supposedly told the Respondent that the county had stopped maintaining the road to the listed property and that flooding had impacted the road's use. The Respondent also says the Complainant had expressed some interest in purchasing the subject property and gave the Respondent her phone number and email. The Respondent says he did not intend to give the impression that he would bulldoze or do anything to alter the road. He says he has also recently removed the listing from the MLS as there is too much left to be done to the estate to which the property is part of.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

23. 2021078681
Opened: 12/27/2021
First Licensed: 11/2/2017
Expires: 3/24/2023
Type of License: Real Estate Broker
History: None

The Complainant is the seller and a TREC licensee, and the Respondent is the buyers' broker.

The Complainant alleges the Respondent "caused the property to be tied up in lien/court proceedings for 3 yrs. And created damages exceeding \$80,000 for myself, my family & the actual buyers who's purchase was held up due to her reckless behavior." As additional background, the matter was recently heard by the Tennessee Court of Appeals stemming from a lawsuit in the local courts in which the Complainant appealed.

The Complainant listed his own house in late 2018, receiving an offer from the buyers on December 21, 2018. The Complainant says a counteroffer was made the next day. The buyers, according to the Complainant, did not accept the counter and "wanted to stop." The buyers scheduled another showing on December 27, 2018 with a contractor. On December 29, the Respondent allegedly told the Complainant that her buyers wanted to continue with the contract but did not submit a written extension. The Complainant then reminded her that the contract had expired.

The two parties supposedly talked about an extension, but the Complainant says no extension was ever forthcoming. On January 4, 2019, the buyers sent the signed contract to the Respondent, although the Respondent made it clear the time had expired. The Respondent asked the Complainant why he did not allow her buyers "to bring their highest and best offer." The home sold to another buyer (the Complainant's neighbor) on or about January 5. The buyers then filed suit against the Complainant on January 25, 2019 for breach of contract, seeking specific performance for the sale of the property. The Complainant theorizes the Respondent was the "driving force" behind the lawsuit. Regarding the appeals court's decision, the appeals court recently reversed the trial court's decision to award specific performance to the buyers. This means the Complainant was able to complete the sale to the latter buyers. The court, however, denied the Complainant's claim for "statutory damages."

The Respondent says that her buyers made an offer on or about the day pointed out by the Complainant. She goes on to say that the issue of an "extension" was never discussed. The Respondent, consequently, believes the Complainant lied about the issue of the extension in order to sell the home to his unrepresented neighbor for a higher price. She says there was never any discussion about a competing offer until the topic of the extension arose. The Respondent goes on to say that she believes selling to the neighbor was a more attractive option as the Complainant saved a commission and gained a listing commission.

The Complainant is attempting to re-litigate the issue here now that the Tennessee Court of Appeals has ruled, partially, in his favor. The basis for the ruling, however, had nothing to do with the Respondent's reasonable skill and care. Furthermore, there is no evidence the Respondent lied under oath or otherwise.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

24. 2021079361
Opened: 12/27/2021
First Licensed: 2/19/2016
Expires: 2/18/2022
Type of License: Affiliate Broker
History: None

The Complainants are the buyers, and the Respondent is the seller and a TREC licensee.

The Complainants say they purchased a home from the Respondent in September 2021. They allege the Respondent failed to disclose that the natural gas stove was not properly vented to meet codes. Further, the Complainants say the stove will need a new mother board in order to work properly. Apparently, the Complainants have been unsuccessful in getting “a resolution” to the matter. The property disclosure form only mentions the gas range but nothing further.

The Respondent says she called the county codes enforcement and was advised there was not a requirement for a “stand alone gas stoves to require a vent hood.” As to the mother board, the Respondent says this is the first she has heard of this issue. The Respondent says she allowed the Complainants to move in early as their options were limited moving in from another state. As to any attempts at “resolution” of these problems, the Respondent says she did not receive any repair proposals or amendments or any copies of invoices showing where the Complainants paid to have anything fixed.

There is no evidence the Respondent intentionally withheld any defects. Further, there is evidence the Complainants asked for a home inspection that may have uncovered the non-vented stove.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

25. 2021079131
Opened: 1/5/2022
First Licensed: 10/19/2018
Expires: 10/18/2022
Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee and principal broker. The Complainant works with a development company in selling homes and lots in a development community. The Respondent is an affiliate broker and lives in the same development. This matter has been ongoing since December 2019.

The Complainant alleges the Respondent is interfering with “commerce” as it relates to the developer of the community where the Respondent resides. Generally, the Complainant says the Respondent is soliciting to buy and sell within the community, interfering with his and his client’s effort to sell homes.

The Complainant claims the Respondent is violating the community’s “Covenants, Conditions, & Restrictions” (“CCRs”) by her actions. The CCRs states, “No real estate brokerage firms, real estate sales offices, or any other business directly or indirectly selling and/or managing real property or improvements shall be permitted within the Properties by a Person other than a Declarant or a Declarant-Related Entity, except with the Declarant’s prior written approval...” The Complainant says the Respondent cannot sell in the community without their permission based on this portion of the CCRs. The Complainant also says that prospective clients have come to her home in order to “procure a sale.”

The Complainant alleges the Respondent is a part owner of a lot for sale within the community where a personal interest disclosure is not included. The complaint contains no documentation to support this allegation.

The Respondent says she has not established a “sales office” as described in the Rules (1260-02-.01) and has only a home office that she has used as a result of Covid-19 restrictions. She says she maintains an office at the brokerage firm she is affiliated with and has never hosted or met clients in her home.

Regarding the personal interest disclosure, the Respondent says she and her husband tried to work with the development community to list their home. The Respondent goes on to say that the prospect of the 1.25% commission prompted them to list the house on their own. The Respondent says this allegation has more to do with an individual who was interested in their home who later spoke with the Complainant about the listing.

Assuming the latter allegation does indeed violate the CCRs, the Commission is not in a position to regulate the development. Further, the Respondent and her spouse are free to sell their own home.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

26. 2021079511
Opened: 1/5/2022
First Licensed: 8/28/2019
Expires: 8/27/2023
Type of License: Affiliate Broker
History: None

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

The Complainants say they made an offer on a retirement home in a rural part of Tennessee in October 2021. The Complainants' agent supposedly told them the sellers were disappointed with their offer as it was \$10,000 below the asking price. The offer then expired; however, the Respondent supposedly told the Complainants' agent that another offer would not be accepted. Consequently, the Complainants then made an offer at \$100.00 over asking price and not ask for any of the furnishings in "the shed." Supposedly, the Respondent told the Complainants' agent that the offer would be accepted. The agent tried to reach the Respondent over the course of four days but was unsuccessful. According to the Complainants, the story was that the Respondent had been traveling and lost her phone.

When communication resumed between the agents, the home had been marked "contingent" on the MLS and was later found to be under contract. The sellers had accepted another offer, although the Respondent told the Complainants' agent their offer could be a backup offer. The Complainants say their offer was identical to their second offer.

The Respondent says she presented all the Complainants' offers to the sellers. The Respondent says the sellers were put off by the Complainants' offers and their general attitudes. The subject property, apparently, was next door to the sellers so they felt like the Complainants would simply not be good neighbors. The Respondent's duty was to her sellers and she represented them first at the same time acting with reasonable skill and care in handling the Complainants' offers.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2021075441
Opened: 1/5/2022
First Licensed: 7/24/2014
Expires: 7/23/2022
Type of License: Real Estate Firm
History: 2019 Consent Order for failure to market property in accordance with the terms of the listing agreement

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

The Complainant is an out of state buyer that claims to have made an offer on the subject property in October 2021. The Complainant says she made an offer at full price with a personal inspection contingency. She claims that verification of funds for purchase was provided on October 15, 2021, but that the seller didn't accept the offer so that the Respondent "could get full commission as seller and buyer's agent."

The Respondent says the proof of funds were more than two years old. Consequently, the sellers did not have confidence that the funds were currently obtainable and legitimate. The other buyers had current proof of funds and an offer \$10,000 more than the Complainant's.

The Respondent's actions were in the best interests of his buyer. The Respondent also acted with reasonable skill and care relative to the transaction.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2021078281
Opened: 1/5/2022
First Licensed: 6/2/2021
Expires: 6/1/2023
Type of License: Real Estate Firm
History: None

The Complainant is a tenant living in a home managed by the Respondent. The Respondent is a licensed property management company.

The Complainant says the Respondent is not responsive to maintenance requests and have caused "issues" with utilities. Apparently, the local electric provider closed the Complainant's account due to non-payment, although power was not shut off. There are also problems with trash pick-up as well that is supposedly controlled by the Respondent.

The Respondent says, contrary to the Complainant, that they have been in close contact with the tenant. They claim to have no maintenance requests from the tenant. The Respondent says when the owner bought the property, the former owner and former property manager mistakenly notified the power company that the property had been sold and ordered all utilities disconnected. The Respondent says they "caught the mistake and had the issue resolved within hours." Unfortunately, the owner had to pay the bill in full before the utilities were turned back on. The Respondent did not address the trash issue.

This appears to be largely a result of the switch in ownership and property management. The Respondent appears to have acted with reasonable skill and care in order to get the utilities restored.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2021078941
Opened: 1/10/2022

First Licensed: 4/12/2021
Expires: 4/11/2023
Type of License: Affiliate Broker
History: None

The Complainants are the sellers, and the Respondent is the listing agent for the sellers.

The Complainants say they entered into a listing agreement with the Respondent for the sale of their home on November 16, 2021. The Complainants say while the Respondent was professional at first, she only visited the home once in-person. All other communication was by text and email. The Respondent scheduled the aerial and interior photos for December 4; however, due to a scheduling conflict with the photographer, a showing was requested instead. On the day of the showing there were scheduling conflicts between the Complainants and Respondent that eventually led to the Complainants becoming frustrated and asking for a mutual release. The parties parted ways, officially, on December 6.

The Complainants attached a screenshot from the Respondent's private social media site in which the Respondent had placed a comment that stated, in so many words, that she had been fired because she was not responsive enough last week "during the trauma of my dad's [sic] hospital stay." She goes on to say, "Real estate is a people business and I'm human. To all my other clients who were understanding, I love y'all." When the Respondent's personal friend saw the comment, the friend replied, "I'll burn her new house down." The Respondent shared the post with an added comment, "Those ride or die friends who don't play around." This last comment was, apparently, intended to affirm her friend's loyalty to her. The Respondent did not mention any specific names or reference any property addresses.

The Respondent says her father had been in the hospital for a few days after suffering a massive heart attack on November 29. There appears to be no dispute between the parties as to this event. This event led to the Respondent's either inability or choice not to respond in a quick fashion to the Complainants' requests during the time the photographer was being scheduled as well as the initial showings. After the mutual release was signed, the Respondent says she provided the drone photos to the new listing agent at no cost in order to assist them in getting the Complainant's house re-listed. Considering the circumstances, the Respondent exercised reasonable skill and care in attempting to get the house listed and showed. In short, it was likely best the listing was terminated given the Respondent's attention to her family's personal situation and lack of focus on the listing.

As to the comments that are the real genesis of the complaint, the Respondent says she regrets sharing her friend's comment. She says that no one, including the friend, intended to threaten or bully the Complainants and that it was an emotional response. As pointed out above, there was no identifiable information in the social media post.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

30. 2021078981
Opened: 1/10/2022
First Licensed: 12/15/2020
Expires: 12/14/2022
Type of License: Affiliate Broker
History: None

The Complainant is a resident and former condo association president in a building in which the Respondent also resides. The Respondent is an affiliate broker who has never represented the Complainant in any real estate transaction.

The Complainant says the Respondent purchased a condo unit "in our building" in 2020. He alleges the Respondent then wanted to turn the building into an Air BnB or short-term rental property. Apparently, the Respondent also ran for a seat on the board of directors for the condo association but was defeated (now apparently the Respondent is the Vice-President as of December 2021).

The Complainant's primary complaint is that the Respondent made a video (included with the complaint) in July 2021 in which he points out problems with the building, ranging from outside construction noise, a fire alarm going off, and an inoperable intercom call box. The Complainant takes the position that the Respondent's video "degrades our home, diminishes the value of our investment and claims disrespect for a historic building." He goes on to say that the Respondent's actions are inconsistent with that of a broker and he should be disciplined.

The Respondent does not deny the video's content; however, he says that he created the video "solely to document valid, factual concerns that have been expressed by several owners..." The idea being that the video would be shared only with the association's board members in order to prompt repair of those conditions. In support of his position, the Respondent also included a copy of a now-settled civil lawsuit/injunction in which he and other owners/occupants in the building filed suit against the condo association of which the Complainant was the president at the time. As best can be determined, the video was never shared outside the condo association.

This complaint appears to largely be an extension of the Complainant's frustration with how the lawsuit/injunction was settled. There is no violation of reasonable skill and care or any other statute or rule.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

31. 2021079791
Opened: 1/10/2022
First Licensed: 11/28/2018
Expires: 11/27/2022
Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee and the listing agent, and the Respondent is the buyers' broker.

The Complainant says that in July 2020, the Respondent contacted him to get a "one-day code" to show the Complainant's listing. The Complainant says the Respondent told him he was not going to attend the showing as he had Covid. The Complainant says he gave the code to his buyers and the Complainant showed the house for him. The Complainant says a similar incident occurred one month later in 2020 where the Respondent told the Complainant he could not make the showing and gave the code to his buyers. Again, the Complainant says he met the buyers for the final walk through.

The Complainant then alleges that in December 2021 the Respondent's buyers made an offer with only a "financing contingency." The Respondent supposedly said that "if the home did not appraise, his client would bring cash to cover the difference between the appraisal and the purchase price." When proof of funds were requested, the Respondent told the Complainant that the funds would be coming from the closing of his buyer's current home. The Complainant then wanted the offer corrected such that it would be a "home sale contingency" and not a financing contingency. The two parties then got into a squabble with the Respondent supposedly telling the Complainant, "If you think it's unethical, I won't disclose it to you brother."

The Respondent's attorney says the incidents with the one-day codes did not result in any party entering the home unaccompanied. The attorney says the Respondent only had his buyers' interests at heart and did not want to reschedule the showings. As to the offer dealing with the contingencies, the Respondent's attorney says that the "agents disagreed as to what was and was not materially contingent in the offer." He goes on to explain that the initial offer was withdrawn and there was no revised offer. In rebuttal, the Complainant says that although the Respondent withdrew the offer by text message, the Respondent never sent a notification form with his client's authorization to withdraw the offer. The Complainant says that his sellers ultimately opted to go with another offer. The Respondent's buyer, presumably, never withdrew their offer (although there is no complaint from the buyer).

The Respondent's decision not to accompany his buyers on both occasions does not appear to have damaged his clients in any way. It appears the Complainant was just simply put off a bit by the Respondent's last-minute decision not to appear. As to the withdrawn offer, it was arguably done in a sloppy fashion. At the same time, it is unknown if this created any problems for the Respondent's buyer.

Recommendation: Letter of Warning for failure to exercise reasonable skill and care in providing services to all parties to the transaction (T.C.A. 62-13-403(1)).

Commission Decision: The Commission accepted counsel's recommendation.

32. 2021080641
Opened: 1/10/2022
First Licensed: 6/24/1991
Expires: 7/5/2023
Type of License: Affiliate Broker
History: None

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

The Complainant says he found a piece of property in Tennessee back in 2019 that was a foreclosure. He claims to have driven up from his home in Florida to view the property and put an offer on the same using his own agent. Of some note is the fact that the seller is listed as an agency of the U.S. Government. The Complainant says he provided a verification of funds and a \$5,000 check for earnest money. He says his offer of \$140,000 was accepted. He goes on to explain that his name on the contract was wrong. His agent, according to him, provided the Respondent with the correct information. In any event, the Complainant did not sign the contract given the incorrect spelling on the document. Consequently, the property eventually sold to another buyer as the time to sign had expired.

The Respondent says he received and submitted multiple offers from the Complainant's agent. The Complainant, apparently, had a total of four offers presented with 33 counteroffers from January to March 2020. The Respondent says that the final offer was accepted by the sellers; however, neither the Complainants nor the sellers ever signed the final contract. The Respondent says he was well aware of the Complainant's misspelled name; however, he says he told the Complainant that they should sign the contract within the timeframe allowed and then an amendment could be drafted later before closing. He says he the foreclosure company was adamant the offer be accepted within the given timeframe.

The Respondent acted with reasonable skill and care in this transaction. His initial duty was to the seller; however, there is no evidence the Respondent withheld any information from the Complainant or his agent or delayed the transaction in any way to the Complainant's detriment.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

33. 2021081001

Opened: 1/10/2022
First Licensed: 6/14/2006
Expires: 7/1/2023
Type of License: Real Estate Broker
History: None

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

The Complainant says they bought a property in Tennessee using their own agent. Apparently, the Complainant lives in California. According to the Complainant, the property was listed on the MLS as having a shipping container that offered additional storage. When the Complainant bought the property the intention was to convert it into a short-term rental. The property was zoned as "C5" allowing for many opportunities in terms of use. The Complainant says she was given a property condition disclosure form that indicated there was nothing that "was not fully and appropriately permitted." As additional background, the Respondent previously owned the property prior to the sellers in this complaint. The Respondent sold the property on February 15, 2019.

After the Complainant closed on the property in March 2021, she claims she received a violation notice from the local historical society, indicating that the shipping container was not in compliance with the historic district and did not have a "COA" for approval. The historical society told the Complainant the shipping container would need a façade built around it or attached to it to hide the fact it was a shipping container. The Complainant contacted both the seller and the Respondent, presumably, to inquire if they would contribute to the costs of making the container compliant. The Complainant says a contractor quoted her \$12,000 to attach a façade. Neither the seller nor the Respondent would assist. The Complainant believes the Respondent had a duty to disclose that the shipping container was not in compliance with the historical society's restrictions.

The Respondent says that the disclosure form was provided by the sellers directly to the Complainant. Additionally, the disclosure does not contain anything related to historical compliance/restrictions or the like. The Respondent says that her sellers "referenced the permitting applications process" but made no mention of anything that gave her concern. In emails between the Respondent and her sellers concerning the container, one of the sellers stated, "No negative feedback from anyone in the neighborhood on the container...It is grandfathered in and has been there a while." From this email, the Respondent could have reasonably concluded that the shipping container was in compliance with all local restrictions. The email also made clear that if the Complainant had not wanted the container they could get rid of it.

The Respondent utilized reasonable skill and care as it applied to the transaction. The Respondent relied on statements from her sellers as to whether or not the shipping container was going to be problematic.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

34. 2021081251
Opened: 1/10/2022
First Licensed: 9/19/2013
Expires: 12/5/2023
Type of License: Real Estate Broker
History: None

The Complainants are the buyer, and the Respondent is the listing agent.

The Complainants made an offer on the subject property on April 13, 2021 using their own agent. The Complainants say they requested proof that the septic tank had been serviced and inspected. Apparently, the proof was not forthcoming; however, the Complainants purchased the property despite this. After closing, the septic backed up into the dishwasher drain. The Complainants allege they received the property disclosure exemption form prior to the offer. The Complainants also say the square footage was off by 300 square feet.

The Respondent says that (as does the purchase and sale agreement) that all inspections were waived and the Complainants accepted the property "as is." Regarding the discrepancy in the square footage, the Respondent says the "[p]roperty was advertised as having 1504 footage and 320 unfinished square footage in the basement. Our FLEX MLS automatically calculated the square footage as being 1824 total square footage and automatically splits into finished and unfinished footage." Therefore, the property appears to have been listed correctly; however, it was divided by finished and unfinished area.

The Respondent exercised reasonable skill and care in the transaction. The Complainants' broker or the Complainants should have requested an inspection if there were any doubts regarding the septic system or square footage.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

35. 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.

CASES TO BE REPRESENTED:

36. **2020091731**
Opened: 12/7/2020
First Licensed: 8/24/2018
Expires: 8/23/2022
Type of License: Real Estate Broker
History: 2019 Consent Order

This matter was administratively opened by the Tennessee Real Estate Commission following a referral from the Kentucky Real Estate Commission concerning the Tennessee Licensee. The Respondent is a licensed Tennessee Principal Broker.

Several Buyers purchased property with the assistance of the Respondent's affiliate broker, who was not licensed in Kentucky and who used the credentials of a Kentucky licensee to make the sale and the Kentucky licensee was aware and assisted in the representation of the client purchasing the property in Kentucky. There were seven different contracts for properties in Kentucky in which the Respondent's affiliate broker was either the listing agent or the Buyer's agent. Both the Respondent's affiliate broker and the Kentucky licensed broker collaborated to transact with their commissions.

The Complainant alleges the Respondent's Affiliate Broker engaged in the unlicensed practice of real estate in Kentucky, while using a Kentucky licensee's credentials. The Kentucky licensee appears to have aided and abetted unlicensed real estate brokering in Kentucky. The Respondent was the unlicensed individual's Principal Broker during all relevant times. The Respondent failed to adequately supervise the affiliate broker to ensure such conduct did not occur. This occurred during a lengthy time frame and the Respondent knew or should have known of the actions of the affiliate broker and failed to prevent them.

The Respondent provided a response claiming to be innocent of the accusations. The accusations lack merit and are slanderous. The Respondent takes his position as a Principal Broker very seriously as well as the supervision of affiliate brokers. The Respondent was not the Principal Broker for the brokerage during the first week of January 2019 and not the Principal Broker for Kentucky at the same time. The Respondent was not even licensed in Kentucky until late December 2018. Every transaction referenced in the complainant was before the Respondent took over as the Principal Broker of the brokerage except for one possible transaction. The transaction's binding agreement date was November 27, 2018 and there were three extensions of the contract that pushed the closing to January 31, 2019. The Respondent was not aware of any negotiations between any parties in any of the transactions. The Respondent did not have access to any of the records from any of the transactions provided by the Kentucky Real Estate Commission.

Recommendation: Authorize a contested case proceeding with authority to informally settle by Consent Order and payment of a \$1,000 civil penalty for failure to supervise pursuant to Tenn. Code Ann. § 62-13-312(b)(15).

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Respondent had not yet become the principal broker for the subject affiliate brokers when the events in Kentucky arose. Therefore, there is no basis to allege any failure to supervise on the part of the Respondent.

New Recommendation: Close.

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

37. 2021060531
Opened: 9/20/2021
First Licensed: 6/12/2017
Expires: 6/8/2023
Type of License: Affiliate Broker
History: None

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

The Complainant sold his home with an agent; however, this complaint is directed at the buyer's broker. The Complainant alleges the buyers did a walk-through on August 10, 2021 with closing the next day. The Complainant was later informed that the buyer was inside the home at noon on the day of closing. The Complainant's agent supposedly confirmed this who went to the home after closing around 1pm. The buyer told the agent that the Respondent had provided them a key from the lock-box the evening before walk-through. No physical damage was sustained to the home.

The Respondent does not deny giving the key to the buyers; however, he is adamant the buyers only received the keys after all loan documents were signed and all funds were wired. An email from the title company confirms this.

The Complainant simply seems put off by the buyers being in the home anywhere near the time the wire transfer was completed. There is no evidence of any breach of the duty of skill and care to any party.

Recommendation: Close.

Commission Decision: The Commission voted to authorize a formal hearing and issue a Consent Order with a \$500.00 civil penalty for failure to exercise reasonable skill and care.

New Information: According to the Respondent, the complaint was lodged at the request of the sellers' broker as she was angry that she did not receive a larger commission as originally anticipated. The Respondent theorizes that the sellers' broker asked the sellers to lodge the complaint as the complaint would have more impact. No one from the sellers' side seems interested in speaking to counsel either.

New Recommendation: Discussion.

New Commission Decision: The Commission declined to amend their previous decision of a Consent Order with a \$500.00 civil penalty for failure to exercise reasonable skill and care.

New Information: Counsel was provided a copy of the settlement statement and the purchase and sale agreement. The original date on which closing was to occur was August 25, 2021. That date was clearly changed by the parties to an earlier date as evidenced by the counteroffer and the settlement statement. The settlement statement indicates August 11, 2021. If the buyer was in the house on August 11, then there is nothing to suggest this was premature. Additionally, the Complainants are unresponsive to counsel's requests for any additional information that might provide a contrary conclusion.

New Recommendation: Close.

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

38. 2021054621
Opened: 8/23/2021
Unlicensed
History: None

The Complainant is a tenant in a rental unit managed by the Respondent. The Complainant also claims to be a TREC Licensee. The Respondent is a property management company that appears to be unlicensed.

The Complainant lodged this complaint after he got home and found his apartment door ajar with noises coming from inside. The Complainant found three maintenance members, although they would later turn out to be independent vendors hired by the Respondent. The workers told him they were there to replace the threshold to his patio door.

The Complainant claims no notice was given contrary to his lease agreement. Also, the workers were unaccompanied, which is also contrary to the lease agreement. The Complainant's concerns were, apparently, somewhat blown off by the on-site manager.

A TDCI investigator made contact with the on-site manager who did acknowledge the complaint. The manager, however, did not answer any of the questions posed related to licensure.

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, which states, It is unlawful for any person, directly or indirectly, to engage in or conduct, to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a real estate broker, affiliate broker, time-share salesperson or acquisition agent, as defined in § 62-13-102, within this state, without first obtaining a license as broker, affiliate broker, time-share salesperson or acquisition agent, as provided in this chapter, unless exempted from obtaining a license under § 62-13-104.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Respondent admits to being an unlicensed manager on-site; however, the entity for whom she worked was also unlicensed.

New Recommendation: Reduce the current civil penalty to \$500.00 and open a complaint against the unlicensed property management entity.

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

39. 2021062531
Opened: 9/2/2021
First Licensed: 4/20/1983
Expires: 9/29/2022
Type of License: Principal Broker
History: None

The Complainant may be a TN TREC licensee; however, they did not state so in the complaint. The Respondent is the principal broker for the firm listing the subject property. The Complainant included a photo of a home with a realtor's sign in the yard. The Complainant says the home is listed as a "fixer upper" but is actually a condemned

property. They also say the property is connected to city sewer but, in fact, it is not. They go on to say that the listing agent has advertised the property as either the owner or related to the owner. The Complainant's concern is that they just want the house represented accurately so it will not "continue to be a problem in the future."

The Respondent's firm did not respond to the original complaint. The Respondent's firm has since signed a Consent Order admitting to failing to respond (complaint presented during the August complaint). This complaint was opened solely against the Respondent as the principal broker.

Recommendation: Authorize a contested case proceeding with authority to informally settle by Consent Order and payment of a \$1,000 civil penalty for failure to supervise pursuant to Tenn. Code Ann. § 62-13-312(b)(15).

Commission Decision: The Commission accepted counsel's recommendation.

New Information: The Respondent says that the subject property was never condemned by the city in which it is located. The Complainant did not provide any proof that the house was, in fact, condemned. The photographs with the complaint do not indicate such either. The Complainant may simply have assumed the property was condemned based on the outside appearance which is rather delapidated. If the house was not condemned, then there is no basis on which to discipline the principal broker for failure to supervise his affiliate broker for a listing that was not misleading.

New Recommendation: Close

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

40. 2021068631
Opened: 11/22/2021
First Licensed: 3/26/2014
Expires: 3/25/2022
Type of License: Affiliate Broker
History: None

This is an anonymous complainant alleging advertising violations. The Respondent is an affiliate broker.

The complaint is only a picture of the Respondent's billboard. The alleged violation appears to be that the size of the affiliate broker's name is larger than the firm name. It appears to counsel that the broker's name is quite larger than the firm name.

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

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

Commission Decision: The Commission accepted counsel’s recommendation and voted to administratively open a complaint against the Principal Broker for failure to supervise the affiliate

New Information: The Respondent and her principal broker had previously signed an Agreed Citation. Each licensee received a \$500 civil penalty. The checks, however, had the principal broker’s complaint number on them, so the Respondent’s complaint was never closed. Both are paid in full.

New Recommendation: Close.

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

41. 2021078251

Opened: 12/8/2021

First Licensed: 7/24/1996

Expires: 5/16/2021

Type of License: Principal Broker

History: None

This complaint stems from an Errors & Omissions (E&O) Consent Order. The Respondent is the principal broker.

As of January 29, 2021, TREC had no record of an effective E&O policy for the Respondent’s affiliate broker. In May 2021, the Respondent, due to health concerns related to her spouse, opted to not renew her license with a view toward getting out of the real estate business. In July, the Respondent executed and mailed in the “Death or Extended Absence of Principal Broker” form with the new principal broker designated. The subject affiliate broker provided proof of E&O as of September 15, 2021.

The Respondent’s license is currently in an “expired” status and will remain so if not renewed prior to May 15, 2022. The Respondent informed counsel that she has no intention of returning to the real estate brokerage business.

Recommendation: Close. However, in the event a renewal is received, reopen the complaint.

Commission Decision: The Commission accepted counsel’s recommendation.

ANNA MATLOCK

New Complaints

42. 2021069041

Opened: 10/25/2021

First Licensed: 12/14/2012

Expires: 12/13/2022

Type of License: Real Estate Broker

History: 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

2021067971, 2021069041, and 2021071971 are all related.

Complainant is a licensee. Respondent is a former principal broker. Complainant states they had a closing on December 24, 2019, and after the holidays, on January 6th, Complainant realized no check was deposited from this closing. On February 11, 2020, Complainant realized a deposit from Respondent's firm and a returned check fee. A paper check was then provided to Complainant and upon an attempt to deposit, Complainant received an "insufficient funds" notification. Complainant has not received their money from the December transaction, incurred a return fee, and a wire transfer fee.

Respondent answered the complaint stating Complainant's closing on December 24, 2019, was not paid until December 31, 2019. Respondent further stated Complainant continued to work for their firm two (2) years after the transaction in question, spoke with Complainant socially, and on occasion waived transaction fees for Complainant. Respondent states Complainant failed to raise this issue up in the following two (2) years and the matter could have been settled. Respondent denies any theft of Complainant's commission as it was paid per their independent contractor agreement.

In late 2021, the Program and Counsel were notified of forthcoming complaints pertaining to a licensee alleging their principal broker was mishandling trust money and firm accounts. Upon receipt of the notification, it was recommended that the licensee file a complaint with the Commission. As the Program received the first complaint, by standard protocol, Respondent was notified of a complaint opened against their license and informed a response to the complaint is required. The two (2) forthcoming complaints were referred directly to Counsel.

After Counsel consulted with the Executive Director, and reviewed the allegations of Complainants, Counsel requested an audit of Respondent's firm accounts. Authority for the Executive Director to conduct an audit can be found in Tenn. Code Ann. § 62-13-312(d), which states, in part, "The director of the division of regulatory boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy books, accounts, documents or records that are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts

required under this part...” Therefore, a Request for Audit was drafted and given to the Auditor for the Commission to review Respondent’s accounts.

The audit requested copies of Respondent’s bank statements, including the general, escrow account, and any other accounts maintained by Respondent, copies of wire transfers, bank reconciliations, copies of commission checks and payments, a listing of outstanding checks and deposits, copies of the journal or check registers, and an explanation of any withdrawals or transfers of funds to the escrow account used for purchases and not for payment or return of earnest money from 2019 through 2021. Tenn. Code Ann. § 62-13-312(b)(6) requires licensees to preserve records relating to any real estate transaction for three (3) years following its consummation. The Auditor received some documents, but most of the records received were incomplete. Upon review of the firm’s operating account, several transactions that did not appear related to real estate transactions were noted.

In late January, the Auditor again requested Respondent to provide a copy of the documents mentioned above for the firm’s escrow account. Respondent answered that their bank did not have records related to their escrow accounts and provided communications with the bank in support of their claim. Respondent also mentioned having an escrow waiver as permitted under Tenn. Code Ann. § 62-13-323. A search of Respondent’s license and Respondent’s now closed firm did not find documentation required for an escrow account waiver. Furthermore, the Auditor spoke with the bank employee of Respondent’s bank, where the alleged missing documents were to be. No history or record of an escrow account ever existing under the name, social security number, TIN, date of birth, or account number related to Respondent and/or their firm were found. The only account found at this bank was personal account belonging to Respondent with a negative balance. To date, neither Counsel nor the Auditor possess any proof of an escrow or trustee account(s) related to Respondent and/or Respondent’s firm as required by Tenn. Code Ann. § 62-13-321.

Therefore, based on the information above, including the allegations made by Complainant, Counsel recommends Respondent’s real estate broker license be revoked for violations of, but not limited to, Tenn. Code Ann. §§ 62-13-309(f), 62-13-312(b), 62-13-312(d), 62-13-321, 62-13-403, and Tenn. Comp. R. & Regs. 1260-02-.09.

Recommendation: Revocation

Commission Decision: The Commission accepted counsel’s recommendation.

43. **2021067971**
Opened: 10/11/2021
First Licensed: 12/14/2012
Expires: 12/13/2022
Type of License: Real Estate Broker
History: 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate’s E&O insurance; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate’s E&O insurance

2021067971, 2021069041, and 2021071971 are all related.

Complainant is a licensee. Respondent is a former principal broker. Complainant states in August of 2020 they transferred to Respondent's firm. Upon arrival, Complainant heard from a fellow affiliated licensee they were having issues with receiving payment timely following a closing. Complainant informed Respondent who rebuffed the affiliated licensee's allegations. Complainant then remembered two (2) of their payments were delayed. Later, Complainant states Respondent approached them regarding upgrading their license to a broker license to help with questions from affiliated licensees. Complainant agreed and upgraded their license in March 2021.

Following Complainant's upgrade, several of the firm's top producing affiliated licensees began to leave, supposedly for firms with better commission splits and/or were owed money from Respondent. Complainant continued to hear complaints of fellow affiliated licensees not receiving their funds from Respondent. Complainant alleges Respondent later requested they open a branch office at another location. Upon being named principal broker of a branch office, Complainant realized how firm money was being spent. Complainant asked Respondent questions as affiliate licensees were still not paid timely. Following a meeting to find ways to cut costs, a separate branch office was closed.

Complainant states they asked Respondent if any affiliated licensees were owed any outstanding money. Complainant states Respondent replied "no." When affiliated licensees were still due funds, another meeting took place where Respondent informed the group, they were going to apply for a loan to repay one affiliate licensee as the money was "gone." Complainant requested proof of the loan; Respondent did not provide proof. Complainant then replied that the firm's previous principal broker left due to unpaid owed funds. Complainant then left Respondent's firm for another firm that was willing to take current affiliated licensees interested in leaving Respondent's firm. All previously affiliated licensees owed money have submitted documentation to Respondent request release of all pending transactions. Complainant provides a list of thirteen (13) names of formerly affiliated licensees that either received their money after a delay or had checks that bounced.

In late 2021, the Program and Counsel were notified of forthcoming complaints pertaining to a licensee alleging their principal broker was mishandling trust money and firm accounts. Upon receipt of the notification, it was recommended that the licensee file a complaint with the Commission. As the Program received the first complaint, by standard protocol, Respondent was notified of a complaint opened against their license and informed a response to the complaint is required. The two (2) forthcoming complaints were referred directly to Counsel.

After Counsel consulted with the Executive Director, and reviewed the allegations of Complainants, Counsel requested an audit of Respondent's firm accounts. Authority for the Executive Director to conduct an audit can be found in Tenn. Code Ann. § 62-13-312(d), which states, in part, "The director of the division of regulatory boards or the

director's duly authorized representatives may, at all reasonable hours, examine and copy books, accounts, documents or records that are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts required under this part..." Therefore, a Request for Audit was drafted and given to the Auditor for the Commission to review Respondent's accounts.

The audit requested copies of Respondent's bank statements, including the general, escrow account, and any other accounts maintained by Respondent, copies of wire transfers, bank reconciliations, copies of commission checks and payments, a listing of outstanding checks and deposits, copies of the journal or check registers, and an explanation of any withdrawals or transfers of funds to the escrow account used for purchases and not for payment or return of earnest money from 2019 through 2021. Tenn. Code Ann. § 62-13-312(b)(6) requires licensees to preserve records relating to any real estate transaction for three (3) years following its consummation. The Auditor received some documents, but most of the records received were incomplete. Upon review of the firm's operating account, several transactions that did not appear related to real estate transactions were noted.

In late January, the Auditor again requested Respondent to provide a copy of the documents mentioned above for the firm's escrow account. Respondent answered that their bank did not have records related to their escrow accounts and provided communications with the bank in support of their claim. Respondent also mentioned having an escrow waiver as permitted under Tenn. Code Ann. § 62-13-323. A search of Respondent's license and Respondent's now closed firm did not find documentation required for an escrow account waiver. Furthermore, the Auditor spoke with the bank employee of Respondent's bank, where the alleged missing documents were to be. No history or record of an escrow account ever existing under the name, social security number, TIN, date of birth, or account number related to Respondent and/or their firm were found. The only account found at this bank was personal account belonging to Respondent with a negative balance. To date, neither Counsel nor the Auditor possess any proof of an escrow or trustee account(s) related to Respondent and/or Respondent's firm as required by Tenn. Code Ann. § 62-13-321.

Therefore, based on the information above, including the allegations made by Complainant, Counsel recommends Respondent's real estate broker license be revoked for violations of, but not limited to, Tenn. Code Ann. §§ 62-13-309(f), 62-13-312(b), 62-13-312(d), 62-13-321, 62-13-403, and Tenn. Comp. R. & Regs. 1260-02-.09.

Recommendation: Revocation

Commission Decision: The Commission accepted counsel's recommendation.

44. **2021071971**
Opened: 11/1/2021
First Licensed: 12/14/2012
Expires: 12/13/2022
Type of License: Real Estate Broker

History: 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

2021067971, 2021069041, and 2021071971 are all related.

Complainant is a licensee. Respondent is a former principal broker. Complainant states they were not paid timely by Respondent and their owed commissions were used to pay Respondent's personal and professional expenses. Complainant states that conversations with Respondent began on or about May 25, 2021, about unpaid commissions and continued through September of 2021. In these communications, Complainant states they asked Respondent about several commissions from various transactions where payments were either substantially delayed or not paid at all. On September 1, 2021, Complainant left Respondent's firm. On September 15, 2021, Respondent informed Complainant that they had to obtain a personal loan to pay Complainant their owed commissions and were waiting for the loan funds to deposit into their account. As of the date of the complaint filing, the Respondent owes Complainant at least eighty thousand dollars (\$80,000.00) in outstanding commissions.

In late 2021, the Program and Counsel were notified of forthcoming complaints pertaining to a licensee alleging their principal broker was mishandling trust money and firm accounts. Upon receipt of the notification, it was recommended that the licensee file a complaint with the Commission. As the Program received the first complaint, by standard protocol, Respondent was notified of a complaint opened against their license and informed a response to the complaint is required. The two (2) forthcoming complaints were referred directly to Counsel.

After Counsel consulted with the Executive Director, and reviewed the allegations of Complainants, Counsel requested an audit of Respondent's firm accounts. Authority for the Executive Director to conduct an audit can be found in Tenn. Code Ann. § 62-13-312(d), which states, in part, "The director of the division of regulatory boards or the director's duly authorized representatives may, at all reasonable hours, examine and copy books, accounts, documents or records that are relevant to a determination of whether a licensee has properly maintained and disbursed funds from escrow or trustee accounts required under this part..." Therefore, a Request for Audit was drafted and given to the Auditor for the Commission to review Respondent's accounts.

The audit requested copies of Respondent's bank statements, including the general, escrow account, and any other accounts maintained by Respondent, copies of wire transfers, bank reconciliations, copies of commission checks and payments, a listing of outstanding checks and deposits, copies of the journal or check registers, and an explanation of any withdrawals or transfers of funds to the escrow account used for purchases and not for payment or return of earnest money from 2019 through 2021. Tenn. Code Ann. § 62-13-312(b)(6) requires licensees to preserve records relating to any real estate transaction for three (3) years following its consummation. The Auditor received some documents, but

most of the records received were incomplete. Upon review of the firm's operating account, several transactions that did not appear related to real estate transactions were noted.

In late January, the Auditor again requested Respondent to provide a copy of the documents mentioned above for the firm's escrow account. Respondent answered that their bank did not have records related to their escrow accounts and provided communications with the bank in support of their claim. Respondent also mentioned having an escrow waiver as permitted under Tenn. Code Ann. § 62-13-323. A search of Respondent's license and Respondent's now closed firm did not find documentation required for an escrow account waiver. Furthermore, the Auditor spoke with the bank employee of Respondent's bank, where the alleged missing documents were to be. No history or record of an escrow account ever existing under the name, social security number, TIN, date of birth, or account number related to Respondent and/or their firm were found. The only account found at this bank was personal account belonging to Respondent with a negative balance. To date, neither Counsel nor the Auditor possess any proof of an escrow or trustee account(s) related to Respondent and/or Respondent's firm as required by Tenn. Code Ann. § 62-13-321.

Therefore, based on the information above, including the allegations made by Complainant, Counsel recommends Respondent's real estate broker license be revoked for violations of, but not limited to, Tenn. Code Ann. §§ 62-13-309(f), 62-13-312(b), 62-13-312(d), 62-13-321, 62-13-403, and Tenn. Comp. R. & Regs. 1260-02-.09.

Recommendation: Revocation

Commission Decision: The Commission accepted counsel's recommendation.

Chairman John Griess adjourned the meeting at 11:45 A.M. CST