



**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 met on September 13, 2023, at 8:30 a.m. CDT in room 1-A of the Davy Crockett Tower, located at 500 James Robertson Parkway Nashville, TN 37243. In addition, the meeting was streamed electronically via the Microsoft Teams meeting platform. Executive Director Denise Baker read the public disclaimer and called the roll. The following Commission members were present: Chairman Geoff Diaz, Vice-Chairman DJ Farris, Commissioner Joan Smith, Commissioner Steve Guinn, Commissioner Jon Moffett, Commissioner Joe Begley, and Commissioner Kathy Tucker. Commissioner Stacie Torbett, and Commissioner Michael Gaughan arrived after roll call. Quorum Confirmed. Others present are Associate General Counsel Anna D. Matlock, Associate General Counsel Kimberly Cooper, Associate General Counsel Aerial Carter, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The board's September meeting agenda was submitted for approval.

The motion to approve the September 13, 2023, agenda was made by Vice-Chairman Farris and seconded by Commissioner Smith. The motion passed unanimously.

The August 9, 2023, Commission meeting minutes were submitted for approval.

The motion to approve the August 9, 2023, minutes was made by Vice-Chairman Farris and seconded by Commissioner Smith. The motion passed unanimously.

INFORMAL APPEARANCE

Nate Zollman appeared before the Commission with his Principal Broker, Gary Baker, to receive approval for his Affiliate Broker license.

The motion to approve Nate Zollman was made by Commissioner Guinn and seconded by Commissioner Moffett. The motion carried 7-0 with Commissioner Begley recusing himself from the vote.

Peggy Marcos appeared before the Commission with her Principal Broker, Cathy Armstrong, to receive approval for her Affiliate Broker license.

The motion to approve Peggy Marcos was made by Vice-Chairman Farris and seconded by Commissioner Tucker. The motion carried unanimously.

William Tylor Holt appeared before the Commission with his Principal Broker, Walter Combes, to receive approval for his Affiliate Broker license.

The motion to approve William Tylor Holt was made by Commissioner Torbett and seconded by Commissioner Tucker. The motion carried unanimously.

Gregory O'Neal appeared before the Commission with his Principal Broker, Todd Smith, to receive approval for his Timeshare Salesperson license.

The motion to approve Gregory O'Neal was made by Commissioner Smith and seconded by Commissioner Torbett. The motion carried unanimously.

WAIVER REQUEST

Executive Director Denise Baker presented Wendell Sturdivant to the Commission seeking a waiver of testing.

The motion to deny Mr. Sturdivant's request was made by Commissioner Guinn and seconded by Commissioner Moffett. The motion carried 7-2 with Commissioner Torbett, and Vice-Chairman Farris voting no.

EDUCATION REPORT

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

The motion to approve courses S1-S42 was made by Commissioner Torbett and seconded by Commissioner Begley. The motion passed unanimously.

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

The motion to approve the instructor's biography was made by Vice-Chairman Farris and seconded by Commissioner Tucker. The motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Denise Baker updated the Commission on the topics below.

TREC Rulemaking – The Commission was informed of the upcoming October rulemaking briefing by legal, and the November 23, 2023, rules effective date was given.

ARELLO ANNUAL CONFERENCE – The Commission was updated that TREC did not participate in the ARELLO Conference this year, held in Montreal, Canada. However, all future ARELLO conferences would have Tennessee participation.

COMMISSION DISCUSSION:

The Commission discussed the proposed 2024 TREC meeting dates. Commissioners decided to work with the possibility of changing TREC meetings to every other month starting with March.

The motion to approve the 2024 TREC meeting dates in its entirety with clarity of deciding to cancel meetings to circumvent a new meeting date process starting with March 2024 was made by Commissioner Guinn and seconded by Commissioner Moffett. The motion passed unanimously.

CONSENT AGENDA

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

A motion was made to accept Counsel's recommendation for complaints 1-67 except for the following complaints, which were pulled for further discussion: **2023025261, 2023026411, 2023022731, 2023024901, 2023028341, 2023021901, 2023021921, 2023024141, 2023024861, 2023009171, 2023023051, 2023023151, 2023019581, 2023025651, 2023023731.**

The motion was made by Commissioner Smith and seconded by Commissioner Begley. The motion carried unanimously.

After further discussion by the Commission on complaint 2023025261, Commissioner Begley motioned **to issue a Consent Order with a \$1,000.00 civil penalty against the Respondent for failure to exercise reasonable skill and care and to open a complaint against Respondent's principal broker for failure to supervise.** Vice-Chairman Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023026411, Vice-Chairman Farris motioned **to accept the Counsel's recommendation.** Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023022731, Commissioner Tucker motioned **to accept the Counsel's recommendation,** and Commissioner Begley seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023024901, Commissioner Smith motioned **to accept the Counsel's recommendation,** and Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023028341 Commissioner Smith motioned **to accept the Counsel's recommendation,** and Commissioner Tucker seconded the motion. The motion was carried unanimously.

After further discussion by the Commission on complaint 2023021901, Commissioner Torbett motioned **to accept counsel's recommendation to issue a Consent Order, but to increase the civil penalty to \$1,000.00 and to also require the Respondent to complete a six (6) hour CORE course to be completed within one hundred eighty (180) days with the CE not counting toward license renewal.** Vice-Chairman Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023021921, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Smith seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023024141, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Smith seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023024861, Commissioner Torbett motioned **to accept the Counsel's recommendation**, and Vice-Chairman Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023009171, Commissioner Guinn motioned **to dismiss the complaint**. Commissioner Smith seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023023051, Commissioner Smith motioned **to accept the Counsel's recommendation**, and Commissioner Moffett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023023151, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Guinn seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023019581, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Tucker seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023025651, Commissioner Smith motioned **to accept the Counsel's recommendation**, and Commissioner Moffett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023023731, Commissioner Torbett motioned **to issue a Consent Order with a \$500.00 civil penalty for failure to respond**, and Commissioner Moffett seconded the motion. The motion carried 8-1 with Vice-Chairman Farris voting no.

Kimberly Cooper
New Complaints:

1. **2023017551**
Opened: 4/26/2023
First Licensed: 9/28/2015
Expires: 9/27/2023
Type of License: Real Estate Firm
History: None

Complainant was the agent for the sellers. Respondent is firm that represented buyers and the holder of the earnest money. Complainant alleges that just days before they were supposed to close on the sale of a property, they were notified by the lender that the closing would need to be delayed. Complainant alleges there was no additional information provided by the Respondent, and that they finally received a denial letter days later that implied the buyers had done “something to compromise their financing.” Complainant alleges that since Respondent’s buyer was in default, the earnest money should go to the seller, and sent a mutual release form to the Respondent to be executed by their clients releasing the money to the sellers. Buyers refused to sign the release and instead sent a mutual release form of their own that would release the earnest money back to the buyers. Sellers refused to sign. Complainant later contacted respondent after “not hearing anything...regarding arbitration/interpleader” and offered to split the earnest money between the parties. Complainant states that Respondent’s managing broker informed Complainant that the money was “awarded” to the buyers after “completing the compliance investigation.” Complainant states they had no notice of any investigation and alleges that Respondent returned the buyers their earnest money without the authority to do so.

Respondent is the managing broker for the selling firm. Respondent stated that the buyer had a financing contingency, and that per the contract (a copy of which was provided by both sides) the financing contingency fell within the contract terms for termination of the contract. Respondent stated they spoke with the lender and that the failure to obtain lending was not due to the fault of the buyer. Buyers were pre-approved through the lender’s system “but upon further final underwriting review the buyer’s overtime was not able to be counted toward (buyer’s) income. Respondent stated that per Tenn. Comp. R. & Regs. 1260-02-.09(7) and the terms of the contract: “Upon a reasonable interpretation of the contract which authorizes Broker to hold the trust money and disburse, I made the decision within the 21 days following the termination and review of all of the facts and documents to release the

buyer's earnest money back to buyer.” Respondent stated the Mutual Release that was provided to the Complainant and that sellers refused to sign communicated that the earnest money would be released to the buyers by the managing broker.

Based upon this information, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

2. **2023017481**
Opened: 5/22/2023
First Licensed: 5/28/2021
Expires: 5/27/2023 (Errors & Omissions Suspension as of 1/31/2023)
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant alleges Respondent is holding themselves out as an agent with a real estate firm despite the fact Respondent’s license is suspended and was released by the firm. Complainant provided a copy of Respondent’s Facebook page showing that Respondent did use the title of “Realtor” and had the logo of their former firm above their picture. Legal did view Respondent’s Facebook page and as of the date of this report, Respondent appears to be acting as an unlicensed agent: “Realtor serving all of Tennessee -Rental Expert- Nashville Native! Here for all your (home) needs!”

Respondent’s former principal broker confirmed that Respondent had been broker released in January for failing to pay their Errors and Omissions insurance. The only mailing address affiliated with Respondent is that of their prior firm, but the complaint was also emailed to the Respondent at their registered email address with no response.

Recommendation: \$1000 civil penalty for unlicensed activity and \$1000 civil penalty for failure to respond.

Commission Decision: The Commission accepted counsel’s recommendation.

3. **2023022221**

Opened: 6/20/2023
First Licensed: 5/28/2021
Expires: 5/27/2023 (Errors & Omissions Suspension as of 1/31/2023)
Type of License: Affiliate Broker
History: None

This complainant is related to REC-2023017481 (#2) and is the same Respondent. This complainant alleges essentially the same facts regarding Respondent's acts but added that the Respondent recently "solicited services from a family member (of Complainant's) on a piece of property for sale" and stated they were a realtor. Complainant provided copies of recently dated posts from Respondent's social media wherein Respondent offers real estate services. Complainant also alleged that Respondent has multiple criminal charges pending in Kentucky. The only mailing address affiliated with Respondent is that of their prior firm, but the complaint was also emailed to the Respondent at their registered email address with no response.

Recommendation: \$1000 civil penalty for unlicensed activity and \$1000 civil penalty for failure to respond.

Commission Decision: The Commission accepted counsel's recommendation.

4. 2023018261
Opened: 5/22/2023
First Licensed: 2/14/2007
Expires: 3/10/2025
Type of License: Principal Broker
History: None

Complainant was the buyer of a home listed by Respondent. Complainant alleges that more than a month after closing the home was still listed as for sale on the MLS and social media sites, resulting in strangers approaching the Complainant and asking for information or a tour of the home, then becoming rude when told it wasn't for sale. Complainant and their agent have reached out to the Respondent multiple times and asked Respondent to remove the listing with no response. Respondent did not respond to the complaint but did remove the active listing the same day that a copy of the complaint was emailed to them.

Recommendation: \$1000 civil penalty for failure to respond.

Commission Decision: The Commission accepted counsel's recommendation.

5. **2023021051**
Opened: 5/22/2023
First Licensed: 8/23/1999
Expires: 12/18/2023
Type of License: Principal Broker
History: None

Complainant is a property owner; Respondent is a part owner of a property management firm that has been hired to manage Complainant's community. Complainant makes numerous allegations of mismanagement by Respondent including embezzlement of HOA funds and paying "friends" to poorly manage the property. Complainant and other property owners have also made complaints to local law enforcement specifically naming Respondent, and these property owners also have pending litigation against the HOA and Respondent.

Respondent denied all the allegations. Respondent confirmed that their firm was hired by the HOA to manage the community, and that they act in accordance with the HOA board's wishes.

Due to the involvement of law enforcement as well as the on-going civil litigation, Counsel recommends litigation monitoring.

Recommendation: Litigation monitoring.

Commission Decision: The Commission accepted counsel's recommendation.

6. **2023021401**
Opened: 5/22/2023
First Licensed: 8/13/2021
Expires: 8/12/2025
Type of License: Affiliate Broker
History: None

Complainant is the president of the board of directors of a community that receives funds for HUD participants. Complainant alleges that Respondent is the owner of the management company that was contracted to provide assistance for the HUD

program and has failed to secure payments from HUD. Complainant alleges that Respondent has failed to provide monthly financial reports as required and that due to mismanagement of the program, the community is in danger of losing their HUD certification.

Respondent denied the allegations and provided copies of emails between their firm and HUD attempting to resolve software issues of a third-party vendor that had assured Respondent they could handle the HUD voucher system when in fact they were not compatible leading to payment issues for months. Respondent ended up submitting their resignation to the board of directors and provided a copy of an email from Complainant thanking them for their work for the community and moving forward. The situation is unfortunate for the community the Complainant represents but based on the information provided there is insufficient evidence of a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

7. 2023024081
Opened: 5/22/2023
First Licensed: 5/21/2010
Expires: 5/20/2024
Type of License: Affiliate Broker
History: None

Complainant was a buyer; Respondent was the listing agent for the property. Complainant alleged that Respondent misrepresented that the property had a deeded boat slip when it was in fact leased; that it had city water when it was on a well; did not disclose that the property was landlocked and an easement would need to be negotiated with the neighbor; did not disclose a personal family relationship with the sellers; did not disclose known defects of the property; and was generally unprofessional in their representation of the sellers.

Respondent principal broker ("PB") responded on Respondent's behalf. PB stated that the need for an easement was discovered after a title search and was disclosed to the Complainant as soon as it was discovered. All information provided in the MLS listing referred to by Complainant was provided to Respondent by seller at the listing interview, and the boat slip information was corrected in the listing

immediately and that information forwarded to the Complainants before closing. PB denied any familial relationship existed between Respondent and seller, and seller confirmed with PB that their transactions with Respondent had all been professional and that Respondent acted according to their instructions. Difficulties in the transaction included notification of heirs, easements, and title defects, and while frustrating are not the fault of the Respondent. Based on the information provided there does not appear to be a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

8. 2023023451
Opened: 5/22/2023
First Licensed: 9/5/2014
Expires: 9/4/2016 (Expired)
Type of License: Real Estate Firm
History: None

The Complainant is a homeowner; the Respondent is a firm that closed in 2020. Complainant alleged that the Respondent firm is using Complainant's home address as their business address. The Complainant contacted a Licensee who used to be affiliated with the firm and left a voice mail but says that Licensee did not call them back. Complainant alleges "this is fraud that (licensee) is doing, and I do not know him or have any ties to this company and very upset at this. I don't know if...(Licensee) is fishing through my mailbox to get out the (Respondent) mail."

Licensee states that they have not been affiliated with the firm in years and confirmed it closed in 2020. Licensee was not sure why Complainant singled them out of the twenty agents also formerly affiliated with the firm. Licensee stated that the home of Complainant was the former home of one of the Respondent's agents and can only guess that the mail addressed to the Respondent at Complainant's home was junk mail. Licensee stated the complaint was frivolous and should be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

9. **2023019011**
Opened: 5/30/2023
First Licensed: 1/5/2021
Expires: 1/4/2023 (Expired)
Type of License: Real Estate Firm
History: None

Complainant is a licensee; Respondent is a licensee with an expired license as of January 4, 2023. Complainant alleges that Respondent has an active listing as of April 2023 and provided the MLS listing of Respondent.

Respondent refused service of the certified letter of complaint and did not respond to the complaint.

Recommendation: \$1000 civil penalty for unlicensed activity and \$1000 for failure to respond to the complaint.

Commission Decision: The Commission accepted counsel's recommendation.

10. **2023025071**
First Licensed: 12/9/2019
Expires: 12/8/2023
Type of License: Affiliate Broker
History: None

Complainants hired Respondent to sell their current home and purchase a new home. Complainant states they asked Respondent to negotiate a closing date on their new home due to a rate lock that would expire prior to the stated closing date. Complainant alleges that Respondent did not do so despite saying they would, and they had to force the issue with Respondent. Complainant alleges they made clear to Respondent that they would not be making any repairs to the home after agreeing to pay closing costs, and that Respondent then told them they would need to make repairs because of the inspection report for buyers' FHA loan. Complainant states that they told Respondent to negotiate with the buyers to pay for some of the repairs and believed that Respondent had done so, and that they would still be closing on their new home at the agreed upon date. Complainant states that Respondent did not do as asked, stopped contact with the Complainants, and moved out of state and another agent with the same brokerage ended up finalizing the transactions while Complainants did all the work. Complainants allege that Respondent was negligent

and failed to uphold their fiduciary responsibilities and did not deserve or earn their commission.

Respondent confirmed they did have to move out of state at an unfortunate time due to personal reasons, and that they worked with their broker and another agent in their firm to assist the Complainants. Respondent agreed that Complainants did make requests regarding the closing date and for the Buyers to pay for some of the repairs, and Respondent advised them of their options and the possibility included that the buyers would have to walk away which would put the purchase of their new home in jeopardy. Respondent denied not acting on their requests to negotiate with the buyer's agent regarding the closing dates and repairs, and provided copies of text messages between Respondent, the buyers' agent and Complainants regarding the requests that appear to be timely. Respondent states that the Complainants demanded that the brokerage pay for the repairs or discount the commission, and because the brokerage refused to do so, this complaint was filed. Both closings took place as planned and the Complainants were able to secure their rate lock.

While the frustration of the Complainants is plain, there does not appear to be a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2023025081
Opened: 6/20/2023
First Licensed: 6/16/2005
Expires: 8/25/2025
Type of License: Affiliate Broker
History: None

This complaint is related to REC# 2023025071 (#10). Many of the same allegations apply. Complainant further alleges that Respondent is the managing broker and that due to Respondent's unprofessional behavior and failure to act on behalf of Complainants that they were harmed and had to pay extra for repairs to the home they were selling.

Respondent answered the complaint and clarified they own the firm, but they are not the managing broker. Respondent agreed that they had spoken with the Complainant

and explained that options regarding the repairs: “Making the repairs will lead to a closing. Not making the repairs will lead to a possible termination of the contract from the buyer due to lending.” Respondent stated that Complainant wanted Respondent to pay for the repairs and blamed them for the repairs costing more than anticipated. Respondent stated they properly represented their client but that does not include paying for the client’s expenses. Respondent stated that the Complainant ended their one and only conversation by promising they would ruin Respondent’s reputation. While the frustration of the Complainants is plain, there does not appear to be a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

12. 2023025261

First Licensed: 5/5/2022

Expires: 5/4/2024

Type of License: Affiliate Broker

History: None

Complainant was the seller’s agent and Respondent was the buyer’s agent. Complainant alleges that Respondent provided the lock box code to the buyers without permission, and the buyers entered the home prior to closing, stayed for the weekend and removed items from the home. Buyers then refused to purchase the home due to “water issues”, and seller is concerned that the buyers damaged the plumbing while they were in the home without permission.

Respondent’s principal broker (“PB”) responded on Respondent’s behalf. PB stated that based on a conversation with Complainant regarding temporary occupancy Respondent “believed” they had permission to give their buyer the lock box code and allow entry prior to closing. PB has made clear to Respondent not to do that again and agreed it was a mistake and that Respondent has “learned a lesson”. PB stated that Complainant misrepresented the condition of the well on the property and that while buyers were in the home, they discovered that the water was not working. After a well inspection was done it was found that the well was dry, and it would be an estimated “\$50,000 to bring water in from below”. As a result of that estimate buyer terminated the contract and offered the seller the earnest money. PB states the seller has so far not responded to the request to sign the mutual release.

Recommendation: Discuss.

Commission Decision: The Commission voted to issue a Consent Order with a \$1,000.00 civil penalty against the Respondent for failure to exercise reasonable skill and care and to open a complaint against Respondent's principal broker for failure to supervise.

**13. 2023026411
Opened: 6/12/2023
Unlicensed:
History: None**

This complaint was a referral from the Attorney General's Office of Consumer Affairs. Complainant is the parent of a disabled adult who was a resident of an apartment complex owned by Respondent. Complainant alleges that their adult child was evicted in retaliation for making complaints to the city about the run-down condition of the complex and for placing them in a second story unit in violation of the ADA. Complainant alleges Respondent put their adult disabled child out of the apartment without notice and without their belongings, resulting in their adult child being found alone on the complex property without proper clothing in cold weather.

Respondent denied illegally evicting the resident and provided copies of court documents including the Order of eviction. Respondent also documented their attempts to work with the resident to address their maintenance concerns. While the primary complaint is a landlord/tenant dispute and not in the Commission's jurisdiction, it is unclear to counsel if Respondent owns the property or is acting as an unlicensed property manager for a third-party owner.

Recommendation: Letter of Warning.

Commission Decision: The Commission voted to accept counsel's recommendation.

**14. 2023022571
Opened: 6/20/2023
First Licensed: 10/26/2018
Expires: 10/25/2024
Type of License: Affiliate Broker
History: None**

Complainant and Respondent are licensees. Complainant stated that Respondent had an “active” listing in the MLS but when Complainant tried to schedule a showing, Respondent refused and stated there would be no showings until after the open house. Complainant informed Respondent that “as long as its active it should be shown or placed in coming soon status. (Respondent) insisted on denying the showing until” after the open house.

Respondent confirmed that they told Complainant that the sellers requested no showings until after the scheduled open house, and that the information was notated in the “private remarks” section of the listing with the MLS. There is no apparent violation of the Broker Act or Commission rules.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

15. 2023022731
Opened: 6/20/2023
First Licensed: 3/17/2017
Expires: 3/16/2025
Type of License: Affiliate Broker
History: None

Complainant was the seller’s agent and Respondent was the buyer’s agent. Complainant states that they accepted an all-cash offer with no contingencies from Respondent’s buyers, with \$1000 in earnest money to placed with a specific title company within five days. Complainant states that the earnest money was not paid and that on the day of the closing Complainant received notification of loan denial and a request for the release of earnest money. Complainant alleges misrepresentation by the Respondent.

Respondent denies making any misrepresentations to the Complainant. Respondent’s buyer told Respondent they would be paying cash for the property and only informed Respondent three days before closing that they would not be able to do so. Respondent pointed out that while it was intended to be a cash purchase, Respondent and client did not check the “Financing Contingency Waived” section of the purchase agreement. Respondent informed client that they would be in default, and the client stated they would not forfeit the earnest money and wanted it returned. Respondent stated they learned the same day as Complainant that the earnest money

had not been deposited by the client and attempts to make the client do as agreed were rejected by the client. Respondent states that their client would not admit fault and then would not answer Respondent's phone calls or texts. Respondent stated that his client lied to Respondent through the whole process, and it certainly appears that the client was the bad faith actor in this transaction through no fault of Respondent.

Based on the information provided, it does not appear that Respondent violated the Broker Act or the Commission rules.

Recommendation: Dismiss.

Commission Decision: The Commission voted to accept counsel's recommendation.

16. 2023024901
Opened: 6/20/2023
First Licensed: 4/27/2005
Expires: 11/27/2023
Type of License: Affiliate Broker
History: None

Complainant was a homebuyer; Respondent "sold me my house last year". It is unclear from the narrative of the complaint if the Respondent was the listing agent for the seller or Complainant's agent. Complainant alleges that on the day of closing due to an error by Respondent the amount due from Complainant was \$800 more than discussed and that Respondent verbally agreed to pay that amount to Complainant but has not done so. Complaint also apparently blames Respondent because a handyman referred to Complainant by Respondent stole \$3000 worth of items from Complainant on two separate occasions. It was unclear from the complaint why the Complainant allowed the handyman back into the home after stealing from Complainant the first time.

Respondent denied all allegations and provided a copy of a "Cease and Desist" letter sent to Complainant directing Complainant to stop contacting Respondent's employer, family and friends and making accusations against Respondent. The complaint appears to be without merit.

Recommendation: Dismiss.

Commission Decision: The Commission voted to accept counsel's recommendation.

17. 2023028341

Opened: 6/20/2023

First Licensed: 8/17/1981

Expires: 9/4/2024

Type of License: Principal Broker

History: None

This is an administratively opened complaint. The original Complainant is a seller. Respondent is the principal broker for the selling agent for Complainant. Respondent's agent was previously issued a civil penalty as a result of the original complaint.

Complainant entered an exclusive right to sell agreement with agent on April 4, 2022, with an expiration date of October 4, 2022. Property was not sold, and the listing expired. Complainant states that agent did not communicate with Complainant and instead communicated with a third party mutual "friend" regarding the sale and any potential offers on the property. Complainant provided copies of three (3) text messages sent to agent after the expiration of the contract that appear to be unanswered asking for updates to the situation as well as copy of the contract. Complainant states they finally contacted Respondent on December 2, 2022, via email and by phone because the listing was still showing active, and Complainant needed the listing removed so that it could be listed by their new agent. Respondent acknowledged that agent had been told by the 3rd party mutual "friend" that they could act on Complainant's behalf. Complainant again informed agent and Respondent that Complainant was the sole property owner and the only party to the original contract and that communication should have been with them, not the 3rd party who was agent's "friend". Agent replied by supplying a letter in support from the "friend" detailing ample personal conflict between "friend" and Complainant and alleging that Complainant's new agent was dishonest and "coached" Complainant to obtain a commission that they (the new agent) were not entitled to. Agent also supplied a letter where they state they and "friend" tried repeatedly to meet with Complainant to discuss the sale of Complainant's property, despite the "friend" not being the Agent's client or a party to the contract. Complainant was eventually able to sell the property to a buyer that the agent represented as buyer's agent.

Respondent replied to the complaint by stating that the first they knew of a problem between their affiliate broker and the Complainant was when they received a copy of the complaint filed with the Commission against the affiliate broker. Respondent stated they then found in their junk email where Complainant had contacted Respondent ten days prior in an effort to get the listing removed. Respondent stated that once they learned of the issues, they communicated with Complainant directly and attempted to salvage the working relationship with the Complainant. Respondent stated they worked closely with their agent and that “every time we discussed this listing...(agent) was told to make sure the person who was on the deed and who signed the listing contract had to be informed every step of this transaction.” Respondent acknowledged however that agent was “used to dealing with” the “friend” because they were a long-time client, and that Respondent took over when they realized that Complainant “had a problem” with the agent. Respondent provided copies of emails between Respondent the Complainant as proof that they “were on top of the situation.”

Recommendation: \$1000 civil penalty for failure to supervise.

Commission Decision: The Commission voted to accept counsel’s recommendation.

18. 2023021901

Opened: 5/15/2023

First Licensed: 1/11/2006

Expires: 8/27/2023

Type of License: Affiliate Broker

History: 2015 Consent Order for Advertising Violation; 2017 Consent Order for Advertising Violation; 2018 Consent Order for Advertising Violation; 2017 Agreed Citation for Advertising Violation; 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate’s E&O insurance; 2021 Final Order for Advertising Violation; 2021 Consent Order for Advertising Violation; 2021 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

This is an anonymous complaint. Complainant submitted a copy of an advertisement by Respondent stating “[REDACTED] OF REAL ESTATE” with their firm telephone number but does not include the name of the Respondent. This

advertisement appears to violation of Tenn. Comp. R. & Regs. 1260-02-.12(f) regarding deceptive or misleading advertising.

Respondent principal broker and Respondent provided almost identical responses to the complaint and denied that the advertisement was a violation of Commission rules or statute.

Recommendation: \$500 civil penalty for violation of Tenn. Comp. R. & Regs. 1260-02-.12(f).

Commission Decision: The Commission voted to accept counsel's recommendation to issue a Consent Order, but to increase the civil penalty to \$1,000.00 and to also require the Respondent to complete a six (6) hour CORE course to be completed within one hundred eighty (180) days with the CE not counting toward license renewal.

**19. 2023021921
Opened: 6/26/2023
First Licensed: 7/3/2016
Expires: 7/12/2024
Type of License: Affiliate Broker
History: None**

This is an anonymous complaint. Complainant submitted a copy of an advertisement by Respondent that has Respondent's last name in large letters and "REAL ESTATE" in much smaller letters underneath Respondent's name. This advertisement appears to violation of Tenn. Comp. R. & Regs. 1260-02-.12(f) regarding deceptive or misleading advertising.

Respondent principal broker replied on Respondent's behalf and denied that the advertisement was in violation of advertising rules.

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

Commission Decision: The Commission voted to accept counsel's recommendation.

**20. 2023023771
Opened: 6/26/2023
First Licensed: 6/18/2019**

Expires: 6/17/2025
Type of License: Affiliate Broker
History: None

This is an anonymous complaint. Complainant states that Respondent licensee is operating a short-term rental/property management business from their affiliated firm location. Complainant provided Respondent's business website address that does market vacation rentals and corporate housing.

Respondent's attorney replied on Respondent's behalf. Respondent stated they did operate a vacation lodging service out of their home separate from their employment as an affiliate broker and denied that they were operating that "sole proprietorship" out of the firm's location. Respondent acknowledged that they learned they did need a vacation lodging service license and was now actively working on obtaining that license. They have obtained all necessary zoning approvals to operate their business from their home and apologized for their error in not obtaining a license prior to starting their business. Counsel confirmed they have since obtained the required license.

Recommendation: \$1000 civil penalty for unlicensed activity.

Commission Decision: The Commission accepted counsel's recommendation.

21. 2023024071
Opened: 6/26/2023
First Licensed: 6/9/2008
Expires: 11/12/2023
Type of License: Time Share Salesperson
History: None

Complainant alleges that they and their spouse attended a timeshare sales presentation, and that Respondent was the "Sales Director". Complainant states that they could not get Respondent to give them direct answers to their questions about financing for the timeshare purchase, how long the contract would last or whether costs would go up over the course of the contract. Complainant states that Respondent ended the presentation by stating that they did not feel that Complainant would make a purchase. Complainant alleged that Respondent was unprofessional and deceptive and that the entire presentation was designed to be high pressure and

uncomfortable and alleges that the program is predatory especially regarding senior citizens.

Respondent's Consumer Affairs manager answered the complaint on Respondent's behalf. Respondent stated that Complainant was "unpleasant" to the Respondent and Respondent's manager when they tried to answer Complainant's questions. Respondent confirmed that they ended the presentation when Complainant stated they didn't care how much it cost, they would not be making a purchase. Respondent denies committing any violation of applicable law or Commission rules, and there is insufficient documentation to prove otherwise.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2023024141
Opened: 6/26/2023
First Licensed: 12/16/1993
Expires: 1/4/2025
Type of License: Principal Broker
History: None

This complaint was a referral from the Attorney General's Office of Consumer Affairs. Complainant was a potential buyer of property and Respondent was the listing agent. Complainants were working with a buyer's agent, but that agent was unable to meet with the Complainants at the desired property, so Respondent agreed to meet Complainants at the property. Complainant alleges that after viewing the property they made a full price offer to the seller and waited to hear from Respondent. Respondent replied almost 24 hours later with a rejection of the offer, and Complainants stated they "did not have a chance to make a counteroffer". Complainants allege that they later learned that the Respondent purchased the property from the seller and re-listed the property at a higher price. Complainants did not provide any documentation of their allegations.

Respondent did not respond to the complaint.

Recommendation: \$1000 civil penalty for failure to respond.

Commission Decision: The Commission voted to accept counsel's recommendation.

- 23. 2023025591**
Opened: 6/26/2023
First Licensed: 7/5/1996
Expires: 10/15/2023
Type of License: Affiliate Broker
History: None

Complainant was the seller of a home; Respondent was the buyer's agent. Complainant alleges that Respondent was not presenting counteroffers to the buyer; demanded unnecessary repairs without consulting the buyer and used an inspector that Respondent "knows" without disclosing that information to the buyer. Complainant states that Respondent "is hostile, unprofessional and appears to be quite underhanded and shady."

Respondent denied all allegations and via their attorney provided a very detailed response including emails and text messages between the parties involved. Respondent stated that they had an experienced buyer as a client and was presented with all offers and information. Respondent states that Complainant was angry that the appraisal for the home was \$20,000 less than the listed sales price and that the inspector found issues that Complainant had to repair before the sale could be completed. Respondent confirmed that they do "know" the Inspector that was chosen but only in a professional capacity.

Complainant provided a rebuttal wherein they reiterated their allegations and stated they had copies of the inspection reports that would prove Respondent's assertions were untrue. The Complainant is obviously frustrated with the process but did agree to the terms of the sale and went through with the closing. Finally, the documents provided by Respondent support Respondent's assertion that they did not violate the Broker Act or any Commission rule.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 24. 2023024381**
Opened: 7/3/2023

First Licensed: 11/4/2020
Expires: 11/3/2024
Type of License: Affiliate Broker
History: None

Complainant was the buyer of a home; Respondent was the listing agent for the home. Complainant alleges that Respondent “allowed” the sellers to file a Residential Property Condition Exemption that Complainant would not have accepted had they known how “familiar” the seller and Respondent were with extensive property damage insurance claims made within the last year. One claim was made in January 2023 due to water damage from a frozen pipe and there was an open electrical claim from April 2023 due to a lightning strike. Complainant also alleges that extensive renovations had been done to the home despite Respondent stating that the seller had not done a renovation. Complainant alleges the Respondent was deceitful and misleading.

Respondent’s attorney responded on behalf of Respondent. Respondent denied the allegations and provided copies of emails and texts between Respondent and Complainant’s agent discussing the need for repairs to the home specifically because of the frozen pipe issue and the lightning strike. This information was communicated to the Complainant’s agent prior to closing and acknowledged by the agent more than once.

In their rebuttal, Complainant stated that their agent told them Respondent said there had been no renovations to the home. Complainant also stated that the Residential Property Condition Exemption form should be revised, as this excuses the owner from disclosure of known defects if they have not lived in the home. After acquiring ownership of the home, Complainant now believes that the renovations and repairs were more extensive than previously disclosed.

Based on the information provided there is insufficient evidence of a violation of the Broker Act or any Commission rule.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

25. 2023031121
Opened: 7/3/2023

First Licensed: 5/10/2002
Expires: 7/27/2025
Type of License: Affiliate Broker
History: None

Complainant was the purchaser of a home in December 2019, Respondent was the seller's agent. Complainant learned in May 2023 that the home was built on "top of a cave" and would not be livable going forward. Complainants allege that Respondent knew about the cave and should have disclosed it.

Respondent and Respondent's principal broker provided a response and denied that they or the seller they represented had any knowledge about a cave in 2019 or now. Without some proof that Respondent knew about the issue, there is insufficient evidence of a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

26. 2023031771
Opened: 7/3/2023
First Licensed: 5/13/2016
Expires: 5/12/2024
Type of License: Real Estate Firm
History: None

Complainant is a home buyer. Respondent is the seller's agent. Complainant stated they signed a purchase agreement with a closing date of June 27, 2023, with the promise from Respondent that the closing date could be moved back if necessary. The purchase agreement included a penalty of \$100 per day if the closing did not occur on that date. Complainant did not indicate if they were represented by an agent. Complainant states they needed the closing date pushed back to July 6, 2023, but the Respondent was refusing to do so, stating that it was not the seller's problem.

Respondent confirmed that they represented the seller and confirmed that the seller did not agree to waive the \$100 per day penalty for default by the buyer. Respondent did not provide additional information. Based on the scant information and documentation provided by both parties, there is insufficient evidence of a violation of the Broker Act.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2023024861
Opened: 7/10/2023
First Licensed: 2/3/2021
Expires: 2/2/2025
Type of License: Affiliate Broker
History: None

This is an anonymous complaint. Complainant stated that the Respondent is the listing agent for a commercial property that was listed on the MLS as "coming soon" on January 4, 2023. Complainant alleges that showings began on January 6, 2023; the property was under contract on March 29, 2023, and the closing date for the property was June 26, 2023; and that Respondent never changed the status of the property to "active" on the MLS. Complainant alleges "this is a violation." Complainant did not provide a copy of the listing or any additional information.

Respondent responded to the complaint and denied any wrongdoing. Respondent did not address whether the listing information was "current and accurate" as required by Commission rules and without proof of the allegations by Complainant a civil penalty is not supported.

Recommendation: Letter of Warning.

Commission Decision: The Commission voted to accept counsel's recommendation.

28. 2023030581
Opened: 7/10/2023
First Licensed: 7/13/2021
Expires: 7/12/2025
Type of License: Affiliate Broker
History: None

Complainant is anonymous; Respondent is a licensee. Complainant alleges that Respondent had an advertisement for a property for sale on Facebook that did not

disclose that the Respondent was an agent and was also advertising the property as a “wholesale contract”. A copy of the advertisement was **not** provided. Respondent and Respondent’s principal broker both asked for additional information regarding the alleged violation to determine “what was wrong” and provide a sufficient response. Respondent also stated that to their knowledge any advertisement on Facebook had long since been taken down; and that Respondent was no longer a member of the Facebook group where it was originally posted so could not access it for themselves.

The information provided is insufficient to support a civil penalty for advertising violations.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

29. 2023030791

Opened: 7/10/2023

First Licensed: 5/20/2008

Expires: 5/19/2024

Type of License: Affiliate Broker

History: None

Complainant is a licensee. Respondent is an affiliate broker and was the listing agent for a home that Complainant’s buyers were interested in purchasing. Complainant provided a copy of the Buyers Agreement signed by their clients, and a document confirming the home was purchased by those clients during the time frame specified in the Agreement. Complainant alleges Respondent/listing agent talked to the buyers after meeting them through Complainant and convinced them to purchase the house through Respondent “in order to get a better deal”. Complainant also alleges that Respondent used Complainant’s race as a factor in their discussion with buyers.

Respondent denied the allegations and provided a copy of a Buyers Agreement signed by the buyers on the same date the buyers signed an agreement with the Complainant. Respondent stated that the buyers denied having an agency relationship with any other agent, and that the buyers reached out to Respondent directly. At the buyers’ request, Respondent changed their status from Listing Agent to Transactional Broker and provided a copy of that document signed by the seller, the Respondent and the Buyers two days after buyers signed the agreement with

Complainant. Respondent denies ever mentioning Complainant's race in any context at all.

Complainant provided a rebuttal to the response, stating that the information they had regarding the alleged acts were provided to them by the buyers, who then refused to put any of their own allegations in writing for review by Counsel or the Commission stating they were concerned about "retaliation" despite having ongoing text communication with the Respondent. Counsel is concerned that the buyers are acting in bad faith for unknown reasons to the detriment of both Complainant and Respondent.

Based upon this information, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

30. 2023021491

Opened: 6/12/2023

First Licensed: N/A

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainants purchased a time-share interest from Respondent in October 2021. When attempting to book their vacation, Complainants experienced difficulties in obtaining the room and services they asked for and were again required to attend a sales presentation during their stay. Complainants' allegations of wrongdoing by the Respondent are not very detailed but they appear to be alleging that Respondents are in violation of the contract and Complainants want to rescind their purchase.

Respondent's attorney responded on their client's behalf. Respondent denied the allegations but did apologize to the Complainants for any difficulties they may have encountered during their trip. Respondent alleged that the reservations were made through a third-party booking agency and that Respondent was not responsible for any inconvenience they may have had while trying to book their reservation. Finally, Respondent noted that the rescission period had passed, provided a copy of the

contract signed by Complainant acknowledging all owner responsibilities and financial liabilities, and declined to rescind the contract.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

31. 2023026281

Opened: 7/3/2023

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainants stated that in December 2022 they booked a hotel they found online that would allow them to bring their pets and included show tickets. Complainants stated that when they arrived to pick up their tickets, they were asked to attend a meeting and told that if they attended the meeting, they would receive additional tickets and a discounted vacation. Complainants reluctantly attended and ended up signing a contract for what they thought was a “vacation club” only to discover that it was time-share. Complainants also allege that Respondent “signed them up for credit cards” but it is unclear if Complainants objected to it at the time. They have attempted to make payments on the credit cards but have been unable to do so. Complainants are afraid the purchase will end up bankrupting them and are asking for the contract to be rescinded.

Respondent's consumer affairs manager responded to the complaint on Respondent's behalf. Respondent provided a copy of the contract signed by the Complainants. Respondent noted that the rescission period has long-since passed, and they deny any misrepresentations were made to the Complainant. Respondent declined to rescind Complainant's contract.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED

32. 2023008521
Opened: 3/6/2023
First Licensed: 6/1/2021
Expires: 5/31/2023
Type of License: Affiliate Broker
History: None

Complainant and Respondent are both licensees. Complainant stated that they were concerned about possible fraudulent agent activity by Respondent. Respondent requested a showing for Complainant's listing, but there was no contact information available for Respondent on his Realtracs account and only an automated message for Respondent's brokerage.

Respondent stated that on the date of the request for a showing that they were out of town and asked a fellow agent to show the home for some of Respondent's clients. Respondent stated that they did not know at the time that their E&O policy had lapsed and that their license was suspended; that they received the letter of notification regarding the E&O lapse a few days after returning home and then the notification for this complaint several days later and contacted Complainant to explain who they were and that the showing was not fraudulent. Respondent stated that they have obtained their E&O renewal (and that has been confirmed) and they apologized for the lapse. The E&O renewal however was not retroactive. The issue with the contact information was apparently resolved, as Respondent's contact information on file with the Commission is correct and has been the same address since 2021.

Recommendation: \$400 civil penalty pursuant to Rule 1260-01-.16 for the lapse in E&O insurance without back-dating for continuous coverage.

Commission Decision: The Commission voted to accept counsel's recommendation and to administratively open a complaint against the principal broker if not already done.

New Information: The Commission didn't start administratively opening complaints against principal brokers for affiliated brokers lapse in E&O coverage and charging penalties for suspended individuals until after March 3, 2023. This Respondent purchased their updated E&O policy on

March 2, 2023, and provided the updated policy to the program on March 6, 2023, so the program did not previously open a complaint against the principal broker.

New Recommendation: \$400 civil penalty pursuant to Rule 1260-01-.16 for the lapse in E&O insurance without back-dating for continuous coverage without opening complaint against principal broker.

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

33. 2023009171

Opened: 3/20/2023

First Licensed: 10/4/2021

Expires: 10/3/2023

Type of License: Affiliate Broker

History: None

Complainants were the seller of a property; Respondent was Seller's agent and was hired in June 2022. Complainant was selling adjoining lots on separate deeds and planned to sell their home on an adjoining lot in November 2022. The sale of the two original lots closed in July 2022. Complainant alleges they told Respondent repeatedly prior to the sale that they were concerned about possible septic line encroachment and asked Respondent's guidance on how to protect themselves in the event the lines did encroach. Complainant alleges that instead of protecting their interests, Respondent instead acted in the interest of the buyer who was also a friend of Respondent. Complainant alleges that Respondent never advised Complainant to obtain a septic line inspection; did not advise that Complainant request a septic line waiver and when pressed to obtain one prior to closing lied and said that it had already been done; and did not disclose their personal relationship with the buyer. Complainant also alleges that Respondent forged their signatures to a notification form. In November 2022, Buyer had a land survey done and discovered that Complainant's home septic lines did encroach on the lots purchased. Complainant alleges that Respondent knew that the lines encroached and advised Buyer to wait until after the sale closed to conduct a land survey. Complainants state that Respondent acted with malice and did not act with due care towards Complainants and as a result they are now unable to sell their home without buying the land back, something the Buyer has refused to do.

Respondent advised that after consultation with their principal broker a notification form regarding the possibility that septic lines encroached on the land was provided to Buyer and a copy was attached to Respondent's response. Respondent stated that they did advise Complainants to contact a septic company to find the precise layout of the septic lines, which they declined, nor did they do a survey to determine exact property lines. Respondent denied that they had any personal relationship with the Buyer, had no personal communication with the Buyer in any form, and only communicated with the Buyer agent. In November when the land survey was done and the septic lines were confirmed to be on Buyer's property, Respondent advised the Complainant that the contract could not be renegotiated and advised Complainants to offer to buy back that portion of the lot. Respondent alleges that communication between Complainant and Respondent deteriorated due to Complainant's actions and that all communication is now through the parties' attorneys.

Complainant responded to Respondent's statement by again alleging that Respondent intentionally lied and put Complainant and their ability to sell their home in a "legally compromised position by not doing (their) job." When asked for additional information or documentation, Complainant stated that they were consulting with their own legal counsel and that they are moving forward with all options including a possible criminal referral due to the alleged forgery of the notification form.

Recommendation: Litigation monitoring.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Complainants have stated that they are not and do not plan on moving forward with civil litigation against the Respondent and ask for action to be taken against the Respondent's license for not acting with due care. Complainants provided copies of text messages between Complainants and Respondent regarding the septic lines.

New Recommendation: Discuss.

New Commission Decision: The Commission voted to dismiss the complaint.

Aerial Carter

New Complaints:

34. 2023023051
Opened: 5/22/2023
First Licensed: 1/28/2010
Expires: 1/27/2024
Type of License: Affiliate Broker
History: None

Complainant is anonymous. Respondent is an Affiliate Broker. Complainant alleges Respondent is advertising managing rentals as a real estate affiliate, not a broker. The complaint also alleged that Respondent's spouse was managing of rentals, who is unlicensed. The complainant did not attach any proof of the advertisement violation.

However, Respondent stated that they took swift action to correct the advertising issue by ensuring that the name, address, and phone number of their brokerage was included in all advertising. Respondent denied that their spouse was involved in managing the rental property. Additionally, the Principal Broker took responsibility for failing to notice the advertising violation.

Based on the information provided, an advertising violation occurred based on Respondent's own admission. However, Counsel is unable to determine which section of the Rules and Regulations and/ or Statutes were violated. The original post has been updated.

Counsel recommends this matter be dismissed because of lack of evidence to determine a specific violation and an administrative complaint be opened against the Principal Broker for failure to supervise.

Recommendation: Dismiss and Open Administrative Complaint Against Principal Broker for Failure to Supervise.

Commission Decision: The Commission voted to accept counsel's recommendation.

35. 2023023151
Opened: 5/22/2023
First Licensed: 1/31/2006
Expires: 1/30/2024
Type of License: Affiliate Broker

History: None

Complainant is a seller in a real estate transaction. Respondent is a licensed affiliate broker. Complainant alleges Respondent pressured them into accepting a “low ball” offer. Complainant only accepted the offer because they were told there were no more potential buyers for the property. After accepting the offer, Seller’s agent informed Complainant there was another potential buyer who was offering an “all-cash offer” and had a buyer scheduled to see the property the following day. Complainant believes that Respondent was not looking out for their best interest during this real estate transaction. Complainant included no documentation for the alleged persistence of Respondent, so Counsel requested additional information.

Respondent stated when Complainant asked if there were any additional offers, they did not see any additional buyers scheduled to view the property. After being made aware that the Buyer’s agent had a tour scheduled for the property, acknowledged that they forgot about the viewing. Respondent attached copies of text messages between them and the Complainant where Respondent apologized for missing the scheduled tour and continued conversations until the day after closing. Complainant completed the real estate transaction with Respondent as their agent and did not express an issue with their representation until after closing.

Based on the information provided, Complainant had plenty of time to reject an offer and Counsel did not find any evidence of Respondent pressuring Complainant to accept any offer. However, Counsel finds Respondent did not do their due diligence when reviewing the showing schedule.

Based upon all these facts, Counsel recommends Respondent be assessed a civil penalty of Five Hundred Dollars (\$500) for failing to do their due diligence when they failed to notice a showing scheduled.

Recommendation: Civil penalty, Five Hundred Dollars (\$500).

Commission Decision: The Commission voted to accept counsel’s recommendation.

- 36. 2023023651**
Opened: 5/22/2023
First Licensed: 2/13/1995
Expires: 11/2/2023

Type of License: Principal Broker
History: None

Complainant is a Tennessee resident and homeowner. Respondent is Principal Broker. Complainant alleges Respondent refused to remove their home on the MLS after Complainant requested it. Complainant stated that their partner, who is a co-owner of the property, signed a 6-month agreement with Respondent's firm on November 12, 2022, which had ended at the time of the complaint. However, Respondent refused to terminate the agreement and did not have the consent of Complainant, who also had joint ownership of the property listed.

Respondent confirmed there was a 6-month agreement to exclusively list the property that ended May 12, 2023. Respondent stated that a misunderstanding regarding the dates and length of listing. Respondent stated that their listing agent informed them they had more time in the agreement. Once they received the proper information, Respondent stated that the listing was removed from the MLS.

Complainant attached documents regarding the agreement including screenshots of text messages between them and the Respondent. The text messages show that Complainant requested on multiple dates to be released from the agreement and have the property removed from the MLS. Respondent refused each time to remove the listing or send a release form. Respondent stated that the agreement was still valid so they would not agree.

Based on the information provided, Counsel determined that Respondent had a duty to be informed of the dates and length of the agreement and failed to exercise reasonable skill and care, in violation of T.C.A. 62-13-403(1). Even if the Respondent believed there was a valid agreement with the Complainant, they would still have options to break a listing agreement that Respondent did not advise them of. Instead, Respondent refused each of Complainant's requests and failed to follow the instructions of the Complainant in violation 62-13-404(1). Additionally, if the real estate transaction had been successful, Respondent would have failed to receive permission from both co-owners of the property.

Based upon all these facts, Counsel recommends the Respondent be assessed a Five Hundred Dollar (\$500) civil penalty for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction. Tenn. Code Ann. 62-13-403(1); and a Five Hundred Dollar (\$500) civil penalty for failing to obey lawful instructions of the client when the instructions are within the scope of the agency

agreement between licensee and licensee's client. Tenn. Code Ann. 62-13-404(1); and education on contracts.

Recommendation: Civil Penalty, One Thousand Dollars (\$1,000) and a four (4) hour Education course in contracts to be completed in one hundred eighty (180) days above and beyond the continuing education requirements.

Commission Decision: The Commission accepted counsel's recommendation.

37. 2023018711
Opened: 5/30/2023
First Licensed: 3/20/2002
Expires: 11/19/2023
Type of License: Affiliate Broker
History: None

Respondent has publicly distributed the private gate code to the entire neighborhood on her social media site(s). This includes access to roads that she does not have homes listed on or that there are any homes for sale at all on.

Complainant is a Tennessee. Respondent is an Affiliate Broker. Complainant alleges Respondent hosted a "public open house" and publicly distributed the private gate code to an entire neighborhood on their social media site(s). Complainant attached a screenshot of a calendar invite but no documents with the original advertisement were included.

Respondent stated they had multiple homes listed for sale in the gated community that they listed on the MLS. They only posted on the MLS website within the notes section. They denied posting any of the listings or access code on social media. They received permission from the head of the Homeowner's Association ("HOA") prior to including the gate code.

Based on the information provided, Complainant's concern was safety of the community, not an advertising violation. The Commission does not have authority over this matter.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

38. 2023019581
Opened: 5/30/2023
Unlicensed:
History: None

Complainant is a licensed real estate agent. Respondent is unlicensed. Complainant alleges Respondent solicited offers for the purchase and sale agreements without a license. Complainant included an email from Respondent with the property listed for sale.

Respondent did not respond.

The advertisement does not indicate Respondent has a property interest or owned the property and suggests they are engaged in unlicensed activity. Counsel reviewed Respondent's firm name and address. However, there were no results found for the firm name and the address came back as a local apartment complex.

Counsel finds Complainant's allegations related to unlicensed activity to be founded.

Based upon all these facts, Counsel recommends this matter be assessed a One Thousand Dollar (\$1,000) civil penalty for unlicensed activity.

Recommendation: One Thousand Dollar (\$1,000) civil penalty.

Commission Decision: The Commission voted to accept counsel's recommendation.

39. 2023021091
Opened: 5/30/2023
First Licensed: 1/31/2017
Expires: 1/30/2025
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident and a Buyer in a real estate transaction. Respondent is an Affiliate Broker. Respondent acted as the Buyer's agent in the real

estate transaction. Complainant alleges Respondent did not inform them that the Seller's agent asked for an extension for the closing date. Complaint also alleges that Respondent did not represent Buyer's best interest by informing the Seller's Agent of their inability to obtain additional funds for a down payment. Complaint alleged that Respondent failed to exercise reasonable skill and care and failed to follow Complainant's lawful instructions.

Respondent's attorney submitted a response on Respondent's behalf. Respondent made it clear to Complainant that they would not be able close on the Property because the Complainants were unable to come up with additional cash prior to closing. The response also stated that the Complainant was not interested in an extension because they knew that they were unable to go forward with the purchase.

The Complainant filed claims in circuit court and attached all the filings in the court. Respondent also submitted supporting documents. After review of all documents, Counsel determined that Complainant's allegations related to failure to exercise reasonable skill and care and follow client's instructions to be unfounded. The text messages clearly show that Respondent communicated the option of extending the closing date if Complainant believed they could secure the money. Respondent also updated Complainant about conversations they had with the Seller's agent.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

40. 2023022861
Opened: 5/30/2023
First Licensed: 7/14/2003
Expires: 3/16/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and buyer in a real estate transaction. Respondent is an Affiliate Broker and acted as the Seller's agent in a real estate transaction.

Complainant alleges Respondent falsely advertised the condition of the pool pump and liner. The allegation was that the pool pump and liner were replaced in 2019 but after inspection, Complainant had to get them replaced and is requesting the price they paid. The Commission has no authority to require Respondent to compensate Complainant but does have authority if there was intentional misrepresentation in the advertisement.

Respondent's attorney responded on their behalf. The response stated that Respondent did not make any false representations about the condition of the pool liner or pump. Respondent only advertised based off the Seller's representation to them. The disclosure form states that all representations are from the seller only and not any licensed real estate professional.

Based on the information provided, Counsel finds that Respondent did not possess any actual knowledge or notice that there was any issue with the pool liner or pump. Additionally, Respondent would not have the expertise to accurately assess the condition of the pool liner and pump.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2023026331
Opened: 6/5/2023
First Licensed: 4/2/2015
Expires: 4/1/2025
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and homebuyer. Respondent is an Affiliate Broker. Respondent was the Seller's agent in the real estate transaction. Complainant alleges Respondent violated the contract by contacting the local water company and having the utilities turned on for a property Respondent does not own.

Respondent stated they were contacted by Complainant to have the utilities turned on and Respondent told them that the property was sold "As is" and the seller was not responsible for making power or water available. Respondent attached

screenshots of text messages between them and the Buyer's agent. The Buyer's agent informing Respondent that their client has been having difficulty getting the water turned on with the water company. The text messages show that Respondent would talk to a person, assumed to be the Seller, about getting the water turned on.

Complainant did not include any documents that would suggest Respondent altered any of the contract provisions during this real estate transaction. Based on the information provided, the Buyer's agent was attempting to get the water turned on, at Complainant's request. There was no indication that Respondent was involved in turning on the utilities at the property.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

42. 2023024431
Opened: 6/12/2023
First Licensed: 7/23/2015
Expires: 8/17/2025
Type of License: Principal Broker
History: None

Complainant is a licensed real estate professional. Respondent is a Principal Broker. Complainant alleges Respondent is a Principal Broker who works with two separate firms, located in different location and under different names. Complainant attached an email with an association to a firm, ("Firm 1).

Respondent stated they transferred to the Principal Broker position at Firm 1, and it was the intention to open a second firm ("Firm 2") in the same location as Firm 1. Respondent believed that paperwork was filed properly. Since receiving the complaint, Respondent stated they have updated and submitted the paperwork to open Firm 2. Respondent attached paperwork for Articles of Organization from 2021 where it appears that the intention was to open Firm 2. However, the change did not occur in the Commission's file with Respondent.

Counsel reviewed the alleged advertising violation. The email shows a two firm names in the signature Firm 1 and another firm ("Firm 3") that is not associated with

either firm mentioned previously. Counsel reviewed the information for Firm 3 and could not find any associations with Firm 1 that matched in CORE. It is unknown if Firm 1 and Firm 3 were meant to be a group or similar entity within the firm but it is clear that Firm 1 is not associated with Respondent's license.

Counsel believes the following violations occurred. Respondent violated Tenn. Comp. R. & Regs. 1260-02. 12 by including a firm name that was not listed on file with the Commission at the end of an email. Also, Counsel finds that at the time of the complaint, Respondent was in violation of Tenn. Code. Ann. § 62-13-309 because they were a principal broker for two (2) firms, but the firms were not in the same location. Counsel did find that the Respondent has taken steps to fix the issue.

Based upon all these facts, Counsel recommends this Respondent be assessed a civil penalty of Two Hundred Fifty dollars (\$250) for each violation listed above for a total civil penalty of Five Hundred Dollars (\$500).

Recommendation: Civil Penalty, Five Hundred Dollars (\$500).

Commission Decision: The Commission accepted counsel's recommendation.

43. 2023020801
Opened: 6/12/2023
First Licensed: 10/21/2019
Expires: 10/20/2023
Type of License: Real Estate Firm
History: None

Complainant is Tennessee resident. Respondent is a real estate firm. Complainant alleges Respondent agreed to repair their backyard after admitting to improperly grading it but are refusing to do the work. Complainant is requesting that their yard be fixed and compensated us for their losses and mental stress.

Respondent submitted a response, but the Commission does not have authority over this matter. Based on the information provided, this issue does not involve a real estate transaction. The Complainant should take this matter to civil court.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 44. 2023025651**
Opened: 6/12/2023
First Licensed: 6/19/2018
Expires: 12/9/2024
Type of License: Real Estate Firm
History: None

Complainant is anonymous. Respondent is a real estate firm. Complainant alleges Respondent did not have a sign that conspicuously displayed the firm's name and address.

A response was submitted by the firm's Broker. Respondent stated that their sign is in their home and complies with the requirements and is displayed in the window. Complainant did not include the sign with the alleged violation. The Respondent included a picture of the sign, but Counsel was unable to read anything on the sign.

Based upon all these facts, Counsel recommends this matter be dismissed because there is no evidence that a violation occurred.

Recommendation: Dismiss.

Commission Decision: The Commission voted to accept counsel's recommendation.

- 45. 2023027261**
Opened: 6/20/2023
First Licensed: 10/31/2008
Expires: 1/21/2025
Type of License: Principal Broker
History: 2010 Agreed Citation for failure to maintain E&O insurance;
2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

Complainant is a Principal Broker at a local firm. Respondent is Principal Broker. Complainant alleges Respondent's license was expired. Complainant stated that they

were attempting to get Respondent's contact information to discuss an issue with a contract. Complainant stated that Respondent is the Principal Broker for two firms.

Respondent stated this was the first time they had to renew as a broker and firm. Respondent stated they renewed for the firm but did not renew their personal license because they did not realize there were two separate applications. Respondent completed the requirements and renewed their license after receiving the complaint.

Counsel reviewed Respondent's file in CORE and finds Complainant's allegations related to unlicensed activity to be founded. Based off the information found, Respondent had been conducting business for around five (5) months without a valid license in violation of T.C.A §62-13-301.

Based upon all these facts, Counsel recommends this Respondent be assessed a civil penalty of One-Thousand Dollars (\$1,000) for unlicensed activity.

Recommendation: Civil Penalty, \$1,000 for unlicensed activity.

Commission Decision: The Commission accepted counsel's recommendation.

46. 2023028211
Opened: 6/20/2023
First Licensed: 9/23/1993
Expires: 8/8/2025
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant stated that Respondent was selling two pieces of property for their neighbor, but Respondent engaged in misleading advertising. The complaint alleges that Respondent instructed people to locate Complainant's barn as a means of identifying the unmarked property for sale then on a different date, posted pictures on the MLS with their house in the background without their permission.

Respondent stated an out-of-town couple came to view the land for one of the properties while they were out of town. Respondent said they gave clear directions of where the property lines were and informed the potential buyers that the barn and fence belonged to the neighbor, and they needed to stay off that property. Regarding the picture, Respondent stated they took a picture that had Complainant's house in

the background but was unaware until they received the complaint and promptly removed it.

Complainant attached a link to the MLS listing to show the picture of their house. However, the link was expired, and Counsel was unable to investigate this further. Respondent attached the MLS documents for the properties they had listed for sale. The listing did not mention Complainant's barn or fence to be used as land markers. Respondent also attached a picture of the land with a house in the background, but it is unclear if that is Complainant's house or how much of the house was included in the MLS listing. Regardless, based off the description in the listing, it does not appear that Respondent engaged in misleading advertisement.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

47. 2023028221
Opened: 6/20/2023
First Licensed: 6/14/2007
Expires: 2/9/2025
Type of License: Principal Broker
History: None

Complainant is an out of state resident. Respondent is a Principal Broker. Complainant is a co-trustee for property with their family member ("Co-Trustee"). Complainant alleges Respondent listed a property that was not approved by Complainant.

Respondent stated they were contacted by Co-Trustee to list the property and was advised by an estate planning attorney that Co-Trustee was permitted to "sell the property individually or in concert." Respondent attached an electronically filed document showing that Complainant and Co-Trustee as successors but nothing indicating that Co-Trustee was the sole successor or had exclusive rights to sell the property.

The property in question is not located in Tennessee and excluding the Respondent, none of the parties are in Tennessee. The property is in State A, the Co-Trustee and

Complainant's Attorney are in State B, and Complainant is in State C. Respondent is licensed in State A.

Based on the information provided, Counsel does not believe the Commission has jurisdiction over this matter and it should be dismissed and referred to the proper state's real estate commission.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

48. 2023028771
Opened: 6/20/2023
First Licensed: 4/2/2009
Expires: 4/25/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant alleges Respondent posted in June 2023 false and misleading information on their social media business regarding "direct trail access" to a local national park. Specifically, the language in the listing that a person could "horseback ride directly from the property into the park."

Respondent stated they have not engaged in false or misleading advertisement. Respondent stated they offer properties with trail access to the national park and land that joins the park with horse trails on it.

Complainant included an email with the description of the land for sale but did not include any evidence that Respondent did not have properties with direct trail access. Counsel reviewed Respondent's social media business page and did not see the specific post that was referred to in the complaint.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

49. 2023029891

Opened: 6/20/2023

First Licensed: 7/6/2012

Expires: 4/20/2024

Type of License: Principal Broker

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

Complaint numbers 2023029891 (#49) and 2023029871 (#50) are related. Complainant is a Tennessee resident. Respondent is Principal broker. Complainant alleges Respondent is responsible for the actions of their agent who acted improperly and illegally while performing their duties as real estate licensees. Complainant stated that Respondent's agent "made a promise to influence, persuade and induced" Complainant to pay \$3,200 as a deposit and first month's rent for a rental property that they never took possession of. Complainant is requesting the return of the security deposit.

Respondent stated that they have not been the Principal Broker with the rental company in this matter since 2019. Counsel confirmed this information.

Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

50. 2023029871

Opened: 7/3/2023

First Licensed: 7/28/2017

Expires: 9/15/2025

Type of License: Principal Broker

History: None

Complaint numbers 2023029891 (#49) and 2023029871 (#50) are related. Complainant is a Tennessee resident. Respondent is Principal broker. The allegations are the same as 2023029891 (#49). Complainant alleges Respondent

improperly and illegally performed their duties as real estate licensees. Complainant stated that Respondent “made a promise to influence, persuade and induced” Complainant to pay \$3,200 as a deposit and first month’s rent for a rental property that they never took possession of. Complainant is requesting the return of the security deposit.

Respondent submitted a response stating that they do not believe they owe Complainant a refund because Complainant applied to multiple properties. They attached a timeline with the property address with the actions taken and a ledger.

Based on the information provided, the Commission does not have jurisdiction over this matter because it is one of the exemptions listed under T.C.A. §62-13-104. Additionally, the Commission has no authority to have security deposits returned to Complainant.

Based upon all these facts, Counsel recommends this matter be dismissed and referred to the Attorney General’s office for potential fraudulent acts.

Recommendation: Dismiss and Refer to Attorney General’s Office.

Commission Decision: The Commission accepted counsel’s recommendation.

51. 2023027301
Opened: 6/20/2023
First Licensed: 1/20/2010
Expires: 1/19/2024
Type of License: Real Estate Firm
History: None

Complainant is the manager of a company who hired Respondent. Respondent is a real estate firm. Complainant alleges Respondent manages multiple units for a Complainant’s company. When Complainant’s company did a self-audit, they discovered Respondent withheld substantial remittances and reports due and owing to their company.

Respondent stated they do not believe they mishandled any of the funds for the properties they managed. Respondent attached various emails and ledgers.

Based on the information provided, the Commission does not have jurisdiction over this matter because it is one of the exemptions listed under T.C.A. §62-13-104. Additionally, the Commission has no authority to have security deposits returned to Complainant.

Based upon all these facts, Counsel recommends this matter be dismissed and referred to the Attorney General's office for potential fraudulent acts.

Recommendation: Dismiss and Refer to Attorney General's Office.

Commission Decision: The Commission accepted counsel's recommendation.

52. 2023028801
Opened: 6/20/2023
Unlicensed
History: None

Complainant is a general partner at a Tennessee company which owns commercial real estate. Respondent is unlicensed. Complainant alleges Respondent was managing property for Complainant's company but did not have valid Tennessee real estate license. Complainant also stated that Respondent owes over \$57,000 to the company and they are working with their attorney to collect those funds.

Respondent stated they worked for the company that sold one of the properties to the Complainant's company and was very familiar with the property. They said they informed Complainant that they were not licensed in Tennessee but thought if they structured the agreement as a dollar amount "fee" rather than a "commission" they would be protected.

Based on the information provided, it does not appear that Respondent was working for a broker, owner, or employee of a broker who was managing the properties. Therefore, Counsel does not believe Respondent is exempt under T.C.A. §62-13-104(E).

Counsel finds Complainant's allegations related to unlicensed activity to be founded. This is based off Respondent's own admission and no record of a Tennessee real estate license.

Based upon all these facts, Counsel recommends this Respondent be assessed a civil penalty of One-Thousand Dollars (\$1,000) for unlicensed activity, in violation of T.C.A. 62-13-301 and flag Respondent in case they apply for a Tennessee real estate license.

Recommendation: Civil penalty of One-Thousand Dollars (\$1,000) and Flag Respondent.

Commission Decision: The Commission accepted counsel's recommendation.

53. 2023027531

Opened: 6/26/2023

First Licensed: 8/8/2011

Expires: 2/1/2025

Type of License: Principal Broker

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

Complainant is Managing Broker at a Tennessee firm. Respondent is Principal Broker. Complainant alleges Respondent violated anti-trust laws ignored ethics codes when they discussed a commission split with an agent instead of the Complainant. Complainant stated that Respondent used hateful and threatening language with one of their agents, implied an agreement regarding the commission split, and attempted to influence Complainant's policies.

Anti-Trust is outside of the Commission's jurisdiction. The commission's rules and regulations may incorporate and establish canons of ethics and minimum acceptable standards of practice for licensees. TCA 62-13-203(b). Here, this does/ does not apply.

Respondent stated that Complainant did not assert any violations under the Rules, Regulations, or Statutes so they could not provide a sufficient response but denies being in violation.

Counsel reviewed the National Association of REALTORS® (NAR) Codes of Ethics and Standards and do not believe Respondent violated any ethical standards. The text messages did not contain any threatening language. It appeared to be a disagreement concerning the commission split, permitted by Article 16 of NAR.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

54. 2023028691
Opened: 6/26/2023
First Licensed: 5/2/2005
Expires: 12/3/2023
Type of License: Affiliate Broker
History: None

Complainant is Tennessee resident. Respondent is an Affiliate Broker. Complainant was listed as executor and shares ownership of real estate property. Respondent was hired by the other co-owner of the property to list the property. Complainant alleges Respondent had no legal right to list the property because they were not employed by Complainant and Respondent was unethical when they continued to list the property without their consent.

Respondent stated that they received a text from Complainant informing them that they were listed as the sole executor of the property. However, the co-owner still had a property interest of fifty percent (50%) while Complainant's property interest was twenty-five percent (25%). Respondent attached text messages and emails between themselves and the Complainant which indicates that there was an agreement to have Respondent sell the property. Respondent had potential buyers lined up and was working on a contract when they were contacted by Complainant stating that they were using a different real estate agent because they were no longer comfortable that the co-owner previously hired Respondent.

Since the filing of this complaint, all parties have agreed enter a co-listing agreement. Based on the information provided, Counsel did not find Respondent to be in violation of any rules, regulations, or statutes.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

55. 2023029371

Opened: 6/26/2023

First Licensed: 9/28/2006

Expires: 8/24/2005

Type of License: Real Estate Broker

History: None

Complainant is a Tennessee resident and homebuyer in a real estate transaction. Respondent is a Broker and was the Seller's agent in a real estate transaction. Complainant alleges Respondent violated the following subsections of the Rules and Regulations: Misleading or untruthful advertising in violation of Rule 1260-02-.12(3)(f) because the unit was advertised as 1,324 square feet instead of 1,017 square feet; failure to correct erroneous information in violation of 1260-02-.12(5)(c) because Complainant's agent made Respondent aware of the difference in square feet and the advertisement remained the same; unsubstantiated selling claims and misleading statements in violation of 1260-02-.12(7)(a) because the property was advertised as "one of the largest floorplans" but there are sixteen (16) other units that were larger.

Respondent stated the Complainant made an offer to purchase the property, sight unseen with no contingencies at full asking price after accepting, it appears the MLS listing was updated to "Pending" and they were no longer showing the property. Respondent did receive a message from the Buyer's agent regarding the square footage of the property. Respondent said they got the number because they measured it along with the Seller. Buyer's agent asked if Complainant could measure the property and was given permission. After being told about the difference in square footage, Respondent advised that Complainant was able to change their mind. Respondent was then asked to reduce the price, which the Seller did not agree to because the price was based off location and availability, not square footage. Complainant went forward with the real estate transaction and sent Respondent the Buyer's Final Inspection.

Complainant attached a copy of a document entitled "Condominium Units" which includes the square footage of unit floor area listed at 1,017. It is unclear when Complainant got the document but it's clear that they had an opportunity to observe the unit and measure themselves. Based on the information provided, Complainant also had access to the square footage and had the ability to receive their security

deposit returned if there was an issue. It was Complainant's choice to go forward with knowledge of the discrepancy on square footage.

Additionally, Complainant advertised the square footage based off measurements they made, and the website was not updated because the property was under contract with Complainant. Therefore, Counsel finds no violation of Rules 1260-02-.12(3)(f) or 1260-02-.12(5)(c). Furthermore, Counsel finds that Respondent violated Rule 1260-02-.12(7)(a) to be unfounded because the language states this is "one of the largest units," and out of thirty-nine (39) properties only sixteen (16) had more square footage than the property sold. It does not appear to be a misrepresentation.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

56. 2023030091
Opened: 6/26/2023
First Licensed: 11/18/2014
Expires: 2/14/2024
Type of License: Principal Broker
History: None

2023030091 (#56), 2023029571 (#59), 2023030111 (#60), and are related and allegations are identical. Complainant is anonymous. Respondent is a Principal Broker. Complainant alleges Respondent engaged in deceptive business practices by targeting older individuals to sell property that they have undervalued. After the get the property, they relist the property and split the profits between other agents in the firm.

Respondent stated the allegation in the complaint is false and vague. Respondent stated they have not listed any property below market value and all sales were listed on MLS and public record.

Complainant did not include dates or addresses for the properties they alleged were undervalued, any documents that suggest the Respondent is targeting elderly people, or that Respondent is involved in an unethical scheme to split profits.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

57. 2023030371
Opened: 6/26/2023
First Licensed: 9/28/2020
Expires: 9/27/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and property owner. Respondent is an Affiliate Broker. Complainant alleges Respondent engaged in false and misleading advertising. Complainant stated Respondent is used photographs of their personal property, an uncertified easement that does not exist, and the listed property that connects to Complainant's private road.

Respondent stated that they pulled numerous neighboring deeds from the courthouse to identify language referring to said easement and it showed that the neighboring properties use the same easement to access their land. They also consulted a local real estate attorney to ensure the advertisement was accurate and lawful. For the photographs mentioned, Respondent stated that they were not misleading. The photographs in the listing were provided by the current owner and the arrow in the photo does accurately indicate the location of the property for sale. Since receiving the complaint, the listing has been terminated by Respondent. Respondent submitted a copy of the warranty deed with a description of the easement, communications with the attorney, pictures included in the listing, and the listing.

Counsel reviewed the documents submitted. Respondent appears to have done their due diligence in ensuring that the easement was advertised properly. Complainant's issue with an easement dispute is outside the expertise of Respondent and would be better suited for civil court. For the pictures of Complainant's house, the listing clearly indicates the location of the listed property and the way to access the property.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 58. 2023023731**
Opened: 6/26/2023
First Licensed: 7/24/2008
Expires: 7/23/2024
Type of License: Real Estate Firm
History: None

Complainant is a Tennessee resident. Respondent is a Real Estate Firm. Complainant alleges Respondent's agent sent a text message that falsely represented that they had a Buyer for Complainant's property to get the listing. Complainant referred to the text message they received as a scam. Complainant did not include a copy of the text message they received or documentation to suggest there was a scam. Complainant only listed the agent's first name but could not confirm who the agent was that authorized the text to be sent.

Respondent did not submit a response. Counsel reached out to Complainant did not provide anything additional and asked that the complaint be dropped because they "don't have time to address this."

Based upon all these facts, Counsel recommends this matter be dismissed because the allegations were not about a specific agent.

Recommendation: Dismiss.

Commission Decision: The Commission voted to issue a Consent Order with a \$500.00 civil penalty for failure to respond.

- 59. 2023029571**
Opened: 6/26/2023
First Licensed: 2/27/2018
Expires: 2/26/2024
Type of License: Real Estate Firm
History: None

Complaint numbers 2023030091 (#56), 2023029571 (#59), 2023030111 (#60), and are related and allegations are identical. Complainant is anonymous. Respondent is a Real Estate Firm. Complainant alleges Respondent engaged in deceptive business practices by targeting older individuals to sell property that they have undervalued. After they get the property, they relist the property and split the profits between other agents in the firm.

Response was submitted by the firm's Principal Broker. Respondent stated the allegation in the complaint is false and vague. Respondent stated they have not listed any property below market value and all sales were listed on MLS and public record.

Complainant did not include dates or addresses for the properties they alleged were undervalued, any documents that suggest the Respondent is targeting elderly people, or that Respondent is involved in an unethical scheme to split profits.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

60. 2023030111
Opened: 7/3/2023
First Licensed: 6/4/2019
Expires: 6/3/2025
Type of License: Affiliate Broker
History: None

Complaint numbers 2023030091 (#56), 2023029571 (#59), 2023030111 (#60), and are related and allegations are identical. Complainant is anonymous. Respondent is an Affiliate Broker. Complainant alleges Respondent engaged in deceptive business practices by targeting older individuals to sell property that they have undervalued. After the get the property, they relist the property and split the profits between other agents in the firm.

Respondent stated the allegation in the complaint is false and vague. Respondent stated they have not listed any property below market value and all sales were listed on MLS and public record.

Complainant did not include dates or addresses for the properties they alleged were undervalued, any documents that suggest the Respondent is targeting elderly people, or that Respondent is involved in an unethical scheme to split profits.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

61. 2023029451
Opened: 7/3/2023
First Licensed: 7/17/2007
Expires: 7/16/2025
Type of License: Affiliate Broker
History: None

Complaint numbers 2023029451 (#61) and 2023029471 (#62) are related and the allegations are identical. Complainant is Tennessee resident and renter. Respondent is an Affiliate Broker. Complainant stated they were renting an apartment from Respondent, who was acting as one of the property managers. The complaint alleges that Respondent failed to return their security deposit and is requesting the money and/ or an itemized invoice of the deductions.

Respondent submitted a response. However, the Commission does not have authority over this matter. This matter is one of the exemptions listed under Tenn. Code Ann. § 62-13-104(E). Additionally, the Commission cannot return money to the Complainant. This matter should be filed in Civil court as a Landlord/Tenant dispute.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

62. 2023029471
Opened: 7/3/2023

First Licensed: 9/6/2007
Expires: 7/9/2025
Type of License: Affiliate Broker
History: None

Complaint numbers 2023029451 (#61) and 2023029471 (#62) are related and the allegations are identical. Complainant is Tennessee resident and renter. Respondent is an Affiliate Broker. Complainant stated they were renting an apartment from Respondent, who was acting as one of the property managers. The complaint alleges that Respondent failed to return their security deposit and is requesting the money and/ or an itemized invoice of the deductions.

Respondent submitted a response. However, the Commission does not have authority over this matter. This matter is one of the exemptions listed under Tenn. Code Ann. § 62-13-104(E). Additionally, the Commission cannot return money to the Complainant. This matter should be filed in Civil court as a Landlord/Tenant dispute.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

63. 2023027581
Opened: 7/3/2023
First Licensed: 6/8/2020
Expires: 6/7/2024
Type of License: Affiliate Broker
History: None

Complainant is Tennessee resident and licensed real estate professional. Respondent is an Affiliate Broker. Complainant alleges Respondent engaged in unprofessional and unethical behavior when they stated that Complainant stole a listing from Respondent at an event hosted for those in the real estate industry.

A response was submitted by the Respondent's lawyer ("Representative"). Representative stated Complainant previously worked at Respondent's firm. Earlier this year, Complainant voluntarily left the firm and Termination and Release form

was signed. After Complainant left, they were soliciting the firm's clients and even got listings based off connections made while employed at Respondent's firm. Representative alleges that Complainant violated the non-compete agreement and the parties are involved in an ongoing court case.

Based on the information provided, The Commission does not have authority over either matter. Complainant's complaint should be handled by the local real estate commission for the alleged ethical violations. Furthermore, the Commission does not have authority over contract disputes.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

64. 2023032031
Opened: 7/10/2023
First Licensed: 8/17/2016
Expires: 8/16/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant alleges Respondent purposely misstated the lot size in their listing to increase the home value and price for personal profit. Complainant included a plat map of the subdivision along with dimensions.

Respondent stated they did not misstate the lot size in their listing and the lot size was generated by the MLS. Respondent denies inflating value and stated that bank approved and appraised the home's value. Respondent attached multiple documents including the same plat map and the MLS listing.

Based on the information provided, Counsel did not find any misrepresentation regarding the lot size. The description of the lot size from the MLS listing matched the plat map submitted by both parties. Additionally, Complainant did not provide any documentation to show that Respondent was involved in a scheme to overvalue the property so they could receive a higher profit.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

65. 2023021721

First Licensed: 8/23/2017

Expires: N/A

Type of License: Time Share Registration – Time Share Exempt

History: None

Complainant stated that they have been involved with Respondent for over ten (10) years. Complainant said that they were coerced by the Respondent's marketing department and cheated out of benefits that were promised.

Respondent attorney responded on the Respondent's behalf ("Representative"). Representative stated that Complainant has been an owner since 2010 and upgraded their contracts in 2011, 2012, 2013, 2014, 2015, and 2017. In each of the contract documents Complainant signed and received fully disclose the agreement between the parties.

Based on the information provided, Complainant is outside of the rescission period, and this matter has exceeded the statute of limitations.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

66. 2023029911

Opened: 7/10/2023

First Licensed: 8/23/2017

Expires: N/A

**Type of License: Time Share Registration – Time Share Exempt
History: None**

Complainant is out of state resident and attended Respondent's timeshare presentation in June 2022. Complainant stated that Respondent lacked sufficient knowledge to address their questions or concerns. Specifically, Respondent never provided any assistance or guidance on how to book a suite, nor did they have available dates that aligned with our work schedule, so they have never been able to use their timeshare.

A representative from Respondent's company submitted a response. Respondent stated that Complainant signed a contract in June 2022 that disclosed the terms and conditions. They stated that all travel options are confirmed on a first come, first serve basis and the usage of points depends on the owner and how they choose to use their points. Respondent included a copy of the original contract. Complainant did admit that they were aware of the rescission period but did not fully grasp the contract.

Based on the information provided, Complainant is outside of the rescission period of ten (10) days.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED

**67. 2023011581
Opened: 4/17/2023
First Licensed: 9/17/1993
Expires: 4/19/2024
Type of License: Principal Broker
History: None**

This is an administrative complaint opened after a previous Commission meeting related to complaint #202204876 for failure to supervise an agent for an advertising violation on social media.

Respondent is Principal Broker. Respondent stated in their response that they believe the issue related to the previous advertising violation has been fixed and provided the social media posts.

Counsel viewed the social media posts to determine if it complies with the advertising requirements. To comply with social media advertising by licensees, the firm name and firm telephone number listed on file with the Commission must be no more than one click away from the viewable page. Respondent has met these conditions.

Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss

Commission Decision: The Commission voted to assess a Five Hundred Dollar (\$500.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(15).

New Information: Respondent submitted a response and stated that they were not the Principal Broker at the time of the original complaint. Counsel confirmed that Respondent became the Principal Broker after advertising violation occurred.

New Recommendation: Dismiss and Open Administrative Complaint Against Proper Respondent.

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

Chairman Diaz adjourned the meeting at 10:50am CDT.