



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE REAL ESTATE COMMISSION
TENNESSEE REAL ESTATE COMMISSION MINUTES

October 1st, 2015

The Tennessee Real Estate Commission convened on Thursday, October 1st, 2015 at 9:00 a.m. in Kingsport Center for Higher Education 300 W. Market Street Kingsport, TN. 37660. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Diane Hills, Commissioner Fontaine Taylor, and Commissioner Bobby Wood. Absent from meeting were Commissioner Austin McMullen, Commissioner Marcia Franks, and Education Director E. Ross White. Others present: Executive Director Eve Maxwell, Assistant General Counsel Mallorie Kerby, and Administrative Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 08, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Friday September 25, 2015. Also, this meeting has been notice on the tn.gov website since September 25, 2015.

Commissioner DiChiara made a motion to adopt the agenda as amended by Commissioner Blume to add a discussion of possible discrepancy of new rules and discussion of verify.tn.gov after Education Report; motion seconded by Commissioner Wood; as amended motion passes unanimously.

Commissioner DiChiara made a motion to approve the September minutes; motion seconded by Commissioner Hills; motion passes.

EDUCATION REPORT

Executive Director, Ms. Maxwell, presented the educational courses O1 – O12 set forth on the October, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve O1 – O11 courses, deferring O12 for discussion after Executive Director Maxwell discusses course with Education Director White and will report back to Commission after lunch on O12 for vote at that time; motion seconded by Commissioner Hills; motion carries. Executive Director Maxwell spoke with Education Director during lunch and confirmed O12 did meet qualifications four course approval. Commissioner DiChiara made a motion to approve education course O12; motion seconded by Commissioner Hills; motions passes unanimously.

Instructors Approvals

Executive Director, Ms. Maxwell presented instructors some are previously approved and some need approval; they are marked in red O1 – O12 to be approved as instructors.

Commissioner DiChiara made a motion to approve all instructors, since Executive Director, Ms. Maxwell, recommended for approval O1 – O12; motion seconded by Commissioner Hills; motion carries.

POTENTIAL DISCREPANCY DISCUSSION

Commission DiChiara made a motion that the Commissions previous clarification of TCA 62-13-310 (b) made in July 2013 superseded by rule 1260-02-12 (3) (b) (1) which states the firm name must be the most prominent name featured in the advertising, motion seconded by Commissioner Taylor; motion passes.

VERIFY.TN.GOV DISCUSSION

Commissioner Blume asked if the Continuing Education is available for the licensees and the Principal Brokers to see on the verify.tn.gov website?

Executive Director Maxwell responded as of Tuesday September 29, 2015 this information has been available on verify.tn.gov. However, the website has been down since the merge of the computer system since 8-31-15, but it was back up on Tuesday and you can see the continuing education of a licensee when you go to verify.gov. You do have to go to detail button, select detail, and you have to scan down the entire page, to see the education.

Commissioner Blume asked if when a Principal Broker logs onto verify.tn.gov if can he see the continuing education of his affiliates.

Executive Director Maxwell responded yes he can, but he will have to log onto the account of each individual affiliated licensee to see their continuing education.

Commissioner DiChiara made a motion to keep continuing education on verify.tn.gov; motion seconded by Commissioner Blume; motion passes unanimously.

REINSTATEMENT

Reinstatement Appearance: Scott M. Boruff Broker #234928: The Commission adopted Commission Policy Statement 2013-CPS-002, Reinstatement of an Expired License, which provides for reinstatement of a license during the first 12 months following expiration of the license. After the 12 month period, paragraph 3 of the Reinstatement Policy states: A licensee seeking reinstatement of a license expired more than one (1) year must reapply for licensure, meet current education requirements and pass all required examinations. The license of the licensee has been expired over 12 months and is therefore not eligible for reinstatement under 2013-CPS-002. The expired licensee has requested that the Commission waive the provisions of Paragraph 3 of 2013-CPS-002 and allow reinstatement of the license. Mr. Boruff was not accompanied by his Principal Broker, as required by Rule 1260-01-.19, so the Commission voted not to hear his request for wavier of the Reinstatement Policy.

Commissioner Blume made a motion to hear Mr. Boruff appeal when his Principal Broker is here; motion seconded by Commissioner Hills; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: ERIC MICHAEL MILLS

PRINCIPAL BROKER: TRACY C. KING #302880

FIRM: KINGS OF REAL ESTATE, LLC #261987

Principal Broker: Tracy C. King #302880 is the PB of Kings of Real Estate, LLC #61987. The firm is located in Sevierville, TN.

Mr. King was first licensed as an affiliate broker 1/11/2006 and was first licensed as a broker on 8/28/2009. The records indicate that he became a PB on 3/1/2012 at the time Kings of Real Estate, LLC was first licensed.

The TREC records reflect that the firm currently has 10 affiliate brokers, 1 brokers and 1 PB.

Mr. King has had no disciplinary action taken against him by the Commission.

Applicant: Eric Michael Mills submitted an Application for Decision Regarding Criminal Convictions. Mr. Mills revealed the following:

He was convicted a felony and a misdemeanor; terms of convictions have been met.

Commissioner Blume made a motion to approve applicant Eric Michael Milles to move forward in the licensure process; motion seconded by Commissioner Hills; motion passes unanimously.

INFORMAL APPLICANT APPEARANCE

APPLICANT: ROBERT JOSEPH VARBONCOEUR #333524

PRINCIPAL BROKER: STEVEN M. CHAMPION #253598

FIRM: GREATER DOWNTOWN REALTY, LLC d/b/a Keller Williams #259794

Principal Broker: Steven M. Champion #253598 is the PB of Greater Downtown Realty, LLC d/b/a Keller Williams #259794. The firm is located in Chattanooga, TN.

Mr. Champion was first licensed as an affiliate broker 2/6/1994 and he was first licensed as a broker on 4/24/1997. The records indicate that he became a PB on 12/14/1998 and has been a PB at various times since 1998. He became PB of Greater Downtown Realty, LLC d/b/a Keller Williams on 8/8/2013. The TREC records reflect that the firm currently has 176 affiliate brokers, 16 brokers and 1 PB.

Mr. Champion has had no disciplinary action taken against him by the Commission.

Applicant: Robert Joseph Varboncoeur submitted an Application for Decision Regarding Criminal Convictions and an Application for Licensure. He has taken and passed the real estate exams and has completed the 90 hours of prelicensing courses. Mr. Varboncoeur revealed the following:

He was convicted of misdemeanors; terms of convictions have been met.

Commissioner DiChiara made a motion to approve applicant Robert Joseph Varboncoeur move forward in the licensure process; motion seconded by Commissioner Hills; motion passes unanimously.

DISCUSSION OF NEW RULES REGARDING ADVERTISEMENTS

Chairman Griess requested discussion of new upcoming rules:

Rule 1260-02-.12(3)(c) Individual Licensee Name as Registered with TREC

Nicknames currently registered with TREC are ok to use in all forms of advertising.

Example: “Park” Richardson” is ok for Parkland Richardson to use as long as “Park” has been registered as a nickname with TREC. If “Park” has not been registered with TREC, Parkland Richardson needs to submit a TREC 1 form with the \$10 fee and register “Park” as a nickname.

Example: Thomas Blaine Norton can advertise as “Tommy” Norton as long as “Tommy” has been registered as a nickname with TREC. If “Tommy” has not been registered with TREC, Thomas Blaine Norton needs to send in a TREC 1 form with the \$10 fee and register “Tommy” as a nickname.

Middle initials, middle names and suffixes included in a licensee’s name as registered with TREC do not have to be used when advertising.

Example: Madden Longstreet Lambert, III can advertise as “Madden Lambert” without making any changes with TREC.

Example: Robert L. Stevenson Jr. can advertise as “Robert Stevenson” without making any changes with TREC.

If you use your middle name or any other portion of your full name as registered with TREC, your principal broker will have until December 31, 2015 to notify TREC of such use. Until that date, there will be no change of name charge to the broker or licensee.

Example: If a licensee is registered with TREC under the name of “William Crawford Bowing” but advertises as “Crawford Bowing”, then, as long as his broker sends a letter to TREC stating the two names identify the same person (before 12/31/2015) and that William Crawford Bowing advertises as “Crawford Bowing”, he can continue to advertise as “Crawford Bowing”.

If you wish to change your name as registered with TREC, you must fill out a TREC 1 form and submit the completed form to TREC along with \$10.00.

Example: A licensee registered with TREC as “Jillian Wright-Patterson” who wants to advertise as “Jillian Patterson” or who wants to advertise as “Jillian Wright” must fill out the TREC 1 and submit it to TREC, along with the \$10 fee.

Example: A licensee currently registered with TREC as “Harriet Truluck” who wants to advertise in her married name of “Harriet Branch” must submit a completed TREC 1 and submit it, along with the \$10 fee to TREC.

Example: A licensee currently registered with TREC as “Annette Baskin Patton” who wants to advertise in her married name of “Annette Patton-Ingram” must submit a completed TREC 1 and a \$10 fee to TREC. TREC-Name Guidelines Page 2 10-5-2015

TCA 62-13-310(b)

The commission decided its previous interpretation of the size relationship between the firm's name on a sign and the agent's name on the same sign was superseded by the Rules which take effect October 18, 2015

Commissioner Hills made a motion which will allow licensee to continue to advertise without middle initials and suffixes with 1st and last name; motion seconded by Commissioner Blume; motion passes unanimously.

Commissioner DiChiara made a motion if you are going to advertise by your middle or nickname name it should be registered with TREC and that is how you must advertise; as long as the Principal Broker submits a list of how affiliates names are listed before 12-31-15 there will be no charge for updates of name change; motion seconded by Commissioner Hills; motion passes with five yes and one no vote by Commissioner Wood.

Commissioner DiChiara made a motion if you change legal name with TREC, but you wish to do business with your maiden name you must register DBA with TREC; motion seconded by Commissioner Hills; motion passes unanimously.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

Ms. Maxwell presented the following information to the Commission for review via the I-Pads:

This month we have very few statistics from where TREC switched data bases from a DOS system, which has been in operation since 1994, was closed down August 31, 2015. All 29 Regulatory Boards switched to a web based system, which went live on September 9, 2015. The new system that's web based is a great system that will do a lot of things, but as you can imagine there was a lot data that had to be transferred and migrated. While it was tested for 6 months and worked on for 2 years, when you go live, systems sometimes develop new twist and turns that were not evident during the testing. That's all to say that all Regulatory Boards were shut down resulting in their getting behind in processing applications, and in our case TREC 1 forms as well. There are still some problems caused from data in the old system which did not transfer over into the new system. There are still some difficulties with the CE recognition and with the E&O recognition, which were two extra programs that were written after the main part of the program. The CE and E&O were written specifically for our programs, because we do have a different set up in these areas than any of the other programs do. This is what programs are working through. Certainly, the system people are working very hard getting those problems worked out. Within the last two weeks, the administration has told us that if someone paid their renewal fees even though it's not showing on the system that we are ok to enter their information in the system and it is ok for them to go ahead to go to work if all other requirements for renewal have been met. The same applies to CE, if you have met all your CE requirements for renewal, and all renewal requirements it is ok to go to work. There is a check list which the computer controls and it won't let us status certain items out, so you won't show active on verify.tn.gov. Unfortunately, we are

downloading some of the CE manually trying to get it all entered and ensure it is in the correct window. We have not had that many people that we had to tell go on to work without being able to status them out in the system. This is something we are doing in an effort to make sure we get everybody back to work, or if they are an applicant that they can start to work. Hopefully the other problems will be worked out. You won't be able to go on verify.tn.gov if it's that situation where we just told you ourselves to go onto work it won't show up there for a while. The certificates, the paper license that you get are now being printed in house, but we are checking them to make sure that they are printing properly and match the name and data that we have. It will probably be 30 to 60 days before the paper licenses are generated. We see that licensee has all of their information and if someone has a question, they can call our office and we can verify that information for them these are some of the things we are trying to do to get it caught back up. We have other people helping us enter information. The call center staff is answering some of the questions; we get about 500 calls a day. We have a significant call volume; all those things are taking place. Hopefully next month we will be able to run some statistical reports. We were not able to generate any reports this month. Ultimately, we will be able to run some in the future that are much better and more accurate than they were before.

LICENSING STATISTICS

Ms. Maxwell presented exams statistics for the month of September 2015. There were 581 exams administered in month of September 2015. There were 488 exams given last year. There were 494 exams taken as for an Affiliate, 43 exams taken as a Broker, 39 Timeshare exams were taken, and 5 Acquisition exams were taken.

TREC EDUCATIONAL SEMINAR UPDATE

Upcoming Educational Seminar in October will be in East TN; the new rules will be incorporated into the Seminars.

Oct. 19, 2015 1PM-4pm

Knoxville Area Association of Realtors, (KAAR)
609 Weisgarber Road
Knoxville, TN 37919
Phone 865-584-8647(ext. 6)

Oct. 28, 2015 1PM-4PM

Greater Chattanooga Association of REALTORS, (GCAR)
2963 Amnicola Highway
Chattanooga, TN 37406
Phone 423-698-8004

Chairman Griess pointed out if you attend seminars you can pick up 3 hours of Continuing Education.

Fingerprints Updates

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 3,252 individuals fingerprinted, 598 had an indication, and 2,587 had no indication. In the month of September 2015 there were 53 indications, 247 no indication, 4 pending, 0 no reads
Total 313

LEGAL REPORT, MALLORIE KERBY, ASSISTANT GENERAL COUNSEL

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Kerby read it into the record: “Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.”

Attached to the end of these minutes is a copy of the legal report with all decision indicated.

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: MALLORIE KERBY, Assistant General Counsel
SUBJECT: OCTOBER LEGAL REPORT
DATE: OCTOBER 1, 2015

***Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.**

- 1. 2015008103**
Opened: 04/07/15
First License Obtained: 03/09/15
License Expiration: 03/08/17
E&O Expiration: 01/01/17
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

The following was presented in regard to all three Respondents at the August 2015 meeting:

Complainant states that Complainants submitted an offer on property via Respondent 1 (affiliate broker) on February 3, 2015. Complainant states that, immediately after Complainants submitted their offer, Respondent 1 told them there were multiple offers on the property. Complainants state that their agent asked Respondent 1 if they needed to submit a best and final offer and were told

by Respondent 1 that the bank (seller) would counter all offers. Complainants state that they tried to stay in touch with Respondent 1 to make sure they were given this opportunity were told on February 19 that they would have a reply soon. On February 25, Complainant and went to Respondents' firm to see what was going on because they had not heard anything regarding a counter offer. Complainant states that Complainant met with Respondent 3 (then unlicensed) who told Complainant that the offer was never submitted. Complainants' agent then submitted a new offer to Respondent 3. Complainants state that they were told by Respondent 2 (Principal Broker) the next day that the bank had countered the offer. Complainants state that they immediately accepted the offer and submitted the proper forms. Complainants state that they were sent separate disclosure and confidentiality forms from Respondent 3 on February 25 and 27 which they signed and returned. Respondent 3 then sent environmental reports to Complainants. Complainants state that on March 2, their agent contacted Respondent 3 asking for the final contract from the bank. Respondent 3 told Complainants that another bidder had come up in price and his offer was accepted. Complainants state this was nearing the end of their inspection period. Complainants state that they had a contract with the bank (seller) but that the bank then entered a contract with another buyer. Complainants also state that Respondent 3 negotiated pricing and other aspects of the transaction while unlicensed.

Respondent 3 states that Respondent 3 did nothing but disclose the status of a listed property and deliver documents, which is allowed under TREC laws. Respondent 3 states that Complainant came in on February 25 to discuss a contract for a listed property with Respondent 2. Respondent 3 states that Respondent 2 was at a conference but Respondent 3 was aware of the status of the property and informed Complainant. Respondent 3 states that Respondent 2 then spoke with the owners who decided that they would put the drafting of a contract with another buyer on hold to consider Complainant's offer. Respondent 2 then told Respondent 3 to send Complainant the confidentiality agreement and due diligence forms in case the bank went with Complainant's offer because the bank did not want to lose any more time. Respondent 3 states that, on the following work day, Respondent 2 told Respondent 3 that the seller has countered both parties and are waiting until the end of the week for responses. Respondent 3 let Complainant's agent know of the delay and gave him the lockbox code, which he had requested. On Thursday of that week, Respondent 2 notified Respondent 3 that the seller decided to go with the original buyer. Respondent 2 asked Respondent 3 to notify Complainant's agent since Respondent 2 was still out of town to which Complainant's agent wanted further explanation. Respondent 3 states that since Respondent 3 had not spoken with the owners, Complainant's agent would have to speak with Respondent 2 when he got back in town. They spoke the following week. Respondent 3 states that Respondent 3 had successfully completed the real estate courses and examination and was issued a license on March 8th.

Complainant provided nothing indicating any contact with Respondent 1 nor did Complainant produce any evidence of an offer submitted before February 25th. Email correspondence between the parties indicate that Complainant submitted an offer on February 25 via email to Respondents 2 and 3. In a previous email that day, Respondent 3 tells Complainant's agent that Respondent 2 will submit the offer to the owners. On the 27th, Complainant's agent returns the signed confidentiality agreement which provides that the form does not obligate the buyer or seller as to the purchase or sale of the property. Respondent 3 immediately replies with the due diligence documents. An email sent from Respondent 3 to Complainant's agent on March 2 states that, since the bank now has two offers on the table, they are giving the other buyer until the end of the week to go up in his offer. Email correspondence also indicates that the bank was drafting a contract for the original buyer when Complainant's offer was submitted but put it on hold to consider Complainant's offer. Email correspondence also shows Respondent 2 stating that Complainant is a legitimate buyer and that Respondent 2 will recommend Complainant's deal to

the seller on an upcoming conference call. Email shows that the other buyer increased his offer to Complainant's price and the seller chose the other buyer. There is no documentation or correspondence indicating that a counteroffer was made or accepted. The written offer submitted by Complainant on February 25 was unexecuted. There is no correspondence indicating that Respondent 3 negotiated any terms or did anything other than deliver documents and disclose the status of a listed property.

Recommendation: Dismiss as to all three Respondents.

DECISION: The Commission voted to refer the matter to Commissioner Hills for review as to all three respondents and to report at the next Commission meeting.

After re-presentation and discussion at the September meeting, the Commission adopted the following decision:

As to Respondent 3, Consent Order in the amount of \$1,000 for violation of T.C.A. § 62-13-301, plus attendance at one (1) entire regularly scheduled meeting of the Commission within 180 days of Respondent's execution of the Consent Order.

Respondent 3 has requested that legal counsel ask that the Commission remove the meeting requirement as Respondent 3 has recently graduated and is in the process of or has already moved to California and states that it will be very difficult to get back to Tennessee to attend a meeting. Respondent 3 states that Respondent 3 will no longer be in the real estate business upon transitioning to California.

Recommendation: Discuss.

Decision: There was no motion so the original decision stands.

Commissioner made a motion to put a flag on her license; if she comes back to state of TN she must attend one of TREC meetings in its entirety before she can reactivate her license an she must pay her Civil Penalty; motion seconded by Commissioner Wood; roll call vote Commissioner Blume No, Commissioner Taylor No, Chairman Griess No, Commissioner Hills Recues, Commissioner Wood No, Commissioner DiChiara No; motion fails; No additional motion made; original motion stands.

2. 2015017051

Opened: 8/21/15

History: No history of disciplinary action.

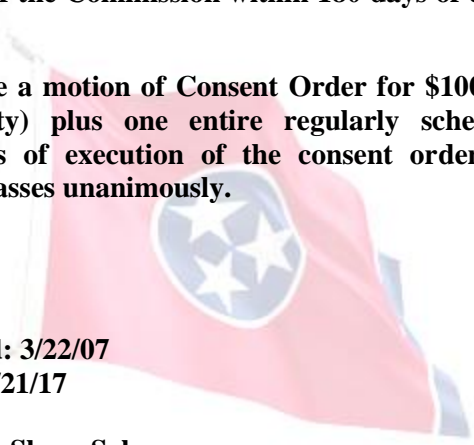
An anonymous complaint was filed against Respondent for potential unlicensed activity in property management. Respondent was surprised to receive the complaint from TREC stating that prior to opening Respondent's property management firm, Respondent called TREC to inquire regarding licensure. Respondent explained that Respondent would be collecting rent, posting payments, and requesting maintenance for individual homes and homeowner's associations but would not be involved in purchases or sales of any properties. Respondent states that the TREC staff member advised that Respondent would not need a license.

Office of legal counsel contacted Respondent with follow-up questions. Respondent states that the property management company is a sole proprietorship that manages some personal properties and apartments but mostly homeowners' associations. Respondent opened the firm in 2002 after inquiring with TREC as to whether licensure was needed. Respondent states that, for the homes and apartments managed, Respondent receives a percentage or flat fee in payment from the owners and signs the leases as agent for the landlord. Respondent states that Respondent has found a principal broker who is willing to take on Respondent's business until Respondent can get a broker's license. Respondent states that the principal broker has formed an LLC for Respondent's business, opened new bank accounts in the principal broker's name and is finalizing the transfer of all of the funds and clients this week (Monday). Respondent states Respondent is on track to finish real estate school on October 6th. Respondent will work as an employee of the principal broker until Respondent gets a license, then will work as an affiliate broker for 3 years until Respondent can get a broker's license. Respondent states that Respondent wants to do everything right and would have done it long ago if Respondent had known a license was needed.

Recommendation: Discuss.

Decision: \$1000 for violation of T.C.A. § 62-13-301 (unlicensed activity) plus one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order.

Commissioner DiChiara made a motion of Consent Order for \$1000 violation of T.C.A. § 62-13-301 (unlicensed activity) plus one entire regularly scheduled meeting of the Commission within 180 days of execution of the consent order, motion seconded by Commissioner Hills, motion passes unanimously.

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3. **2015015301**
Opened: 8/26/15
First License Obtained: 3/22/07
License Expiration: 3/21/17
E&O Expiration:
Type of License: Time Share Salesperson
History: No history of disciplinary action.

Complainants purchased a timeshare and state they were told many things with the contract that were not true. Complainant's state they tried to contact Respondent (sales representative) three (3) weeks after the purchase but were told Respondent no longer works for the company. Complainants state that Respondent never worked for the company. Complainants state that Respondent told them the 23,000 points they purchased could be rented out to make money. Complainants state that Respondent told them the points would get them five (5) weeks of vacation and if they rented three of them, they would recoup the investment within two (2) years. Complainants state that Respondent told them that if they booked less than 45 days out, the stay would be free- no points or cash. Complainants state they now have points they cannot use and want their money back and their contract voided.

Respondent states that Respondent's job was to do closings for all of the time share representatives which included going over the numbers, answering questions and filling out the paperwork. Respondent states that Respondent had Complainants initial every item on the disclosure form as he explained it. Respondent states that another sales rep actually went into the unit and gave the sales pitch and that Respondent was not involved until after that point.

Respondent states that Complainants have a choice at the beginning of the year whether to bank their points or use all their points for the one week at the resort that they purchased. If they choose to bank the points, they can get anywhere from one (1) to four (4) weeks depending on where they want to go and what time of year. Respondent states that if they book with 45 days or less, they can usually get it for less points but that Respondent never told them anything about staying for free. Respondent states that he never told Complainants they could rent out their unit and that Respondent 1 previously fired someone for telling customers they could.

Complainants signed a financial summary and final acknowledgement document that acknowledges that there are no promises, statements, representations or warranties pertaining to the purchase except those set out in writing. The document also states that the purchase was made for personal use and not for investment return or rental income but also that they have the right to do so as a fee simple interest holder. There is nothing in the agreement specifying how many weeks they of vacation Complainants' will receive, only the number of points. Complainants signed a form acknowledging that Respondent was representing the resort.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept legal recommendation to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.

4. 2015015341

Opened: 8/21/15

First License Obtained: 5/2/1991

License Expiration: 5/7/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 201502065—pending referral to legal

Respondent (Principal Broker for the timeshare salesperson above) states that Complainants chose to make a purchase during their stay at the resort in October of 2014 and that purchase included a membership in the points network. Respondent states that Complainant's claim that the sales representative (time share salesperson above) was never with the resort is untrue because he was employed at the resort at the time of the purchase. Respondent states that they do not encourage rental and the customer initials and signs two documents stating that their purchase is not an investment. However, an owner has the right to do what they wish with their timeshare. Respondent states that weeks in the point system start at 5500 points, so Complainants could potentially get multiple weeks out of their timeshare. Respondent states that access to lower point weeks is on a short notice basis and if they come back to the resort to use the unit they purchased, the stay is free. Respondent states that the corporate office made multiple attempts to contact Complainants after receiving their cancellation letter but Complainants have made no attempt to respond to any calls. Respondent states that there is no basis for any of Complainants' claims and that if Complainants' are having trouble using their purchase, they will be more than happy to work with Complainants to understand how to get the most out of their purchase.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.

5. **2015015291**
Opened: 9/1/15
First License Obtained: 4/3/14
License Expiration: 4/2/16
Type of License: Time Share Registration
History: No history of disciplinary action.

This respondent is the time share firm in the above Complaint. It was opened by TREC staff in error as the “failure to supervise” complaint was already opened against the principal broker.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

6. **2015016721**
Opened: 8/26/15
First License Obtained: 2/15/06
License Expiration: 6/13/16
E&O Expiration: 1/1/17
Type of License: Broker
History: No history of disciplinary action.

7. **2015016722**
Opened: 8/26/15
First License Obtained: 4/5/02
License Expiration: 12/21/15
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No history of disciplinary action.

8. **2015016751**
Opened: 8/26/15
First License Obtained: 3/9/87
License Expiration: 12/10/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2014016111--\$1,000 Consent Order for Rule 1260-02-.12

9. **2015016752**
Opened: 8/26/15
First License Obtained: 4/15/02
License Expiration: 6/30/17
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No history of disciplinary action.

A complaint was filed by a seller against Respondent 2 (seller's agent) and Respondent 1 (buyer's agent). Complainant entered into a binding purchase and sale agreement with buyers but eventually elected to cancel the agreement. Complainant contacted Respondent 2 to receive the binding contract and states that a page was missing out of the contract, which included the notice requirements for cancellation. Complainant alleges that this page was intentionally removed from the contract by Respondents 1 and 2. Complainant states that the binding contract with the missing page was scanned by Respondent 2, forwarded to Respondent 1 and also forwarded to Complainant's bankruptcy attorney. Complainant further states that Respondent 2 failed to provide a copy of the contract until later requested when the buyer's filed suit against Complainant. Complainant states that Complainant proceeded to cancel the contract as any business contract would be canceled—by certified mail. Complainant mailed and postmarked the cancellation on February 28th and left a message at Respondent 2's firm on the morning of March 1. Complainant states that, if Complainant had been provided documentation with procedures for cancellation, those procedures would have been followed. Complainant was sued by the buyers and the buyers were awarded expenses in the amount of \$4,000. Complainant states they were bombarded with endless paperwork from the buyers' attorney and unwarranted harassment.

Respondent 1 represented the buyers in the contract and states that all communication was done through Respondent 2 (Complainant's agent). Respondent 1 states that after the binding contract, Respondent 2 advised the sellers that Complainant did not want to proceed with closing. Respondent 1 states that the buyers elected to seek legal counsel, the matter proceeded to court, and the court determined that the Purchase and Sale Agreement was valid, and closing was to proceed. Respondent 1 further states that a bankruptcy action was filed, and the Bankruptcy Court determined that the sale should continue. All parties closed on the property.

Respondent 2 states that the Complainant was ordered by Bankruptcy court to sell the property. Respondent 2 states that the buyers' first offer was reviewed with Complainant on 11/11/13, at which time Complainant did not sign the offer. The buyers submitted a second offer on 11/21/13 which was reviewed with Complainant, who countered the offer to include the same terms but allowed both parties to maintain the right to cancel the offer prior to 3/1/14. The binding agreement date was 12/17/13. Respondent 2 states that receptionist notified Respondent 2 (3/3/14, Monday) of a voicemail left by Complainant on 3/1/14 (Saturday) stating "something about backing out of a deal." Respondent 2 called Complainant who advised that there was another buyer. Respondent 2 advised Complainant that the time limit had expired. Respondent 2 further states that Respondent 2 received the certified mail letter at the office on March 3 or 4. Respondent 2 called Respondent 1 to state that Complainant withdrew the offer, but buyers wanted to move forward because it had been withdrawn after the deadline. Respondent 2 states that it was explained to Complainant that notices are only viable once all parties have been notified, regardless of when it was mailed, and that voicemails are not considered notice at all. Respondent 2 states that Complainant always communicated by text or by calling Respondent 2' cell phone. and states that it seemed highly suspect that Complainant chose to convey an important message via mail and calling the firm office on the weekend when the firm office is closed. Respondent 2 states that Complainant's bankruptcy attorney advised that it was necessary for the Complainant to sell the home. Respondent 2 feels used in a deceptive way to make it appear that Complainant was trying to sell the home but had no intention to do so. Respondent 2 is sorry for Complainant's situation but feels that it is unfair to blame Complainant 2 for the situation. Respondent 2 is still uncertain as to how page 7 of the binding agreement came to be missing on the second offer because it was included on the first offer. Respondent 2 states Complainant was sent copies of both offers via the electronic signature system and had full access and opportunity to read both offers thoroughly. Respondent 2 states, in order for Complainant's argument to be valid, both Respondents 1 and 2 would have had to been able to predict that

Complainant would cancel the contract by sending mail the day of the deadline and by calling the firm office on a day that it is closed, which is impossible.

Office of legal counsel reviewed the documentation provided, and it appears that the binding agreement was on a TAR Purchase and Sale Agreement form, which states that all notices should be in writing and delivered either in person, by overnight delivery, fax, certified mail, or email. "NOTICE shall be deemed to have been given as of the date and time it is actually received..." Counter Offer # 1, which became a binding agreement on 12/17/13, states that, "Buyers reserves the right to withdraw the contract prior to March 1, 2014." An Order Authorizing Sale Free and Clear was entered in Bankruptcy Court on 3/10/14, which ordered that the sale of the property may proceed under the terms and conditions of the notice of sale. The phone records were provided, in which Complainant called Respondent 2's office on 3/1/14 at 8:11 AM. An email from Complainant (wife) to Respondent 1 (buyer's agent) begs for Respondent 2 to not file suit and to allow them to stay in their house because it would be devastating to their marriage and their daughter to lose their home. She also lists several reasons why the buyers should not want to buy the house.

TREC opened a complaint against Respondent 3, who is Respondent 2's principal broker. Respondent 3 states that Complainant never contacted Respondent 3 regarding any concerns with the contract.

TREC opened a complaint against Respondent 4, who is Respondent 1's principal broker. Respondent 4 states that the buyers made a decision to seek legal counsel when the sellers decided not to sell the property. Respondent 4 states that the Bankruptcy Court required the sellers to proceed with the closing in an order issued on May 27, 2014.

Recommendation: Dismiss all Respondents.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss all Respondents; motion seconded by Commissioner Hills; motion passes unanimously.

10. 2015017161

Opened: 8/16/15

First License Obtained: 12/2/85

License Expiration: 4/9/17

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

A complaint was filed by a tenant, who rented a property through Respondent's property management company. The lease began in April of 2015 for a year term. Complainant, through a series of journal entries, states that Complainant contacted the property management company and the company refused to bring the landscaping up to neighborhood standards, costing Complainant \$200. Complainant states that Complainant had no hot water multiple times and called the gas company who put a red tag on the hot water heater. Complainant states that Respondent came onto the property without calling and without getting permission, came into the garage and started to run out with the red tag. Complainant states that Respondent entered the property again without her permission and knows this because the front and back doors were unlocked. Complainant called the police who advised Complainant to change the locks.

Complainant states that Respondent was unlicensed (at the time) and was entering the property and collecting rent. Complainant states Respondent gave a plumbing company a key to the house and that the plumber entered the house without Complainant's permission and without announcing himself. Complainant states that it is a problem that Respondent's company no longer has a website and that Respondent had the rent checks sent to Respondent's home address. Complainant states that Complainant has been scammed because Complainant found the property on Zillow. Complainant states that there is a mold and algae issue and that Complainant has been forced to close off part of the house because Respondent has not removed the mold and Complainant is severely allergic to mold. Complainant states that Respondent told Complainant to get a lawyer because of Respondent's insistence on getting the mold problem resolved. Complainant states that Complainant had tainted water for 3 weeks until the hot water heater was switched out. Complainant states that the debris compromised the whole house and all of the pipes. Complainant states that a company was called out due to leaking pipes and advised that the pipes are likely tainted because the house has been vacant and uncared for over a year. Complainant states that there was a problem with the HVAC which would cause a burden on her electrical bill. Complainant states there was horrible smell which forced Complainant to pay for a carpet cleaning service. Complainant claims the house could be condemned.

Respondent states that, upon mailing a check to renew his 2015 broker license, Respondent found out that privilege tax was past due. Respondent went to the Dept. of Revenue, paid all privilege tax owed and received a letter of good standing from the department. Respondent decided to remove the company website and instead use Zillow in order to cut costs for his small company. Respondent states that his office is in his home and that all documentation pertaining to his firm office being at home are on file with TREC. Respondent states that Complainant contacted the owners several times and they refused to speak to Complainant and that the neighbors have contacted the owners several times about Complainant harassing them. Respondent states that Respondent looked at the bathroom wall where Complainant thought there was mold and Respondent found no mold there or on the tub. Respondent states that it was a poor drywall finishing job and told Complainant they would be happy to repair it. Respondent states that this repair did not happen because Complainant started throwing temper fits and was unsafe to be around. Respondent states that he never told Complainant to get a lawyer regarding this issue. Respondent states that there was no mold in the carpets or anywhere else and that the carpets had been cleaned before Complainant moved in. Respondent states that a couple of minor mold spots in the insulation under the house were treated with bleach. Respondent states that Respondent did agree to have the water tested and it was found to be safe and that Complainant had the city water department test it again, confirming the water is safe and met federal guidelines. Respondent states that the house has not been empty for over a year as Complainant claims and that the house was previously occupied by tenants. Respondent states that the HVAC was serviced before Complainant moved in and was working perfectly. Respondent states he never received a service request from Complainant regarding the HVAC. Respondent does not know where Complainant came up with the claim that he entered the house without her being there and there is no way Respondent would enter the house without Complainant being there and only then with a witness. Respondent states that the pilot light on the hot water heater had to be relit on two occasions and it appeared that someone had been resetting the controls. After the gas company inspected the unit and found a small leak, Complainant called Respondent who told Complainant he would be there ASAP. Respondent states that Respondent went straight to the hot water heater in the garage and removed the tag to take it out into the light to read because it was poorly lit in the area. Respondent states Complainant began screaming and cursing at Respondent and threatening to call the police so Respondent left. The next day, Respondent called a plumbing company to check the hot water heater and to fix it. Respondent gave the plumbing company Complainant's number and they were not able to reach her after several attempts. Respondent states the plumbers

were in the area and went by to see if they could catch Complainant at home. Complainant went into a rage and ran them off. Respondent states the plumbers were never given a key to the house as Complainant claims. Respondent states that there was no way Respondent ran from the garage as Complainant claims because Respondent is 76 years old and scheduled for back surgery. Respondent states that Complainant sent a letter on May 22, 2015 stating she will vacate the property as soon as possible. Respondent accepted this as Complainant's thirty (30) day notice as stated in her lease and sent confirmation by certified mail on May 27, 2015 which Complainant chose not to accept. Respondent states that Complainant would not communicate with Respondent's attorney or anyone from the property management firm. Respondent states that when he went to the house to see if Complainant was still there, a notice was posted on the door stating that a stalker named [Respondent's name] keeps coming onto the property and describes some of her allegations. Respondent states that he is a grandfather with a wonderful family and is definitely not a stalker. Respondent states that none of Complainant's allegations are true and that his attorney contacted the police officer Complainant spoke to who told him there was nothing to her claims. Respondent states that Complainant has not been able to find an attorney to represent her.

A lease agreement from the prior tenants show that the property was not vacant for over a year as Complainant alleges. A copy of Complainant's letter stating she will be vacating the property and Respondent's response confirming Complainant's 30 day notice was provided. The letter from Respondent also requests that Complainant stop harassing the neighbors. A letter from an attorney was provided which informs Complainant that the attorney will not be taking Complainant's case. Nothing provided by Complainant, including photographs, substantiates Complainant's claims. At the end of July, 2015, the General Sessions court awarded possession of the property to the owner as well as \$4,000 in rent.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Wood; motion passes unanimously.

11. 2015017511

Opened: 8/26/15

First License Obtained: 12/21/95

License Expiration: 1/5/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant states that Complainant has called Respondent (listing agent) over a dozen times in order to put an offer on a property and has not gotten a return call. Complainant's agent states that she was finally able to get a hold of Respondent, Respondent was very helpful and professional. Respondent apparently had a family tragedy.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner Hills made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Wood; motion passes unanimously.

- 12. 2015017521**
Opened: 8/21/15
First License Obtained: 4/5/94
License Expiration: 7/31/17
E&O Expiration: 7/31/17
Type of License: Affiliate Broker
History: No history of disciplinary action.
- 13. 2015018221**
Opened: 9/1/15
First License Obtained: 5/3/89
License Expiration: 8/30/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: No history of disciplinary action.

Complainant states that Complainant purchased two buildable lots from Respondent 1 in 2006 with the intent of combining the lots and building a home on them. Complainant became ill in 2007 and decided to sell and change their plans. Complainants put the lots up for sale with the same firm from which they had bought the lots. In 2014, Complainant changed agencies and still had no luck selling the lots. Complainant states that, about a year ago, Complainant found out that those lots were previously filled with unbuildable fill and was told by the state and a soil scientist that they were not buildable. Complainant states that Respondent 1 has not been cooperative about the matter and no attorney in town will take a case against Respondent 1 because Respondent 1 owns most of the town. Complainant feels that Complainant was cheated, discriminated against, and taken advantage of.

Respondent 1 states Respondent 1 was the listing agent for the property when the lots were developed. Respondent 1 states that Respondent 1 never had any direct communication with Complainant prior to or during the sales process because Complainant worked with another agent for their purchase. Respondent 1 states that she spoke to Complainant in 2014 who said that the Complainant was told by the state of TN that they could not get a septic system on the lots. Respondent 1 explained to Complainant that the state is in control of the approval process for septics. Respondent1 asked Complainant if Complainant had gone to the State Health and Groundwater Protection Office prior to or during the purchase of the lots and she stated she had not. Respondent 1 called the State Health and Groundwater Protection Office and the representative stated that Complainant needs a high intensity soil map done of the lots but that he had not told Complainant that they were unbuildable. Respondent 1 states she called the agent Complainant worked with when Complainant purchased the lots and that agent stated she told Complainant about the fill and gave her a copy of the restrictions at the time of the sale. Respondent 1 again spoke to Complainant and explained that the state has a right to disallow a lot in the future, place tighter restrictions or require additional testing and that the state regularly updates and changes evaluation standards. Respondent 1 explained the state's approval process and that the developer cannot present a plat for final approval if the Groundwater Protection Office does not approve the lots and sign the final plat. Respondent 1's firm was the developer on this plat and all of the proper signatures were obtained prior to the sale. Respondent 1 states that

soil conditions change over time, there has since been a subdivision built above this one, and the lots lay below the adjoining subdivision as well which can result in sediment run-off. There have also been heavy rains in the last decade which could alter groundwater conditions. All of these things could possibly contribute to the State approving or disapproving a septic system for the lot. Respondent 1 states that, after sharing this with Complainant, Complainant just wanted to know who Complainant could sue. Respondent 1 states that the filling of the back of the lots was done under the supervision of the State Groundwater Protection Office. Respondent 1 states that the state required some of the other purchasers of the lots in the development to do high intensity soil maps and, subsequently, issued septic permits.

Respondent 2 (Principal Broker) states that, other than the surveyor who prepares the plat, the representative from the State Environmental Field Office is the first person to sign. The plat for Complainant's lots was signed by the State representative and a representative from the local electric co-op in October of 2005. The remaining signatures were obtained in June of 2006 after all of the improvements were complete. Respondent 2 states that the plat and MLS printout clearly state that the lots were approved for a three (3) bedroom septic system at the time the property was sold. The plat was recorded in the county courthouse and available for Complainants to review. Respondent 2 states that Complainant did not work with Respondent 1 and 2 when they purchased the lots but worked with an agent from another firm who was responsible for assisting the buyers with due diligence. Respondent 2 states that Complainant has been trying to sell the lots for over a year now and that the listing states "the soil originally perked for a three bedroom dwelling, but will have to be re-tested before a building permit will be issued." The listing also says that it is a perfect site to build your home and does not mention that the lots are unbuildable. Respondent 2 states that Respondent 1 has done nothing wrong and that Respondent 2 supervised Respondent 1 properly. Respondent 2 states that they cannot be responsible for system requirement changes since the sale of the lots to Complainants.

The plat from 2005 does state that the lots are approved for installation and duplication of conventional subsurface sewage disposal system and is signed by the environmental specialist from the Division of Ground Water Protection. There is an unsigned letter from a TDEC soil consultant recommending a high intensity soil map.

Recommendation: Dismiss as to both Respondents.

Decision: The Commission voted to adopt the recommendation of legal counsel.

Commissioner Hills made a motion to accept legal counsel recommendations to dismiss both respondents; motion seconded by Commissioner DiChiara; motion passes unanimously.

14. 2015017531

Opened: 9/1/15

First License Obtained: 4/13/87

License Expiration: 3/19/17

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

A complaint was filed against Respondent (Broker) by tenants of a property that Respondent managed. Complainants state that Respondent assured them that the property owner would extend their lease on a month to month basis after the lease expired. Complainants allege that Respondent never communicated their request to the property owner, and Complainants were

expected to move out upon expiration of the lease—even though their new home was neither fully repaired nor habitable at the time. Complainants allege that Respondent misrepresented the property owner and made a commitment without authority. Complainants would not have signed the lease and moved in if staying month to month after the lease term was not an option.

Respondent filed a response stating that if Complainants had accepted the property owner's offer to extend the lease for six (6) months, there would not have been a complaint. Respondent states that, at the time of lease signing, Complainants did not know when they were going to purchase a new home or how long it would take for the new property to be habitable. Respondent states that Complainants have rental properties of their own and are fully aware of the terms of a lease contract. Respondent states that Complainants corresponded via email regarding a month to month clause, and Complainants could have put it in their lease at the time if it was important to them. Respondent states that the property owner self-manages tenants, and Respondent only procures those tenants. Respondent states that Respondent has no knowledge of or authority to extend or modify terms of the original lease unless notified by the property owner. Respondent is empathetic for Complainants but believes Respondent fairly represented the rental to the property owner.

Respondent provided the executed lease agreement and emails between Respondent and Complainants. In July 2014, Complainants asked if they could adjust the notice and holdover language to be month to month after the first year. Respondent replied stating, “[Owner] will happily accommodate you for however many months you need after the term of the lease...[Owner] fully intends not to go month-to-month indefinitely for a very good reason in that she doesn't want to end up trying to go through this process in the middle of a busy holiday season...” In June 2015, Complainants email requesting resolution and clarity regarding Respondents statements in July 2014. The owner replied to a June 2015 email stating that Complainants could renew from August 1, 2015 through March 31, 2016. It does not appear that the language in the lease regarding notice and holdover were changed when executed by Complainants on 7/24/14. In a response from Respondent to a Consumer Affairs complaint by the Complainants, Respondent states that Respondent and Respondent's principal broker have worked with the owner for the better part of six years and neither had a clue that the owner would take this firm of an approach regarding the extension.

Recommendation: Consent Order for \$500 for failure to diligently exercise reasonable skill and care in violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Decision: Consent Order for \$1000 for failure to diligently exercise reasonable skill and care in violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Commissioner DiChiara made a motion to accept counsel recommendation of a Consent Order for \$500 for failure to diligently exercise reasonable skill and care in violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; motion was seconded by Commissioner Hills; Commissioner Blume made a substitute motion of Consent Order for \$1000 for failure to diligently exercise reasonable skill and care in violation of T.C.A. § 62-13-403(1) and § 62-

13-312(b)(14), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner DiChiara; motion passes unanimously.

15. 2015017551

Opened: 9/1/15

First License Obtained: 8/16/06

License Expiration: 3/28/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant states that Complainant three times requested a withdrawal form from Respondent for properties Complainant and Complainant's wife have listed with Respondent's company. Complainant states that, upon the third request, Respondent told Complainant that Respondent had looked in Complainant's files and there were no contracts. Complainant states that Respondent made every excuse for not sending a withdrawal form and Complainant advised Respondent that he would make a complaint with TREC. Respondent stated that he would have to talk to the agent who had Complainant's listing. Complainant states that Respondent is interfering with Complainant's right to relist his property and Respondent acted in an unprofessional manner. Complainant states that Complainant does not have copies of the contracts and that when Complainant contacted the agents taking care of the properties, they stated they had been locked out of the computer system at the firm and could not provide copies.

Respondent states that on May 29, 2015, the owner and manager of the firm decided to release the principal broker of one of the branch locations because of lack of documentation and record keeping of contracts and offers. Respondent (Principal broker at a different branch location) states that, within an hour of being informed of the other principal broker's release, the office began receiving requests for mutual release forms so that the client could re-list with the released principal broker. Respondent was asked by the owner to assist with the transition, including dealing with the requests for release, because the owner was going to be out for a couple of weeks for medical reasons. They decided that anyone who requested a release would be given one because it made long-term business sense. Respondent states that many of the documents were missing from the files and the clients indicated that they were never given copies of the documents they signed. Respondent states that this was unacceptable because the company had adopted Dotloop to ensure that clients received and could save signed copies. Respondent states that Respondent spoke to Complainant via phone on June 14 and Complainant indicated that Complainant had sent an email several days prior. Upon further search, Respondent found the email in the spam folder. Respondent states that Respondent told Complainant that Respondent would send the mutual release forms, which Respondent was under no obligation to do. When Complainant called again a couple of days later, Respondent told Complainant that the previous agent failed to keep adequate records for his properties, including listing agreements, so Respondent had to search several different avenues to be sure they had the correct dates and descriptions. Respondent asked Complainant to send copies of the listing agreement but Complainant did not have copies. Respondent states that Complainant became confrontational and told him that it did not matter what information Respondent did not have but that Respondent needed to get Complainant the forms or Complainant would file a complaint with TREC. Respondent states that Respondent then told Complainant that Respondent would get Complainant the forms as soon as Respondent had the information reconstructed and, in the interim, his property remained active and an offer or interest would still be in the benefit of the previous agent. Respondent then contacted the previous agent who said she did not have any of

the files or documents but they should be on Dotloop or in the office. Respondent then went back to the other office and looked on Dotloop and in the physical files a second time and found nothing. Respondent then contacted the local Association of Realtors who assisted Respondent in constructing a timeline for the properties. Respondent prepared the Mutual Release forms for the clients and sent them to Complainant on June 24th.

Respondent included the signed Mutual Release forms as well as statements from the firm owner and the owner's assistant stating that the owner had to take over as principal broker and make changes in the office because it was not being run properly by the principal broker. The owner states that they sent out letters to as many of the clients as they could find contact information for and two of the three letters sent to Complainant came back as incorrect addresses. The owner states that Complainant told the owner Complainant wanted the listing removed and the owner then referred it to Respondent to handle because the owner was going out for surgery.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel and voted to open a complaint against the principal broker who was released.

Commissioner Blume made a motion to accept legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously. Commissioner Blume made a motion to for the staff to open a complaint against the principal broker who was released; motion seconded by Commissioner DiChiara; motion passes unanimously.

16. 2015017581

Opened: 9/1/15

First License Obtained: 4/19/93

License Expiration: 7/9/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 200706580—\$100 Agreed Citation (Advertising)

Complainant states that Complainant hired Respondent's firm to manage Complainant's property. Complainant states that the latest tenant has not paid rent since January of this year and the manager took no action for eviction until April. Complainant states the tenant filed bankruptcy in March and Complainant has not heard from the manager since. Complainant states Complainant has retained a real estate attorney to file a motion in court. Complainant feels that the manager did little to collect back rent or make any attempts to collect rent until April.

Respondent (principal broker) states that the eviction and collection attempts did not occur sooner than they did because the owner elected to allow the tenant additional time to pay the rent, as the tenant was waiting on an income tax refund. Respondent states that the agent spoke to the tenant numerous times about paying rent. Once the rent payments did not materialize, the agent contracted with a collection firm (March 16, 2015) but those efforts were thwarted when the tenant filed for bankruptcy. Respondent states that the agent and the firm have been very cooperative and supportive in helping the owner's evict the tenant and regain possession of the property. Respondent states that the collections firm attorney filed for a Forcible Entry and Detainer in the General Sessions Court. The tenant filed for bankruptcy on or about March 31, 2015. The judge entered an order to allow the tenant to stay if the tenant complied with certain conditions. The tenant violated the order and the case was set for trial on July 2. The tenant did not show up for trial so a default judgment was entered to which the tenant appealed.

A statement from the agent who managed the property states that the tenant failed to pay rent in January of 2015 and advised that the tenant would be receiving an income tax return and would then get current on rent. The agent states the agent discussed with the owners who decided to give the tenant until the end of February before initiating further efforts. The agent states that the agent stayed in communication with Complainant throughout the entire time. The agent initiated collection on March 16. Text messages between tenant and the agent indicate that the agent made several attempts beginning January 15 through the end of February to collect the rent. The agreement between the agent and the collection agency was submitted and shows that it was signed on March 16. There is nothing in the property management agreement setting forth procedure for default on rent or eviction. It appears that the agent made efforts to collect the rent for over a month and contracted a collection agency when those efforts failed. All further proceedings have been in the hands of the bankruptcy court. From the General Session court documents, it appears that the case was remanded back to General Sessions, a writ of possession was served and possession was given on 9/1/15.

Recommendation: Dismiss.

Decision: The Commission voted to adopt the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept legal counsel recommendation to dismiss; motion seconded by Commissioner Taylor; motion passes unanimously.

17. 2015017591

Opened: 9/1/15

First License Obtained: 1/16/15

License Expiration: 1/15/17

E&O Expiration: 12/03/15

Type of License: Principal Broker

History: No history of disciplinary action.

Complainant states that Respondent has as principal broker's license in Tennessee but is submitting offers through Respondent's firm's office in Arizona. Complainant states that Respondent's assistants are practicing real estate in Tennessee from the Arizona office. Complainant submitted an email from a person at the Arizona branch of Respondent's firm introducing themselves as a property acquisition assistant and stating that the buyer Respondent represents wants to make a cash offer on Respondent's Tennessee property. The email has the offer and the proof of funds attached. The email states to direct all questions to Respondent. Another email is from a different person at the Arizona branch stating that the buyers would like to raise their offer to \$124,500 and to let them know if Complainant's client could work with that amount. That person's email signature also states "property acquisition assistant".

Respondent did not submit a response. It is legal counsel's opinion that the first individual was only delivering documents because the individual refers to Respondent as the person representing the buyer. It also instructs that any questions should go to Respondent. The other individual, on the other hand, appears to be making an offer on behalf of the client with no reference to the Respondent other than the email signature.

Recommendation: \$500 for violation of T.C.A § 62-13-302(a) (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), (14), \$500 for violation of T.C.A § 62-13-313(a)(2) failure to respond, and attendance at one (1) entire

regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order.

Decision: \$1,000 for violation of T.C.A § 62-13-302(a) (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), (14), \$1,000 for violation of T.C.A § 62-13-313(a)(2) failure to respond, and attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order.

Commissioner Blume made a motion to accept counsel recommendation with the following changes \$500 to \$1000 Consent Order for violation of T.C.A § 62-13-302(a) (it is unlawful for any licensed broker to employ or compensate any person who is not a licensed broker or a licensed affiliate broker for performing any of the acts regulated by this chapter...), (14), \$1,000 for violation of T.C.A § 62-13-313(a)(2) failure to respond, and attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order; motion seconded by Commissioner DiChiara; motion passes unanimously.

18. 2015017751

Opened: 9/1/15

First License Obtained: 8/26/13

License Expiration: 8/25/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

***Expired license in Grace Period**

Complainant states that Complainant requested a copy of the management agreement on 4/14/15 and received a copy on 4/27/15. Complainant agreed not to re-key the property and had keys made and dropped off for retrieval by Respondent. Complainant states that Complainant agreed to have the property painted, parquet floors installed, leaves blown from the gutters and the grass cut. The next day, Respondent received a message from someone advising Complainant not to sign with Respondent's firm because they had ruined the person's property. The same day, Complainant states that Complainant informed Respondent that Respondent would not be signing the agreement and the deal was off. Complainant states that Respondent told Complainant the work had been done already. Complainant sent someone to the property who informed Complainant that the work had not been done, the locks had been changed and a sofa had been stolen from the property. Complainant states that Respondent sent Complainant a message stating that whoever brings the check will receive the keys.

Respondent states that Complainant instructed them to retrieve a set of keys at the base of the tree in the front yard of the home. The property manager and leasing agent walked through the home and discussed with Complainants the work they felt needed to be done to rent the property for the maximum amount based on comps in the area. This included an interior paint job, sanding and staining the hardwoods, cleaning, and lawn care. Respondent states that Respondent did not give concrete quotes but told Complainant that the paint would run \$300-\$400, and hardwoods would run \$200-\$300. Respondent states that the make-ready crew removed an old couch from the house because of an abundance of dead roaches. Respondent states that Respondent immediately got the crew working on the house as soon as Complainant agreed to the work. Respondent states that there were multiple keys for each unit (duplex) and some of the locks did not work so Respondent instructed the locksmith to change it so there was one key for each unit and that all

locks worked properly at no cost to the owner. Respondent states that their efforts were in the best interest of the owner because there were already inquiries on both units and they would have been rented in 5 days. Respondent then discussed the management agreement with Complainant and made it clear that it needed to be signed. A few days later, Respondent received an email from Complainant stating that all work needed to be stopped because the agreement was not going to be signed. Respondent states that Respondent then told Complainant that all of the work had been done already and the new keys were where there original keys were located. Over a week later, Complainant nor Complainant's representative had been to view the property. Respondent states that the bill was sent to Complainant but, after several attempts, Respondent instructed the bookkeeper to write off the charges. Respondent states that the firm no longer performs work without a signed agreement. Respondent feels like the firm went above and beyond for Complainant and is saddened that Complainant is not satisfied with the services.

Respondent included an unexecuted property management agreement as well as a work order log from the properties. The paint work done on the order totals more than \$1000. While the quote appears to be quite a ways off from the actual cost, Complainant had not actually signed an agreement with Respondent and, subsequently, Respondent did not charge Complainant in the end. No documentation was provided to verify any previous conversations between Complainant and Respondent regarding the locks being changed, the other costs or the sofa.

Recommendation: Dismiss.

Decision: The Commission voted to adopt the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept recommendation of legal counsel; motion seconded by Commissioner Wood; Commissioner Blume made substitute motion of \$1000 Consent Order for T.C.A. § 62-13-403(1) and attend failure to respond, and attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of execution of the consent order; motion seconded by Commissioner Taylor; Roll call vote: Chairman Griess Yes, Commissioner DiChiara No, Commissioner Hills, No, Commissioner Wood No, Commissioner Blume Yes, Commissioner Taylor Yes; motion fails; original motion passes

**19. 2015018321
Opened: 9/1/15
First License Obtained: 3/25/86
License Expiration: 11/5/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2015018322 Under legal review (below).**

Respondent is Principal Broker for the above affiliate broker (complaint number 2015017751 above). Respondent states that Respondent had no knowledge of incident until several days later. Respondent states Respondent told the affiliate broker that they must have a management agreement signed prior to doing any work on the properties. It was decided that the firm would not file a lien against the property for unpaid bills. Respondent states that the firm has absorbed all of the costs involved in this incident and Complainant has received \$1141.81 worth of improvements at no cost.

Recommendation: Dismiss.

Decision: The Commission voted to adopt the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.

20. 2015018322
Opened: 9/1/15
First License Obtained: 3/25/86
License Expiration: 11/5/16
E&O Expiration: 1/1/17
Type of License: Principal Broker
History: 2015018321 Under legal review (above).

This matter is the same as case number 2015018321 above and was opened in error.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.

21. 2015018441
Opened: 9/11/15
First License Obtained: 8/27/12
License Expiration: 8/26/16
E&O Expiration: 1/1/17
Type of License: Affiliate Broker
History: No history of disciplinary action.

Complainant states that Respondent showed Complainant's home to prospective buyers who entered Complainant's wife's closet and frantically went through her personal Louis Vuitton boxes. Complainant had a video camera installed in the closet which captured her going through the boxes and contains the woman's voice as well as two men's voices. Complainant states that one of the voices is the Respondent. Complainant states that the woman on the video states loudly that she went through the boxes and, on the video, Respondent does not reprimand the woman or tell her not to do so. Complainant states that he and his wife feel violated and that Respondent brought people into their home who did not protect or respect their things. Respondent states that this is the only evidence they have because they only put a camera in the closet because it contained their most valuable items and they are unsure if anything from the home is missing. Complainants filed a police report. Complainant states that when the sheriff's office spoke with Respondent, Respondent would not provide the names of the buyers. Complainant states that the principal broker (below) will also not reveal the names of the buyers and will not cooperate with the police investigation. Complainant states that the buyers are Respondents' personal friends. Complainant states that Respondent should have made the buyers leave after knowing they went through their personal items.

Respondent states that Respondent had shown the home before and knew the layout of the property and that Respondent and the husband went into the master bath after measuring the bedroom. The master closet and the shower are on opposite sides of the bathroom. The shower wraps around a corner and Respondent walked around the corner to show the extra space. Respondent states that the husband went to look at the master closet on the other side which is why his voice is heard saying something to the wife. Respondent states Respondent didn't hear the wife say anything about looking in the boxes because Respondent was walking into the

shower and asking them to “check it out”. Respondent states Respondent was not aware of what happened until Respondent received a call from Complainant. Respondent, at Complainant’s request, went to the home and viewed the video. Respondent states that it is very clear that the male voice is the husband’s and not the Respondent’s and that you can faintly hear Respondent’s voice in the background asking them to come check out the shower. Respondent states that the wife made a mistake out of curiosity and Respondent does not believe there was any malicious intent. Respondent states that the detective wanted the buyers’ names and numbers and wanted to surprise them and try to catch them in a lie. Respondent states Respondent and principal broker agreed that the clients had a right to know the detective would be calling them. The clients’ (buyers) attorney contacted the detective and, after reviewing the case, the detective decided not to pursue any action against the buyers. Respondent states that, in hindsight, Respondent should have warned the clients that they must respect the seller’s property and allow privacy with their personal belongings and now does this for all buyers.

There was nothing submitted to indicate that Respondent knew behavior was going to take place or knew did take place until after Respondent met with Complainant after it took place.

Recommendation: Dismiss.

Decision: The Commission voted to adopt the recommendation of legal counsel.

Commissioner Hills made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Wood; motion passes unanimously.

22. 2015018451

Opened: 9/17/15

First License Obtained: 2/16/94

License Expiration: 5/22/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint against Respondent (principal broker) for failure to supervise Affiliate Broker in previous case number 2015018441 above.

Respondent states that Respondent has never been contacted by any means or method by any law enforcement officer regarding this matter. Respondent states that Respondent received a call from Complainant on July 9, 2015 informing Respondent of what happened and Respondent agreed to drive out and meet Complainant. Respondent agrees that the buyers’ actions were totally inappropriate but that the affiliate broker’s voice was the faintest in the video and there is no evidence that the affiliate broker did anything inappropriate. Respondent states that, from looking at the layout of the room, it would be impossible to be looking at the shower and the closet at the same time. Respondent agrees that the buyer was out of line. Respondent states that Respondent and the leadership team reviewed the video and went over the events with the affiliate broker, they saw no reason to discipline him but expressed the importance of keeping prospective buyers together and giving them explicit instructions. Respondent states that Respondent, before this event and currently, instructs agents on these sorts of topics and now emphasizes giving proper instruction to prospective buyers on proper behavior and respect. Respondent states that Respondent is a full time managing broker who does not list and sell but trains and coaches agents full time. Respondent states that, in not providing the names of the buyers, they were not covering up anything, but that Respondent and the affiliate broker determined that they did not want to violate the confidentiality of their clients without their permission. Respondent states that

the detective told the affiliate broker that there was no obligation to give the names. Respondent hoped that the buyers would call Complainants and apologize but feels that the clients' rights needed to be observed.

Recommendation: Dismiss.

Decision: The Commission adopted the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.

CONSENT ORDER TRACKING

Ms. Kerby asked if the Commissioners had any questions about the consent order log.
The Commissioners did not have any questions about the consent orders report.

Chairman Griess adjourned the meeting on Thursday,

October 1, 2015 at 3:21 p.m.

