



**STATE OF TENNESSEE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243
615-741-2273**

<https://www.tn.gov/commerce/regboards/trec.html>

MINUTES

The Tennessee Real Estate Commission held a meeting on June 8, 2022, at 8:30 a.m. CST at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243 in Conference Room 1-A. In addition, the meeting was streamed electronically via Microsoft Teams meeting platform. Chairman John Griess called the meeting to order and welcomed everyone to the Board meeting. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission members were present: Commissioner Joe Begley, Commissioner DJ Farris, Commissioner Joan Smith, Vice-Chair Marcia Franks, Chairman John Griess, Commissioner Jon Moffett, Commissioner Geoff Diaz, Commissioner Steve Guinn, and Commissioner Stacie Torbett. Quorum Confirmed. Others present: Associate General Counsel Anna D. Matlock, Associate General Counsel Dennis Gregory, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The June 8, 2022, board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Guinn and seconded by Commissioner Diaz. Motion passed unanimously.

Minutes for the May 12, 2022, board meeting were submitted for approval.

Motion to approve the May 12, 2022, minutes was made by Commissioner Diaz and seconded by Commissioner Smith. The motion passed 8-0 with Commissioner Torbett abstaining.

INFORMAL APPEARANCE

Cindy Grissom of RISC insurance addressed the commission on Errors and Omissions Insurance claims. In addition, the commission was notified that RISC has gone through an ownership change with no change to RISC Staff.

WAIVER REQUEST

Director Maxwell presented Ms. Amber Pfeiffer to the commission seeking a waiver request for retesting.

Motion to approve the request was made by Commissioner Farris and seconded by Commissioner Moffett. Motion passed unanimously.

Director Maxwell presented Ms. Amira Hamwia to the commission seeking a Medical Waiver request for late penalty fees.

Motion to approve the request was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed unanimously.

EDUCATION REPORT

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

Motion to approve courses J1-J25 with the exception of J10 was made by Commissioner Torbett and seconded by Commissioner Farris. Motion passed unanimously.

After further discussion motion to approve courses J10 was made by Vice-Chair Franks and seconded by Commissioner Farris. Motion passed unanimously.

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

Motion to approve instructor's biography was made by Vice-Chair Franks and

seconded by Commissioner Diaz. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Maxwell updated the Commission on the topics below.

- **CE BROKER:** Provider training has been ongoing within the next month TREC will be moving live with CE Broker.

COMMISSION DISCUSSIONS:

Associate General Counsel Anna Matlock presented a draft of Timeshare rules to the Commission.

After further discussion commission reviewed new language to the Timeshare rules. Motion to approve the draft was made by Commissioner Farris and seconded by Commissioner Torbett. Motion passed unanimously.

A draft of the distance education rules were presented to the Commission. The rules were discussed and additional language was requested to be added to include clarification around proctoring.

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

Motion was made by Commissioner Begley to keep records for a minimum four-year time period was seconded by Vice-Chair Franks. Motion passed unanimously.

Once the draft of the rules are approved, the Commission will have a rule making hearing. During members of the public are able to participate with comments in favor, or comments in opposition of the proposed rule changes.

Exclusive Right contracts were discussed by the commission. The commission will continue to look further into this matter and will address in future if necessary.

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 1-65 with the exception of the following complaints, which were pulled for further discussion: **2022010751, 2022011641, 2022008471, 2022010571, 2022013971, 2022013991, 2022010091, 2022006591, 2022009241, 2022010961, 2022016021.**

Motion was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

In addition, the commission reviewed the following complaints regarding transfer/E&O labeled 50-62. 2021074931, 2021074961, 2021074991, 2021075011, 2021075031, 2021075051, 2021075071, 2021075091, 2021075121, 2021075151, 2021075171, 2021075191, 2021075211

Motion was made by Vice-Chair Franks to **reinstate the One Thousand Dollar (\$1,000.00) civil penalties, for a total of Thirteen Thousand Dollars (\$13,000.00) motion was seconded by Commissioner Torbett. Motion passed unanimously.**

Further information was provided by counsel on the following cases: 2021067971, 2021069041, 2021071971.

Motion was made by Commissioner Diaz to accept Counsel's recommendation on cases 2021067971, 20210690041, 2021071971. Motion was seconded by Commissioner Torbett. Motion passed 8-1 with Vice-Chair Franks voting against the motion.

After further discussion by the Commission on complaint 2022010751, Commissioner Diaz made the motion **to accept counsel's recommendation.** The motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2022011641, Commissioner Diaz made the motion **to accept counsels' recommendation** motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022008471, Commissioner Diaz made the motion **to defer this matter to allow enough time for counsel to gather more information regarding the complaint.** Motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2022010571, Commissioner Diaz made the motion to **accept counsel's recommendation** motion was seconded by Commissioner Guinn. Motion passed 8-1 Chairman Griess voting no.

After further discussion by the Commission on complaint 2022013971, Commissioner Diaz made the motion **voted to accept counsel's recommendation, but to increase the civil penalty to \$1,000.00.** Motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022013991, Commissioner Diaz made the motion **to accept counsel's recommendation, but to increase the civil penalty to \$1,000.00.** motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022010091, Commissioner Begley made the motion **to authorize a contested case proceeding and to issue a Consent Order with a \$1,000.00 civil penalty for failure to supervise.** Motion was seconded by Vice-Chair Franks. Motion passed 8-1 with Commissioner Torbett voting against.

After further discussion by the Commission on complaint 2022006591, Vice-Chair Franks made the motion **to continue with the original decision.** Motion was seconded by Commissioner Moffett. Motion passed 8-1 with Commissioner Guinn voting against.

After further discussion by the Commission on complaint 2022009241, Commissioner Diaz made the motion **to dismiss the complaint.** Motion was seconded by Vice-Chair Franks. Motion passed 8-0 with Commissioner Begley abstaining.

After further discussion by the Commission on complaint 2022010961, Vice-Chair Franks made the motion **to accept counsels' recommendation.** Motion was seconded by Commissioner Torbett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022016021, Vice-Chair Franks made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Diaz. Motion passed unanimously.

**Dennis Gregory:
New Complaints:**

- 1. 2022002761**
Opened: 3/11/2022
First Licensed: 9/29/2009
Expires: 9/28/2023
Type of License: Real Estate Firm
History: None

The Complainants are timeshare owners. The Respondent is a timeshare company.

The Complainants got their current timeshare in 2016 in Texas. Eventually, the Respondent had offers for resorts in Tennessee. They claim they have stayed at a number of resorts from 2016 to 2020. The Complainants claim the Respondent has made promises they have not kept and want out of the timeshare agreement.

The Respondent denies they made any false promises to the Complainants. All documents were presented to the Complainants with the ability to rescind the agreement within the standard 10-day window. The Respondents have recently offered a Deed in Lieu of Foreclosure, although they reminded them this may negatively impact the Complainants' credit. In summary, the Respondent has complied with the applicable statutes and rules.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 2. 2022007771**
Opened: 4/4/2022
First Licensed: 11/24/2021
Expires: 11/23/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent was an unlicensed individual at the time of the subject transaction.

The Complainant says she worked with the Respondent and another broker to both get her house sold and find a house. The Complainant's budget was somewhat limited; however, a house was eventually found and the Complainant closed. The issue now is a leaky roof in the Complainant's home. The Complainant feels the Respondent and the broker should have alerted her to the roof's leaky condition. A home inspection was not obtained as the Complainant could not afford one.

The Respondent says he was not licensed at the time and had no part in the real estate transaction. He says he was a "ride along for security reasons." In her rebuttal, the Complainant also

corroborates this and says she should not have lodged the complaint against the Respondent. *The complaint against the correct affiliate broker was dealt with during the May 2022 meeting.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

3. **2022007811**
Opened: 4/4/2022
First Licensed: 1/4/2013
Expires: 1/3/2023
Type of License: Affiliate Broker
History: None

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

The Complainant says he purchased a house listed by the Respondent in August 2021. He says the home was listed as having electric heat rather than gas. He later found out the home was heated with gas. The Complainant believes he was misled by the Respondent. The Complainant appears to have been working with his own agent.

The Respondent says the seller told her the home had a new heat pump well before closing. The Respondent says she asked a contractor about a pipe that was sticking out from the left side of the home. She says the contractor told her it was an "old main gas line" that was capped off. To her knowledge, the home was *not* on natural gas any longer. Further, she explains that the Complainant had a home inspection and was satisfied with the findings.

The Respondent appears to have exercised reasonable skill and care here. The Complainant had more than enough information to rely on aside from what was in the listing (there is no proof of what was, in fact, in the MLS). It was reasonable to conclude the house was no longer on gas heat.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

4. **2022009341**
Opened: 4/4/2022
First Licensed: 4/27/2000
Expires: 11/27/2022
Type of License: Principal Broker
History: None

The Complainant is a prospective, out-of-state buyer. The Respondent is the listing agent.

The Complainant says he contacted the Respondent regarding a couple of properties he was interested in. He says he contacted the Respondent for a showing. The Complainant alleges the

Respondent told him in a voicemail that “she doesn’t set up showings via text or email.” The only way she scheduled a showing was through a direct phone call. At some point later, the Respondent asked for a mortgage approval letter which the Complainant says he provided. Next, the Complainant says the Respondent asked for a current address. The Complainant says that he had recently sold that particular home but had not lived there in four months. Eventually, the Complainant became frustrated with the Respondent as he did not believe all this “extra research” was warranted for a showing. The Respondent feels he was treated unfairly.

The Respondent’s attorney explains that the Respondent is a “senior citizen and incredibly small in stature.” The attorney further explains that the entire line of questions to the Complainant were to protect the Respondent and to adhere to “strict safety precautions when setting up showings.” As some additional background, both listings the Complainant was interested in were in very rural areas of the state. The attorney says that the National Association of Realtors (NAR) advises realtors to obtain some degree of information on a client/prospect when meeting outside the office.

The Respondent regularly requests mortgage approval letters for all new prospects. Apparently, the Complainant’s mortgage approval letter did not contain an address which she found odd. The showing was set up for March 5, 2022; however, she would not confirm until she received the approval letter with an address. After this, the Complainant advised he would not come to the showing as he did not think this information was necessary for a showing.

While the parties did not reach the stage of a real estate transaction, the Respondent’s actions were not unreasonable given all the factors.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

5. 2022010561
Opened: 4/4/2022
First Licensed: 2/25/2003
Expires: 11/27/2022
Type of License: Real Estate Broker
History: None

The Complainant is the buyer. The Respondent is the buyer’s broker.

The Complainant says he was purchasing two \$800,000 units with a \$20,000 earnest money deposit. The closing was set for December 20, 2021. He explains that he informed the Respondent that his bank was having difficulties with the funding as the closing was delayed on a Chicago, IL property. He says he thought the Respondent and the listing agent were working to move the closing date. After additional back and forth between the parties, the seller asked for more money. The Complainant says he asked the Respondent to get his escrow back as the seller had then accepted a deal much higher that would get them \$100K-\$150K more per unit. The seller and his agent refused to return the earnest money. The Complainant feels the Respondent did not

effectively work to get the closing date extended and is suspicious over the fact that the Respondent and seller's agent are friends.

The Respondent says he got the Complainant through a referral for the purpose of finding short-term rental opportunities. The Respondent says the Complainant's plan was to sell income-producing properties in Chicago and transfer the proceeds into the two properties in Tennessee via a 1031 exchange. The Respondent says they started the search in October 2021 and finally put offers in on the two subject units very soon after.

The Respondent explains that since the funds from the Chicago properties were to fund the purchase of the Tennessee properties, the contract was written as a cash transaction. The Complainant was not given a finance contingency. As closing approached, the Complainant supposedly informed the Respondent that he would have to secure financing for the Tennessee units as one of the Chicago properties was not going to close on time. The Respondent says he reached out to the seller's agent and told him of the change; however, the sellers *would not* agree to amend the contract to add a financing contingency.

On the day of closing, the Complainant told the Respondent that his Chicago banker denied the financing as these properties were in Tennessee. The Respondent says this was frustrating as the banker was aware of the location of the properties when the decision to get financing was made. The Respondent says he reached out to a "hard-money" lender that could close in three days, but that was a very expensive option for the Complainant that he could not swing. Ultimately, the seller would not return the earnest money as the Complainant had missed the closing date.

The Respondent says that he realizes an amendment to extend closing was not signed; however, the Respondent says he was clear in his many conversations with the Complainant that "the Seller was not open to this and we were going to try to work out an alternative solution after the Seller contacted their CPA to discuss how [Complainant's] inability to perform on the contract he executed would impact their tax liability." As to the friendship with the seller's agent, the Respondent says he has worked with this agent before as they have worked in the same area for several years. He claims this had no impact on his duty or ability to represent the Complainant.

It appears the Complainant's inability to get the Chicago properties sold in time was the linchpin of the trouble here. This, of course, was not within the Respondent's control. While an amendment to extend the closing would have normally been the solution, that would only have worked if the seller had agreed. The Respondent appears to have exercised reasonable skill and care given the circumstances.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

6. 2022010741
Opened: 4/4/2022
First Licensed: 9/14/2017
Expires: 9/13/2023

Type of License: Affiliate Broker
History: None

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

The Complainant closed on her current home in August 2020 using the Respondent as her broker. She says that in June 2021 she noticed a water leak that was apparently coming from a hole in the home's roof. The HOA will not cover the roof due to a change in its by-laws that took effect not long after she took possession. Consequently, the Complainant says the roof is now her responsibility. She goes on to say that a number of roofing contractors have stated the roof was put on in a poor manner at the time of construction.

The Respondent says that a home inspection was done after they submitted the offer on the house. The home inspection did note an old leak in the roof; however, the seller provided a copy of the repair invoice. The Respondent says the Complainant then accepted the property following the final walk through.

In rebuttal, the Complainant says the Respondent declined to show her a number of homes the Complainants alleges she was interested in. The Complainant; however, provides no other details as to why this happened. She closes by saying the Respondent is, basically, responsible for her current situation. The roof's condition is not the Respondent's responsibility at this stage, particularly given the fact that a home inspection was done at the time of purchase. This appears to be more a case of negligence by the builder or the seller if they failed to disclose the condition, which it appears they did not as evidenced by the repair invoice.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

7. **2022010751**
Opened: 4/4/2022
First Licensed: 11/14/2013
Expires: 11/13/2023
Type of License: Affiliate Broker
History: None

The Complainants are the out-of-state buyers. The Respondent is the Complainants' broker.

The Complainants put an offer in on the subject home in January 2021. They allege that during the "buying process" they were assured that a number of repair items would be made such as the fireplace, drainage issues, and bad landscaping. Apparently, these items were never repaired as the closing date approached. The Complainants claim they went through with the purchase despite the lack of repairs as they were afraid they would have no place to live. The Complainants believe the Respondent conspired with the builder's agent to "run out the clock" and compel them to accept the home without the repairs.

The Respondent says she worked with the builder's/listing agent to get the subject items repaired. She explains that the first walk through was done roughly 10 days prior to closing with a builder representative. The Respondent says that the items the Complainants pointed out would not be repaired as, in their opinion, there was nothing wrong with those items. At a certain point, the seller even offered to refund the Complainants' earnest money and let them walk. The last resort, according to the Respondent, was to try and extend closing; however, the Complainants did not want to jeopardize losing the house given their out-of-state status. At the end, the Respondent says the Complainants had become so belligerent that she did not attend the closing, sending another agent from her office. Thereafter, all other communications were done via email.

Overall, the Respondent took all reasonable steps to try and get the repairs the Complainants wanted despite the fact they may have not been needed. There is also no evidence of collusion between the Respondent and builder/listing agent.

Recommendation: Close.

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

8. 2022011431
Opened: 4/4/2022
First Licensed: 8/13/2007
Expires: 12/3/2022
Type of License: Affiliate Broker
History: None

The Complainant is the seller. The Respondent is the listing agent and later transaction broker or facilitator.

This complaint arises from a lawsuit between the Complainant and his brother who is also a 50% owner. The subject property is a home that was left to the Complainant and his brother following their mother's death. Apparently, the Complainant brother did not (and still does not) want to sell, so the other brother filed suit in order to force a sale. Both parties hired their own attorneys. The Respondent was later hired by both brothers to list the home in November 2021.

The genesis of this complaint is that the Complainant brother does not want to sell the house. He claims he will buy it back if it is sold. The court with jurisdiction over the property has approved the sale at \$329,000. The Complainant claims the Respondent advised him not to disclose the fact that meth was cooked in the house as well as a number of sinkholes on the property. It appears the Complainant brother is now trying to derail the sale by complaining about the Respondent and how the property is not worth \$329,000. It appears the Complainant simply wants to keep a free place to live. The Complainant has not signed the latest offer, so the court may order the sale at public auction.

The Respondent says that the Complainant told him that he never cooked meth in the house; however, he was arrested twice at the house. The Respondent says the Complainant told him that his brother "may have" cooked meth in the house while he was in prison. The Respondent

explained at the time that unless he was truly aware of such activity, he was not required to disclose it on the property disclosure form. The Respondent says the house showed no signs of meth manufacturing. The Respondent did not comment on the issue about the alleged sinkholes on the property.

The Respondent goes on to say that the Complainant's wife, who also resides at the house, regularly follows prospective buyers around during showings, making comments that are intended to scare away the buyers. As of March 22, 2022, the court ordered the Complainant to execute the deed and any other documents necessary to perfect the sale of the property. If he does not, the court will hold him in contempt. The Respondent has since moved to transaction broker or facilitator for this listing.

Overall, the Respondent has attempted to exercise reasonable skill and care relative to the transaction. The Complainant is clearly working to upend any sale of the property at his own peril with the court. The Respondent has thus far attempted to represent both sellers effectively.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

9. 2022011631
Opened: 4/4/2022
First Licensed: 4/1/2021
Expires: 3/31/2023
Type of License: Affiliate Broker
History: None

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

The Complainant claims to lease a residence that is listed for sale. The Complainant alleges the Respondent scheduled a showing through "Showing Time" at roughly 2pm on March 23, 2022. The Complainant says the Respondent arrived at the home, knocked on the door, and then opened the door and said, "Hello." The dog that stays at the house then allegedly "chased [Complainant] out of the house." Once the dog was put away, the Respondent came back through the door, but did not identify himself by name or title. Presumably, he then proceeded to look at the house.

The Respondent says he did schedule a showing for 2pm and claims to have arrived 10 minutes early. He explains that he found no lockbox at the front door, so he went to the back and found a lockbox there. The Respondent also says there were no cars in the driveway, so he assumed the house was empty as he says most people leave during showings. While at the back door, he explains that the tenants came to the door and said they were expecting him and directed him back to the front door. The Respondent then went back around to the front door and knocked. As there was no answer, he says he unlocked and opened the door and said, "Hello." At that time, the dog showed up, so he says he quickly shut the door.

The Respondent says he was in the house for less than five minutes. He also explains that he was wearing a realty firm jacket, making it rather easy to identify him as the guy they were expecting. Later, he says the listing agent called him and told him the occupants had complained. He also claims the listing agent told him they had experienced similar problems from the tenants before.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

10. 2022011641
Opened: 4/4/2022
First Licensed: 5/26/2005
Expires: 6/16/2022
Type of License: Affiliate Broker
History: None

The Complainant is a prospective tenant. The Respondent is the property owner and agent.

The Complainant says she was seeking a new condo and texted the Respondent to inquire about one she viewed on-line. The Respondent says she is Hispanic and English is not her first language, so she claims she was unable to effectively explain her situation by text (she claims to be recently divorced with children). She alleges the Respondent decided not to rent to her because of her "family status" after she told the Respondent she had two children. *As part of the Fair Housing Act, a landlord cannot refuse to rent to families with children or give preference to tenants without them.

The Respondent included the subject text string between the two parties (that was the only mode of communication between the parties). The Respondent posed no questions about family status or children. The Respondent did ask how many people would be occupying the unit and whether pets would be included. The answers the Complainant gave were not straightforward with a good deal of irrelevant information. The Complainant did, however, eventually explain she had custody of two children. The Respondent concludes by saying she had three other good applicants and she just thought they were better suited. The Respondent says the conversation with the Complainant "warranted red flags."

In rebuttal, the Complainant says she has filed a grievance with the Tennessee Human Rights Commission. She claims the reason for her half-responses was that she was texting with her ex-mother-in-law at the same time and the texts ran together. If this was the case, the Respondent may simply have thought the Complainant was a bit erratic and decided not to go with her for that reason. In any event, there is no evidence of discrimination based on ethnicity or familial status.

Recommendation: Close.

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

11. 2022012051
Opened: 4/4/2022
First Licensed: 9/10/2020
Expires: 9/9/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent. *The complaint in #12 is lodged against the Respondent's principal broker.

The Complainant says he has not yet received his earnest money from the seller after his financing was not approved. There was a financing contingency clause built in the contract to allow the Complainant to get out of the deal if he was unable to secure financing.

The Respondent says the communication with the Complainant's agent was terrible. The Respondent says it was difficult to get anything signed by the Complainant. As to the earnest money, the Respondent explains that the release form was signed on March 24, 2022-only seven days from date when the clock would have started to run. The Respondent complied with the 21-day rule regarding the earnest money.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

12. 2022011831
Opened: 4/11/2022
First Licensed: 10/18/2005
Expires: 2/9/2024
Type of License: Principal Broker
History: 2021 Consent Order for Failure to Supervise an Affiliate due to Lapse in Affiliate's E&O Insurance, 2021 Consent Order for Failure to Supervise an Affiliate due to Lapse in Affiliate's E&O Insurance

The Complainant is the buyer. The Respondent is the listing agent's principal broker in #11 above.

The Complainant says he has not yet received his earnest money from the seller after his financing was not approved. There was a financing contingency clause built in the contract to allow the Complainant to get out of the deal if he was unable to secure financing.

The Respondent says the communication with the Complainant's agent was terrible. The Respondent says it was difficult for his agent to get anything signed by the Complainant because of the Complainant's agent. As to the earnest money, the Respondent explains that the release form was signed on March 24, 2022-only seven days from date when the clock would have started to run. The Respondent complied with the 21-day rule regarding the earnest money.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 13. 2022012781**
Opened: 4/4/2022
First Licensed: 9/7/2021
Expires: 9/6/2023
Type of License: Affiliate Broker
History: None

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

The Complainant says he was working with the Respondent to find a new home. He claims they put three offers in; however, he alleges the Respondent "hid" an agent/client binding agreement in the closing documents and now he is upset about the fact the Respondent is trying to get a referral fee. The mutual release form does, indeed, say the Respondent's realty firm will receive compensation if the Complainant buys property that was initially showed by the Respondent during the period of the buyer representation agreement. The mutual release the form; however, has "0" where a referral fee percentage would normally be included.

The Respondent and her principal broker explain that the Complainant signed the agreement knowingly and they did not attempt to hide the document. The Respondent goes on to say that during the month and half she worked with the Complainant, all three offers were rejected. As a result, the Respondent claims the Complainant informed her that he would continue to rent until more properties became available. Somewhat unexpectedly, the Respondent found out that the Complainant was working with a new agent. The Respondent then told the Complainant to provide her with the new agent's information as she was going to send the release form to them with the referral fee clause. It appears the release form was signed, individually, and not along with any other forms where it would have been hidden.

The form appears to have been acknowledged and signed by the Complainant with full disclosure. If he did not read it fully, that was not the Respondent's fault. Although outside the purview of the Commission, the contract for any referral fee issue may be in the Complainant's favor as the compensation to the Respondent's firm is noted as "0."

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 14. 2022008471**
Opened: 4/4/2022
First Licensed: 11/24/2015
Expires: 11/23/2023
Type of License: Real Estate Firm
History: None

The Complainant is a former Respondent employee and a TREC licensee. The Respondent is a nation-wide property management entity headquartered in Arizona but with a TREC license.

The Complainant is a former employee of the Respondent who was terminated in March 2022. The Complainant alleges the Respondent “has been conducting questionable business practices for years.” One practice is allegedly allowing unlicensed leasing consultants to receive commissions for “TN move ins.” The Complainant says she reported this activity to the Respondent’s human resources division in January 2022 and was thereafter terminated. The Complainant believes she was retaliated against for reporting the matters in question.

The Respondent’s Director of Legal Services and Licensing responded to the complaint. The Respondent says their consultants do not receive commissions and that they are limited to answering calls and emails from prospects (much like a leasing agent at an apartment complex). The Respondent goes on to say that if a person is interested in a property from the website, they are then put in touch with a licensed leasing specialist. The Respondent says the individuals the Complainant identified in the complaint are either not engaged in “real estate activity” or are licensed in Tennessee. The Respondent closes by saying the Complainant was let go for “performance issues.”

In rebuttal, the Complainant claims that “every employee in every market is aware that [Respondent] have been assigned applicants and prospects outside of their jurisdiction.” The Complainant goes on to say that the licensed leasing specialists “were having their leads redirected to out of state [Respondent office] often and there is proof of this.”

The Respondent’s general counsel reiterates what the Director says. She says they only use licensed individuals for those actions that involve a real estate transaction. They have a brick and mortar location in Tennessee; however, all the licensed real estate professionals work from home. It is unknown whether or not the Complainant is planning to file a lawsuit for wrongful termination.

The Commission may not be able to take the allegations as gospel based on the relationship between the parties. Clearly, the Complainant is quite biased against the Respondent due to her termination. An investigation can be undertaken to interview current employees for more information. Otherwise, there is insufficient evidence to prove a violation of TCA 62-13-301 (unlicensed activity).

Recommendation: Discussion.

Commission Decision: The Commission voted to defer this matter to allow enough time for counsel to gather more information regarding the complaint.

15. **2022010571**
Opened: 4/11/2022
First Licensed: 3/28/2018
Expires: 3/27/2024
Type of License: Affiliate Broker

History: None

The Complainant is the buyer. The Respondent is the listing agent and property manager.

The Complainant says he purchased a fourplex from a construction company that built the subject fourplex and was listed by the Respondent. The Complainant worked with his own agent. The Complainant says he did not receive the existing leases on the fourplex, claiming the Respondent threw them away before closing. The Complainant also alleges that the Respondent agreed to replace two cracked windows but was unable to do so before closing. Later, the window company only replaced one window.

The Respondent says she provided all the names of the tenants and their respective rent amounts. As to the windows, the documents provided with the complaint indicate that the Complainant agreed to the replacement after closing. The Respondent does admit that she disposed of the tenants' leases; however, she says she assumed the Complainant would negotiate new leases with the tenants (he ultimately did). Consequently, the leases appear to be a non-issue given this fact. The Complainant's agent also did not request a copy of any leases. The Respondent closes by saying she is not an attorney and could not advise him on how the leases could or would transfer to a new owner.

The Respondent appears to have complied with T.C.A. 62-13-312(6) by maintaining the leases for at least three years after "consummation" of the real estate transaction. All the tenants had been in the units over three years since signing their initial leases. Furthermore, if the Complainant was going to negotiate new leases, then the old leases were somewhat irrelevant. As to the window, the parties had agreed the "one" window would be replaced after closing.

Recommendation: Close.

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

16. 2022011761
Opened: 4/11/2022
First Licensed: 7/17/2007
Expires: 8/31/2023
Type of License: Affiliate Broker
History: None

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

While the complaint is a bit convoluted, the Complainant appears to allege the Respondent listed the subject property in an incorrect manner. The subject property is a piece of land with a cabin. There is little attached to the complaint in order to get a real picture of the transaction.

The Respondent says he found a buyer for the property and is not sure what the complaint is about. He says the Complainant and spouse have already signed the deal and have agreed to close. It appears the Complainant is now satisfied.

Recommendation: Close

Commission Decision: The Commission accepted counsel's recommendation.

17. 2022011971
Opened: 4/11/2022
First Licensed: 6/12/2007
Expires: 12/21/2023
Type of License: Real Estate Broker
History: None

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

The Complainant says he went under contract to sell his property on October 16, 2020. He says that it was going to be sold in different parcels (a north side and a south side). The Complainant claims he went under contract for the north side on December 18; however, the appraisal was late, so the Complainant requested the offer be extended until February 11, 2021. The Complainant then says the Respondent told him the buyers were approved with a new bank. Later, he says he found out the buyers were not able to secure a loan from the first bank. The second contract (the south side) was set to expire on February 19. The Complainant also says the buyers were unable to secure financing for this parcel. The Complainant only says he feels the Respondent "misrepresented" the facts of the contract, although it is unclear exactly what the Respondent misrepresented.

As the point of the complaint is vague, the Respondent explains as best as possible. The information provided by the Respondent tends to refute any allegation of misrepresentation. The Respondent says that, if anything, the buyer's agent misled her. As to the north parcel, the Respondent says the appraiser would not add any value to the mobile home on the property, so the property did not appraise at the buyer's offer price. The buyer was able to walk away due to the appraisal contingency clause in the contract. According to the Respondent, the property went back on the market after the deal fell through at which time multiple new offers were received. Presumably, the property sold shortly thereafter.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

18. 2022012401
Opened: 4/11/2022
First Licensed: 8/1/2018
Expires: 7/31/2022
Type of License: Affiliate Broker
History: 2021 Consent Order for Advertising Violation

The Complainant is a TREC licensee. The Respondent is an affiliate broker.

The Complainant alleges the Respondent's advertising violates applicable TREC advertising rules. A photo of the sign is included with the complaint. The Complainant believes the Respondent's phone number should be less prominent.

Contrary to the Respondent's belief, the sign is in compliance as the issue with the phone number is no longer addressed under the rules (or never was). Apparently, this violated a local realty rule at one time.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

19. 2022012841
Opened: 4/11/2022
First Licensed: 4/6/2006
Expires: 11/24/2023
Type of License: Principal Broker
History: None

The Complainant is the former property owner. The Respondent is the listing agent for the mortgage company.

*The subject property is a foreclosure. The Respondent was contacted by a mortgage company in January 2021 to list a "Pre-REO property." The mortgage company requested that the Respondent conduct a weekly occupancy check and to offer "cash for keys" if occupied. The Respondent says she verified the property was occupied with a person in a house at the front of the property and a person in a cabin at the back of the property. The person at the front told the Respondent he paid rent to the guy living in the cabin. The guy who lived in the cabin was the Complainant's son. The Respondent says that both residents declined "cash for keys" in the amount of \$7,000 each.

The Complainant then contacted the Respondent and asked the Respondent to ask "the bank" to buy the farm bank. The mortgage company denied this offer. Over the course of 2021, the Respondent explains that she continued to offer "cash for keys;" however the offers were all declined. In January 2022, a law firm was hired to begin eviction proceedings. The Complainant's son and the other occupant were still refusing to communicate with the Respondent, and both remained on the property.

The occupant in the home near the front of the property (which was by then different from the first occupant) accepted \$4,000 to vacate the premises. The occupants cleaned up the house and then later were mailed a check for \$4,000 sometime in February 2022. In an effort to get the Complainant's son off the property without being formally evicted, the Respondent called the Complainant to let her know the bank would offer \$5,000 to the son. The Complainant allegedly said he needed "\$10,000" as he would have to relocate to another state (the Complainant lives in Florida). Eventually, the son contacted the Respondent and he agreed to \$5,000. From this point, the rest of the complaint is really just about the amount of time it took for the \$5,000 check to get

to the Complainant's son. By April 14, the son finally received the check. It appears the Respondent has little control over how quickly checks are processed for these actions.

The Complainant also alleges that once the check was delivered to the son, the son did not have any way to deposit the check as he had no bank account. The Complainant says the Respondent offered to have one of her employees "cash the check for him – for \$300." There is no evidence to suggest what the \$300 represented or whether the employee, in fact, made such an offer. Basically, the Complainant is disgruntled that the subject property was foreclosed on. The Respondent had no duty of loyalty to the Complainant or her son as her client was the mortgage company. All other actions appear to have been reasonable relative to the son and the other tenant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2022013261
Opened: 4/11/2022
First Licensed: 7/24/2007
Expires: 12/16/2023
Type of License: Real Estate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent. *This complaint was originally opened under a different complaint number in February 2021. It was closed with no action at the April 2021 meeting.

The Complainant contacted the Respondent regarding the subject commercial space in January 2021. The Complainant claims the Respondent advised her to email a proposal and that she would have the owner review it. The Complainant later visited the space with the Respondent at which time they discussed the possible uses for the space. A few days later, the Complainant claims the Respondent asked for her financial information to "confirm [she] can afford the space..." The Complainant emailed her bank statement to the Respondent. The Complainant is now re-engaging with the Commission as she believes the Respondent's actions discriminated against her on the basis of some protected class (race, color, ethnicity, sex, etc.), although she does not specify which.

The Respondent agrees with the timeline of events; however, she says that when she received only the Complainant's bank statement, the Respondent's owner decided to decline her offer to lease. The Respondent says they needed financials with payment history and information on her business. As in the first complaint, she explains that the reason for the owner's decision to decline the Complainant's lease was the lack of financials and information about her business. The Respondent's principal broker explains much the same who has operated the subject space since the late 1980's. The principal broker says the Respondent is "not involved in the determination of who is approved to lease a space in the center." He concludes by saying that such determination is made solely by the ownership.

There is no evidence the Respondent failed to exercise reasonable skill and care relative to the transaction. There is also no evidence of discrimination.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

21. 2022013761
Opened: 4/11/2022
First Licensed: 6/23/2006
Expires: 12/6/2022
Type of License: Real Estate Broker
History: None

The Complainant is anonymous. The Respondent is a real estate broker.

The Complainant says she recently witnessed the Respondent call a person a derogatory name while the Respondent was at the apartment complex where the Complainant lives. The Complainant also alleges the Respondent threw "a coke can at the girl's door, denting the door and of course spilling coke all over the door.."

The Respondent explains this is a personal matter, having nothing to do with a real estate transaction. The Respondent says she was asked to come to the subject apartment to pick up her son. She says she was invited by the son's ex-girlfriend/fiancé who resides at the apartment complex. Apparently, this was to help the son pick up his remaining personal belongings and to return an engagement ring. According to the Respondent, a pit bull ran out of the apartment and caused her to drop the coke can the Complainant mentioned.

The Complainant is attempting to use the Commission to grind a personal ax.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2022013971
Opened: 4/11/2022
First Licensed: 12/17/2021
Expires: 12/16/2023
Type of License: Affiliate Broker
History: None

The Complainant is the listing agent. The Respondent is an affiliate broker. *The Respondent in #23 below is directly related to the complaint.

The Complainant says that the Respondent posted a TikTok video link to one of his listings. He says the Respondent only mentioned the other agent (Respondent in #22) and made no mention of

his realty firm or him. There was also no link to the MLS. Neither the Respondent nor the other agent ever listed the property or served as buyer's agents. The listing was a new build in a development by a particular building contractor. There is no mention of how long the post had been active.

The Respondent does not deny the incident and profusely apologizes in the response. The principal broker also responds and says he counseled both agents and had them take down the post.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for violation of Tenn. Comp. Rules & Regs. 1260 02-.12(3)(e) which requires that "no licensee shall advertise property listed by another licensee without written authorization from the listing agent or listing broker."

Commission Decision: The Commission voted to accept counsel's recommendation, but to increase the civil penalty to \$1,000.00

**23. 2022013991
Opened: 4/11/2022
First Licensed: 11/3/2017
Expires: 11/10/2023
Type of License: Affiliate Broker
History: None**

The Complainant is the listing agent. The Respondent is an affiliate broker.

The Complainant says that the Respondent posted a TikTok video link to one of his listings. He says there was no mention of him or his realty firm. There was also no link to the MLS. Neither the Respondent nor the other agent ever listed the property or served as buyer's agents. The listing was a new build in a development by a particular building contractor. There is no mention of how long the post had been active.

The Respondent does not deny the incident and profusely apologizes in the response. The principal broker also responds and says he counseled both agents and had them take down the post.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(e) which requires that "no licensee shall advertise property listed by another licensee without written authorization from the listing agent or listing broker."

Commission Decision: The Commission voted to accept counsel's recommendation but to increase the civil penalty to \$1,000.00.

**24. 2022013271
Opened: 4/11/2022
Unlicensed
History: None**

The Complainant is anonymous. The Respondent is an unlicensed entity.

The Complainant says the Respondent is holding itself out as a real estate firm. The Complainant claims the Respondent is buying and selling properties by advertising in print, social media, and through their website.

The Respondent denies they are holding themselves out as a real estate firm. They say they own roughly 60 rental properties in the area and buy and sell “off market” properties on a monthly basis. They explain that they do not represent either buyers or sellers of real estate.

The Respondent’s website seems to support their response. There are no offers displayed that suggests they are representing buyers or sellers of real estate or offering to do so. The Respondent refers to themselves as “real estate investors” on their website where a number of homes are listed for sale. Based on the information contained in the complaint, there are no violations.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

25. 2022010091

Opened: 4/18/2022

First Licensed: 2/4/2003

Expires: 1/10/2023

Type of License: Principal Broker

History: 2007 Letter of Warning; 2010 Consent Order for failure to supervise an affiliate due to lapse in affiliate’s E&O insurance; 2020 Letter of Warning; 2021 Consent Order for failure to supervise due to lapse in affiliate’s E&O insurance; 2022 Consent Order for failure to supervise due to an advertising violation

The Complainant was originally the listing agent. The Respondent is the principal broker for the buyers’ broker. *The complaint against the affiliate broker was closed at the March 2022 meeting; however, the Commission requested a complaint be administratively opened against the principal broker.

The Complainant originally alleged their clients were scheduled to close on 10/15/2021 and the buyers agreed to submit earnest money toward the purchase within five (5) days of the contract. On 10/12/2021, Complainant received a request to extend closing by two (2) weeks. Complainant’s clients agreed to the extension and the buyers would relinquish earnest money if closing did not occur on 10/29/2021. All parties signed the extension on 10/15/2021. Complainant states they did not received notice from Respondent or their client. Also, Respondent and their client had yet to submit any documentation for purchase or closing. Complainant alleges upon contacting Respondent they were told to contact Respondent’s client as they are handling the earnest money deposit. Complainant contacted Respondent’s client and was provided no clear answer on the missing funds, but Respondent’s client assured closing would proceed the next day. The day of

closing Complainant spoke to Respondent's client several times and finally stated Respondent was to send an extension agreement. Complainant's clients allowed the contract to expire and did not sign an extension. However, Complainant's clients have yet to receive the agreed upon earnest money.

The affiliate broker explained in her response that she and their fiancé, now husband, submitted an offer to purchase the home of Complainant's sellers. The affiliate detailed that an extension was made past the original closing date and the earnest money was due five (5) days after the contract bound. **The affiliate stated their client began having difficulties submitting earnest money due to several issues including inability to access accounts frozen due by the bank to fraudulent activity, a check failing to clear, notice a cashier's check could not be sent from a stock brokerage account, wiring instruction mishaps, missed communications without response, and the affiliate client changing jobs which led to changing the loan application bank.** On 10/28/2021, Complainant contacted the affiliate broker about the absent earnest money. The affiliate broker contacted their law firm holding the funds to inquire if the funds had arrived but failed to receive a response and therefore believed closing would proceed as usual on 10/29/2021. However, on 10/29/2021 it was clear to the affiliate that this matter would not close on this date. When the affiliate broker called Complainant, the affiliate alleged the Complainant informed the affiliate the contract was to be cancelled by RF 656. The affiliate broker stated since they did not hear communication about the earnest money from Complainant and that previously Complainant terminated the contract stating it was null and void, no outstanding earnest money remained. The affiliate broker stated the Complainant made no mention of any further obligations, financial or otherwise.

The Respondent (principal broker) states that he reviewed the transactional file involved in the complaint and discussed the file with the affiliate broker. He says she was required to upload all of the transactional documents into the management platform, which she did. Once uploaded, all documents were carefully reviewed by our Contract Compliance Specialist Team for accuracy, completeness, and compliance. The Affiliate broker says all members of the compliance team are currently licensed real estate agents or retired real estate agents and each receives extensive training both on the national and state level and all are very knowledgeable about the TAR documents and requirements. The compliance team confers with one of the brokers if any question arises. He says his affiliate broker completed the required TAR documents, including a RF 305, Personal Interest Disclosure, properly disclosing her role as one of the buyers of the property (she was not on any loan documents). He goes on to say that the file also contained a fully executed Amendment extending the Closing Date to October 29, 2021, a date that the new lender and the affiliate broker's fiancé believed that all items for the closing could be reviewed and approved by the lender's underwriters. The Affiliate broker says he believed that the affiliate broker acted in good faith and was diligently pursuing the close of the transaction.

The Affiliate broker explains that when the affiliate broker joined his firm, she had just received her affiliate broker license in September 2021. Since she was newly licensed, he says that she was required to enter the firm program. During the onboarding process, he says she was Ms. carefully paired with an experienced, licensed agent who had been vetted by the TN Management Team and trained through the national "Firm Realty University Mentor Certification process" and was certified as a mentor by the firm realty office. The Affiliate broker says the affiliate broker stated worked with her mentor closely during the few months she was affiliated with his firm and found

her to be a great resource. According to him, the mentor program was established by the firm almost 10 years ago to provide new agents a learning platform where the new agent will “gain the fundamental knowledge to start and build a successful real estate career.”

He goes on to say, “The mentor provides knowledge and guidance in a practical and hands on manner to lead the mentee in the early stages of their career so that the mentee establishes a strong foundation and understanding of the forms, laws, rules and intricacies of a transaction in order that the mentee gains the confidence, understanding and skills to work with customers and clients as they progress through their careers.”

It appears the Respondent’s firm has a robust training and mentoring program that addresses these issues. As the standard is a “failure to supervise,” the Respondent must be found to have failed in the exercise of his supervisory duties. Here, it appears the Respondent fulfilled his duty and the earnest money woes seem to have resulted more from the problems with the buyers’ checking account than anything else.

Recommendation: Close.

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

26. 2022012501
Opened: 4/18/2022
First Licensed: 10/20/1993
Expires: 2/10/2023
Type of License: Principal Broker
History: None

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

The Complainants contracted to purchase a tiny home built by the Respondent’s client in late 2020. Largely, the complaint is a list of things the Complainants claims is wrong with the home. The chief complaints are water intrusion, possible mold, and crawlspace insulation. The Complainants also claim the Respondent had a personal interest in the transaction he did not disclose.

The Respondent did have a personal interest in the transaction; however, that was made known by a personal disclosure form that all parties signed. As to the complaints about the physical structure, the Respondent says that ServPro replaced and repaired some of what he thought was the problem. Otherwise, these issues are largely builder complaints having little to do with the Respondent’s role.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

27. 2022012621

Opened: 4/18/2022
First Licensed: 9/25/2013
Expires: 9/24/2023
Type of License: Affiliate Broker
History: None

The Complainant is anonymous and likely a TREC licensee. The Respondent is an affiliate broker.

The Complainant says they (or someone they know) have received a mailing in which the Respondent is allegedly violating ethical rules. The Respondent mailed out several handwritten mailers to specific addresses in which she explains she is interested in buying the property and to give her a call if they are interested in selling. In the example the Complainant sent in with the Complaint, the Respondent does not identify herself as a realtor. The only number included on the mailer is the Respondent's name and personal cell phone number. The Complainant cites to a "Standard of Practice" list from a realtors association that is attached to the complaint.

The Respondent says she sent out the letters in an effort to find properties for she and her husband to purchase for their "non-profit ministry." The mailings she provided do, in fact, state that the Respondent is a licensed realtor with an affiliated firm. It is not clear, then, if the Complainant received one that did not have this information or whether they intentionally left it out. Additionally, some of the mailers explain the intent of the non-profit: "Our Mission is to Reclaim Families, Redeem Mothers, Reunite Children + Restore Communities." Presumably, either the non-profit entity would buy the home or the Respondent and spouse would perform the buyer role. The Respondent also knows who the Complainant is; however, she does not reveal their identity.

The majority of the mailers do meet the requirements of the "advertising" rules in Tenn. Comp Regs. 1260-02-.11. The Complainant appears to have cherry-picked one that does not have all the information or has left out the information about the Respondent's realtor status.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2022013851
Opened: 4/18/2022
First Licensed: 12/16/2005
Expires: 10/28/2023
Type of License: Principal Broker
History: None

The Complainant is the tenant's father. The Respondent is the principal broker for a property management entity.

The Complainant says his daughter and son-in-law rented a house managed by the Respondent's property management entity beginning in May 2021. The Complainant was not a party to the lease. Sometime in December or January, the Complainant called the property management office and

explained that the daughter would no longer be able to pay the rent. They also wanted to break the lease early and move out. The owner had the Respondent make an offer to the tenants to buy the property; however, they later declined to purchase it. The Complainant alleges that someone employed by the Respondent told him on the phone that the tenants could move out AND have their security deposit and last month's rent refunded. The Complainant then goes on to say that the Respondent kept the last month's rent and security deposit (\$1,750 and \$600). The Complainant also claims that the tenants never signed a "Lead Based Paint Disclosure" since the house was built in 1948. Finally, there is some information about a letter from the IRS the daughter opened up that supposedly stated the house was going to be "seized."

The Respondent says that the tenants did explain they would not be able to continue to pay rent. The Respondent also explains that the owner did offer the home to the tenants to buy as he was going to place the house on the market. After the tenants moved out, the Respondent claims that the damage found in the home was beyond normal wear and tear, therefore the security deposit went back to the owner. He does not address whether there was an agreement to refund the last month's rent (a refund would seem contrary to any situation where the tenants broke a lease early). Regarding the letter from the IRS, the Respondent says that was a past due notice from the IRS addressed to the owners. He says it was not a notice of lien or a notice of seizure. The Respondent concludes by explaining that the homeowner no longer uses his company to manage the property and the house is now under contract for sale.

Presumably, there was only a phone conversation in which anything was ever mentioned about the return of the last month's rent or the security deposit. The Complainant has no written proof of either. As to the Lead-Based Paint Disclosure, it is unknown whether or not there was any such disclosure contained in the lease as the lease was not provided. The disclosure only applies to "known information" about lead-based paint.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2022013871
Opened: 4/18/2022
First Licensed: 3/6/2006
Expires: 3/5/2024
Type of License: Affiliate Broker
History: None

The Complainant is the buyer and a TREC licensee. The Respondent is the listing agent.

The Complainant says she was looking to purchase riverfront property utilizing a bi-state regional MLS that she is a member of. The Complainant claims she found an expired listing in which the Respondent was listed as the agent. She says she then reached out to the Respondent to see if her past client was still interested in selling. The Complainant says the Respondent told her she would check with the seller. Supposedly, the seller was interested and so the Respondent told the Complainant she would pull the comps. The original list price was \$99,000.

After speaking with an appraiser, the Respondent came back with \$180,000 as the amount “it should sell for.” The Complainant claims the Respondent told her the easement would add value to the property as she said it “adds privacy.” The Complainant says she thought that was odd as easements generally have the opposite effect. In any event, the Complainant submitted a purchase and sale agreement along with a confirmation of agency status as she was going to be both buyer and buyer’s agent. The Complainant says that when she received the paperwork back, the listing price was \$160,000 with 8% to the listing agent and 0% to the buyer’s agent. The Complainant then asked why the Respondent would get all 8% and her explanation was that the property was not listed on the MLS. As of the filing of the complaint, the property was still not on the market. The parties contract expired. The Complainant feels that “the seller is unaware of the situation, the property has still not been put on the market in anyway and the buyers agent (myself) is not offered anything.”

The Complainant seems to believe the February 2022 listing agreement renewed the old information in the original MLS (which had long since expired). The February 2022 listing agreement; however, provided no commission to the buyer’s agent-only the listing agent. The Complainant believes that regardless of the listing agreement, the buyer’s agent is still entitled to a commission. There is no authority for such in the statutes or rules-only by contract.

The Respondent says the subject listing expired in October 2013 (originally listed in 2012). The Respondent claims the Complainant called her seller before she reached out to her; however, the seller did not return the call as the seller did not recognize the Complainant’s number. The Respondent says that once she spoke with the Complainant, she contacted the seller to see what she wanted to do. She says the seller was interested in selling. The comps were pulled and, to no surprise, the comps had increased since 2012-13. The seller told the Respondent to price the property at \$179,400. The Complainant’s initial offer was \$140,000. After some negotiating, the parties agreed to \$160,000.

Once the Complainant received the documents back, there was an exchange of words about the commission. The Respondent says the Complainant, basically, accused her of being greedy by cutting out the buyer’s agent commission. The Respondent explains that her seller told her not to list the property in the MLS and that since the Complainant had come in at \$160,000, she preferred to cut out the buyer’s agent commission as well.

The Respondent appears to have only followed her seller’s instructions and put the seller’s interests first. Furthermore, the MLS listing the Complainant is attempting to stand on expired nearly a decade ago.

Recommendation: Close.

Commission Decision: The Commission accepted counsel’s recommendation.

30. 2022011501
Opened: 4/18/2022
First Licensed: 1/7/2013

Expires: 1/6/2023
Type of License: Real Estate Firm
History: None

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

The Complainant's complaint is quite hard to follow; however, it appears the issue is Section 8 housing. The Complainant also makes broad allegations of how the Respondent is treating her poorly.

The Respondent explains that the Complainant is a resident of the apartments they manage. The property has 88 Section 8 apartments. As part of a large renovation project to upscale all the apartment units, the Respondent moved the residents into a hotel at the Respondent's expense. Initially, there was some question about whether the Section 8 residents would be able to move into the temporary hotels. The city, however, offered to use a grant to put up the Section 8 residents during the course of the renovations. Due to construction delays, the Complainant had to remain in the hotel longer than usual. The Respondent explains that the Complainant became very agitated that she would be responsible for the stay at the hotel. The Respondent says they attempted to explain this to the Complainant.

The Respondent appears to be working with the Complainant in order to get her back into her Section 8 housing. There also appears to be no intent to charge the Complainant for the hotel stay.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES

31. 2022012741
Opened: 4/18/2022
First Licensed: 4/4/2018
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: 2016 Consent Order for allegations of ignoring cancellation requests

The Complainants are time share owners. The Respondent is a time share company.

The Complainants reside out of state. The Complainants say they attended a presentation in January 2021 with one of the Respondent's sales representatives and upgraded their time share. They say that after upgrading, the sales representative offered "no assistance" so they wanted to get out of the time share agreement. After some back and forth, the Respondent offered to allow the Complainants to buy out of their time share for \$12,500. The Complainants offered to pay \$5,000; however, the Respondent refused.

The Respondent claims the Complainants were aware of all the requirements of the time share agreement. The Complainants originally entered into a time share with the Respondent in 2017. Since that time, they have had four other transactions with the Respondent, including the current one. The Respondent appears to have disclosed all required documents to the Complainants and have not failed in any duty thus far.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED

32. 2020090771
Opened: 1/14/2021
First Licensed: 10/5/1989
Expires: 3/3/2023
Type of License: Principal Broker
History: None

The Complainant is a Tennessee resident, and the Affiliate broker is a licensed Tennessee Principal Broker.

The Complainant alleges the Affiliate broker willfully tried to deceive the Complainant's 93-year-old mother. On or about August 1, 2020, the Complainant's Mother asked the Affiliate broker to represent her in the sale of her home. The Affiliate broker produced a list of 12 similar properties sold, which were labeled as "over the last 12 months." The list of properties was from 2009-2010. The Affiliate broker tried to get the Complainant's mother to list the property at \$225,000, which is more than \$100,000 less than the current market value of the home. The closing was scheduled for the sale. The Complainant alleges the Affiliate broker intended to enlist a friend to buy the home below market value and flip it for a significant profit. The Affiliate broker also represented the Complainant's uncle in the sale of his home when he died eight years ago. The Complainant alleges that home was also listed below market value.

The Affiliate broker provided a response and stated the Affiliate broker has been a real estate agent since 1970 both in Mississippi and Tennessee. The Affiliate broker is a managing broker. The Affiliate broker denies any wrongdoing. The Affiliate broker did not intentionally try to list the property at a low price for the benefit of another customer.

The Affiliate broker did not provide a sufficient response to the allegation concerning producing the dated comparables from 2009 to 2010 and why the property was sold for \$140,000 less than the current comparables and the current market value.

Recommendation: Authorize a contested case proceeding and assess a civil penalty of \$1,000 for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1) and require the Affiliate broker to take the Principal Broker Core Class within

180 days of the execution of the Consent Order with the class not count toward required Continuing Education for licensure.

Commission Decision: The Commission accepted counsel's recommendation to assess a civil penalty of \$1,000 for failure to diligently exercise reasonable skill and care in violation of Tenn. Code Ann. § 62-13-403(1) and also voted to add four additional violations:

Tenn. Code Ann. § 62-13-312

- (1) Making any substantial or willful misrepresentation;**
- (20) Any conduct, whether of the same or a different character from that specified in this subsection (b), that constitutes improper, fraudulent or dishonest dealing;**

Tenn. Code Ann. § 62-13-403(4)

Provide services to each party to the transaction with honesty and good faith;

Tenn. Code Ann. § 62-13-403(7)(A)

Not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction;

The Commission voted to assess a \$5,000.00 civil penalty for the above violations and require the Affiliate broker to take the Principal Broker Core class within 180 days of the execution of the Consent Order and this will not count toward the continuing education required for licensure.

New Information: The Complainant's information is largely based on speculation. Any party that could provide first-hand knowledge is now out of state. Further, the Complainant appears to have received all his information came through an unrelated third-party who told the Complainant the Respondent acted in bad faith.

The Respondent says that he can only presume that whoever ran the comps report (possibly a firm employee) accidentally hit "2009" instead of "2019" and "2010" instead of "2020." He says there was no intent to deceive the seller and is a bit confused as to why the seller's son was pursuing him with such vigor.

Ultimately, the house was listed with another agent and the seller sold the house a few months later. This appears to be more an instance of negligence than intentional conduct. At most, the seller was shown comps from 2009-2010 as opposed to 2019-2020 and did not list the house either as a result of those numbers or for some other reason.

Of further note, the Respondent is preparing to retire from the realty business.

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

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

33. 2022006591
Opened: 3/11/2022
Unlicensed
History: None

The Complainant is not a TREC licensee. The Respondent is an out-of-state individual who claims to be an investor.

The Complainant says the Respondent and a related entity are actively selling homes in “our market area.” He goes on to say the Respondent is acting as a wholesaler, marketing and advertising that they are selling real estate. There is no other evidence with the complaint.

The Respondent is based in Arizona. They say they are not selling real estate, rather they are “assigning equitable title to real property which is granted via the bi-lateral purchase contract as seen in the disclosure statement...” The Respondent takes the position they are allowed to assign equitable title as part of the joint venture agreement they are engaged in. The subject listing the Complainant provided explicitly states it is “Contract for Assignment” as opposed to “for sale.”

Recommendation: Discussion.

Commission Decision: The Commission voted to issue a Consent Order with a \$1,000.00 civil penalty for unlicensed activity.

New Information: Counsel reviewed again the 2021 TN Court of Appeals case that deals with this issue and is the most recent holding on the topic. In the court’s opinion, it says quite explicitly that, “The Act [broker’s act] defines a “broker” as an individual who deals or attempts to deal by ‘negoat[ing] the listing, sale, purchase, exchange, lease or option’ to buy or sell real estate.” The Court does not address the assignment of contracts.

Here, there is no other evidence aside from the Respondent’s assigning or attempting to assign contracts-not the listing, sale, purchase, etc. Without any additional facts, finding that the Respondent engaged or is engaging in brokerage is likely contrary to the Court’s opinion.

New Recommendation: Close.

New Commission Decision: The Commission voted to continue with the original decision.

34. 2022009311
Opened: 3/14/2022
First Licensed: 6/11/2014
Expires: 6/10/2022
Type of License: Affiliate Broker
History: None

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

The Complainants had their home for sale using a listing agent. According to the Complainants, the buyers made an offer of \$800,000 on September 27, 2021. The Complainant spouse says she was out of town due to a family illness when the offer came in. She says the Respondent wanted to move quickly to determine if the offer would be accepted. The Complainant claims she told her listing agent that they would pay "no more than 4% commission, 2% for each agent." The Respondent supposedly told the listing agent he would not agree for less than the 3% commission. The Complainant says she refused. The Complainant then says the Respondent contacted the listing agent and said his buyers would pay \$8,000 for the other 1% commission. The listing agent then said he would adjust the sales price to \$808,000. The Complainant says the additional \$8,000 will impact their 2021 taxes even though they say they were not paid the additional \$8,000. Anything dealing with the commission appears to be the fault of the listing agent rather than the Respondent.

Later, there was a problem with the buyers moving in furniture before the sellers had all their belongings out. The purchase and sale agreement states, "Closing to be on or before Nov 24th to line up with buyers sale." The Complainant says the buyers did a walk through "a day or two before closing." The Complainant claims she does not know when they signed their documents. The Complainants say they signed their sellers' documents at 3:30 pm on November 23. Five hours before the Complainants signed the documents, they went over to the house and found the buyers moving furniture into the house. This was around 10 am, roughly. The Complainant says they informed the people at the house that they had not yet signed the sellers' documents so they should leave. To avoid the buyers having to pack up everything, the Respondent got a certificate of insurance to cover the buyers in the event something happened while moving in. Presumably, the buyers continued with the move.

The Respondent points out that the MLS clearly listed the commission as "3%." He says that following his buyers' offer, the listing agent called him and attempted to negotiate the commission down to 2%. The Respondent says he told him the MLS stated it was 3%. The Respondent says he contacted his team leader for advice. After discussing the matter, the Respondent went back to the listing agent, and they re-wrote the offer at \$808,000 per the listing agent's request. The Respondent (who may understand capital gains) says the Complainants will not have any negative tax impact as the home was a primary residence for more than two years.

As to the buyers moving in early, the Respondent says he did not tell them they were free to start moving in. He says the buyers clearly got that impression after they wired the money; however, it was before the sellers had signed their documents. To avoid the police being called, he says he negotiated a written amendment that stated the buyers would be responsible for any damage that occurred during the time before the Complainants signed their documents. The Respondent included a letter with the response that corroborates that the decision to move in was his. He also explains that the listing agent was out of his depth and attempted to save face with the Complainants as he was a family member of theirs.

The listing agent is largely at fault as it relates to the disagreement over the commission. The Respondent did not advise the buyers to move in when they did-that appears to be a decision made

by the buyers themselves. Overall, the Respondent used reasonable skill and care in this transaction given the circumstances.

Recommendation: Close.

Commission Decision: The Commission voted to defer this matter to the June meeting in order for counsel to research who gave the buyers the house key.

New Information: The Respondent says that the listing agent took his lockbox off roughly two days prior to the final walk through. When the Respondent went over for the walk through, the key was on the ground next to a flowerpot, largely out of sight. The Respondent says he did not give the keys to the buyers; however, he thinks the buyers saw him place the key back where the listing agent had placed it. Once the buyers had made up their minds to move in, they went back and retrieved the key on their own.

New Recommendation: Close.

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

**35. 2022009241
Opened: 3/28/2022
First Licensed: 8/22/2017
Expires: 8/21/2023
Type of License: Affiliate Broker
History: None**

The Complainant is anonymous. The Respondent is an affiliate broker.

The Complainant says the Respondent's advertisement sign is not in compliance with the Commission's rules. The sign displays the Respondent's name in larger size than the firm's full name. There are two letters; however, that are equal to or larger in size than the Respondent's name.

The Respondent says his sign is in compliance as the two-letter "branding" is larger than his name. He claims his firm has a "Style Guide" that he followed. The Respondent appears to have followed the referenced guide.

Recommendation: Have a Commission member review a copied photograph of the sign.

Commission Decision: The Commission voted to defer this matter to the June meeting in order for counsel to obtain a clearer picture of the sign.

New Recommendation: Have a Commission member review a copied photograph of the sign.

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

Anna Matlock
New Complaints:

36. 2022010451
Opened: 4/4/2022
First Licensed: 3/5/2018
Expires: 3/4/2024
Type of License: Affiliate Broker
History: None

Complainant is a licensee. Respondent is a licensed real estate broker. Complainant alleges Respondent does not have permission to advertise the listings on a Facebook page from the listing age. The listings redirect to the Complainant's website. Complainant provides a screenshot of the top of the Facebook page and the top of Respondent's website.

Respondent answered the complaint stating the information is non-specific and they were unable to find a listing of Complainant's on their social media without permission. Respondent states they are willing to remove the listing if on is missing, but listings are shared similarly to another real estate company that uses an IDX feed like Respondent. Respondent states they receive dozens of requests a day from agents to share their listings and is complaint with every board in Tennessee. Respondent states each listing automatically includes the brokerage and offers provides example screenshots of the disclaimers, brokerage information, and examples from licensees requesting their listings to be shared and promoted.

Complainant submitted a rebuttal citing Tenn. Comp. R. & Regs. 1260-02-.12(3)(e) which cites the rule stating advertising of another requires permission. Additionally, Complainant provides a screenshot of supposed additional licensee commenting with their contact information "for information on this listing, please contact the ACTUAL listing agent..." Complainant provides a citation of the rule and a screenshot of Respondent's Facebook page and website but does not provide a copy of any specific listing connected to Complainant. While the screenshot provided by Complainant may be true, the individual in the listing is not the same as the complainant. Therefore, due to insufficient information, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

37. 2022010961
Opened: 4/4/2022
First Licensed: 8/4/2015
Expires: 8/3/2023
Type of License: Affiliate Broker
History: None

Complainant is a licensed principal broker. Respondent is a licensed affiliate broker, recently released by Complainant. Complainant recently released Respondent who previously returned a commission check they claimed was associated with a missing buyer's representation agreement. Complainant states the check was a 50% referral fee and the managing broker agreed to process the request. However, as Complainant worked to process the check, neither Complainant nor Respondent could find the buyer's representation agreement. Complainant informed Respondent of the requirement to keep transaction documents for three (3) years and returned the check back to the previously mentioned managing broker. Upon return, Complainant received documents partially handwritten and partially typed from January, months before Respondent's transfer. Complainant states they do not believe this is the original document and does not want to be involved in any potentially illegal matter.

Respondent answered the complaint stating the document in question was signed by their client and there was a clerical error with the dates. Respondent states their buyer agency contract was extended and have attached a copy of an affidavit from their client attesting to such. Respondent believes Complainant filed this complaint in retaliation for leaving their firm for another firm. Respondent closed making several allegations related to Complainant and how Respondent believes Complaint holds other potentially derogatory and offensive beliefs related to Respondent. However, Respondent provides no documentation to support these allegations. Further, Counsel finds no documentation to support Complainant's allegations that the document may be fraudulent, or any illegal matters are ongoing. Therefore, Counsel finds no information violations of the rules and statutes by Respondent.

Recommendation: Dismiss.

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

38. 2022011771
Opened: 4/4/2022
First Licensed: 8/24/2018
Expires: 8/23/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Complainant alleges Respondent is related to the buyers of their home and served as their agent and this information was not immediately disclosed. Complainant also states Respondent completed the inspection with the buyers and is a licensed contractor, not a home inspector. Complainant states this part was not disclosed either. Complainant states they feel they were bullied, harassed, and threatened. There was very little communication, lack of professionalism, and unethical behavior. Complainant also alleges Respondent was not the agent that showed the house to the buyers, but believes Respondent received the entire compensation.

Respondent states at the time they placed a formal offer on the sellers' home, they did disclose the information they were related to the buyers via email and that the purchase and sale agreement permits the buy to conduct inspections on their behalf. Respondent accompanied the buyer on the

home inspection and clarified they are not a licensed contractor. Respondent states they have not spoken to the actual seller and only communicated with the seller's agent. Additionally, Respondent states that at the showing they were out of town and the agent that showed their clients the home failed to provide them a buyer's agreement and were therefore not contractually obligated to share compensation.

Complainant submitted a rebuttal requesting the complaint be cancelled as they no longer feel comfortable moving forward. When complaints are submitted to the Commission, and Complainant's request a complaint to be withdrawn this does not mean the matter is automatically dismissed. Complaints are still reviewed for violations. However, in this matter, based on the information submitted by Complainant and Respondent, Counsel finds no violations of the rules and statutes. Respondent provided documents to support their statements related to disclosures and information provided in the purchase and sale agreement. Based on this information, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

39. 2022011131
Opened: 4/4/2022
First Licensed: 11/2/2018
Expires: 11/1/2022
Type of License: Real Estate Firm
History: None

Complainant is an out of state resident. Respondent is a licensed firm. Complainant alleges an agent of Respondent intentionally breached agency duties and still received a commission. Complainant states an agent of Respondent served as a facilitator for the sale of their property and during the process, Complainants at various times had several questions and allege they received several misleading answers from Respondent's agent. Complainant explains an issue related to closing, specifically a Limited Power of Attorney. Complainant alleges they called the agent of Respondent to ask questions and stated that the original paperwork had to be provided to the title agency for the sale to go through. Complainant states they informed Respondent's agent the paperwork could not be delivered by the deadline without an eight (8) hour commute. Complainants then claimed Respondent ceased communication and they went through closing and were unaware this was a "For Sale by Owner" as they claim Respondent charged a fee. Complainants requested the commission fee as they felt misled by Respondent's agent and were told commissions are not refunded.

A representative for Respondent answered the complaint stating they do not refund commissions after closing and they never had the property listed. This property was a one-time showing and the individual named in the complaint represented neither party and all appropriate disclosures were presented, sent prior to sending the offer, and attached with their response. Respondent stated there was a typographical error in the Limited Power of Attorney, but this was not realized until 9:00 p.m. the day before the closing and this was a mail-out closing. Respondent provided the sellers

signed the closing documents and received their funds. The buyer's Final Inspection Report was sent and stated the buyers were accepting the property in its current condition.

After review of the documents submitted by Respondent, Counsel finds no violations of the rules and statutes by Respondent and no supporting documentation proving Complainant was misled. It appears Complainant has an issue with the commission disbursed to Respondent's agent. However, the Commission does not get involved in disputes related to commissions. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

40. 2022011871

Opened: 4/11/2022

First Licensed: 12/12/2019

Expires: 12/11/2023

Type of License: Affiliate Broker

History: None

Complainant is a licensed real estate broker. Respondent is a licensed affiliate broker. On March 23, 2022, Complainant states there is a "for sale" sign on a lot next to new construction on a property. To date, Complainant provides this property is not listed in the MLS. Complainant provides pictures of the property and an up-close picture of a sign with Respondent's information.

Respondent answered the complaint stating the property is not listed in the local MLS because it is exempt and provides a specific rule stating the property is in conjunction with an affordable housing initiative. Respondent provides all the information about the property is available to all when requested and is therefore following the rules.

Complainant states that the sign is still posted and not in the MLS and that Respondent has signs on other properties that are not in the MLS. Complainant is attempting to contact the local MLS and believes their local association is not responding to them to give Respondent time to collect their signs and put the information in the MLS. Complainant provides emails to and from their local association and others related to this issue. Based on the information on the file, it appears this complaint is part of a dispute between two parties. Specific local requirements related MLS listings do not fall within the jurisdiction of the Commission and are reserved for the local associations. However, Counsel did review the yard sign provided in the original sign photo submitted by Complainant. Counsel finds no violation of the advertising rules of the yard sign next to the new construction submitted with the property. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2022013251
Opened: 4/11/2022
First Licensed: 1/28/2013
Expires: 1/27/2023
Type of License: Affiliate Broker
History: None

Complainants are Tennessee residents. Respondent is a licensed affiliate broker. Complainants recently purchased a home where Respondent served as the selling agent. Complainants left a review of Respondent and in response Respondent made over 50 different comments over two (2) hours, many including their agent, in an attempt to encourage Complainants to delete the review. This included posting Complainants full address, pictures of documents, and other personal insinuations. Complainants state Respondent was very unprofessional, and the review stemmed from an issue related to a cleaning issue of the purchased property. During the final walkthrough, Complainants state the property was unclean and Respondent replied that a clean home was not negotiated in the contract, but the expectation was the property would be in the same condition or better on closing.

Respondent answered the complaint stating they were the listing agent and represented the sellers and did not know Complainants were unhappy until they left a negative review on their company social media page. Respondent states everything in the contract was fulfilled and the buyer's agent stated they were providing the Complainants with a clean at closing that was addressed at closing through amendment. Respondent states they wish Complainants reached out to them directly before leaving a review online as this can be damaging to their business and this review contained false claims and was negative. Respondent further stated they felt the need to defend themselves and mentions in the amendment they added a cleaning credit. This was added in the amendment as well as the home was purchased in "as is" condition.

While the social media actions of Respondent in response to Complainant's negative review are substantial, numerous in content, and concerning ethics and professionalism claims do not fall into the jurisdiction of the Commission and are left to the association level. Here, the claims related to the cleaning of the home are accounted for in the text messages and the buyer's final inspection states the property is to be accepted in its present condition and their agent is arranging a cleaning. Based on the information provided within the Commission's jurisdiction, Counsel finds no violation of the rules or statutes and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

42. 2022004831
Opened: 4/11/2022
First Licensed: 8/25/2014
Expires: 8/24/2022
History: None

Complainant is a licensed attorney and title insurance producer. Respondent is a licensed principal broker. Complainant states Respondent has caused much confusion and substantial delays during multiple transactions, does not respond to emails for multiple days, and requests information she is not entitled to as the seller's agent. In a current transaction, Complainant states due to a contract typographical error, the listing agent received three thousand (\$3,000.00) more than owed and Respondent has refused to return the funds. Complainant states Respondent informed them their firm must do an internal audit to determine where the funds are to be sent and is requesting the buyer's personal and private information. Complainant refused to provide this information without the buyer's consent, so Respondent went around her to the buyer's agent to contact the buyer. Complainant states Respondent claims this information is necessary because the buyer hired Respondent to be a fiduciary for the trust funds when the buyer tendered the earnest money to the listing agent's company. Complainant states Respondent is refusing to balance the settlement statement and instead is requesting the buyer's Closing Disclosure which is protected by the CFPB. Complainant does not believe Respondent is acting within their authority or in compliance with the standards and ethics required of their license.

Respondent answered the complaint stating it contains willful and misleading statements and they have subsequently taken additional steps. Respondent states their company's commission check was not disbursed to the seller and the disbursement form was ignored as well. Respondent provides that their escrow account served as the trust money holder and had a fiduciary interest and were following their normal procedure and looking out for their consumers' best interest. Respondent states they cannot make a determination and are unable to conduct their inquiry in peace and have returned the overpayment to the sellers closing company. Respondent closes stating they have done nothing wrong and is there for consumer protection acting as a fiduciary because they are the trust fund holder. Respondent states they noticed a large overpayment and tried their best to return this to the correct party without a subsequent dispute.

The Commission rarely has jurisdiction over disputes between licensees and unlicensed third parties and does not interview in the settlement of debts, loans, draws, or commission disputes between firms, brokers, and/or affiliates. Additionally, complaints related to ethics and professionalism of Respondent do not fall into the jurisdiction of the Commission and are left to the association level. Based on all other documentation provided in the complaint file, Counsel finds no violations of rules and statutes based upon the information provided by Complainant. Therefore, Counsel recommends this matter be dismissed with no action.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

- 43. 2022009401**
Opened: 4/18/2022
First Licensed: 2/4/2003
Expires: 1/10/2023
Type of License: Principal Broker
History: 2007 Letter of Warning; 2010 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2020 Letter of Warning; 2021

**Consent Order for failure to supervise due to lapse in affiliate's E&O insurance; 2022
Consent Order for failure to supervise due to an advertising violation**

Complainant is a licensed principal broker. Respondent is a licensed principal broker. Complainant states the property in question had three (3) contracts in which two (2) "fell out" and this is the second "fall out" event and makes a litany of allegations against Respondent for various violations of the rules and statutes. Complainant states after a bound contract was executed, Respondent executed an amendment changing title companies which then reroute the trust money. Complainant alleges the consumer did not have knowledge of this fact and this disclosure was not provided to the parties before the parties and amendment were executed. Complainant alleges Respondent did not inform them of an earnest money release, which allowed Complainant to continue to work on the file, accruing expenses and exhausting time. Complainant provides a timeline of the earnest money altercation mentioned above.

Complainant suspects falsified documentation exists and questions serial numbers and stamps related to electronic signatures. Complainant further states documents are falsified as the consumer signed the earnest money release stating Complainant was the earnest money holder. Complainant states they still attempted to demand Respondent return the "misdirected funds." Complainant states Respondent's the practice of changing title companies is causing consumers to call, contact and harass, them to return their release even though Respondent is the one mishandling the funds. Complainant states this has caused months of consumer confusion, anger, emails, false information, and negativity toward their company due to Respondent's information.

Respondent failed to submit a response. Therefore, Counsel recommends Respondent be assessed a civil penalty of One Thousand Dollars (\$1,000.00) for failure to respond.

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

Commission Decision: The Commission accepted counsel's recommendation.

44. 2022014771
Opened: 4/18/2022
First Licensed: 10/21/2003
Expires: 12/12/2022
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed principal broker. Upon traveling out of state for an extended period, Complainant leased their residence. After speaking with Respondent for several hours about expectations of a good tenant and learning of Respondent's credentials, background, and history, Complainant ultimately signed a contract with Respondent where they would serve as property manager. After signing the contract, Complainant states they called Respondent regularly and were later informed Respondent found a solid prospective tenant with certain characteristics. Complainant alleges they later noticed Respondent would give excuses for Respondent's inability to send verification of employment history, past residency references, income history, and a signed contract. Complainant then alleges the tenant selected by Respondent

was not verified truthfully and all previously disclosed characteristics and documents were false. Complainant states the tenant now owes substantial amount of money, has been evicted, and is causing damage to their residence. Complainant states they have been assessed damages from their warranty company related to appliances. Complainant believes the tenant is politically connected in the area and because of this their history was withheld. Complainant believes they are a victim of elder abuse and feel exploited and overwhelmed by the events and are frustrated the eviction court hearing is not scheduled until February of 2024. Complainant is seeking assistance in this situation.

Respondent submitted several videos, text message, photos, phone call messages, and documents along with their response. Respondent states after Complainant left their property in July, they began showing the properties at that time, including the tenant in question. Respondent denies providing Complainant any personal information related to the tenant as this information is private and protected by law. Respondent confirms the tenant was approved, paid a deposit as well as the first and last month rent. In September of 2021, Complainant insisted Respondent inform the tenant their lease would not be extended past August of 2022. In response to Complainant's remarks of damages and issues with appliances, Respondent explains to the process of how tenants use a portal to pay rent, how documents are exchanged, and how requests can be made for any necessary repairs, such as those related to the tenants' washer and dryer. Respondent explains Complainant called frequently and alleges Complainant requested monthly inspections, frequently made calls around town asking about the tenant and their family and was very insistent the tenant be removed from the property. Respondent provides following the tenant's failure to pay in December and January, Complainant requested on January 25, 2022, the eviction process commence. The tenant was served on February 22, 2022, which Respondent stated the process server encountered several issues. Respondent states they informed Complainant the court date for eviction was delayed until 2023 due to the eviction moratorium.

Complainant and Respondent provided an update stating a court date occurred in the beginning of May and resulted in the judge awarded the outstanding amount of rent and damages, possession of the residence, and that the tenant was to be removed from the property the end of May. During the eviction process the tenant became very aggressive and law enforcement was involved. All items were removed, and photos of damage left behind by the tenant were submitted. Complainant advised Respondent their services were no longer needed, so all remaining for Respondent is to disburse funds after a few final bills are received. Based on the condition of the home, Complainant does not believe that Respondent has the skills to operate a real estate company nor the competence to care for the client and their property. It is clear that the Complainant is very dissatisfied with Respondent's property management service.

Based on the information that we have received, the significant issues that occurred during this transaction are the actions of the tenant. The tenant is the individual that failed to pay their rent on time, was evicted, did not vacate the premises, ultimately caused law enforcement to be involved, and caused damage to the residence. While Respondent's firm ultimately accepted the application, deposit, and initial payments of the tenant, it is the tenant's behavior that ultimately led to the ultimate detailed events. The situation is certainly very unfortunate for Complainant, and there may be recourse in other avenues following consultation with an outside attorney. However, Counsel does not find Respondent is in violation of any rules and laws as it relates to this

transaction. Respondent has fulfilled their duties owed to Complainant. Therefore, Counsel recommends this matter be dismissed with no action.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

45. 2022015321
Opened: 4/25/2022
First Licensed: 12/15/2005
Expires: 7/22/2023
Type of License: Real Estate Broker
History: None

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

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

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

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

Commission Decision: The Commission accepted counsel's recommendation.

46. 2022016021
Opened: 4/25/2022
First Licensed: 12/9/2008

Expires: 11/3/2023

Type of License: Principal Broker

History: 2010 Civil Penalty for failure to maintain E&O insurance

This is an administratively opened complaint following the April 2022 Commission meeting and related to REC-2021076591, opened against Respondent's firm. In this matter, Complainants were Tennessee residents and alleged the home they purchased had three (3) bedrooms and a full unfinished basement. After moving out of state, Complainants listed their home as a modular home. The inspections showed the septic system required upgrades for many of the bedrooms, which Complainants agreed to pay at closing. During a title search Complainants were told they lived in a "triple wide trailer" and could not obtain a loan required to sell the home. A new appraisal returned with a lower price and the buyer revised their purchase offer to the new appraisal cost. Complainants were told an affiliated agent of Respondent's informed them a commission would not be charged on their side. Also, this affiliated agent maintained this was a modular home, not manufactured. Complainants maintained the affiliated agent defrauded them at the time of their original purchase of the property in question by providing dishonest information related to their property. Respondent's firm was assessed a civil penalty of One Thousand Dollars (\$1,000.00) for failure to respond.

This administrative complaint was opened against Respondent, the principal broker as they failed to respond on behalf of their real estate firm. Here, the real estate firm has already been issued a civil penalty for violation of Tenn. Code Ann. § 62-13-313(a)(2) for failing to respond. A violation for failure to supervise or, Tenn. Code Ann. § 62-13-312(b)(15), only applies to the activities of any licensed affiliate brokers within the scope of this chapter. Therefore, a violation for a real estate firm's failure to respond would not apply. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

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

47. 2022016041

Opened: 4/25/2022

First Licensed: 3/11/2011

Expires: 3/10/2023

Type of License: Principal Broker

History: 2022 Consent Order for failure to exercise reasonable skill and care in providing services to all parties in a transaction

This is an administratively opened complaint following the April 2022 Commission meeting and related to REC-2021078871, opened against Respondent's firm. In this matter, the complaint was referred by the Division of Consumer Affairs from a Tennessee resident against Respondent's real estate firm. Complainant alleges they received a flyer of a take lot sale and later signed a contract and put down a deposit. Complainant states the flyer stated all utilities were in the subdivision but found no poles or wires. After Complainant asked their agent about the utilities, they were told the utilities were underground and only required service from the street to their future home and

electricity would not be available until the beginning of the year at the earliest. Respondent's firm was assessed a civil penalty of One Thousand Dollars (\$1,000.00) for failure to respond.

This administrative complaint was opened against Respondent, the principal broker as they failed to respond on behalf of their real estate firm. Here, the real estate firm has already been issued a civil penalty for violation of Tenn. Code Ann. § 62-13-313(a)(2) for failing to respond. A violation for failure to supervise or, Tenn. Code Ann. § 62-13-312(b)(15), only applies to the activities of any licensed affiliate brokers within the scope of this chapter. Therefore, a violation for a real estate firm's failure to respond would not apply. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

48. 2022016081

Opened: 4/25/2022

First Licensed: 11/11/1987

Expires: 5/6/2023

Type of License: Principal Broker

History: 2010 Civil Penalty 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; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

This is an administratively opened complaint following the April 2022 Commission meeting and related to REC-2022000501, opened against Respondent's affiliate broker. In this matter, there were several square footage discrepancies for a listing that original had 2,881 square feet and the auditor website provides 2,437 square feet. Due to this discrepancy, Complainant hired an inspector and after finding the difference requested a new price per square footage and that was rejected. Complainant provided a new listing for the beginning of January that showed a difference square footage amount of 2,631. Respondent's affiliate broker answered the complaint confirming they do represent the owner of the property in question and that this is their first listing and based on their understanding of the tax records there was 2,261 square feet plus 588 bonus room for a total 2,849 and also provided this information in the public remarks section that the square footage was to be verified by the buyer and buyer's agent. Respondent's affiliate broker was issued a Letter of Instruction explaining the importance of Tenn. Code Ann. § 62-13-403.

The Commission opened this complaint against Respondent, the principal broker for failure to adequately supervise the activities of any licensed affiliate brokers within the scope of this chapter. Though this is Respondent's affiliate broker's first transaction, principal brokers are tasked with assisting agents in their supervision on transactions, especially one such as this where a dispute is taking place with square footage in a listing. Respondent failed to do so. Therefore, Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) Civil Penalty.

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

Commission Decision: The Commission accepted counsel's recommendation.

49. 2022016131

Opened: 4/25/2022

First Licensed: 4/6/2006

Expires: 2/9/2024

Type of License: Principal Broker

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

This is an administratively opened complaint following the April 2022 Commission meeting and related to REC-2021075521, opened against Respondent's affiliate broker. In this matter, Complainant found Respondent's firm did not pay the mortgage company and Respondent's affiliate broker informed Complainant the mortgage company returned the check via mail. Complainant states the mortgage company did not receive a check. After contacting law enforcement, Complainant discovered their name remained on the deed. Respondent's affiliate broker contacted Complainant and requested Complainant come discuss how to remedy the situation. Respondent's affiliate broker continued to contact the bank about the destroyed certified funds. The bank verified and issued a refund to Respondent's firm escrow account and the funds were immediately wired to Complainant's mortgage company. Respondent's affiliate broker was assessed a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(11) for accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, except the licensed real estate broker.

This administrative complaint was opened against Respondent, the principal broker, for violation of Tenn. Code Ann. § 62-13-312(b)(15), failure to adequately supervise the activities of any licensed affiliate brokers within the scope of this chapter, as affiliate real estate brokers are not permitted to accept commission checks from any individuals other than their principal broker. Therefore, Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) Civil Penalty.

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

Commission Decision: The Commission accepted counsel's recommendation.

NOTE REGARDING COMPLAINT NUMBERS 50-62:

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

50. 2021074931

Opened: 11/18/2021

First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

51. 2021074961
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

52. 2021074991
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

In response, on December 1, 2021, as required by Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(2), if a principal broker releases an affiliated licensee more than one hundred twenty (120) days after suspension, the consent order shall contain a civil penalty of one thousand dollars. Therefore, Counsel sent Respondent a consent order authorizing a One Thousand Dollar (\$1,000.00) civil penalty per affiliated licensee, for a total of Thirteen Thousand Dollars (\$13,000.00). On April 19,

2022, Counsel filed a Notice of Hearing and Charges with the Tennessee Secretary of State's Administrative Procedure Division for these matters to be set for a contested case hearing before an administrative law judge sitting alone on behalf of the Commission.

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

53. 2021075011
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

54. 2021075031
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

55. 2021075051
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022

Type of License: Principal Broker
History: None

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

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

56. 2021075071
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

57. 2021075091
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

In response, on December 1, 2021, as required by Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(2), if a principal broker releases an affiliated licensee more than one hundred twenty (120) days after suspension, the consent order shall contain a civil penalty of one thousand dollars. Therefore, Counsel sent Respondent a consent order authorizing a One Thousand Dollar (\$1,000.00) civil penalty per affiliated licensee, for a total of Thirteen Thousand Dollars (\$13,000.00). On April 19, 2022, Counsel filed a Notice of Hearing and Charges with the Tennessee Secretary of State's

Administrative Procedure Division for these matters to be set for a contested case hearing before an administrative law judge sitting alone on behalf of the Commission.

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

58. 2021075121
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

59. 2021075151
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker
History: None

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

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

60. 2021075171
Opened: 11/18/2021
First Licensed: 3/9/1995
Expires: 10/20/2022
Type of License: Principal Broker

History: None

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

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

61. 2021075191

Opened: 11/18/2021

First Licensed: 3/9/1995

Expires: 10/20/2022

Type of License: Principal Broker

History: None

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

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

62. 2021075211

Opened: 11/18/2021

First Licensed: 3/9/1995

Expires: 10/20/2022

Type of License: Principal Broker

History: None

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

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

NEW INFORMATION REGARDING COMPLAINT NUMBERS 50-62:

During proceedings, Counsel for the Commission informed Respondent's Counsel that they are permitted to anonymously present the matter before the Commission for consideration. Tenn. Comp. R. & Regs. 1260-01-.16(2)(c)(4) provides that nothing in the rule shall be construed as limiting the Commission's authority to authorize a consent order in a different amount than listed herein, seek any other legal discipline—including revocation or suspension of a license—for failure to supervise an affiliated licensee's E&O insurance, review an initial order under the *Uniform Administrative Procedures Act*, or not seek discipline against a principal broker for failure to supervise an affiliated broker's maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter. Counsel has provided a copy of the statement from Respondent's counsel with all personal identifying information removed.

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

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

New Recommendation: Discuss.

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

CASES TO BE REPRESENTED

- 63. 2021069041**
Opened: 10/25/2021
First Licensed: 12/14/2012
Expires: 12/13/2022
Type of License: Real Estate Broker
History: 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

2021067971, 2021069041, and 2021071971 are all related.

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

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

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

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

for Audit was drafted and given to the Auditor for the Commission to review Respondent's accounts.

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

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

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

Recommendation: Revocation.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Following the meeting, Counsel for the Commission sent Respondent a copy of a consent order authorizing revocation of their real estate license. Later, Respondent and their counsel contacted Counsel for the Commission in an attempt to cure and settle the outstanding complaints with the Commission. Counsel for the Commission reiterated to Respondent and their counsel the importance of keeping the Commission appropriately apprised of the status of a firm's escrow or trust account as required by statute. While Respondent made further attempts to collect documentation related to banking statements of an escrow account and failed, Respondent did aver under the penalty of perjury that to best of Respondent's knowledge and belief Respondent maintained an escrow account at either of the two (2) of the banking locations mentioned in the audit. Following negotiations,

Counsel for the Commission recommends Respondent's license be downgraded from real estate broker to affiliate broker for a term of three (3) years. Upon completion of the three years, should Respondent intend to upgrade their license to real estate broker, Respondent shall appear before the Commission with their current principal broker for a determination of whether Respondent shall be permitted to continue to upgrade their license. If Respondent receives approval, Respondent must first complete the thirty (30) hour office management broker class and real estate broker examination.

New Recommendation: License downgrade for three (3) years. Following downgrade period, Respondent must informally appear before the Commission and receive approval, complete the thirty (30) hour office management broker class, and pass the real estate broker examination.

New Decision: The Commission accepted Counsel's recommendation.

64. 2021067971

Opened: 10/11/2021

First Licensed: 12/14/2012

Expires: 12/13/2022

Type of License: Real Estate Broker

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

2021067971, 2021069041, and 2021071971 are all related.

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

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

Complainant states they asked Respondent if any affiliated licensees were owed any outstanding money. Complainant states Respondent replied "no." When affiliated licensees were still due funds, another meeting took place where Respondent informed the group, they were going to apply

for a loan to repay one affiliate licensee as the money was “gone.” Complainant requested proof of the loan; Respondent did not provide proof. Complainant then replied that the firm’s previous principal broker left due to unpaid owed funds. Complainant then left Respondent’s firm for another firm that was willing to take current affiliated licensees interested in leaving Respondent’s firm. All previously affiliated licensees owed money have submitted documentation to Respondent request release of all pending transactions. Complainant provides a list of thirteen (13) names of formerly affiliated licensees that either received their money after a delay or had checks that bounced.

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

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

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

In late January, the Auditor again requested Respondent to provide a copy of the documents mentioned above for the firm’s escrow account. Respondent answered that their bank did not have records related to their escrow accounts and provided communications with the bank in support of their claim. Respondent also mentioned having an escrow waiver as permitted under Tenn. Code Ann. § 62-13-323. A search of Respondent’s license and Respondent’s now closed firm did not find documentation required for an escrow account waiver. Furthermore, the Auditor spoke with the bank employee of Respondent’s bank, where the alleged missing documents were to be. No history or record of an escrow account ever existing under the name, social security number, TIN, date of birth, or account number related to Respondent and/or their firm were found. The only

account found at this bank was personal account belonging to Respondent with a negative balance. To date, neither Counsel nor the Auditor possess any proof of an escrow or trustee account(s) related to Respondent and/or Respondent's firm as required by Tenn. Code Ann. § 62-13-321.

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

Recommendation: Revocation.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Following the meeting, Counsel for the Commission sent Respondent a copy of a consent order authorizing revocation of their real estate license. Later, Respondent and their counsel contacted Counsel for the Commission in an attempt to cure and settle the outstanding complaints with the Commission. Counsel for the Commission reiterated to Respondent and their counsel the importance of keeping the Commission appropriately apprised of the status of a firm's escrow or trust account as required by statute. While Respondent made further attempts to collect documentation related to banking statements of an escrow account and failed, Respondent did aver under the penalty of perjury that to best of Respondent's knowledge and belief Respondent maintained an escrow account at either of the two (2) of the banking locations mentioned in the audit. Following negotiations, Counsel for the Commission recommends Respondent's license be downgraded from real estate broker to affiliate broker for a term of three (3) years. Upon completion of the three years, should Respondent intend to upgrade their license to real estate broker, Respondent shall appear before the Commission with their current principal broker for a determination of whether Respondent shall be permitted to continue to upgrade their license. If Respondent receives approval, Respondent must first complete the thirty (30) hour office management broker class and real estate broker examination.

New Recommendation: License downgrade for three (3) years. Following downgrade period, Respondent must informally appear before the Commission and receive approval, complete the thirty (30) hour office management broker class, and pass the real estate broker examination.

New Decision: The Commission accepted Counsel's recommendation.

65. 2021071971

Opened: 11/1/2021

First Licensed: 12/14/2012

Expires: 12/13/2022

Type of License: Real Estate Broker

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

2021067971, 2021069041, and 2021071971 are all related.

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

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

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

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

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

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

Recommendation: Revocation.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Following the meeting, Counsel for the Commission sent Respondent a copy of a consent order authorizing revocation of their real estate license. Later, Respondent and their counsel contacted Counsel for the Commission in an attempt to cure and settle the outstanding complaints with the Commission. Counsel for the Commission reiterated to Respondent and their counsel the importance of keeping the Commission appropriately apprised of the status of a firm's escrow or trust account as required by statute. While Respondent made further attempts to collect documentation related to banking statements of an escrow account and failed, Respondent did aver under the penalty of perjury that to best of Respondent's knowledge and belief Respondent maintained an escrow account at either of the two (2) of the banking locations mentioned in the audit. Following negotiations, Counsel for the Commission recommends Respondent's license be downgraded from real estate broker to affiliate broker for a term of three (3) years. Upon completion of the three years, should Respondent intend to upgrade their license to real estate broker, Respondent shall appear before the Commission with their current principal broker for a determination of whether Respondent shall be permitted to continue to upgrade their license. If Respondent receives approval, Respondent must first complete the thirty (30) hour office management broker class and real estate broker examination.

New Recommendation: License downgrade for three (3) years. Following downgrade period, Respondent must informally appear before the Commission and receive approval, complete the thirty (30) hour office management broker class, and pass the real estate broker examination.

New Decision: The Commission accepted Counsel's recommendation.

Chairman John Griess adjourned the meeting at 12:45 P.M. CST