



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

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

MINUTES

The Tennessee Real Estate Commission met on December 6, 2023, at 8:30 a.m. CST in room 1-A of the Davy Crockett Tower at 500 James Robertson Parkway, Nashville, TN 37243. In addition, the meeting was streamed electronically via the Microsoft Teams meeting platform. Executive Director Denise Baker read the public disclaimer and called the roll. The following Commission members were present: Chairman Geoff Diaz, Vice-Chairman DJ Farris, Commissioner Joan Smith, Commissioner Steve Guinn, Commissioner Jon Moffett, Commissioner Kathy Tucker, Commissioner Stacie Torbett, and Commissioner Michael Gaughan. Commissioner Joe Begley was absent. Quorum Confirmed. Others present are Associate General Counsel Anna D. Matlock, Associate General Counsel Kimberly Cooper, Associate General Counsel Aerial Carter, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

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

The motion to approve the December 6, 2023, agenda was made by Commissioner Smith and seconded by Commissioner Gaughan. The motion passed 6-0 with Commissioner Torbett and Vice Chairman Farris absent from the vote.

The November 8, 2023, Commission meeting minutes were submitted for approval.

The motion to approve the November 8, 2023, minutes was made by Commissioner Smith and seconded by Commissioner Moffett. The motion passed 6-0 with Vice-Chairman Farris and Commissioner Torbett absent from the vote.

INFORMAL APPEARANCE

Quincy Mull appeared before the Commission with his Principal Broker, Laura Gaither, to receive approval for his Affiliate Broker license.

The motion to approve Quincy Mull was made by Commissioner Tucker and seconded by Commissioner Guinn. The motion carried 7-0, with Vice-Chairman Farris absent from the vote.

WAIVER REQUEST

Executive Director Denise Baker presented Linda Brandon to the Commission seeking a testing waiver.

The motion to deny waiver was made by Commissioner Gaughan and seconded by Commissioner Guinn. The motion carried 5-2, with Commissioners Torbett and Moffett voting against. Vice-Chairman Farris was absent from the vote.

EDUCATION REPORT

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

The motion to approve courses D1-D59 was made by Commissioner Guinn and seconded by Commissioner Tucker. The motion passed 7-0. Vice-Chairman Farris was absent from the vote.

Education Director Ross White presented the Instructor Bios for approval.

The motion to approve the Instructors Bios was made by Commissioner Torbett and seconded by Commissioner Smith. The motion passed 7-0. Vice-Chairman Farris was absent from the vote.

EXECUTIVE DIRECTOR'S REPORT

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

PSI Reporting Numbers – The Commission was advised that corrected reporting numbers from 2021 through December 2023 would be presented at the January 2024 meeting.

ARELLO Mid-Year Conference – Executive Director Baker advised up to two (2) commissioners could request to attend the ARELLO Mid-Year Conference to be held in New Orleans, LA on April 16-18th.

TR (Tennessee Association of REALTORS®) – The Commission was advised of the request from TR to participate in the TNEX Summit Panel on February 20, 2024.

TREC Staff – Executive Director Denise Baker introduced the TREC Staff to the Commission and their job function within the Commission.

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 1-59 except for the following complaints, which were pulled for further discussion: **2023044991, 2023041151, 2023033851, 2023038031, 2023041171, 2023032421, 2023033751, 2023045071, 2023045961, 2022016981.**

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

After further discussion by the Commission on complaint 2023044991, Commissioner Smith motioned **to accept the Counsel's recommendation.** Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023041151, Commissioner Smith motioned **to accept the Counsel's recommendation.** Vice-Chairman Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023033851, Vice-Chairman Farris motioned **to issue a Consent Order for revocation for violation**

of Tenn. Code Ann. § 62-13-403(1), or failure to diligently exercise reasonable skill and care in a transaction. and Commissioner Guinn seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023038031, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023041171, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Tucker seconded the motion. The motion was carried unanimously.

After further discussion by the Commission on complaint 2023032421, Commissioner Gaughan motioned **to issue a Consent Order with a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-403(1), or failure to diligently exercise reasonable skill and care in a transaction.** Vice-Chairman Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023033751, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Guinn seconded the motion. The motion carried 6-2, with Commissioners Tucker, and Smith voting against.

After further discussion by the Commission on complaint 2023045071, Vice-Chairman Farris motioned **to accept the Counsel's recommendation**, and Commissioner Gaughan seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023045961, Commissioner Guinn motioned **to dismiss this complaint**, and Commissioner Moffett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2022016981, Commissioner Torbett motioned **to dismiss the complaint.** Commissioner Tucker seconded the motion. The motion carried 7-1, with Commissioner Guinn voting against.

Kim Cooper

New Complaints:

- 1. 2023044991**
Opened: 9/25/2023
First Licensed: 1/27/2023
Expires: 1/26/2025
Type of License: Real Estate Broker
History: None

This was an administratively opened complaint resulting from a self-report by Respondent regarding disciplinary action against their license in another state. Respondent was alleged to have not adequately supervised employees who sent out an incorrect lease termination notice and allowed unlicensed assistants to communicate with a client regarding a residential lease agreement. Respondent disputed the allegations but entered a consent order in August 2023 providing for a civil penalty and additional hours of education. Respondent has completed the terms of their consent order.

Recommendation: Letter of Warning regarding due care in supervision of employees.

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

- 2. 2023044171**
Opened: 9/25/2023
First Licensed: 12/6/2006
Expires: 7/28/2024
Type of License: Principal Broker
History: None

Complainant was the seller of a home; Respondent was the listing agent. Complainant alleges that Respondent did not disclose that Respondent was the owner of the title and escrow firm that Respondent suggested Complainant use at closing. Complainant entered into a purchase agreement with a cash buyer that was set to close on February 28 and based on that agreement Complainant entered a contract to purchase another home that closed on March 1. On March 7th, Respondent notified Complainant that the buyer of Complainant's home never wired the purchase funds, so that sale did not actually close and asked if Complainant wanted to put the house back on the market. Respondent then explained that the funds used to purchase Complainant's new home was sent while Respondent was still trying to get in touch with the buyer and that the monies were sent so that it wouldn't delay the closing on Complainant's new home. At the time of the complaint in September, Complainant still owned both homes. Respondent has contacted Complainant requesting the return of the proceeds used to purchase the new home and placed a lien on Complainant's home. Complainant states that they were not notified of the lien until after a contract to purchase the home was finally executed in late August and the title search revealed the lien. The sale of the home was completed, and the lien was satisfied, and Complainant informed legal counsel that they have a suit pending against Respondent's title company to recoup losses due to the mismanagement of the closing process.

Respondent stated that Complainant was aware that Respondent owned the title company and provided a copy of the business interest disclosure signed by Complainant prior to the original closing date. (Counsel noted that one of the Complainants signed the disclosure one day before the closing.) Respondent stated that along with Complainant they reviewed all the offers made and that Respondent checked the background of the buyer and they “had no reason to believe the buyer would not complete the transaction.” Respondent stated that the fault lies solely with the buyer who failed to move forward with the sale and that they and their agents did not violate any fiduciary duties to the Complainant. Respondent asserts that a lien was placed only after months of attempts by Respondent to come to an agreement regarding the return of the funds sent by mistake to Complainant and learning that the Complainant’s home was under contract with a different listing agent.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for failing to exercise due care in providing services to all parties to the transaction in violation of Tenn. Code Ann. § 62-13-403(1).

Commission Decision: The Commission accepted counsel’s recommendation.

3. **2023041151**
Opened: 9/18/2023
First Licensed: 7/23/1996
Expires: 5/2/2025
Type of License: Principal Broker
History: 2020 Letter of Warning

Complainant is a licensee; Respondent is a licensee. Complainant and Respondent co-own a firm. Complainant alleges that Respondent let their E&O insurance lapse, is rarely available for calls and does not keep records as required by Tenn. Code Ann. § 62-13-312(b)(6). Complainant also alleges that Respondent is refusing to sign their broker release form and has written Complainant a “bad check”. Complainant asked for assistance is helping them “close down their firm.” Complainant provided a copy of notifications of missed deliveries as “proof” that Respondent is not actively in the office and proof the of the returned check. As co-owner, however, Complainant did not explain why they were not also responsible for missed deliveries.

Respondent’s E&O insurance did lapse but was renewed well within the grace period without penalty. Respondent denied refusing to sign the broker release forms, stating that they were signed within 48 hours of the request. Respondent stated that the bad check was the result of a missed deposit, and that it was solely their fault and apologized for the error and that it was rectified, and payment made as soon as they became aware of it. Respondent did not address the allegation that they were not keeping records as required but there is insufficient evidence at this time that the soured relationship between these former partners has risen to the level of violations of the *Broker Act* or Commission Rules.

Recommendation: Dismiss.

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

4. **2023034891**
Opened: 8/7/2023
First Licensed: 6/18/2009
Expires: 6/17/2025
Type of License: Affiliate Broker
History: None

This complaint was the result of a referral from a realtor association. Respondent is a licensee and was representing both the Buyer and Seller in a transaction. Buyer made an offer on the property and following discovery of issues on inspection and attempting to negotiate repairs, Respondent induced Buyer to continue with the purchase by offering in writing (via text) to rebate/refund to Buyer \$3,500 out of Respondent's commission to cover repair costs in violation of Tenn. Code Ann. § 62-13-312(b)(2). Buyer accepted that offer but, after the closing, Respondent refused to abide by that agreement. Copies of the text messages were provided.

Respondent admitted to making the offer of a rebate to "my client after closing because there was no longer time to make an Amendment without going through underwriting prior to Thanksgiving." Respondent stated that after the fact they changed their mind and realized they should not have made the offer, and regret that the Buyer felt taken advantage of. Respondent also stated that they had a family member with severe health issues at the time and they should have stepped away or leaned on their broker for more assistance with the transaction.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 32-13-312(2).

Commission Decision: The Commission accepted counsel's recommendation.

5. **2023035671**
Opened: 8/15/2023
First Licensed: 9/9/2005
Expires: 3/24/2025
Type of License: Principal Broker
History: None

Complainant was selling their home, and Respondent was their agent. Complainant alleges that Respondent did not promptly return messages or calls, and they had to schedule their own open house. Complainant alleges that Respondent "is not educated nor does (Respondent) show proper work ethic." Complainant did not provide copies of any documents or communication with Respondent.

Respondent denied the allegations and stated that they had spoken with Complainant since the complainant was filed and Complainant would be withdrawing the complaint. Complainant was notified of Respondent's statement and chose not to submit a rebuttal or additional information.

Based on the limited information provided there is insufficient evidence of a violation of the *Broker Act* or Commission rules.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

6. **2023033851**

Opened: 8/21/2023

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; 2022 Consent Order for failure to supervise an affiliate regarding acceptance of a commission check.

Complainant was seller of a property on behalf of Parent and had Power of Attorney ("POA") to act on Parent's behalf. Respondent was Seller's Agent for Complainant. Complainant and Respondent executed the Confirmation of Agency Status on June 21, 2022. The lot that was to be sold contained a mobile home that did not have a clear title. In November 2022 Complainant alleges that Respondent told Complainant that a buyer was ready to move forward and that the only delay to closing would be the title issue on the mobile home. Complainant alleges that Respondent had Complainant sign a deed conveying the property to Buyer, and that Complainant would receive the funds as soon as the closing took place. In January 2023 Respondent told Complainant that Buyer would accept a Bill of Sale in lieu of a title and that closing would go forward "soon" but that Respondent had Complainant's sales proceeds in escrow. As of June 2023, Complainant learned that Buyer had paid the 2023 property taxes. Complainant then learned that the deed they had signed in November 2022 had been filed with the county clerk in January 2023 and that the recorded sale price was substantially higher from what Respondent told Complainant. Complainant stated that "When I questioned the difference in sales price, I was told by (Respondent) that (they) sold the contract to the buyer and that the difference would be (their) profit, stating the closing statement would reflect all of that. I haven't seen a closing statement, was never given a closing date, wasn't present for a closing and haven't received any funds whatsoever for the sale of the property." Counsel followed up with Complainant and confirmed that Complainant has still not received their funds and the last contact with Respondent was in August 2023. Complainant provided copies of the deed they signed, the confirmation of agency status, the sale agency contract, the MLS listing naming Respondent as listing agent, state Comptroller data indicating the sale date, price and new owner, and a copy of their POA for their Parent along with copies of texts between Complainant and Respondent.

Respondent stated that they "regret this happened" but that they wanted to resolve the matter with Complainant. Respondent states that they purchased the property from Complainant in June 2022, and provided the 1st page of what appears to be a contract for the sale of real estate between Complainant and Respondent. The contract provides that the Respondent "will handle evictions of current renters." Respondent states they did this because there was an otherwise homeless relative of Complainant's on the property and Respondent felt they were in a better position to "fix up" the

mobile home and remove the squatter, which was unfortunately not the case. A “few months later” Buyer expressed interest in the property and agreed to “purchase my contract”. Respondent stated that due to the title issue with the mobile home, Buyer did not agree to pay for the property until January 2023. Respondent pointed to eviction proceedings taking place between Buyer and the squatter along with not having been provided a bill of sale from Complainant as to why the sales proceeds had not been delivered to Complainant almost a year later. Respondent said they would release the funds if “(Complainant) will provide a bill of sale for the trailer on said property and if the court case is closed” in Buyer’s favor against the squatter but for now the funds are “safely in escrow”.

Recommendation: Discuss.

Commission Decision: The Commission voted to issue a Consent Order for revocation for violation of Tenn. Code Ann. § 62-13-403(1), or failure to diligently exercise reasonable skill and care in a transaction.

7. **2023038031**
Opened: 8/21/2023
First Licensed: 11/14/2013
Expires: 11/13/2023
Type of License: Affiliate Broker
History: None

Complainant was a buyer; Respondent was the agent for the sellers. Complainant alleges that after the purchase agreement was signed and before closing, Complainant was on site at the property to make some repairs and discovered a new water leak that caused substantial damage. Due to the extent and cost of the repairs Complainant decided not to move forward with the purchase and Complainant’s agent asked for a mutual release and return of the earnest money. Respondent declined, and Complainant alleges that Respondent stated that the closing documents had already been signed by the sellers, the purchase would go forward, or the Complainant would lose the earnest money. Complainant’s agent was able to confirm that the closing paperwork had not been signed by the sellers. The day after what would have been the closing date, Respondent re-listed the property and Complainant alleges that Respondent did not update the disclosure statement to list the water damage and did not disclose that Respondent subsequently sued Complainant for the earnest money and legal fees. Complainant provided pictures of the damage and provided a copy of a quote for repairs that was over \$17,000 and stated they provided those documents to the Seller and the Respondent.

Respondent stated that Complainant entered the property without Seller’s permission after receiving the lock box code from Complainant’s agent. Respondent stated that per the contract the home was being sold “as-is” and that when Respondent did not go forward with the purchase, they forfeited the earnest money. Respondent confirmed that an interpleader action is pending regarding the earnest money. Respondent also asserted that a new disclosure form was prepared when the home was put back on the market.

Complainant submitted a rebuttal, noting that the contract was enforceable only if the “Property is in the same or better condition as it was on the Binding Contract Date, normal wear and tear excepted”. Complainant also provided a point-by-point response regarding the contractual items referenced by Respondent. Complainant also again provided a copy of the repair estimate provided to Respondent. While the Complainant’s frustration is clear and probably well-founded, there is insufficient evidence that the Respondent failed to disclose the issue to prospective buyers after Complainant’s sale fell through. Additionally, the dispute over the earnest money is being appropriately addressed through the interpleader action.

Recommendation: Dismiss.

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

8. **2023031361**
Opened: 7/3/2023
First Licensed: 10/26/2004
Expires: 12/14/2024
Type of License: Principal Broker
History: None

Complainant is a homeowner; Respondent is a licensee. Complainant alleges that Respondent’s company was hired to perform lawn maintenance and fence repairs on their home, received money to buy materials, and then did not complete the work. Respondent provided a response disputing the allegations and stated that the matter was a contractual issue that had been resolved after the filing of the complaint. There is no evidence of a violation of the *Broker Act* or Commission Rules.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

9. **2023031341**
Opened: 7/3/2023
First Licensed: 6/21/2019
Expires: 6/20/2023 (Expired Grace, Uninsured)
Type of License: Real Estate Firm
History: None

This complaint is related to REC # 202303136. For the reasons stated above, Counsel recommends dismissal of the complaint.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

10. **2023038361**
Opened: 9/18/2023

First Licensed: 6/1/2021
Expires: 5/31/2025
Type of License: Affiliate Broker
History: None

Complainants were homebuyers, Respondent was the listing agent and owner of the home Complainants purchased. Complainants allege that Respondent did not disclose an active leak in the master bath shower that has resulted in expensive repairs to the home. Complainants provided copies of repair quotes and pictures of the damage to their master bath subfloor taken after closing.

Respondent confirmed that there had been repairs to the master bath in the months leading up to the sale of the home and that information was provided to the Complainants prior to closing. Copies of work orders and a letter from a remediation company stating that there were no active leaks were also provided. While there is obviously a dispute as to whether the work was done competently by the remediation company and the plumber, there is insufficient evidence that Respondent hid the fact that a repair was done. Both the remediation company and plumber said that the repairs were made as required by the repair amendment.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2023041171
Opened: 10/2/2023
First Licensed: 6/2/2010
Expires: 6/1/2012 (Expired)
Type of License: Real Estate Firm
History: None

Complainant is a resident of condominium community; Respondent is a property management company. Complainant alleges that Respondent was hired three years ago by the HOA to manage the community and has not provided competent services. A pool gate was left broken for much of the summer which was a safety concern; trash and debris are being allowed to accumulate in the dumpster enclosure areas which is attracting rodents; and the lights on the property grounds have been out for months. The Respondent has not responded to resident requests for assistance and did not respond to the complaint. A review of Respondent's website showed that the Respondent offers residential and commercial property management services including leasing properties for their customers.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity pursuant to Tenn. Code Ann. § 62-13-301.

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

12. 2023041921
Opened: 10/2/2023
First Licensed: 8/30/2007
Expires: 8/29/2025
Type of License: Real Estate Firm
History: None

Complainant purchased a property at an auction conducted by Respondent. Respondent's description of the property was that it had "updated electrical". Complainant alleges that they learned the property failed an electrical inspection prior to the auction, and that Respondent admitted that they knew of the failed inspection but that it "wasn't (Respondent's) responsibility." Complainant alleges that Respondent failed to provide services to each party to the transaction with honesty and good faith in violation of Tenn. Code Ann. § 62-13-403.

Respondent did not provide a response to the complaint.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for failure to respond.

Commission Decision: The Commission accepted counsel's recommendation.

13. 2023045731
Opened: 10/2/2023
First Licensed: 9/29/2005
Expires: 9/28/2025
Type of License: Real Estate Firm
History: None

Complainant and Respondent are both licensees. Complainant alleges that Respondent is engaged in "misleading and false" advertising as well as using Complainant's marketing in Respondent's ads. Complainant alleges that Respondent is "purposely defaming our brand and brokerage for their marketing message." Complainant provided a copy of an advertising email from Respondent that uses an image of Complainant's advertising and states "Now that (Complainant) is shipping out, why not piggyback" on Complainant's advertising for a cash offer by contacting Respondent's firm. Complainant is still operating in the area advertised, and Complainant's logo was used without Complainant's permission.

Respondent confirmed that they did use Complainant's marketing imagery to promote their business after reading in a local newspaper that the Complainant was closing their local office. Respondent stated they should not have used Complainant's advertising in that manner, but that the email was not sent to "any member of the public". Respondent sent out the email on one occasion and shelved the promotion after receiving a cease and desist letter from Complainant.

Recommendation: Five Hundred Dollar (\$500.00) civil penalty for advertising in a false or misleading manner in violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(f).

Commission Decision: The Commission accepted counsel's recommendation.

14. 2023046641
Opened: 10/2/2023
First Licensed: 1/2/1991
Expires: 5/14/2025
Type of License: Real Estate Firm
History: None

Complainant is a property owner; Respondent is the property manager for two of Complainant's properties. Complainant alleges that Respondent has withheld a security deposit from Complainant and has generally mismanaged the properties. Complainant provided a copy of the parties' property management agreement.

Respondent denied any wrongdoing and agreed that they declined to give the security deposit to the Respondent because it was the tenant's money, the tenant was still residing in the home, and the money was in Respondent's escrow account until the end of the lease term as required by the lease. Respondent also provided a copy of a text from Complainant sent to the tenant, directing the tenant to pay rent directly to Complainant instead of Respondent in violation of their contract and the tenant's executed lease agreement. As this is primarily a contractual dispute, it is outside of the Commission's jurisdiction.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2023048571
Opened: 10/9/2023
First Licensed: 4/15/2008
Expires: 5/27/2025
Type of License: Principal Broker
History: 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

Complainant and Respondent are both licensees. Complainant alleged that on September 29, 2023, they learned that Respondent's license expired on May 31, 2023, and that while they "know there is a grace period...as a broker this is unacceptable."

Respondent provided a response on the same day they received a copy of the complaint asking that it be dismissed. Respondent properly renewed their license prior to expiration but learned because of the complaint that the payment of the renewal fee was not appropriately credited to their file, and so the license was not renewed by the system. The error was addressed immediately, and Respondent's license is now correctly shown as active.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

16. **2023049071**
Opened: 10/19/2023
First Licensed: 6/18/2019
Expires: 7/11/2024
Type of License: Principal Broker
History: None

Complainant is a property owner who hired Respondent to manage one of their properties including securing a tenant. Complainant alleges that Respondent has mismanaged the property, failed to secure a tenant, failed to communicate with the Complainant, and is now demanding fees for services that they did not perform.

Respondent denied any wrongdoing, stated the matter was a contract dispute between the parties, and provided a detailed response to each of Complainant's allegations. Because the complaint appears to be entirely a contractual issue it is not within the jurisdiction of the Commission.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

17. **2023050071**
Opened: 10/19/2023
First Licensed: 7/30/2020
Expires: 7/29/2024
Type of License: Affiliate Broker
History: None

Complainant was selling their home; Respondent was the buyer's agent. Complainant alleges that Respondent failed to act with due care and as a result the sale of their home to Respondent's buyer did not occur. Complainant blames Respondent for not collecting the earnest money from Buyer and feels that Respondent should pay Complainant the earnest money lost plus compensation for expenses as the result of the failed sale, including the cost of moving and storing furnishings.

Respondent's principal broker (PB) responded for Respondent. PB provided a timeline of events regarding the failed purchase and copies of dozens of text messages between Respondent and Buyer and Respondent and seller's agent. Respondent made clear to Buyer repeatedly that they needed to provide the earnest money, and that they were in breach of contract by not doing so. Respondent and seller's agent negotiated an extension of closing to give Buyer more time, but Buyer eventually stopped replying to Respondent's texts and phone calls. There doesn't appear to be anything else that Respondent could have done to salvage the sale, and there's no apparent violation of the *Broker Act* or the Rules of the Commission.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

18. 2023050291
Opened: 10/19/2023
First Licensed: 2/23/2022
Expires: 2/22/2024
Type of License: Affiliate Broker
History: None

Complainant was the seller of a home; Respondent was the buyer's agent. Complainant alleges that their agent negotiated with Respondent for Buyers to purchase some furniture in the house as well. There were also repairs that needed to be made before closing, and Complainant seems to be alleging that Buyers were demanding more repairs than were necessary. Complainant blames Respondent for the Buyer not personally paying Complainant for one of the items of furniture. The Complainant was eventually paid in full for the furniture and asked for the complaint to be withdrawn.

Respondent provided a detailed response that included the Repair/Replacement Amendment signed by all parties. Buyer was concerned about the repairs being done properly, and those concerns were conveyed to the Complainant's agent. Additional conversations were had regarding the furniture, and it appears that the furniture discussion was separate from the purchase/sale agreement for the home. There is no evidence of a violation of the *Broker Act* or Commission rules.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

19. 2023050871
Opened: 10/19/2023
First Licensed: 3/6/2013
Expires: 3/5/2025
Type of License: Affiliate Broker
History: None

Complainant is a home renovation company that was hired by licensee/Respondent to provide repairs to the Respondent's parents' home. Complainant alleged that Respondent did not pay for the repairs. Respondent denied wrongdoing and the parties eventually settled out of court earlier this year. A complaint with the same underlying facts filed by a different employee of Complainant's was dismissed at the June 2023 meeting due to insufficient evidence of a violation of the *Broker Act* or Commission Rules. Counsel recommends dismissal of this complaint for the same reason.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2023050951
Opened: 10/19/2023
First Licensed: 7/17/1995
Expires: 3/25/2025
Type of License: Real Estate Broker
History: None

Complainant stated that Respondent advertised a property on social media as being “REDUCED” when it actually had been previously listed at a lower price, then inactive, and when re-listed the asking price was 25% more than previously listed. Complainant alleges Respondent’s advertising is misleading.

Respondent stated that the wording was a mistake and not made to intentionally deceive the public. The listing was corrected immediately, and Respondent apologized for the error. Based on the Respondent’s length of licensure and the lack of any previous disciplinary history, Counsel recommends a letter of warning regarding the need for advertising to be kept current and accurate pursuant to Tenn. Comp. R. & Regs. 1260-02-.12(5)(c).

Recommendation: Letter of Warning.

Commission Decision: The Commission accepted counsel’s recommendation.

21. 2023045061
Opened: 10/19/2023
First Licensed: 9/15/2022
Expires: 9/14/2024
Type of License: Real Estate Firm
History: None

Complainant alleged that Respondent is operating a real estate firm from a residence in violation of city zoning and HOA rules. Attempts to reach Complainant to obtain additional information were unsuccessful.

Respondent stated they had permission to operate a home office and were compliant with all zoning laws and ordinances. Respondent provided the agreement between Respondent and the HOA noting that they would be running a “home-based” business. Based on the limited information provided, it does not appear that Respondent is in violation of the *Broker Act*.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

22. 2023052761

Opened: 10/23/2023
Unlicensed
History: None

Complainant/licensee states that their client received an offer in the mail regarding their vacant land and that the offer was “made with intent of assigning to another buyer.” Complainant alleges that Respondent is acting as an unlicensed broker. A copy of the offer was provided, and Counsel noted that the offer stated that the buyer/Respondent would pay closing costs and that the offer was contingent on free and clear title being conveyed on the day of closing. There is no mention of an assignment of the contract.

Respondent denied acting as an unlicensed broker, and stated they sent a simple purchase agreement to buy a few properties in the area. Respondent pointed out that “No where in my agreement does it mention I plan to assign” the contract. Counsel agrees that based on the information provided there is insufficient evidence of a violation of the *Broker Act*.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

23. 2023044371
Opened: 10/23/2023
Unlicensed
History: None

Complainant received a mailer asking if they were interested in selling their home. The mailer seemed to be from a person i.e., not a company, and had a name and phone number listed to call if interested. Complainant alleges that when they called the number it was a business number and seems to be alleging that the Respondent is engaged in unlicensed activity.

Respondent confirmed that they sent the mailer, they are a real estate investor, and they were soliciting leads for potential purchases. The name on the mailer is the Respondent’s and the number is an answering service for their business. There is no evidence currently that the Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

24. 2023049971
Opened: 10/23/2023
First Licensed: 9/1/2009
Expires: 8/31/2025
Type of License: Real Estate Firm
History: None

This complainant was a referral from the Division of Consumer Affairs. The Complainant is a tenant in an apartment managed by Respondent and alleges mismanagement by the Respondent. The Complainant alleged that despite repeated maintenance requests their air conditioning had not been fixed along with other issues. The Complainant asked to be credited for one month's rent due to the inconvenience.

Respondent denied not responding to Complainant's maintenance requests and provided an invoice detailing the work done on Complainant's air conditioning. There is no evidence of a violation of the *Broker Act* or the Rules of the Commission, and this appears to be primarily a landlord/tenant dispute.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

25. **2023044051**
Opened: 10/2/2023
First Licensed: 3/24/2008
Expires: 3/23/2024
Type of License: Time Share Registration
History: None

Complainants' attorney submitted a copy of a letter sent to Respondent requesting cancellation of their contract and a refund of all money paid to Respondent. Complainants stated they are unhappy with the products and the services.

Respondent provided a timeline regarding the Complainants' purchase and how they have attempted to address Complainants' concerns. Since this matter is a contractual dispute, it is outside of the Commission's jurisdiction.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

26. **2023042291**
Opened: 10/9/2023
First Licensed: 8/23/2017
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: None

Complainants purchased a time-share from Respondent in March 2021. They allege that the Respondent pressured them into the purchase, offered gifts and incentives, and forged their

signatures on the purchase contract. They have used the Respondent's services "three or four times" since they made the purchase but due to limited availability state that the timeshare is "useless". A copy of the purchase contract was provided and were signed electronically by the Complainants except for the Disclosure of Agency Status which was personally signed by the Complainants. The Complainants also had several issues with the customer service provided by the Respondents. They are asking the Commission to assist them in cancelling their contract.

Respondent advised that they met all required disclosures and contractual requirements. Additionally, Respondents stated that the contract documents provided by the Complainants demonstrate that Complainants "signed and received fully disclose the agreement between them and (Respondent). The Buyer's Acknowledgement, Ownership Review Summary and Financial Review Summary, which they also signed and/or received at the time of purchase, are documents used to assist a purchaser in avoiding misunderstandings and to aid them in understanding the product they are purchasing. There are also specific written disclosures concerning ownership, discount, down payment, monthly (Respondent) assessment and loan payments, programs, resale assistance, rental income, investment, and tax benefit." Counsel noted that the required rescission language was provided and conspicuous. The rescission period has passed; the two-year statute of limitations pursuant to Tenn. Code Ann. § 62-13-313 has passed, and the remaining issues are contractual disputes between the parties.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

Aerial Carter

New Complaints:

27. 2023039741

Opened: 9/25/2023

First Licensed: 9/28/2021

Expires: 9/27/2025

Type of License: Real Estate Broker

History: None

This complaint was administratively opened against the Respondent. Respondent is a licensed Real Estate Broker. The administrative complaint contained an attachment of a signed consent order from another state. Respondent is a licensed Broker in the other state. The consent order was for an advertising violation.

Respondent had multiple correspondences regarding this complaint and was confused on what an out of state consent order had to do with their out of state license.

Counsel reviewed the out of state consent order. It was unclear what the complainant's concern was. The out of state consent order does not contain any matter that the Commission would have jurisdiction over. Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2023039461
Opened: 8/28/2023
First Licensed: 3/5/2021
Expires: 3/4/2025
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and home Buyer in a real estate transaction. Respondent is an Affiliate Broker. The Respondent acted as the Seller's Agent in the real estate transaction. Complainant alleges the Respondent (1) kept trying to change the closing date from July 14th to July 17th accommodate their client. (2) Respondent insisted on doing a final walkthrough although the Seller hadn't fully moved out, and (3) Respondent failed to disclose issues in the home. Specifically, one of the garage doors was sitting inside the garage, the garage door had three bent panels, and the roof was leaking. Complainant did not include any additional documentation to support their claims.

Respondent's Principal Broker provided a response on their behalf. The response stated that the parties agreed on July 14th as the closing date, but it was known that the Seller wanted a flexible closing date because they were doing a dual closing. Respondent then did a temporary occupancy as a backup. However, the seller didn't want to agree to be flexible. The Seller signed the agreement on July 13th with disbursement on July 17th. Next, the Complainant's agent came to the property on July 14th to see the progress of the Seller moving out and was in the process of moving. Last, it was denied that Respondent failed to disclose any information. The Respondent included the property disclosure form and there was nothing that they were aware of or required to disclose. The Respondent also stated if there was anything they were aware of, they would have disclosed it. After the home inspection came back, the Seller offered a price reduction and ultimately the property was purchased "as is." Respondent included various documents including screenshots of text messages between them and the Complainant's agent.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2023028531
Opened: 7/3/2023
First Licensed: 4/28/2015
Expires: 12/2/2025
Type of License: Principal Broker
History: 2021 Consent Order for Advertising Violation

Complaint number 2023028531 (#29) and 2023043671 (#52) are related and contain the same allegations.

Complainant is a Tennessee resident and prospect home buyer. Respondent is a Principal Broker and supervises an affiliate who assisted Complainant in the real estate transaction. Complainant alleges Respondent's affiliate (1) failed to offer any strategy for buying homes, (2) lacked professionalism and wore casual attire such as jeans, t-shirts, and tennis shoes, (3) failed to include that the closing costs would be paid by the seller (4) Respondent refused to release them from the Exclusive Representation Agreement (Agreement) unless they paid \$3,000. Complainant included a copy of the Agreement.

Respondent and their affiliate submitted responses. Respondent maintains that their affiliate was responsive and provided Complainant with relevant information for submitting offers and advising them throughout the real estate transaction. The affiliate stated that they were always in professional attire when interacting with Complainant and did not wear jeans or t-shirts. Affiliate did state that they may have worn polo shirts and khaki pants but nothing that could be deemed unprofessional. Respondent and Affiliate stated that they refused to release Complainant from the Agreement unless they paid a cancellation fee of \$3,000. Respondent did not include any supporting documentation.

Counsel requested additional information from the Complainant and Respondent regarding this matter. Complainant did not provide any additional information and only requested that they be released from the agreement. The Respondent included screenshots of communications between the Affiliate and the Complainant.

Counsel reviewed the screenshot provided and it appears that Affiliate communicated regarding potential properties for sale.

Counsel reviewed the Agreement, and it appears that it was clear that the Seller would be responsible for closing costs, but Complainant would be responsible the difference if the closing costs was less than \$3,000. Counsel failed to see any agreement that entitles Respondent to \$3,000 to release the Complainant from the Agreement. There is not a condition that discusses a termination/ cancellation fee that would be owed if the Complainant chose to terminate the agreement. The only mention of a \$3,000 fee occurred in the section entitled special stipulations and says "Buyer acknowledges that the Broker is paid by the seller at the time of closing. in the event the total commission is less than \$3,000, Buyer agrees to pay the difference at closing to [redacted firm name]."

As of this legal report, the Agreement is expired, and Respondent should have released the Complainant without any monetary penalty. However, the Commission does not have the authority over this matter as it is a contract dispute.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

30. 2023032421
Opened: 7/24/2023
First Licensed: 2/9/2011
Expires: 2/8/2025
Type of License: Affiliate Broker
History: None

At its June Commission meeting, the Real Estate Commission opted to open an administrative complaint against the correct respondent. This Complainant is a Tennessee resident and was a buyer in a real estate transaction. Respondent is an Affiliate Broker and was the listing agent for a vacant lot. Complainant alleges Respondent falsely advertised the property. The Respondent stated there was electricity available on the property, but after the Complainant purchased the property, they discovered there were no electrical poles and had to get an easement from their neighbor. They now have property that can't get power and they would not have purchased the property if they knew there was no power.

Respondent stated that Complainant and their agent went to the property prior to purchasing and there were no utility poles present at any time. The Respondent said that they were never asked about utilities until after closing. The Respondent stated that they provided the Complainant with a survey and legal description of the property prior to close. Furthermore, the Respondent stated when they showed the property, they only showed the Complainants the property lines and did not advise the buyers on inspection, electric or water.

Counsel submitted an investigation request in this matter. The investigator contacted the Complainant and their agent, they provided the property assessment data, the original deed, and the new warranty deed. Counsel reviewed the investigator's findings.

The investigator contacted the Complainant in this matter to see if there were any updates since the complaint was submitted. They stated that they still have no electricity on the property because the neighbors will not grant an easement. The Complainant submitted the MLS listing and listing posted on a listing website. Here, the MLS and post from the listing website stated that electricity is available. This is in comparison to the section related to the sewer and clearly states "septic needed."

The investigator contacted the Complainant's agent. They confirmed they represented the Complainant in this transaction. They attached the MLS listing that stated electric was available by plateau electrical co-op, a link to the video advertisement where the Respondent states there was electric, water, high-speed fiber internet and natural gas available. The Complainant's agent also sent an email detailing why they believed there was electricity available. They stated that they relied on the Respondent's representations, they saw electric poles and power to the neighboring property.

The investigator provided the property assessment data, the register of deeds, and the warranty deed. The property assessment data has a section entitled "value information" and stated they utilities are electric and public. The original deed was from the previous owner who had a large tract of land, and they were selling off portions. The property purchased by the Complainant was

the first deed recorded after the division. Counsel reviewed the original deed and based off their understanding, there was an easement for utilities that runs with the land. It also appears that the easement required electric poles to be installed. The new warranty deed was conveyed to the Complainant and had a special provision stating the land was conveyed “as is” and “with all faults.”

Based on the information provided, the Complainant relied on the representations made by the Respondent via the listings and video. The video has clear representation that electricity along with other utilities were available. The MLS and post from the listing website support this. Counsel has determined a violation has occurred and recommends a discussion to assess the proper penalty.

Counsel believes the Respondent engaged in the following violations. Respondent stated that they were aware that there were no electrical poles on the property but did not disclose the adverse fact to any party in violation of T.C.A. § 62-13-403(2). Alternatively, if the Respondent was aware there was no electricity and purposefully posted misleading advertisements in violation of Rule § 1260-02-.12(3)(f). If the Respondent was unaware if the property had electricity available, the Respondent failed to do their due diligence before listing the property in violation of T.C.A. § 62-13-403(1). Additionally, Respondent did not enter into this agreement in honesty and good faith as there is no mention of electricity not being available, in violation of T.C.A. §62-13-403(4).

The Commission has the authority to refuse a license for cause or to suspend or revoke when a licensee is found guilty of making any substantial and willful misrepresentation. T.C.A. § 62-13-312(b)(1). The Respondent makes any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep the promise. T.C.A. § 62-13-312(b)(2). When the Respondent pursues a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, any medium of advertising or otherwise. T.C.A. § 62-13-312(b)(3).

Recommendation: Discuss.

Commission Decision: The Commission voted to issue a Consent Order with a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-403(1), or failure to diligently exercise reasonable skill and care in a transaction.

31. 2023033751

Opened: 7/24/2023

First Licensed: 4/2/2002

Expires: 7/8/2025

Type of License: Principal Broker

History: None

This is an administrative complaint that was related to a home inspection case where an individual was engaged in unlicensed activity. The related complaints alleged that the Respondent knew that an individual was engaging in unlicensed activity as a home inspector, but still promoted the unlicensed individual’s services to their real estate clients. It was also alleged that the Respondent allowed the unlicensed individual to operate their business within the same office as Respondent’s

real estate firm. The Complainant attached pictures of yard signs where the unlicensed individual was promoting their services.

Respondent stated that the unlicensed individual is not currently associated with their office and has been instructed in writing numerous times via a cease and desist from advertising and performing home inspections as a non-licensed individual. The Respondent included a cease and desist letter to the unlicensed individual from their attorney.

Counsel submitted an investigation request in this matter to determine if the Respondent promoted the unlicensed activity. The inspector attempted to get documentation related to the allegations but neither the Complainant nor the Respondent provided any additional information to support or reject the allegations. The Respondent maintained that although they were aware the individual did not have a license, the individual was not associated with their real estate firm. The pictures of the yard signs did not show the location nor did include the Respondent's firm information.

At the time the complaint was filed, Counsel believes Respondent knew or should have known that they were allowing an unlicensed individual to advertise their services from their real estate firm because the Respondent and the unlicensed individual are married. Additionally, Respondent stated in their response that there was a public table where the public could advertise their services and clients could choose who to hire. However, there is not enough documentation to suggest the Respondent knew about the unlicensed activity.

Recommendation: Dismiss.

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

32. 2023036311

Opened: 8/7/2023

First Licensed: 4/2/2002

Expires: 7/8/2025

Type of License: Principal Broker

History: None

Complainant is a licensed real estate professional. Respondent is a Principal Broker. The Complainant was an affiliate at the Respondent's firm. The Complainant was the listing agent for a prospective seller, and they signed an Exclusive Right to Sell and List Agreement (Agreement). The Complainant left the firm and the prospective seller decided to list with them. Complainant alleges Respondent continued to contact their client after they terminated an Exclusive Right to Sell and List Agreement and continued to have an active listing despite the seller asking for it to be removed. The Complainant attached screenshots of text messages between them and the Respondent, the Listing/ Buyer Representation Mutual Release Agreement

Respondent submitted a response. The response did not address the allegations and focused on the perceived faults of the Complainant including them not being unethical, dishonest, and failing to exercise reasonable care. The Respondent included screenshots of text messages between them, but it does not appear to be relevant to the current complaint.

Counsel reviewed the information provided. Although the Complainant was the designated agent, the Agreement was signed at the Respondent's firm. Respondent has the right to the Agreement until the contract expired or the relationship was terminated. The Agreement has a section for early termination, but it does not have a price. However, the Respondent requested \$495 before they would agree to terminate the Agreement. This is a contract dispute and is outside of the Commission's authority. The Complainant did not provide any documentation to indicate that the Respondent was reaching out to their client. It is unclear when it occurred, but it appears that the parties agree that the listing became inactive.

Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

33. 2023044381
Opened: 10/2/2023
First Licensed: 3/23/2022
Expires: 3/22/2024
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident and a prospective home buyer in a real estate transaction. Respondent is an Affiliate Broker and represented the Seller. Complainant alleges Respondent rejected their cash offer for the property being sold although it was previously accepted by the Seller. On August 24th, Complainant stated that they submitted a cash offer, and the Seller accepted it the offer, and the parties signed a document that stated the sale was contingent on a home inspection. On August 27th, Complainant flew to Tennessee to view the property, but when they arrived, they were told that the Sellers cancelled the viewing. Complainant's agent attempted to reschedule and negotiate the purchase, but the Respondent kept putting them off. A few days later, the Complainant was told that the Seller had already accepted another offer on August 22nd.

The Complainant attached several documents including, a document entitled "Tennessee Residential Property Conditional Disclosure" ("Disclosure"), one page of the purchase agreement entitled "Amendment to the Purchase and Sale agreement" ("Agreement") and screenshots of text messages.

Respondent and their Principal Broker submitted responses. The Respondent stated that the Complainant did submit a cash offer, but they informed the Complainant's agent that the home went under contract on August 22nd. Respondent was told by the Complainant's agent that Complainant loved the home and still wanted to see the property. After speaking with their client, Respondent was authorized to consider the Complainant's offer as a backup and they scheduled the viewing on August 28th and the Complainant was unable to make it so they tried for the next day, but the schedules didn't align. On September 1st, the Complainant showed up to the Seller's property unannounced and was asked to leave. The Principal Broker's response supported the

Respondent's version of events. The Respondent submitted a copy of the purchase agreement for the offer that was accepted.

Counsel reviewed the documents submitted. The Disclosure that the Complainant attached was signed by the Seller on July 25th and the Complainant on August 24th. For the page of the purchase agreement, the Complainant only included the last page of the Agreement that defined the Seller's time to either counter or accept the offer and the deadline of August 24th, but it was only signed by the Complainant. Lastly, the Complainant submitted text messages. However, the only communication provided was between them and their agent and did not include any dates or timestamps.

The Respondent's attached the purchase agreement for the offer that their client accepted. This document confirmed that the property was under contract on August 22nd.

Based on the information provided, it does not appear that there was a binding agreement between the parties. Although there was an offer made, there is no evidence to support that it was accepted by the Seller. The Complainant was aware that there was another offer, but it doesn't seem like it was clearly communicated that the offer was only a backup. Since the Respondent informed the Complainant's agent about the accepted offer, it is Counsel's belief that it was the Complainant's duty to convey that to their client.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

34. 2023045071

Opened: 10/2/2023

First Licensed: 4/18/2012

Expires: 6/23/2025

Type of License: Real Estate Broker

History: 2021 Close & Flag

Complainant is from an anonymous individual. Respondent is a licensed Real Estate Broker. Complainant alleges that Respondent submitted a Broker Application with false information to obtain a Broker's license from TREC. The basis of the belief was because of an out of state arrest warrant for failing to appear. Additionally, the name on the arrest warrant had a different last name. Complainant did not provide any additional information to support their claim.

Respondent submitted a response and denied the allegations in the complaint. They stated that they received a speeding ticket, but they were unaware of the violation or court date and paid a bond for the failure to appear. The case was dismissed, and they deny any criminal history. For the allegation of the different last name, the Respondent stated that their last name changed after marriage and the name listed is the same as their account with the Commission. The Respondent included a copy of the case history from the out of state clerk's office.

Counsel reviewed the document, and it states that the case was for speeding, and it was dismissed in May 2021 based off a motion from the District Attorney's office. Counsel finds Complainant's allegations related to the Respondent submitting a Broker Application with false information to obtain a Broker's license from TREC to be unfounded.

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

Recommendation: Dismiss.

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

35. 2023045961

Opened: 10/2/2023

First Licensed: 3/22/2021

Expires: 3/21/2025

Type of License: Affiliate Broker

History: None

Complainant is a licensed real estate professional. Respondent is an Affiliate Broker. Complainant is a Broker and Respondent was an affiliate at their firm ("Firm 1"). While Respondent worked at Firm 1, they met a client who was a buyer in a real estate transaction. Respondent represented the buyer under Firm 1's name. After a few months, the buyer decided to sell the property on November 8, 2022, and Respondent represented the client as the seller. Respondent withdrew the listing on November 14, 2022, at the request of the seller. Respondent was released from Firm 1 on January 31, 2023. In June 2023, Respondent listed the same property under another firm ("Firm 2"). Complainant alleges Respondent committed an ethical violation when they relisted the property and sold it under Firm 2 without consent or having a mutual release from Firm 1. The Complainant included a copy of the Exclusive Right to Sell Listing Agreement ("Exclusive Agreement") and the MLS listing Respondent posted for the property.

Respondent, their current Principal Broker, and the client submitted a response. Respondent stated the previous client contact Respondent about re-listing the property in February 2023, but the listing was not active until June 2023. Respondent stated that after their release from Firm 1, they did not have any access to previous document and client did not state they had an agreement with Firm 1.

The client stated that they were unaware that they were still a client of Firm 1 as they did not contact them. Additionally, the client stated that the Respondent never took her from Firm 1, and they contacted the Respondent because they were the realtor they wanted to work with.

Respondent, Principal Broker, and the client maintain that Complainant never contacted them about the Exclusive Agreement. The response included screenshots between, the Respondent and client; the MLS listing; a timeline of events; letters from the Respondent's attorney; and the order from the civil lawsuit.

Counsel reviewed the documents submitted by all parties. The Exclusive Agreement is clearly with Firm 1. However, there is confusion as to whether the contract was terminated. The stipulations were that Firm 1 would have the exclusive right to sell the property starting March 1, 2023, to September 8, 2023. The Exclusive Agreement was signed by all parties on November 8, 2022. Under a section entitled “Special Stipulations,” the parties agreed that if the seller wanted to withdraw the listing, they would owe Firm 1 for pictures and marketing. All parties agree that the seller withdrew the listing on November 14, 2022. According to the Exclusive Agreement, withdrawing the listing would terminate the agreement.

Under the Rules and Regulations, “when a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.” Tenn. Comp. R. & Regs. 1260-02-.02.

Here, the Respondent received the listing from the client while working as an affiliate with Firm 1. However, they did not get permission from Complainant to list the same property with Firm 2.

Based on the information provided, The Commission has no authority over any ethical violations the Complainant cited. However, Counsel believes further discussion is needed to determine if Respondent had a duty to request written authorization to list the property.

Recommendation: Discuss

Commission Decision: The Commission voted to dismiss this complaint.

36. 2023046661
Opened: 10/2/2023
First Licensed: 3/25/2022
Expires: 3/24/2024
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident and prospect buyer in a real estate transaction. Respondent is an Affiliate Broker and acted as the seller’s agent. Complainant alleges Respondent engaged in unethical behavior by (1) refusing to their request to show the property via Zoom, (2) refusing to sell the property to the Complainant unless the Respondent represented them, (3) Respondent requested an offer on the property even though they refused to show the property. The Complainant stated they would not work with the Respondent because it would be a conflict of interest and they were not interested in the property, so they did not put an offer to purchase the property. The Complainant did not provide any additional documentation.

Respondent denied all the Complainant’s allegations that they engaged in unethical behaviors. The Respondent stated that they were contacted by the Complainant’s agent to see the property via Zoom. The Complainant’s Agent lived hours from the listed property and requested that the Respondent show the property to the Complainant. They stated that after discussing it further, they realized that the Complainant’s Agent wanted them to speak directly to the Complainant. The

Respondent refused the request because the Complainant was not their client and believed it was their agent's responsibility to view the property with the Complainant. Respondent sent a text the Complainant's Agent informing them that they could come to the property and call their client via Zoom.

The Respondent denied telling the Complainant that they were refusing to sell the property to the Complainant unless the Respondent represented them. Respondent stated that after informing the Complainant's Agent that they would not do the showing via Zoom, they received a call from the Complainant. When they first called, the Complainant did not identify themselves and roughly halfway through the conversation Respondent realized the connection and let the Complainant know they needed to contact their agent and if they came to Tennessee, they would be happy to show the property. Respondent stated they did not make showing the house conditional on them representing the Complainant in the real estate transaction.

Lastly, Respondent denied that they refused to sell the property to the Complainant and suggested that if they wanted to make an offer, they should speak their agent and write down any conditions. After discussing submitting a potential offer, the Respondent was informed that the Complainant would look at other properties. The Respondent did not provide any additional documentation.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

37. 2023047421
Opened: 10/2/2023
First Licensed: 1/16/2020
Expires: 1/15/2024
Type of License: Affiliate Broker
History: None

Complainant is a licensed real estate professional. Respondent is an Affiliate Broker. Complainant alleges Respondent used photographs from the Complainant's listing and advertised it as their own along with incorrect information about the property. The posts were seen on social media. The Complainant included screenshots of the listing on social media and a text asking about the advertisement.

Respondent stated they were not involved with posting the listing or using the pictures that the Complainant found on social media. Respondent stated that they are an admin of a social media page with a similar name, but the two pages are not related. When the Respondent received the complaint, they called the Complainant to inform them that they had the wrong person and offered to help them find the right party. The Respondent attached a link to both social media groups.

Counsel reviewed the social media posts and the messages submitted. The social media post did not have any identifying information about who made the original posts. The information page on the social media website states that “this page can have multiple admins. They may have permission to post content, comment or send messages as the Page.” There is not a specific person listed as the admin. Additionally, there was no address attached, just a city and state.

In the screenshots of the message, the person that the Complainant spoke with did not identify themselves and only stated that the pictures came from “a third-party agency that helps them with leads.” Counsel compared the number from the message to the one listed on the Respondent’s account with the Commission, they did not match. The city was also different than the one on the social media page.

Based on the information provided, there is nothing to indicate that the Respondent made the social media post. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

38. 2023042341

Opened: 10/9/2023

First Licensed: 3/23/2015

Expires: 3/22/2025

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and prospective buyer in a real estate transaction. Respondent is an Affiliate Broker and represented the prospective seller. Complainant alleges Respondent refused to sign a mutual release agreement which would return their earnest money. Complainant stated they received a request for repairs which included a termite issue and roof issue. Complainant decided to walk away from the transaction because they would not repair the roof. When Complainant asked for the mutual release, Respondent refused because the seller has agreed to repair the roof.

Respondent stated the request for repairs had thirteen items by Complainant’s agent. Respondent stated that only two items would not be completed, the roof would not be repaired, and the seller would not remove the wood and debris in the crawl space. The Complainant’s agent submitted another request for repairs where they inserted that the seller would agree to have the roof evaluated and make repairs. Respondent talked to Complainant’s agent to discuss the insertion as it was not agreed to. Respondent stated they only refused to sign the mutual release because the information was not correct. Respondent stated that they have no issue releasing the earnest money but will not sign a document with false information. Respondent attached the documentation for the repairs their client was willing to make.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

39. 2023042861
Opened: 10/9/2023
First Licensed: 11/12/2020
Expires: 11/11/2024
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident and prospective home buyer. Respondent is an Affiliate Broker who represented the seller. The Complainant submitted an offer with an expiration after twenty-four (24) hours. Complainant alleges Respondent never presented their offer to the seller and the Complainant lost the opportunity to purchase the property. The Complainant included multiple documents including the Purchase Agreement, the MLS listing, and their loan approval.

Respondent acknowledged that they received Complainant's offer via their agent. After receiving the offer, the Respondent tried calling the seller but was unable to get a response. The seller is elderly and bed-ridden and does not have access to email so the only way to present an offer is in person. Respondent stated they contacted the Complainant's agent to let them know they were having difficulty getting in touch with their client and requested more time. The seller got in touch with the Respondent, and they had an appointment the next day to go over the offers received. After speaking with the Complainant's agent, the Complainant agreed to extend the offer time. The Respondent took all the offers to their client and the seller decided to accept a different offer. The Respondent included multiple documents including the Purchase Agreement and screenshots of text messages between them and the Complainant's agent.

Based on the information provided, the entire interaction occurred within forty-eight (48) hours. The offer was received On August 30th around 12:00 pm. The seller contacted the Respondent later the same day but was unable to meet so the Respondent scheduled a time to review the offers received on September 1st around 1:00 pm. The text messages submitted by the Respondent shows that the extension was discussed, and the Complainant agreed to extend the time to September 1st at 5:00 pm. There is no indication that the Respondent refused to present the offer to the seller. Additionally, they have no ability to control other offers that were received nor is there a guarantee that the seller would accept the Complainant's offer.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

40. 2023045831
Opened: 10/9/2023
First Licensed: 5/24/2006

Expires: 5/23/2024
Type of License: Affiliate Broker
History: None

Complaint number 2023045831 (#40), 2023047371 (#44), 2023048751 (#46) are related and contain identical allegations.

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant alleges Respondent committed fraudulent activity by contacting the Complainant and others about a cryptocurrency investment scam. The Complainant has filed a lawsuit in Circuit Court.

Respondent acknowledged that there is a lawsuit filed by the Complainant and other investors, but they denied engaging in any fraudulent activity. The Respondent stated that none of the claims involved a real estate transaction.

The Commission has the power to refuse, suspend, or revoke a license when they have been convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses. T.C.A. § 62-13-312(b)(12).

Here, the complaint is not related to fraudulent activity regarding a real estate transaction that the parties were involved in. Also, it does not appear that the Respondent was using their title as an Affiliate Broker to promote their involvement in the cryptocurrency investment. Counsel confirmed that there is an open case in civil court but there is no disposition. If the Respondent were convicted, then the Commission would have jurisdiction over this matter.

Based upon all these facts, Counsel recommends this matter be dismissed but flag this Respondent due to the nature of the allegations.

Recommendation: Close and flag.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2023046591
Opened: 10/9/2023
First Licensed: 1/28/2005
Expires: 5/5/2025
Type of License: Principal Broker
History: 2018 Letter of Warning

Complainant is a Tennessee resident and prospective buyer in a real estate transaction. Respondent is a Principal Broker and acted as the Complainant's agent. Complainant alleges Respondent made misrepresentations was only concerned about their own financial interest. The Complainant did not state what the misrepresentations or include additional documentation.

Respondent stated that they tried to assist the Complainant buy the property however, negotiations were unsuccessful. The Respondent submitted a copy of a letter sent to the Complainant, the MLS listing, and a Purchase Agreement. According to the letter, the Complainant made an offer on the property and the sellers submitted a counteroffer. At the time of the letter, it had been three months since the Complainant and the Respondent asked if they are still interested in making another offer for the property. The Respondent mentioned that the Complainant hired them as their agent for listing rental property for them.

The Complainant submitted a rebuttal to the Respondent's response which stated that they were never provided with a declination letter or a counteroffer, it was just a verbal discussion that the seller wasn't interested in the offer. The rebuttal also addressed the separate agreement for the Respondent to represent them as the seller and stated that Respondent did not act in their best interest.

In the first real estate transaction, both parties agree that negotiations were not successful to purchase the property. However, the Complainant's main concern was that their offer wasn't accepted even though the seller accepted another offer that was only twenty-four dollars more than their offer. The Respondent does not have the ability to require a seller to accept their client's offer. In the second real estate transaction where the Complainant was the seller and the Respondent was the seller's agent, the complaint stated that the Respondent failed to communicate with them, yet the property was sold in a little over a month.

Counsel finds Complainant's allegations related to misrepresentations that the Respondent made to be unfounded and recommends that this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

42. 2023048211

Opened: 10/9/2023

First Licensed: 6/25/2013

Expires: 12/19/2024

Type of License: Principal Broker

History: None

Complainant is a Tennessee resident. Respondent is a Principal Broker. Complainant alleges Respondent listed a property in a different state but does not have a valid license in the other state. The Complainant attached a screenshot of the out of state listing.

Respondent stated that they removed the listing. They stated that the property in question is located on the border of Tennessee and the other state and thought it would be acceptable since portions of the same property were in the two states and the seller requested their help.

Based on the information provided, the Commission does not have jurisdiction over this matter because the property is not located in Tennessee. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

43. 2023042311
Opened: 10/19/2023
First Licensed: 5/10/2006
Expires: 12/17/2023
Type of License: Principal Broker
History: None

Complainant is a licensed real estate professional. Respondent is Principal Broker. Complainant alleges that they were contacted by one of their agents regarding a mail away closing for a buyer. However, when they received the check for earnest money from the broker, the bank was unable to confirm the funds.

Respondent's attorney submitted a response asking for this matter to be dismissed due to the vagueness of the complaint.

Neither party included additional documentation. Based on the information provided, Counsel finds that the complaint was too ambiguous. It does not appear that the Complainant had any direct interaction. They did not state the agent's name who provided the information, nor did they have any details about Respondent's involvement in this matter.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

44. 2023047371
Opened: 10/19/2023
First Licensed: 5/24/2006
Expires: 4/24/2024
Type of License: Principal Broker
History: None

Complaint number 2023045831 (#40), 2023047371 (#44), 2023048751 (#46) are related and contain identical allegations.

Complainant is a Tennessee resident. Respondent is a Principal Broker. Complainant alleges Respondent committed fraudulent activity by contacting the Complainant and others about a cryptocurrency investment scam. The Complainant has filed a lawsuit in Circuit Court.

Respondent acknowledged that there is a lawsuit filed by the Complainant and other investors, but they denied engaging in any fraudulent activity. The Respondent stated that none of the claims involved a real estate transaction.

The Commission has the power to refuse, suspend, or revoke a license when they have been convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses. T.C.A. § 62-13-312(b)(12).

Here, the complaint is not related to fraudulent activity regarding a real estate transaction that the parties were involved in. Also, it does not appear that the Respondent was using their title as Principal Broker to promote their involvement in the cryptocurrency investment. Counsel confirmed that there is an open case in civil court but there is no disposition. If the Respondent were convicted, then the Commission would have jurisdiction over this matter.

Based upon all these facts, Counsel recommends this matter be dismissed but flag this Respondent due to the nature of the allegations.

Recommendation: Close and flag.

Commission Decision: The Commission accepted counsel's recommendation.

45. 2023048461
Opened: 10/19/2023
First Licensed: 8/17/2009
Expires: 8/16/2025
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and was a prospective seller in a real estate transaction. Respondent is an Affiliate Broker and represented the prospective buyer. Complainant alleges the following (1) that the Respondent exercised undue influence against an independent roof inspector that the Complainant hired by stating that the Respondent uses a specific home inspector (Second Home Inspector); (2) The Respondent attempted to recommend services of a different home inspector but failed to disclose a relationship with an inspector; and (3) the Respondent directly contacted the lender appointed home appraiser prior to the appraisal. The Complainant attached the Repair/ Replacement Agreement and the Roofing Inspection Report (Inspection Report).

Respondent denied any wrongdoing and stated that fulfilled their duties by representing their client's interests. The Respondent stated that the main issue is about a dispute regarding the home inspection and the roof's age which was mentioned in the Inspection Report. Additionally, the listing agent failed to update the Purchase Disclosure Agreement (Disclosure Agreement) to reflect

a defect in the roof. The Respondent asked for an updated Disclosure Agreement, but it was never provided. Lastly, the Respondent stated that the appraiser contacted them about being present for the appraisal. The Respondent attached a letter of support from their client, the Roofing Inspection Report, the Property Condition Disclosure, and screenshots of text messages between themselves and the appraiser.

Counsel finds Complainant's allegations to be unfounded. There is no indication that the Respondent attempted to use undue influence to have an inspector they've worked with previously in this real estate transaction. The Complainant stated that they took the Respondent's words to mean that they were recommending the inspector's services. Similarly, the allegation that the Respondent failed to disclose their relationship with the Second Home Inspector is not relevant in this situation. The Respondent would be required to disclose their relationship to an individual, organization, or business entity if they had a personal interest, may receive a referral fee or other compensation. Here, there is no indication the Respondent received anything. Lastly, the text messages indicate that the appraiser contacted the Respondent to determine their availability to be present during the appraisal because the seller indicated that they did not want the Respondent or their client present.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

46. 2023048751
Opened: 10/19/2023
First Licensed: 5/24/2006
Expires: 5/23/2024
Type of License: Affiliate Broker
History: None

Complaint number 2023045831 (#40), 2023047371 (#44), 2023048751 (#46) are related and contain identical allegations.

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant alleges Respondent committed fraudulent activity by contacting the Complainant and others about a cryptocurrency investment scam. The Complainant has filed a lawsuit in Circuit Court.

Respondent acknowledged that there is a lawsuit filed by the Complainant and other investors, but they denied engaging in any fraudulent activity. The Respondent stated that none of the claims involved a real estate transaction.

The Commission has the power to refuse, suspend, or revoke a license when they have been convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses. T.C.A. § 62-13-312(b)(12).

Here, the complaint is not related to fraudulent activity regarding a real estate transaction that the parties were involved in. Also, it does not appear that the Respondent was using their title as an Affiliate Broker to promote their involvement in the cryptocurrency investment. Counsel confirmed that there is an open case in civil court but there is no disposition. If the Respondent were convicted, then the Commission would have jurisdiction over this matter.

Based upon all these facts, Counsel recommends this matter be dismissed since it has previously been addressed in a different complaint.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

47. 2023048791

Opened: 10/19/2023

First Licensed: 3/23/2001

Expires: 10/3/2025

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident. Respondent is an Affiliate Broker and Developer. In this interaction, the Respondent acted as primarily as the Developer. The Complainant stated their agent met with the Respondent about purchasing a home within the development. Once the Complainant arrived, they realized that there were five homes a for sale but only one listing was active. Complainant alleges they violated the Clear Cooperation rules by failing to make all listing active at once.

Respondent denied the allegations and states that the listings reflected what was available at the time. One of the properties was in the process of installing an elevator and needed to ensure safety, another needed cleaning before it was listed, and the others were at various stages of completion.

Based on the information provided, the Commission has no authority over this matter. The alleged violation stems from rules established by the National Association of Realtors. These rules have not been incorporated by the Commission.

Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

48. 2023049111
Opened: 10/19/2023
First Licensed: 3/14/2019
Expires: 3/13/2025
Type of License: Affiliate Broker
History: None

Complainant is a licensed real estate professional and represented the prospective buyer. Respondent is an Affiliate Broker and acted as the listing agent. The Complainant sent the prospective buyer multiple listings, and they chose to see one of the properties. After viewing the property, the prospective buyers liked the house and asked the Complainant to go to an open house to provide their opinion before placing an offer. The Complainant went to the open house and introduced themselves as the buyer's agent. Later, the Complainant learned that their client, the prospective buyers, entered an agreement with the seller and purchased the property. Complainant alleges Respondent violated several standards of practice sections because the buyer signed an Exclusive Buyer's Representation Agreement with them. The Complainant attached screenshots of text messages between them and the prospective buyers, the Exclusive Buyer Representation Agreement (Exclusive Agreement), and the MLS listing.

Respondent and their Principal Broker submitted a response. The Respondent stated that denied violating the standards of practice related. The Respondent stated that during the open house, they communicated with the prospective buyers, and they told the Respondent that they were unrepresented. They stated they did not hear the Complainant introduce themselves as an agent and assumed the Complainant was a family member. At the open house, the prospective buyers made a verbal offer on the property and told the Respondent that they were unrepresented. After negotiating the seller accepted the prospective buyer's second verbal offer. Throughout their interaction with the prospective buyers, the Respondent was told multiple times they were not represented. The Respondent attached screenshots of email and text messages between them and the prospective buyers.

Counsel reviewed all documents that were submitted. It appears that the prospective buyers did not disclose to the Respondent that they were represented. It is undisputed that they signed an Exclusive Agreement with the Complainant, but they chose to proceed as unrepresented when they learned the seller accepted their offer because they did not have an agent.

Based on the information provided, the Respondent was not involved with the prospective buyers when they first entered the Exclusive Agreement with the Complainant. The Respondent had a sign in at the open house where they indicated they were not represented, they entered the Purchase Agreement as an unrepresented party, and the Respondent had multiple screenshots with the prospective buyers where they confirmed they did not have representation. Both parties agree that the introduction may have made it difficult to hear due to children being at the open house.

The Commission does not have authority to assess a penalty for violations of the Standards of Practice enacted by the National Association of Realtors (NAR). Counsel reviewed the relevant rules and statutes that may apply in this situation. Here, the Respondent appears to have taken

reasonable care to ensure that the prospective buyers were unrepresented. The Complainant may have a claim for breach of contract against the prospective buyers, but it would be a matter for civil court.

Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

49. 2023049371
Opened: 10/19/2023
First Licensed: 9/28/2020
Expires: 9/27/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and prospective buyer. Respondent is an Affiliate Broker. Complainant alleges Respondent engaged in misleading advertisement by not having a photograph of the front of the house without mentioning the "75 stairs going up to the front door."

Respondent stated they did not attempt to mislead anyone with the photographs. The property has two entrances, and their client provided the other entrance as the main photograph. The other entrance is from the driveway access, where the stairs are located, and was included in the roll of photographs. The Respondent stated that the Complainant did not contact them about the property and only submitted the complaint after they drove to the property and saw the stairs.

Counsel finds Complainant's allegations related misleading advertisements to be unfounded and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

50. 2023050041
Opened: 10/19/2023
First Licensed: 1/26/1998
Expires: 10/20/2024
Type of License: Principal Broker
History: 2023 Letter of Warning

Complainant filed anonymously. Respondent is a Principal Broker. The complaint is not very clear, but it is believed that the Complainant alleges that (1) the Respondent is wholesaling with an out of state firm; (2) the Respondent is using an address that is incorrect and it is misleading to potential buyers; (3) the out of state firm has an affiliate who impersonates the Respondent although they do not have a valid Tennessee license; (4) The Respondent is not a member of the

local realtor association. The Complainant attached a screenshot of the incorrect address, a license search of the Respondent's firm, information for an affiliate at the out of state firm, and various screenshots of active listings from the Respondent.

Respondent stated that the out of state firm is their client, but they handle all their own negotiations. There is a representative from the out of state firm that fields the syndicated listings and is only used for showing instructions and questions. However, the representative is not associated with the Respondent or their firm. Next, the Respondent stated that they have moved addresses and the updated address with the Commission, and they are easy to find and is not sure where the Complainant got the old address information from when it has not been used in years. Third, the Respondent denied having the representative act on their behalf nor are they aware of the representative attempting to impersonate them.

Counsel finds all the Complainant's allegations to be unfounded. The wholesaling appears to be unrelated to the out of state firm as the Respondent's listings are for Tennessee. For the address, the correct address is on their account with the Commission, so there is no violation on this matter. Third, there was no documentation submitted to suggest that the representative attempted to impersonate the Respondent. Lastly, the Respondent is not required to join a local realtor association.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

51. 2023042901

Opened: 10/19/2023

First Licensed: 7/28/2008

Expires: 7/27/2024

Type of License: Real Estate Firm

History: None

This complaint is related to complaint numbers 2023042891 and 2023043561 which came before the Commission during the November 2023 legal report and contains the same allegations. Complainant is a Tennessee resident and homeowner. Respondent is a Real Estate Firm. Complainant alleges that they noticed an out of state vehicle at the base of their driveway who was flying a drone over (Individual). The Complainant told the Individual that they were trespassing and told them that Respondent gave them the access code. Complainant believes that Respondent engaged in unethical behavior by giving the Individual the access code.

Respondent stated their firm did list the property. However, the agent did not provide the access code, it was the president of the Homeowner's Association (HOA). The Individual was the buyer

of the vacant lot and threatened to shoot down the drone if they didn't leave. Respondent attached a screenshot of the conversation showing that the code was obtained from the HOA president.

Based on the information provided, Respondent did not violate any rules, regulations, or statutes. The individual was legally permitted to be there, and the code was provided by person not associated with the firm.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

52. 2023043671

Opened: 10/23/2023

First Licensed: 2/9/2023

Expires: 2/8/2025

Type of License: Affiliate Broker

History: None

Complaint number 2023028531 (#29) and 2023043671 (#52) are related and contain the same allegations.

This is an administrative complaint because the affiliate was mentioned in the original complaint, but it was only against their Principal Broker.

Complainant is a Tennessee resident and prospect home buyer in a real estate transaction. Respondent is an Affiliate Broker. Complainant alleges that they entered into an Exclusive Buyer Representation Agreement with Respondent, but the Respondent did not fulfil their duties. The Complainant alleges Respondent (1) failed to offer any strategy for buying homes, (2) lacked professionalism and wore casual attire such as jeans, t-shirts, and tennis shoes, (3) failed to include that the closing costs would be paid by the seller, and (4) Respondent and their Principal Broker refused to release them from the Exclusive Representation Agreement (Agreement) unless they paid \$3,000. Complainant included a copy of the Agreement.

Respondent and their Principal Broker submitted responses. The responses stated Respondent fulfilled their obligations by discussing pricing and the market with Complainant. Additionally, Respondent provided Complainant with strategies to make a comfortable offer on property based on how long the property had been on the market and price reduction and that the sellers would counter.

The Respondent stated that they were always in professional attire when interacting with Complainant and did not wear jeans or t-shirts.

The Principal Broker stated that they would not release the Complainant from the Exclusive Agreement unless they paid a cancellation fee of \$3,000 or would allow the Complainant to re-assign them to another agent. Respondent did not include any supporting documentation.

Counsel requested additional information from the Complainant and the Respondent. The Complainant did not provide additional documentation and just requested that the Commission allows them to terminate the Agreement. The Respondent included screenshots of communications between the Respondent and the Complainant.

Counsel reviewed the screenshot provided and it appears that Affiliate communicated regarding potential properties for sale.

Under the Tennessee Rules and Regulations, an exclusive buyer representation agreement must advise and confirm in writing the following:

- (1) That the buyer should make all arrangements to view or inspect a property through the licensee and should not directly contact other licensees;
- (2) That the buyer should immediately inform any other licensee the buyer may come into contact with (for example, at an open house) that he or she is represented by the licensee; and
- (3) Whether the buyer will owe a commission in the event the buyer purchases a property without the assistance of the licensee through another licensee or directly from an owner. Tenn. Comp. R. & Regs. 1260-02-.36.

Counsel reviewed the Exclusive Agreement and it failed to include stipulation stating that the buyer would owe a cancellation fee of any amount if they chose to terminate the Agreement early. The only mention of a \$3,000 fee occurred in the section entitled special stipulations and says “Buyer acknowledges that the Broker is paid by the seller at the time of closing. in the event the total commission is less than \$3,000, Buyer agrees to pay the difference at closing to [redacted firm name].”

As of this legal report, the Agreement is expired, and Respondent should have released the Complainant without any monetary penalty. However, the Commission does not have the authority over this matter as it is a contract dispute. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

53. 2023048801
Opened: 10/23/2023
First Licensed: 10/2/2003
Expires: 3/26/2024

Type of License: Affiliate Broker
History: None

Complainant was an unrepresented prospective buyer for property in a real estate transaction. Respondent is an Affiliate Broker and co-listed the property with another agent. Complainant alleges Respondent failed to properly present their offer to the seller. The Complainant stated that they wanted to offer \$160,000 with no appraisal contingency but the Respondent marked contingent on the appraisal.

Respondent stated that the Complainant made an offer, and they reviewed it in their office line by line. The Respondent stated that the computer didn't allow them to click some boxes, but they printed off the offer and again reviewed everything. The parties specifically discussed the Complainant's approval letter that stated it was contingent on a favorable appraisal, so the Respondent marked contingent. The seller had multiple offers and accepted a different offer. The Respondent included the Purchase and Sale agreement showing the rejection of the offer, the Complainant's approval letter, Confirmation of Agency Status.

Based upon all these facts, the Complainant's offer was rejected, and the Respondent cannot force the seller to accept the offer. Additionally, Counsel does not find that the Respondent misrepresented the offer when the approval letter was contingent on the appraisal. Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

54. 2023050941
Opened: 10/23/2023
First Licensed: 2/9/1987
Expires: 8/10/2024
Type of License: Real Estate Broker
History: None

Complainant is a licensed real estate professional and represented the buyer in a real estate transaction. Respondent is Real Estate Broker and represented the seller. Complainant alleges Respondent did not inform them that the key was in the mailbox which the Respondent illegally accessed. The Complainant also mentioned other issues such as having their client sign an expired contract, forgot conversations, and uploading blank forms. The Complainant attached a screenshot of the conversation they had with the Respondent regarding the house key's location.

Respondent stated they did forget to inform the Complainant where the key was at closing but responded via text when asked.

Counsel reviewed the information provided. The text message that showed that the Respondent provided the location. There was no documentation provided to suggest that the Respondent's client signed expired contract.

Based on the information provided, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

55. 2023051881

Opened: 10/30/2023

First Licensed: 9/13/2000

Expires: 1/23/2024

Type of License: Principal Broker

History: 2014 Letter of Warning

Complainant is a Tennessee resident and homeowner. Respondent a Principal Broker. Complainant is not a party to any real estate transaction, but they are neighbors to the property that was listed by the Respondent. The Complainant stated that the Respondent used pictures that were uploaded six years ago and includes pictures of their farm and believes it misrepresents the property. The Complainant stated that they called the Respondent multiple times but did not hear anything. The Complainant included pictures from a third-party site with the pictures.

Respondent denied using the six-year-old pictures in their advertisement. All the pictures that were used were taken by the Respondent and they stated they have never been on the Complainant's property. Respondent stated they received a voicemail from the Complainant, and they informed them that they did not include the pictures in their listing and that the pictures they were looking at was from a third-party site. The Respondent include the pictures in their listing, screenshots of text messages and emails between them and the Complainant.

Based on the information provided, the Respondent was prompt in responding to the Complainant and contacted the third-party site to have the pictures removed. Additionally, the pictures included by the Complainant are under a tab called "Historical Photos" and the website stated, "historical picture when home was listed 6 years ago." There is also a separate tab titled "Current Photos."

Based upon all these facts, it does not appear that the Respondent attempted to use old pictures to misrepresent the property. The pictures were on a third-party site that the Respondent does not have authority over. Furthermore, even if a potential buyer were to review the historical pictures, it clearly states that it was uploaded six (6) years ago. Counsel recommends this matter dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

56. 2023052691

Opened: 10/30/2023

First Licensed: 11/16/2017

Expires: 11/15/2025

Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident a prospective seller. Respondent is an Affiliate Broker and acted as the seller's listing agent. Complainant alleges Respondent was unprofessional and uncooperative. Specifically, the Respondent only showed the property once, Respondent attended a luncheon with other realtors but there were no results, and the Respondent did not put in any effort to sell their property. The Complainant wanted to work with a different agent and requested a release from the Exclusive Right to Sell Listing Agreement (Exclusive Agreement) but the Respondent refused. The Complainant did not include any additional documents.

Respondent attached the Exclusive Agreement, screenshots of social media posts, screenshot of messages with potential buyers, screenshots of messages between the Respondent and the Complainant, the MLS listing, and Confirmation of Agency Status.

Counsel reviewed the information provided. The Exclusive Agreement is valid and binding with an expiration in December 2023. The text messages between the Respondent and Complainant shows that the Complainant was aware that there was still a valid agreement but consulted with a different agent to represent them. The Complainant believed that the Respondent agreed to let them withdraw from the Exclusive Agreement, but the Respondent clarified that they could withdraw the listing from the market. The Respondent also updated the Complainant about the actions they were taking. The social media posts and screenshots shows that the Respondent tried to market the property.

Based on the information provided, this appears to be a contract dispute and the Commission does not have authority over this matter.

Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

57. 2023053111
Opened: 10/30/2023
First Licensed: 8/19/2020
Expires: 8/18/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an Affiliate Broker. Complainant alleges engaged in various unethical behavior such as: stalking, harassment, forgery, drugs and alcohol use and theft of property. The Complainant filed on behalf of their family member, and it does not appear that the Complainant ever interacted with the Respondent. The Complainant did not provide any additional information to support the allegations.

Respondent denied all the allegations in the complaint. It's Counsel belief that the Respondent had additional information that would allow them to provide an overview of a previous real estate transaction with the Complainant's family member. The Respondent included AuthentiSign confirmation. The Respondent stated that there was an incident involving the Complainant's family member and a vehicle where the family member purchased a vehicle from the Respondent's spouse. The vehicle was in the spouse's name and after seven months of nonpayment, the spouse contacted the local authorities and reported it as stolen.

The Commission has the power to refuse a license for cause or to suspend or revoke a license where it the licensee is found guilty of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or offenses, or engages in any conduct that constitutes improper, fraudulent, or dishonest dealing. Here, the forgery and theft allegations would be the most relevant. Tenn. Code Ann. §62-13-104(b)(7)(B).

Here, there is not an active or prior real estate transaction or a complaint against the Respondent while working in their capacity as an Affiliate Broker. The complaint did not provide any identifying information just generalized allegations. Counsel attempted to confirm if there were any criminal or civil cases open and no records were found. If the Respondent were to be convicted of an offense that constitutes improper, fraudulent, or dishonest dealing they would be required to report it to the Commission.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED

58. 2023031041

Opened: 7/24/2023

First Licensed: 2/4/2003

Expires: 1/10/2025

Type of License: Principal Broker

History: 2009 Letter of Warning; 2010 Consent Order for failure to maintain E&O insurance; 2020 Letter of Warning; 2020 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; 2022 Consent Order for failure to respond to a complaint; 2022 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2022 Consent Order for failure to supervise an affiliate due to an advertising violation

Complainant is a licensed real estate professional. Respondent is Principal Broker. Complainant alleges an individual advertises as a licensed Broker and Owner in an out of state firm. The complaint is against that individual.

Respondent's response asked that the Commission investigate the matter to determine if the individual has active licenses in two states and if employ necessary sanctions to that individual. Respondent also denied association with the individual.

Counsel investigated the licenses to determine if any relations existed. At the time of the complaint, Respondent was the Principal Broker for the individual. The individual has an active Broker license in an out of state firm and a license as an Affiliate Broker in Tennessee. This is in violation of T.C.A. § 62-13-309.

Under T.C.A. § 62-13-312(b)(15) In the case of a licensee, failing to exercise adequate supervision over the activities of any licensed affiliate brokers within the scope of this chapter (Chapter 62-13). Here, Respondent had a duty to properly supervise the individual and be aware of their activities.

Due to the lengthy history of Respondent's failure to supervise, Counsel recommends that the Respondent's Principal Broker license be downgraded to an Affiliate Broker. Counsel also recommends and administrative complaint be opened against the individual with two active licenses.

Recommendation: Downgrade License to Affiliate Broker and Open an Administrative Complainant against proper Respondent.

Commission Decision: The Commission accepted counsel's recommendation.

New Information: Counsel's recommendation was based on an incorrect application of T.C.A. § 62-13-309 and the Respondent's extensive history of failing to properly supervise. Here, the affiliate was not in violation as they are permitted to have active licenses in two different states therefore the Respondent should not be penalized.

New Recommendation: Dismiss.

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

Anna Matlock:

CASE TO BE REPRESENTED

**59. 2022016981
Opened: 04/27/2022
First Licensed: 02/19/1999
Expires: 02/15/2025
Type of License: Principal Broker**

History: None

On or about January 29, 2021, the Commission suspended Respondent's affiliate broker for failure to maintain continuous errors and omissions ("E&O") insurance coverage. On or about April 25, 2022, the Commission received a request to reinstate a license from Respondent's affiliate broker. Following this action, the Commission administratively opened a complaint against Respondent for failure to adequately exercise supervision over the activities of the affiliated broker. Specifically, Respondent failed to ensure that the affiliate licensee maintained continuous E&O insurance coverage.

In response, on May 26, 2022, 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.

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

New Information: Recently, in working to close outstanding cases, Counsel contacted Respondent related to this matter. Respondent requested this matter be presented to the Commission for consideration and submitted the following:

"To the Tennessee Real Estate Commission:

This response is in reference to the application of a \$1000 for violation of Tenn. Comp. R. & Regs. 1260-02-01

FACTUAL BACKGROUND:

I am the managing broker and have been since January 2021. The facts of this matter predate my employment with the firm, and I can only rely on the facts as documented in the employee file of the agent in question. On Jan 14, 2020, the agent was broker released by the previous broker and the form was sent to TREC and the local board. It appears the form was faxed; which was the preferred method of the previous broker. The agent was removed from the local board's roster and lost access to MLS as well as being terminated from the company. In June 2022, I received written notice from the Commission that a fine would be imposed under this statute.

The Broker Release form that was signed by the previous broker was immediately send to the Commission as proof that the agent had been released from the firm. No other communication was received from the Commission as to the status of the fine or the resolution of this matter. Seventeen months later, on November 7, 2023, I was contacted again by the Commission that a fine would be imposed because the original form was never received.

RESPONSE:

It is my position that the facts of this matter predate my duties and responsibilities as managing broker, and to impose a fine for the actions of the previous broker, some 46 months later, would place an undue financial burden upon me and/or the firm. Furthermore, the issue of my supervisory responsibility over this agent is a non-issue as he/she was not an active agent at my firm nor a member of the local board at the time my employment began. The information gained from review of his file leads me to conclude his release was processed in a manner consistent with practices and procedures allowed under Tenn. Comp. R. & Regs. 1260-02-02(1). This matter progressed for nearly two and a half years before it was brought to my attention in June 2022. My office conducts routine E&O audits and the agent in question did not appear on our audit. It has been another seventeen months since receiving the first notice until now. This matter has been ongoing for nearly four years. During that time neither I nor the previous broker, through review of the file, appear to have been given the opportunity to clear this matter before a penalty was imposed.

In conclusion, I restate my position that I should not be penalized for a matter that has taken this long to investigate and for an agent that I never exercised "supervisory responsibility" over. I respectfully ask that you review the facts stated and dismiss the complaint and fine."

The Commission did not receive a copy of the TREC Form 1 submitted on January 14, 2020. Tenn. Comp. R. & Regs. 1260-02-.02(1) also states, "The principal broker's supervisory responsibility for future acts of the licensee shall terminate upon the Commission's receipt of the release form or online submission." Therefore, as the Commission did not receive the TREC Form 1, the supervisory responsibilities did not terminate. The Commission does not regulate the MLS, nor has access to or keeps track of records related to local board rosters and records. Respondent was added as principal broker on January 15, 2021, and received the statutory required mailed notifications on or about January 29, 2021, that the affiliate broker's license was suspended due to lapsed E&O insurance. Therefore, Respondent was provided notice of the affiliate broker's affiliation with Respondent's firm. Any audit of Respondent's firm with the Commission from January 14, 2020, through the dissemination of the consent order would have shown the affiliate broker's affiliation with Respondent's firm.

New Recommendation: Discuss.

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

The meeting adjourned at: 11:08 AM

