



**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 May 10, 2023, at 8:30 a.m. CST at City Hall, George A. Smith Room at 121 East Main Street, Jackson, TN 38301. In addition, the meeting was streamed electronically via the Microsoft Teams meeting platform. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission members were present: Chair Marcia Franks, Commissioner DJ Farris, Commissioner Joan Smith, Commissioner Jon Moffett, Commissioner Joe Begley, and Commissioner Stacie Torbett. Absent from the meeting were: Vice-Chair Geoff Diaz, Commissioner Steve Guinn, and Commissioner Kathy Tucker. Quorum Confirmed. Others present 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 May meeting agenda was submitted for approval.

The motion to approve May 10, 2023, agenda was made by Commissioner Farris and seconded by Commissioner Torbett. The motion passed unanimously.

The minutes for the April 12, 2023, commission meeting were submitted for approval.

The motion to approve the April 12, 2023, minutes was made by Commissioner Begley and seconded by Commissioner Smith. The motion passed unanimously.

INFORMAL APPEARANCE

Tevarious Washington appeared before the commission with his Principal Broker, Brandon Baca, to receive approval for his Affiliate Broker license.

The motion to approve Tevarious Washington was made by Commissioner Torbett and seconded by Commissioner Begley. The motion carried unanimously.

Henry Powers appeared before the commission with his Principal Broker, Tina Baker, to receive approval for his Affiliate Broker license.

The motion to approve Henry Powers was made by Commissioner Smith and seconded by Commissioner Moffett. The motion carried unanimously.

Wyatt Setzer appeared before the commission with his Principal Broker, Jim Carollo, to receive approval for his Tennessee Real Estate license.

The motion to approve Wyatt Setzer was made by Commissioner Moffett and seconded by Commissioner Torbett. The motion carried unanimously.

Wayford Demonbruen appeared before the commission with his Principal Broker, Staci Coleman, to receive approval for his Affiliate Broker license.

The motion to approve Wayford Demonbruen was made by Commissioner Moffett and seconded by Commissioner Smith. The motion carried unanimously.

Nicole Dickerson appeared before the commission with her Principal Broker, Cassandra Warren, to receive approval for her Affiliate Broker license.

The motion to approve Nicole Dickerson was made by Commissioner Begley and seconded by Commissioner Smith. The motion carried unanimously.

WAIVER REQUEST

Executive Director Maxwell presented Kayla Palmer to the commission seeking a Waiver of the retesting.

The motion to approve Ms. Palmer's request was made by Commissioner Begley and seconded by Commissioner Torbett. The motion carried unanimously.

Executive Director Maxwell presented Clifton Jorgenson to the commission seeking a Medical-Waiver of the E&O penalty fees.

The motion to approve Mr. Jorgenson's request was made by Commissioner Smith and seconded by Commissioner Begley. The motion carried unanimously.

EDUCATION REPORT

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

The motion to approve courses M1-M27 was made by Commissioner Farris and seconded by Commissioner Torbett. The motion passed unanimously.

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

The motion to approve the instructor's biography was made by Commissioner Farris and seconded by Commissioner Moffett. The motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Maxwell updated the Commission on the topics below.

- **ARELLO:** Director Maxwell updated the commission on other states passing of legislation in regards to unfair service agreements.
- **LICENSING and E&O:** Director Maxwell updated the commission on licensing numbers and noted that that for the month of April there was a drop in Initial Applications. In addition, our licensees suspended due to a lapse in Errors and Omissions Insurance is down to around 1000 licensees.

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 1-48 with the exception of the following complaints, which were pulled for further discussion: **2022052241, 2022052231, 2022052251, 2023001411, 2023003171, 2023004121, 2022051371**

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

After further discussion by the Commission on complaints 2022052241, 2022052231, and 2022052251, Commissioner Smith motioned **to accept counsel's recommendation**. Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023001411, Commissioner Farris motioned **to accept counsel's recommendation**. Commissioner Torbett seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023003171, Commissioner Begley motioned **to dismiss the complaint**, and Commissioner Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2023004121, Commissioner Smith motioned **to accept counsel's recommendation**, and Commissioner Farris seconded the motion. The motion carried unanimously.

After further discussion by the Commission on complaint 2022051371, Commissioner Begley motioned **to assess a One Thousand Dollar (\$1,000.00) civil penalty**, and Commissioner Smith seconded the motion. The motion carried unanimously.

**Anna Matlock:
New Complaints**

- 1. 2023000511**
Opened: 1/23/2023
First Licensed: 4/6/1978
Expires: 6/2/2023
Type of License: Real Estate Broker
History: None

Complainant is a Tennessee resident. Respondent is a real estate broker. Complainant provides a timeline of events related to a transaction of property which begins with Complainant expressing their interest in the property to Respondent on April 1, 2021. Complainant alleges Respondent sent them the listing on April 6th and

later requested Complainant sign a Purchase and Sale Agreement. On or about April 9, 2021, Complainant alleges they sent a signed purchase and sale agreement and three (3) days later sent a One Thousand Dollar (\$1,000.00) earnest money deposit. On or about April 13, 2021, Complainant alleges Respondent sent an email requesting a time for the home inspection and mentioning a ten (10) day deadline included in the Purchase and Sale Agreement. Complainant alleges they met with Respondent on April 16, 2021. On or about May 11, 2021, Complainant alleges they received an email from a loan company with Complainant's disclosure with no termite inspection or termite. Complainant alleges Respondent violated the law by concealing termite reports until the conclusion of the sale.

Respondent answered the complaint stating when the property was initially shown to Complainant, the property was under contract and scheduled to close on April 6, 2021. Respondent states at this time, no appraisal had been done prior to closing or contract expiration. Respondent states they explained to Complainant the previous agent informed Respondent the property required termite treatment per a pest control company and Complainant could get another inspection. Respondent states upon this information, Complainant informed Respondent they were more interested in the land than the property and Complainant was unsure what they may do with the house. On or about April 8, 2021, Respondent states they marked in the home inspection section Complainant would obtain a home inspection and on a separate form, Complainant checked they would not have a home inspection. Respondent states they walked through the property with their principal broker and saw nothing out of the ordinary for a home built in the early 1900's and took several pictures. Respondent explains the email from the loan company explains it does not include a termite inspection, but the lender signed the termite inspection letter on May 18, 2021. In closing, Respondent states Complainant signed the Inspection and Service Agreement showing the property had been treated at closing and Complainant was aware the inspection revealed live infestation and needed treatment and had plastic on the ground. Respondent states this inspection was completed and Respondent offered Complainant a home warranty at no cost.

Respondent provided a copy of a "Wood Destroying Insect Report" signed by Respondent and Complainant with the "Visible evidence of wood destroying insects was observed as follows" along with a recommendation for a vapor barrier and removal of brush from the crawlspace. Additionally, Respondent provided a copy of a receipt of "Termite Control Service Agreement" that includes payment for a treatment and special instructions with "warranty to buyers." Additionally, Complainant signed the "Buyer's Final Inspection" confirming they have made a final inspection of the property and all repairs and replacements were made to their

satisfaction, as well as the “Importance of Inspections and Property Survey” where Complainant checked they chose not to have a home inspection performed. Based upon all this information, it is clear Complainant was aware of the termite status of the property and receive and signed several disclosures. Therefore, Counsel finds no violations of the rules or statutes by Respondent and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

2. **2023001791**
Opened: 1/23/2023
First Licensed: 6/27/2014
Expires: 6/26/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident and the buyer. Respondent is an affiliate broker and the seller. Complainant alleges they entered a Purchase and Sale Agreement for a property that provided if Complainant paid full price, a complete renovation of the existing pool would be provided. Complainant, however, alleges this did not occur and Twelve Thousand Dollars (\$12,000.00) was put into escrow as a show of good faith, when the pool estimate came in at Twenty-Four Thousand Three Hundred (\$24,300.00). Complainant alleges after their pool renovation was declined; Respondent never pursued another pool contractor. Complainant alleges per contract terms; Respondent is required to provide additional funding for the renovation.

Respondent answered the complaint stating they secured a quote for a full pool renovation for Eight Thousand One Hundred Fifty Dollars (\$8,150.00) in case the future buyer intended to repair the pool. Respondent provides the property listing’s “Public Comments” provided that a renovated pool would be included with a full price offer of Three Hundred Fifteen Thousand Dollars (\$319,600.00). Respondent states Complainant made an offer of Three Hundred Twenty-Four Thousand Six Hundred Dollars (\$324,600.00) with Ten Thousand Dollars (\$10,000.00) to be paid to Respondent (the seller) to cover buyer’s closing costs. Therefore, Respondent alleges Complainant’s offer was required to be Three Hundred Twenty-Nine Thousand Six Hundred Dollars (\$329,600.00) to be the equivalent of a full price offer since the buyers required Ten Thousand Dollars (\$10,000.00) in closing cost

assistance, which negated the pool repair offer. However, Respondent provides they agreed to escrow funds for the buyers to use for the pool renovations. Upon Complainant's concern, Respondent increased this amount to Twelve Thousand Dollars (\$12,000.00). Respondent states this amount was to be held in escrow for all pool repairs/replacements and installation per the Escrow Agreement. Lastly, Respondent states they communicated with Complainant after the transaction to assist but was told by the intended pool repair company Complainant's expectations were unrealistic.

Complainant submitted a rebuttal stating the original pool renovation quote was grossly inadequate and without several pool features. Complainant rebuts that pool renovations were ever discussed during closing cost conversations with the seller. Lastly, Respondent argues Respondent was not helpful after closing when they began the pool renovation process. Based on the information provided, the "Escrow Agreement" does state "\$12,000 to be held in escrow for all Pool Repairs/Replacements and Installation." Additionally, it appears that the matters remaining are mostly contractual—performance related to the pool renovation—which falls outside of the Commission's jurisdiction and reserved for a court of competent jurisdiction. Lastly, this matter is outside of the Commission's jurisdiction as the Purchase and Sale Agreement was executed by the parties on 11/1/2020 and acknowledged by Respondent on 11/5/2020, which falls outside of the two (2) year statute of limitations outlined in Tenn. Code Ann. § 62-13-313(e)(1). Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

3. **2023000241**
Opened: 1/30/2023
First Licensed: 11/8/2019
Expires: 11/7/2023
Type of License: Affiliate Broker
History: None

This complaint is related to #4, REC-2023007811.

Complainant is an out of state resident. Respondent is an affiliate broker. Complainant alleges Respondent purchased a property from them, served as the licensee for the transaction, and failed to include any assume of Complainant's mortgage. Complainant alleges they believed Respondent satisfied their mortgage payment so they would no longer be responsible and after signing the deed relocated to a separate jurisdiction. Complainant alleges after they moved, Respondent informed Complainant they would not refinance the mortgage but instead make payments and then sell the house and pay off the mortgage. Complainant states this was an issue when they attempted to qualify to purchase a new property. Complainant alleges they attempted to contact Respondent several times, but Respondent informed Complainant the sale fell through and threatened to cease making mortgage payments. In closing, Complainant alleges Respondent misrepresented the value of the property to avoid paying a recording tax and Respondent failed to disclose they were a prospective buyer.

Respondent answered the complaint through their attorney ("RA"). RA provides Respondent is a sibling of Complainant and the issue with the transaction stems from Complainant's issue with relocating and their inability to sell their property for what was owed on the mortgage. RA denies Respondent was purchasing the property, but instead was attempting to rent or sell the property. RA acknowledges that Respondent "probably should have" checked the immediate family box but failed to do so. RA provides there is no requirement under the law for a Purchase and Sale Agreement to include an assumption of the mortgage and it was known to all parties that their parents would pay Complainant on mortgage payments. RA provides that Respondent has made all mortgage payments since April 2020, including a Ten Thousand Dollar (\$10,000.00) payment. RA provides currently the property has failed to sell as the buyers could not close, but Respondent has offered to refinance the property in their name to Complainant and Respondent is awaiting Complainant's signature. In conclusion, RA states Respondent worked diligently to attempt to sell the property to relieve Complainant of the responsibility of the mortgage and updated on the status.

Complainant submitted a rebuttal stating they do not agree with the amount the property sold for and other property's listing prices. Additionally, Complainant alleges Respondent took advantage to "get my house for free." Complainant states they were not provided the proper sales contracts to sign, and Respondent never solved their mortgage, but transferred the deed in Respondent's name. It is clear this is a very contentious domestic dispute between the parties. However, this matter is

outside of the Commission's jurisdiction as the Purchase and Sale Agreement was executed by all parties on September 24, 2020, which falls outside of the two (2) year statute of limitations outlined in Tenn. Code Ann. § 62-13-313(e)(1). Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

4. **2023007811**
Opened: 4/3/2023
First Licensed: 11/8/2019
Expires: 11/7/2023
Type of License: Affiliate Broker
History: None

This complaint is related to #3, REC-2023000241

Complainant is an out of state resident, and the spouse of the Complainant in #3, REC-202300241. Respondent is an affiliate broker and same Respondent from complaint #3, REC-2023000241. Complainant alleges Respondent used their Power of Attorney ("POA") to purchase their property and transfer the deed. Specifically, Complainant alleges their POA was to be used when their property was sold to another person, not Respondent. Complainant alleges Respondent failed to explain how the deed transfer worked, took their property, never resolved their mortgage, harassed Complainant, and their spouse, and took advantage of Complainant with their knowledge and position. Complainant requests the transaction to be cancelled and the deed to be reverted.

Respondent answered the complaint through their attorney ("RA"). RA states Complainant is a sibling-in-law of Respondent, and the issue arose with Complainant and their spouse relocating and their inability to sell their property for what was owed on the mortgage. RA provides Complainant signed a POA for Respondent to transfer the property and Respondent only transferred the property to their name to facilitate the sale. RA states Respondent explained all issues to Complainant, a market study was completed, and Complainant stated that no payments on the mortgage would be made if the property failed to sale. RA provides that Respondent took all actions with Complainant's best interest in mind and did not seek to take advantage. RA provides currently the property has failed to sell as

the buyers could not close, but Respondent has offered to refinance the property in their name to Complainant and Respondent is awaiting Complainant's spouse's signature. In conclusion, RA states Respondent worked diligently to attempt to sell the property to relieve Complainant of the responsibility of the mortgage and updated on the status.

It is clear this is a very contentious domestic dispute between the parties. However, this matter is outside of the Commission's jurisdiction as the Purchase and Sale Agreement was executed by all parties on September 24, 2020, which falls outside of the two (2) year statute of limitations outlined in Tenn. Code Ann. § 62-13-313(e)(1). Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 5. 2023002211**
Opened: 1/30/2023
First Licensed: 6/9/2015
Expires: 3/23/2025
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a principal broker. Complainant alleges they placed an offer over asking on a property on January 13, 2023 and would receive feedback by 1:00 p.m. on January 15, 2023. Complainant alleges they were informed another offer was accepted without any explanation why their offer was rejected or the opportunity to adjust. Additionally, Complainant alleges the buyer's agent worked for the seller's agent and believe this led to their offer not being accepted. Specifically, Complainant alleges Respondent's commission values were part of the issue as the two (2) worked at the same firm. Complainant also states there was no disclosure of this relationship as an interested party in the property.

Respondent answered the complaint stating this transaction was a multiple offer situation where their seller wanted to disclose such. Respondent states all offers were sent to their seller on January 14, 2023, at 12:00 p.m., their seller decided, and decisions were sent and signed shortly after. Respondent states the original selected

offer required additional tweaks, which required revision, and prompted a counteroffer that was ultimately rejected. Respondent states Complainant arrived at the property on January 14, 2023 after 5:00 p.m. during a showing and provided a fake name and stated they were a cash buyer and wanted to buy the contract out currently in place. At that time, Respondent's agent informed Complainant they may be a back-up offer, so Complainant left their card with the Respondent's agent. Respondent provides Complainant filed this complaint shortly after. Respondent provides a copy of all transaction documents.

Complainant submitted a rebuttal stating wished to withdraw their complaint as they did not have all the appropriate facts upon initially filing the complaint. Complainant further states they believe Respondent did nothing wrong and this was a misunderstanding, should not have been filed, and would hope the Commission refrains from any discipline action against Respondent. Once a complaint is filed, matters cannot be withdrawn. However, this information is taken into consideration when reviewing the totality of the facts and circumstances of the complaint. Here, based on the information provided by Complainant and Respondent, Counsel finds no violation of the rules and statutes. It appears that all appropriate steps were followed by Respondent and Counsel finds no evidence to substantiate Complainant's original allegations. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

6. **2023003151**
Opened: 1/30/2023
First Licensed: 1/16/2013
Expires: 3/30/2024
Type of License: Principal Broker
History: None

Complainant is a Tennessee resident. Respondent is a principal broker. Complainant alleges they are the spouse (“Spouse”) of an individual they believe is posing as a non-licensed employee posing real estate agent that receives commissions from home sales. Complainant alleges they have video where Spouse has access to MLS listings and allegedly permits Spouse to sell a home while Respondent completes the paperwork but provides Spouse the commission. Complainant does not want to be involved in any illegal activity or have their family brought into legal troubles due to any potential unlicensed activity.

Respondent answered the complaint stating Spouse is not and has never been an employee of their firm. Respondent states Spouse is an employee of a client of Respondent’s. Respondent denies ever promising Spouse or anyone unlicensed any commissions, sales, or paying commissions directly to anyone unlicensed. Also, Respondent denies permitting unlicensed individuals show houses, open houses, negotiate deals, give advice, or present themselves as agents. Respondent states they provide each team member a handbook that includes the Commission’s rules and the Code of Ethics. Respondent also states Spouse is in the middle of a contentious divorce with Complainant and the two are not in communication due to a military protective order and no contact order from Child Protective Services.

Spouse’s attorney also provides a statement denying allegations from Complainant providing this could cause their client to lose their job. Additionally, Spouse’s attorney provides this complaint is a violation of the military protective order. Complainant provided a rebuttal denying the claims stating Spouse made statements they were provided commissions from the transaction, and states they filed the complaint as they are required to report this due to having information on illegal activity. Based on the information provided, it is clear Complainant filed this complaint in retaliation in the middle of a contentious divorce proceeding. Counsel finds no merit or evidence to substantiate any claims against Respondent or Spouse by Complainant. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

7. **2022052241**
Opened: 1/30/2023
First Licensed: 8/7/2020

Expires: 8/6/2024
Type of License: Real Estate Firm
History: None

This complaint is related to #8, REC-2022052231 and #9, REC-2022052251.

Complainant is a principal broker. Respondent is a real estate firm. Complainant alleges Respondent has been operating several months without a principal broker and the office appears to be abandoned. Complainant alleges Respondent has deceived the public and is most likely conducting real estate transactions with a principal broker. Complainant states if Respondent is no longer conducting business, then Respondent should retire the firm license and release all agents.

Respondent did not submit a response. Counsel researched Respondent and it appears Respondent is presently without a principal broker. The last date Respondent had a principal broker was July 5, 2022. However, Respondent has four (4) affiliates, two (2) are suspended, one (1) is expired, and one (1) license is voluntarily surrendered. Respondent is in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A) which states “Each office shall have a real estate firm license, a principal broker and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.” Here, there is no principal broker in place at the firm and an active firm license. Though Respondent did send a response, there is no individual to provide a response on behalf of Respondent, and assessment of a civil penalty is not appropriate. As it is critical for a firm to have a principal broker and Respondent has been without one for nearly a year, Counsel recommends Respondent’s firm license be revoked in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A).

Recommendation: Revocation.

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

8. 2022052231
Opened: 2/6/2023
First Licensed: 8/11/2020
Expires: 8/10/2024
Type of License: Real Estate Firm
History: None

This complaint is related to #7, REC-2022052241 and #9, REC-2022052251.

Complainant is a principal broker. Respondent is a real estate firm. Complainant alleges Respondent has been operating several months without a principal broker and the office appears to be abandoned. Complainant alleges Respondent has deceived the public and is most likely conducting real estate transactions with a principal broker. Complainant states if Respondent is no longer conducting business, then Respondent should retire the firm license and release all agents.

Respondent did not submit a response. Counsel researched Respondent and it appears Respondent is presently without a principal broker. The last date Respondent had a principal broker was August 10, 2022. However, Respondent presently has four (4) affiliates, three (3) suspended, and one (1) in expired grace. Respondent is in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A) which states “Each office shall have a real estate firm license, a principal broker and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.” Here, there is no principal broker in place at the firm and an active firm license. Though Respondent did send a response, there is no individual to provide a response on behalf of Respondent, and assessment of a civil penalty is not appropriate. As it is critical for a firm to have a principal broker and Respondent has been without one for nearly a year, Counsel recommends Respondent’s firm license be revoked in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A).

Recommendation: Revocation.

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

- 9. 2022052251**
 - Opened: 2/6/2023**
 - First Licensed: 10/23/2018**
 - Expires: 10/22/2024**
 - Type of License: Real Estate Firm**
 - History: None**

This complaint is related to #7, REC-2022052241 and #8, REC-2022052231.

Complainant is a principal broker. Respondent is a real estate firm. Complainant alleges Respondent has been operating several months without a principal broker and the office appears to be abandoned. Complainant alleges Respondent has

deceived the public and is most likely conducting real estate transactions with a principal broker. Complainant states if Respondent is no longer conducting business, then Respondent should retire the firm license and release all agents.

Respondent answered the complaint through their own (“RO”). RO states they are the sole owner of a limited liability company with multiple DBAs, but the business interest belongs to a family trust where RO claims Complainant is a co-trustee. RO denies all other accusations. RO states this complaint is frivolous and disingenuous as Complainant is aware of the set-up and this complaint is only designed to annoy/harass. Counsel researched Respondent and it appears Respondent is presently without a principal broker. The last date Respondent had a principal broker was August 10, 2022. Respondent presently has two (2) affiliates, one (1) active and (1) expired. Counsel recommends Respondent is in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A) which states “Each office shall have a real estate firm license, a principal broker and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.” Here, there is no principal broker in place at the firm and an active firm license. Though Respondent did send a response, there is no individual to provide a response on behalf of Respondent, and assessment of a civil penalty is not appropriate. As it is critical for a firm to have a principal broker and Respondent has been without one for nearly a year, Counsel recommends Respondent’s firm license be revoked in violation of Tenn. Code Ann. § 62-13-309(a)(1)(A).

Recommendation: Revocation.

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

- 10. 2023005051**
- Opened: 2/21/2023**
- First Licensed: 6/14/2021**
- Expires: 6/13/2023**
- Type of License: Affiliate Broker**
- History: None**

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant alleges a property where they placed an offer did not have a property survey and was erroneously posted for sale and included in the advertisement. Complainant provides their lender did not want to move forward with the process due to the lack of survey.

Additionally, Respondent states their house did not receive acceptance from a housing agency due to a bathroom floor leak and a hole that required fixing. Complainant alleges after these issues were fixed, they attempted to proceed to closing but Respondent stated their sellers did not want to extend the date and claimed Complainant's lender was uncommunicative. Complainant alleges Respondent was dishonest and angry with Complainant's decision to switch lenders. Lastly, Respondent alleges Respondent breached the contract by re-posting the property prior to the contract's termination citing the buyer's financing fell through, which Complainant denies. Complainant would like compensation for their appraisal and inspection and time lost on other potential properties.

Respondent answered the complaint stating Complainant's referenced survey is from 1992 and after pulling the title and deed, Respondent realized the survey was not recorded nor used in the subdivision development. Respondent provides the seller did pay for a survey. Respondent denies any time was taken from closing due to repairs in the kitchen and the current extension at the time expired on November 30, 2022. Additionally, Respondent states numerous discrepancies from the lender is what ultimately led to the decision to not extend the contract further. Respondent states after the lender denied Complainant's file, Respondent's client declined to extend the timeline and requested Respondent place the property back on the market as Complainant would not meet the financial contingency. Based on the information provided, it does not appear that Respondent is in violation of any of the rules or statutes. Respondent's client was within their right to decline to extend the timeline for the Purchase and Sale Agreement, and Respondent's client paid for a new survey. Therefore, Counsel recommends this matter be dismissed with no action.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 11. 2023006761**
 - Opened: 2/21/2023**
 - First Licensed: 2/24/2022**
 - Expires: 2/23/2024**
 - Type of License: Real Estate Firm**
 - History: None**

Complainant is a principal broker. Respondent is a real estate firm. Complainant is the owner and broker of a real estate firm and alleges Respondent, located in a

neighboring jurisdiction (“Jurisdiction J”), is advertising in a newspaper under Complainant’s real estate firm name. Complainant alleges Respondent’s registered name is their firm name with “LLC” added at the end. Due to this, Complainant alleges they are receiving phone calls about this advertising, and this is confusing.

Respondent answered the complaint through their principal broker and owner (“RPB”). RPB answered the complaint stating their firm name is similar to Complainant’s without “The” and includes “Agency, LLC” at the end. RPB states Respondent was formed and registered in Jurisdiction J several years ago, approved by the Secretary of State in February of 2022, and licensed by the Commission in February of 2022. RPB denies using Complainant’s name in any advertising and has used their Jurisdiction J address and phone number in all advertising. RPB provides there are several entities in Tennessee using similar combinations in their name of Tennessee, and claims that Complainant’s firm is not registered with the Secretary of State.

Tenn. Comp. R. & Regs. 1260-01-.18 provides the guidelines for duplicate or confusingly similar firm names. It is clear Complainant and Respondent’s names are confusingly similar, and the firms are in close proximity. However, Tenn. Comp. R. & Regs. 1260-01-.18 applies to new firms. Respondent has a current firm license. Counsel does not believe the Commission has the ability to require Respondent to change their firm name. Additionally, Respondent’s advertisement was posted in a Jurisdiction J publication. Though Respondent is licensed by the Commission, Counsel holds the Commission does not have jurisdiction over advertisement violations in other jurisdiction’s publications. Therefore, based on this information, Counsel finds no violation of the rules and statutes by Respondent, and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel’s recommendation.

- 12. 2023001781**
- Opened: 2/27/2023**
- First Licensed: 3/14/1995**
- Expires: 11/2/2024**
- Type of License: Real Estate Firm**
- History: None**

Complainant is a Tennessee resident. Respondent is a real estate firm. Complainant placed an offer on a property and deposited One Thousand Dollars (\$1,000.00) in earnest money. Later, Complainant alleges they withdrew their offer after finding several issues including a crack in the foundation, and they were later informed the house was pushed back one hundred fifty-five (155) feet to the edge of the setback preventing the ability to construct a deck. Complainant alleges Respondent encouraged them to purchase the property and once inspections were complete to install the deck anyway. Complainant alleges the sellers requested Five Hundred Dollars (\$500.00) of the earnest money and Complainant agreed. However, Complainant alleges their agent, without Complainant's signature or agreement, gave the sellers the entire One Thousand Dollars (\$1,000.00). Complainant believes they had adequate grounds to withdraw from the Purchase and Sale Agreement ("PSA"), and Respondent did not have their best interests in mind when presenting the property. Complainant alleges the defects on the property should have been disclosed but were hidden.

Respondent answered the complaint through their principal broker ("RPB"). RPB states the sellers completed and executed a Tennessee Residential Property Condition Disclosure Exemption form on July 27, 2022 and noted that this is a transfer involving the first sale of a dwelling. Further, RPB provides the Exclusive Buyer Representation Agreement, their agents are not experts on home inspections, zoning, codes, covenants, restrictions, and other related issues. RPB states Complainant at no point expressed their desire to build a deck and declined to include an inspection contingency in their property offer. RPB further provides that Complainant and their spouse were sophisticated buyers, with over thirty (30) property purchases, and Complainant is an architect and their spouse a licensed real estate agent in another jurisdiction. Additionally, RPB states Complainant did not request for the terms of the offer to change or include a special stipulation for building a deck. Upon discovering Complainant's desire to terminate the contract, RPB's agent informed Complainant there was no due diligence period for inspections and attempted to contact the general contractor for their county. However, Complainant instructed RPB's agent to send notification of termination. RPB states upon notification, the listing agent requested the full earnest money deposit, but Complainant requested and subsequently sent an Earnest Money Release of Five Hundred Dollars (\$500.00) with the threat of litigation. RPB states the listing agent again request the full amount in full and Complainant declined. RPB states in reviewing the PSA and speaking with the agents in the transaction they made the decision to release the earnest money to the sellers based upon reasonable interpretation of the PSA per Section 3B(d) and Tenn. Comp. R. & Regs. 1260-02-.09(7). RPB explains Complainant waived all inspections and did not put anything

as to building suitable deck for needs in the Special Stipulations and believed Complainant did not have a justifiable reason to terminate the PSA as Complainant did not proceed to closing. RPB states they attempted to have a conversation with Complainant, but they refused and stated they believed they were entitled to the full amount. At their suggestion, RPB states they offered their agent to offer Complainant Five Hundred Dollars (\$500.00) of their commission if they decided to purchase another property. RPB states per the PSA, Respondent, as the holder of earnest money, cannot be held liable for performing duties per the PSA, which PSA states includes distributing earnest money. Additionally, RPB states their agent did not make any representations as to the suitability of the property for a deck prior to Complainant making an offer.

Tenn. Comp. R. & Regs. 1260-02-.09(7)(a) provides a principal broker may properly disburse trust money upon a reasonable interpretation of the contract which authorizes him to hold the trust money. Here, Respondent served as holder of the earnest money for Complainant's transaction. Complainant withdrew their offer and made a request for a certain amount of their earnest money deposit, and their sellers denied that request. Further, the PSA provides that earnest money may be disbursed "upon reasonable interpretation of the Agreement" and "Should Buyer default thereunder, the Earnest Money/Trust Money shall be forfeited as damages to Seller and shall be applied as credit against Seller's damages." Complainant sent Notification to the sellers of their desire to terminate the contract. Therefore, per the regulations of the Commission and the PSA, Respondent, as holder of the earnest money, was within their right to release the earnest money. Counsel finds no violation of the rules or statutes by Respondent and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

- 13. 2023001411**
Opened: 3/6/2023
First Licensed: 7/15/2021
Expires: 7/14/2023
Type of License: Principal Broker
History: None

Complainant is anonymous. Respondent is a principal broker. Complainant alleges they began receiving phone calls from callers looking for a similarly named firm. Complainant alleges Respondent is the principal broker of a firm registered with the Commission “Abbreviation-Firm Name Group, LLC d/b/a Abbreviation-Firm Name Group” but all their social media, website, yard signs all use the name “Unabbreviated Firm Name” which is like Complainant’s firm name “Unabbreviated Firm Name Realty, LLC d/b/a Unabbreviated Firm Name Realty.” Complainant alleges this includes social media group names, email addresses, and logos. Complainant included a yard sign with a picture, agent name, and email address.

Respondent was sent an Agreed Citation for violations of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b) and (3)(c) with a One Thousand Dollar (\$1,000.00) civil penalty. Respondent did not provide a response. Respondent’s firm is not advertising under the name licensed with the Commission. Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for failure to respond in violation of Tenn. Code Ann. § 62-13-313(a)(2) and additional Five Hundred Dollars (\$500.00) for violations of Tenn. Comp. R. & Regs. 1260-02-.12(2)(a) and (2)(b), as cited in the Agreed Citation, and One Thousand Dollars (\$1,000.00) for violation of Tenn. Comp. R. & Regs. 1260-02-.12(3)(b). Additionally, Counsel recommends including language in Respondent’s consent order instructing Respondent to advertise under the correct firm name as licensed with the Commission.

Recommendation: Three Thousand Dollar (\$3,000.00) civil penalty.

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

TIMESHARES:

- 14. 2023002571**
 - Opened: 2/13/2023**
 - First Licensed: 10/15/2019**
 - Expires: 6/19/2024**
 - Type of License: Real Estate Firm**
 - History: None**

Complainant is a Tennessee resident. Respondent is a timeshare company. Complainant is dissatisfied with their timeshare and wishes to rescind their contract

immediately. Complainant alleges Respondent informed them it would be easy to terminate their timeshare agreement, but believes Respondent lied to them.

Respondent answered the complaint stating they have a program specifically designed to include all options related to ownership changes and help owners understand and use the solutions to make changes to our transition out of their travel needs to evolve over time. Respondent provides that many of these options require that ownerships are paid off and current on their maintenance fees. However, Respondent states Complainant's week does not qualify for this program. Based on the information provided, Counsel finds no evidence that Respondent violated the rules and statutes, and the rescission period has expired. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

**Kim Cooper:
New Complaints**

- 15. 2023002401**
Opened: 1/23/2023
First Licensed: 7/30/2020
Expires: 7/29/2024
Type of License: Affiliate Broker
History: None

This complaint is related to REC #2023002491. Complainant is an affiliate broker. Respondent is an affiliate broker. Complaint alleges that Respondent's listing stated that the auction would pay 1% commission for broker participation. Complainant alleges that their buyer won the auction, but that Respondent has not paid the commission to Complainant. Complainant provided a copy of the broker participation form.

Respondent's principal broker responded on Respondent's behalf. Respondent stated that the Complainant did not attend the auction in person as required, and that additional liens were placed on the property after the day of the auction and before the closing. Due to the additional liens, the cost of the title search, and damage done

to the property by the Complainant's buyer after the day of the auction and prior to closing, Respondent lost money on the transaction and did not have a commission to provide to the Complainant.

Tenn. Comp. R. & Regs. 1260-02-.02(8) provides the Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers, and/or affiliates. Here, any issue between Complainant and/or Respondent appears to be contractual in nature. The Commission does not have jurisdiction in matters related to breach of contract. Based on the information provided, Counsel finds no violation of the rules or statutes by Respondent and recommends this matter be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

16. 2023002491

Opened: 2/27/2023

First Licensed: 1/13/1986

Expires: 2/25/2025

Type of License: Principal Broker

History: None

This complaint is related to REC #2023002401 and the facts are identical. Complainant is an affiliate broker. Respondent is the principal broker of respondent in the companion case.

Tenn. Comp. R. & Regs. 1260-02-.02(8) provides the Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers, and/or affiliates. Here, any issue between Complainant and/or Respondent appears to be contractual in nature. The Commission does not have jurisdiction in matters related to breach of contract. Based on the information provided, Counsel finds no violation of the rules or statutes by Respondent and recommends this matter be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

17. 2023001601
Opened: 1/30/2023
First Licensed: 1/28/2022
Expires: 1/27/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant alleged that Respondent lied to them about the cost of a home inspection and kept fees for themselves that they were not owed.

Respondent stated that Complainant and their spouse were first time homebuyers and were referred to Respondent by family members. Respondent stated that due to the Complainant's financial situation, they paid for the home inspection so that the Complainant could put \$500 towards earnest money for the purchase of a home. After the inspection, Complainant decided not to move forward with the purchase. Respondent then deducted the cost of the home inspection from the earnest money and returned the remaining funds to the Complainant. After the complaint was filed, Complainant asked that the complaint be closed, as it was all "a misunderstanding".

Complainant followed up after Respondent answered the complaint and confirmed that they wanted the complaint to be closed.

Any issue between Complainant and/or Respondent appears to be the result of lack of communication between both parties. Based on the information provided, Counsel finds no violation of the rules or statutes by Respondent and recommends this matter be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

18. 2023001691
Opened: 1/30/2023
First Licensed: 5/1/2015
Expires: 10/22/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker.

Complainant alleges that Respondent has “continually harassed them despite being told to stop”. Complainant alleges that they continued to receive phone calls, texts and emails after the Respondent was told to cease all communication. Complainant stated that a family member may have used their computer to check out real estate listings on Respondent’s website while visiting from out of state over the holidays, but that they are not interested in purchasing a home. Complainant asked that the Commission make the sales activity stop before they were forced to take legal action.

Respondent’s principal broker answered on Respondent’s behalf. Respondent provided screen shots of their attempts to contact the Complainant as tracked by their contact management system. Respondent stated that Complainant or someone using Complainant’s information provided Complainant’s email and phone number and inquired about a specific property on December 21, 2022. Respondent stated that their affiliate broker/Respondent was assigned to follow up with the Complainant and did make multiple attempts to contact the Complainant without success. On January 6, 2023, Complainant responded to a communication and informed Respondent that they did not want to be contacted and that they had filed a complaint with the Commission. Respondent removed Complainant’s contact information from their system at that time and ceased all communication with the Complainant.

Counsel’s opinion is that Respondent did not violate any TREC rule or regulation and recommends the complaint be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel’s recommendation.

19. 2023002171

Opened: 1/30/2023

First Licensed: 5/1/2000

Expires: 1/4/2025

Type of License: Principal Broker

History: 2021 Consent Order; 2021 Consent Order; 2021 Consent Order; 2021 Consent Order; 2021 Consent Order; 2021 Consent Order; 2021 Consent Order

Complainant was a Tennessee resident. Respondent is a principal broker. This complainant was referred to the Commission by the Tennessee Division of Consumer Affairs due to the Respondent being a TREC licensee. The Division of Consumer Affairs is mediating the fees dispute independently of the complaint.

Complainant was a tenant in a property managed by the Respondent. Complainant gave notice in September that they would be terminating their lease early in December due to a job transfer and asked for instructions on move-out and pro-rating the month of December rent. Complainant provided copies of emails that confirmed Respondent was notified in September that they would be vacating the property on December 15th. Complainant states that Respondent told them they would be responsible for rent through January, despite provisions in lease agreement stating otherwise, and they consulted with an attorney regarding this and other issues regarding the rental property. Complainant states that when Respondent was contacted by the attorney, Respondent retaliated by giving them notice to vacate by November 30.

Respondent stated that the many of the allegations in the Complainant's statement were false but did confirm that they gave the earlier notice to vacate to the Complainant in response to the contact from the Complainant's attorney. Respondent states they did so knowing that the Complainant would not be out by then but so that the attorney could explain to Complainant that they were misstating the law and should have clean hands when they made accusations against someone else. Respondent states that the Complainant was charged pro-rated rent for the month of December at the request of the Complainant's attorney, and that the Complainant's security deposit was returned to them in full minus a rekeying fee in mid-January.

Based on the information provided it appears this matter is fundamentally a landlord tenant dispute, which falls outside of the Commission's jurisdiction. Therefore, Counsel recommends that this matter be Closed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2023002301
Opened: 1/30/2023
First Licensed: 3/28/2006

Expires: 1/7/2025
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident. Respondent is an affiliate broker.

Complainant contacted Respondent through Realtor.com and stated that Respondent was not responsive to her request for information. Complainant submitted a copy of a purchase agreement that Respondent was not a party to, without explanation, as part of their supporting documents.

Respondent stated that Complainant was not a client, that they had limited contact with the Complainant, and that the nature of the complaint was confusing. Counsel agrees that the complaint is confusing and cannot find any violation of TREC rules or statutes.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

21. 2023002311
Opened: 1/30/2023
First Licensed: 7/1/2022
Expires: 6/30/2024
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident. Respondent is an affiliate broker.

Complainant contacted Respondent in response to an on-line advertisement and asked for virtual showings of various properties. Complainant believes that Respondent then impersonated another agent and misled them to secure their business.

Respondent stated that they worked with Complainant to purchase a house and communicated with Complainant via text and emails to set up several virtual showings. Complainant made an offer to purchase a property and signed and returned documents to Respondent, then an hour later stated that they "knew who Respondent's mentor was" and withdrew the offer. Respondent was unclear on what

Complainant was referring to but notified seller's agent that the offer was withdrawn. Respondent was then notified of this complaint.

Counsel's opinion is that Respondent did not violate any TREC rule or regulation and recommends the complaint be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

22. 2023002841

Opened: 1/30/2023

First Licensed: 8/30/2019

Expires: 8/29/2023

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident and the parent of a first-time homebuyer ("Buyer"). Respondent is an affiliate broker.

Complainant alleges that Buyer purchased a home on or about July 26, 2022, in an area where fire protection is provided through a subscription service. Complainant alleges that the seller had a subscription to the fire service and that Respondent was negligent by not advocating to have the balance of the annual membership conveyed to Buyer by adding a line item in the closing documents. Complainant states that the fire service subscription should be like HOA fees which are routinely included in closing documents. Buyer did not pay the subscription as part of closing, nor did Buyer subscribe after the purchase, and Complainant states that Buyer did not do so because Buyer believed they already had fire protection services due to Respondent's negligence. On October 11, 2022, there was a fire at Buyer's home, and Buyer received an invoice for over \$20,000 for fire services provided by the fire department that seller had subscribed to and that responded to Buyer's home. Complainant states that Tennessee realtors buying/selling property in unincorporated areas have an obligation to inform their clients of this type of requirement as one of their standard duties.

Respondent stated that they spent almost a year working with Buyer to purchase a home, and that Buyer was educated regarding the different utilities and services available both inside and outside of the city limits. Respondent provided a copy of

the Property Condition Disclosure signed by Buyer which states that: “The property is serviced by (fire company) and the property owner is subject to charges or fees for fire protection such as subscriptions.” Respondent states that they provided due diligence to Buyer including advising Buyer multiple times to subscribe to the fire service program.

Counsel’s opinion is that while this was an unfortunate and costly situation for Buyer, Respondent did not violate any TREC rule or regulation and recommends the complaint be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel’s recommendation.

23. 2023002871
Opened: 2/6/2023
First Licensed: 8/23/1999
Expires: 12/17/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker.

Complainant alleges that Respondent represented themselves as the listing agent of Seller, when in fact they were not the listing agent and never represented Seller. Complainant also alleges that Respondent altered a purchase agreement that Complainant and spouse signed to change the seller’s name from Seller to a company that Respondent worked for. Complainant and spouse were able to purchase the property directly from Seller in April 2022. Complainant filed the complaint against Respondent in January 2023, stating that they “feel insecure and feel as though our identities have been compromised by the alterations of an officially signed document that either fraudulently has our signatures on it or was manipulated in an unethical and illegal way.” Complainant provided copies of purchase agreements, one with Seller’s name and one with a company named as owner/seller. Complainant provided a recording of a telephone call with Respondent wherein Respondent provided a counteroffer to Complainant allegedly from Seller and tells Complainant it’s “fine” if Complainant takes a few days to think about it.

Respondent denied the allegations. Respondent stated that they never represented Seller and that they were acting as an acquisition agent for a third-party company. Respondent states that the property that Complainant purchased from Seller was actually in the middle of closing on a sale to the third-party company by Seller when Seller reneged on the agreement and accepted an offer from Complainant. Respondent states that the Seller has been sued by the company and was recently served with the lawsuit and believes this is why the complaint was filed a few weeks after Seller was served and not at the time of the original transaction. There has not been an explanation provided by Complainant as to the delay in filing the complaint.

After reviewing the documents and the audio recording, it does appear that Respondent held themselves out as representing Seller, a violation of Tenn. Comp. R. & Regs. 1260-02-.12(7)(a).

Recommendation: \$1000 civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

24. 2023003171
Opened: 2/6/2023
First Licensed: 12/30/1987
Expires: 10/8/2023
Type of License: Affiliate Broker
History: None

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

The complaint is a picture of the Respondent's website. The alleged violation is that the size of the affiliate broker's name is larger than the firm name in the body of the main page of the website. On all other pages the Respondent's name and that of the firm name are the same size in the header and footer portions of the pages. It appears to counsel that the broker's name is quite larger than the firm name on one section, a violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that "[a]ll advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of the licensee or the name of any team, group, or similar entity."

Respondent stated that the error was a result of a template used by the website company and that it has been corrected. Respondent apologized for the error and asked that the Commission take into account that this was their first violation after many years in the profession.

Recommendation: \$500 civil penalty.

Commission Decision: The Commission voted to dismiss the complaint.

25. 2023003921
Opened: 2/6/2023
First Licensed: 7/16/2003
Expires: 4/1/2024
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant states Respondent misrepresented the condition of a home and that Respondent promised Complainant the home would qualify for a Veteran's Administration loan. Complainant states they made an offer based on this assurance. After inspection, Complainant withdrew the offer due to what they claimed were multiple issues with the home and alleged that Respondent knew or should have known the home would "not pass inspection". Complainant also alleges that Respondent had the water shut off to the home on the day of the inspection so that any water leaks would be harder to detect. Complainant believed Respondent provided false information and stated they have since re-listed the home without mention of any of the issues found during the inspection.

Respondent answered the complaint stating they did not claim the home would qualify for a VA loan and would not especially since there had not been an inspection done on the home at the point and they would have no idea what unforeseen problems there might be with the home. Respondent provided text messages with Complainant's agent notifying Respondent that the inspection was taking place and asking about the water being turned off. Respondent stated that was the first they knew about it, and they immediately contacted the city who stated their records showed the water was on at the property but could not get anyone out until later that afternoon to check on the home in person. The inspector did not want to wait so left before completing the inspection. Respondent further provides that after the incomplete inspection while there were more issues than anticipated, none were of

a type that could not be repaired and provided a copy of the inspection report along with a copy of the only MLS listing that the Respondent used. There is insufficient evidence the Respondent either failed to disclose material defects or acted with malicious intent. Therefore, Counsel recommends this matter be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

26. 2023004291
Opened: 2/6/2023
First Licensed: 8/16/2018
Expires: 8/15/2024
Type of License: Affiliate Broker
History: None

Complainant and Respondent are both affiliate brokers.

Complainant alleged that Respondent left a derogatory review on their Zillow page, stating that the Complainant was unprofessional, unresponsive and did not know the area well enough to help potential buyers. Complainant provided a copy of the review, and the reviewer used a screenname and left a review as if they were a buyer who was dissatisfied with the Complainant's service. The review ended with "Do yourself a favor and find another local realtor." Complainant was able to connect the screenname used by the reviewer to a post by Respondent on another social media network and is familiar with Respondent. Complainant states that Respondent's "intentional, premeditated lie...was made with the purpose of deceiving the public. It is reasonable to assume that this dishonest act was meant to tarnish another licensee's reputation by posing as a consumer and posting a negative review online on January 27, 2023." Complainant stated they would be following up with the local realtor's board regarding the alleged breach of ethical standards.

Respondent replied by admitting that they left the derogatory review and apologized for their actions. They deleted the review and provided a copy of Complainant's Zillow page showing that the review was no longer available. Respondent stated that "(their) actions were shameful and (they) regret them deeply. The account that I used is a legitimate account, but I did write an untrue review and as a fellow professional I do realize that it could affect (Complainant's) career negatively." Respondent

stated that they let a personal matter with Complainant spill over into their professional lives and that it will not happen again.

Complainant responded to Respondent's assertion that this was a result of a "personal matter" by firmly stating that they have no personal matters of any kind with the Respondent, and this was purely out of spite due to a previous business relationship ending. Complainant stated that Respondent has been unprofessional on social media with other business matters.

Respondent's admitted act appears to be in violation of Tenn. Comp. Rules & Regs. 1260-02-.12(7) which states: "Guarantees, Claims and offers. (a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited."

Recommendation: \$500 civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2022051911
Opened: 2/6/2023
First Licensed: 7/18/2005
Expires: 7/17/2023
Type of License: Real Estate Firm
History: None

Complainant is an affiliate broker. Respondent is a real estate firm. Complainant received an unsolicited offer from an out of state address to purchase Complainant's in-state property. The offer was in the form of a letter from an unlicensed individual who stated they lived nearby and were interested in purchasing properties in the area. The contact information appeared to be the personal phone number of the buyer but the "P.S." provided an email address with Respondent firm's name in the email address. There was no other indication that the letter was from a licensee who may have a personal interest in the transaction.

Respondent stated that they and their spouse own a real estate investment company and acknowledged that Respondent is licensed while their spouse is not. Respondent states that their spouse purchases properties usually at foreclosure auctions,

renovates them, then Respondent sells the properties. Respondent stated that recently their spouse has tried to obtain properties through sending letters to people who may want to sell their property. Respondent's spouse hired an outside marketing company that works with real estate investors to find properties. Because the letter was sent by the spouse as the investor and purchaser, Respondent's name and real estate affiliation was not included in the letter. Respondent states it was not an intentional omission and that because the letter was "an advertisement generated from (real estate investment company) and not Respondent's firm" they did not believe the disclosure was necessary. Respondent did not address the name of their firm being the contact address for response to the solicitation.

Respondent appears to be in violation of Tenn. Comp. Rules & Regs. 1260-02-.11(2) which states: "(2) All licensees shall identify themselves as a licensee when buying or selling property for themselves."

Recommendation: \$500 civil penalty.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2023001501
Opened: 2/13/2023
First Licensed: 4/12/2016
Expires: 4/11/2018 (Expired, Uninsured)
Type of License: Affiliate Broker
History: None

Complainant is a licensee. Respondent is a former licensee.

Complainant alleges that Respondent is engaged in unlicensed activity. Complainant stated that Seller signed a listing agreement with Complainant on 12/14/2022, and then a few weeks later decided they did not want to sell the house but rent it instead, because they needed the cash flow. Complainant agreed to cancel the listing agreement. Complainant then saw on Facebook a few days later Respondent advertising the property for sale, then a day later "Under Contract!" Seller stated they did not know that Respondent advertised the home for sale and offered to pay Complainant the commission they would have received on the property. Complainant declined and filed this complaint instead.

Respondent stated they spoke with Seller and agreed to a “six month on or before sales contract” wherein Respondent would rent the property from Seller for six months or less if they found a purchaser for the property or decided to purchase it for themselves. Respondent paid rent for the first month, then a few days later advertised the home on social media to see if there any potential buyers. Respondent stated he notified Seller that “I (Respondent) had found someone to buy the property from me.” Respondent denies they are engaged in unlicensed activity.

Recommendation: \$1000 civil penalty for unlicensed activity.

Commission Decision: The Commission accepted counsel’s recommendation.

29. 2023003531
Opened: 2/13/2023
First Licensed: 10/7/2005
Expires: 10/6/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is an affiliate broker.

Complainant owns and operates a handy man business and was hired by Respondent to paint a property in preparation for listing. Complainant states that Respondent refused to pay Complainant after the project was complete and acted unprofessionally towards both Complainant and Complainant’s spouse, who is a business colleague of Respondent.

Respondent stated that they did hire Complainant but was unhappy with the quality of the work provided, and so refused to pay the amount that Complainant demanded. Respondent denies that they acted unprofessionally and alleges that Complainant and their spouse were the ones who acted unprofessionally. Respondent did eventually pay the full amount previously agreed upon after Complainant filed a lien against the property. Complainant then notified the Commission that they wanted to withdraw their complaint.

Counsel believes this is a contractual issue and outside of the jurisdiction of the Commission.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

30. 2023004121
Opened: 2/13/2023
Unlicensed
History: None

Complainant is a TREC licensee. Respondent is unlicensed and their company is not based in Tennessee.

Complainant alleges that Respondent is conducting unlicensed activity. Complainant provided copies of Respondent's website that had Tennessee properties for sale and a link to an excel spreadsheet where the public could "reserve now" properties, with the appearance of an auction. All of the properties were owned by individuals other than Respondent and advertised as investments, some with "immediate cash flow" as an additional enticement to purchase.

Respondent stated that they maintain the website "for free" as a way for the "general public to learn about real estate in general and as a way for buyers, sellers, investors and all people interested in real estate to connect". Respondent stated they have multiple disclaimers posted that they are not a buyer, seller or representative of any party in a transaction. Respondent stated that "it is impossible to "buy" or "sell" any property listed on any website that I operate unless you contact the owner or agent of the property. The buyers and sellers must contact each other to engage in a transaction. They must hire their own closing attorneys and obtain their own financing should that be necessary." Respondent stated they don't believe they have to be licensed but would be happy to do so if instructed by the Commission.

Complainant's rebuttal to Respondent points out that the website has reviews listed from "satisfied customers" that thank the Respondent for their help on closing on several properties that were purchased "through" Respondent's website. Complainant also pointed out that on the website Respondent's profile states they have "created a successful wholesaling, flipping & management business working across multiple markets..."

Respondent appears to be advertising and soliciting property they do not own and does not appear to fall into any of the exemptions provided in Tenn. Code Ann. §

62-13-104(a)(1)(a). Therefore, Counsel recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity.

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

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

31. 2022051931

Opened: 2/13/2023

First Licensed: 9/20/2022

Expires: 9/19/2024

Type of License: Real Estate Firm

History: None

Complainant alleges that they have received unsolicited mailers from Respondent offering to buy their property. The mailers allege to be from "Alex" and offer to buy the property "AS-IS ALL CASH". The mailers do not have the Respondent's name, nor do they indicate they are from a realtor.

Respondent stated that the solicitations are not from their company and their Broker/Agents have no knowledge of the mailing. Respondent states that the company mailing the solicitations is a "wholesale company that is engaged in acquiring property" and that while the wholesale company is owned by the same parent company as Respondent, they operate separate and apart from Respondent.

A website address listed on one of the mailers takes you to Respondent's website, which directs viewers on how to "sell your home" or "buy investment properties". One review states that the Respondent "got the transaction done with ease. I can't imagine selling a home being any easier". Additionally, the contact information on the website is the same as Respondent's listed address.

Respondent appears to be in violation of Tenn. Comp. R. & Regs. 1260-02-.12(3) as the broker's firm name or phone number appears nowhere on the envelope or card.

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

Commission Decision: The Commission accepted counsel's recommendation.

32. 2023001891
Opened: 2/13/2023
First Licensed: 9/20/2022
Expires: 9/19/2024
Type of License: Real Estate Firm
History: None

*The facts in REC# 2022051931 above are identical to those in this complaint, but with a different complainant.

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

Commission Decision: The Commission accepted counsel's recommendation.

33. 2023004391
Opened: 2/13/2023
First Licensed: 2/8/1997
Expires: 1/15/2025
Type of License: Principal Broker
History: 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

Complainant is a property owner. Respondent is a licensee and acted as a property manager for home owned by Complainant.

Complainant alleges that Respondent was negligent in their duties and allowed the home and personal property in the home to be damaged by tenants. Complainant also alleges that Respondent lied to them about vetting the tenants and lied to them about conducting routine checks on the property to confirm it was being maintained by the tenants. Complainant also alleges that Respondent failed to communicate with them or provide copies of the lease from August 2019 until January 2023, when they say discovered, Respondent had charged fees in excess of what they reported to Complainant. Complainant alleges that as a result of Respondent's negligence they suffered monetary damages. Complainant states that they "believe (Respondent) has been dishonest, negligent, unprofessional, misleading, confrontational, trying to intimidate us and dominate us."

Respondent confirmed that they did agree to act as property manager for Complainant's property but disputed much of the rest of Complainant's allegations.

Respondent gave a detailed rebuttal to Complainant's allegations and provided copies of all lease paperwork they say they provided to the Complainant. Respondent states that they advised the Complainant to remove all personal possessions from the home before they rented it to anyone, and Complainant declined to do so. Respondent disagreed so strongly with the Complainant's decision to leave personal property in the home that they photographed all personal items left behind in addition to highlighting in yellow the portions of the management agreement (signed by all parties) that stated the agent was not responsible for the condition of personal property left in the home. Respondent stated that Complainant received all funds due to them, and that Respondent terminated the business relationship prior to the filing of this complaint.

Complainant again disputed Respondent's version of events and stated Respondent is lying. Complainant states they want to sue Respondent.

There is insufficient proof to find that Respondent is in violation of any TREC rule or statute.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

34. 2023001181
Opened: 2/21/2023
First Licensed: 9/29/2009
Expires: 9/28/2023
Type of License: Real Estate Firm
History: None

The Complainant is an out of state time share owner. The Respondent is a time share company.

The Complainant stated they were "pushed into a corner and tricked into signing the contract by manipulative salespeople" and that they did not have enough time to review the purchase contract before signing. They allege that Respondent misrepresented fees associated with the time share ownership and that they have repeatedly requested to cancel their contract and Respondent will not agree to do

so. They are asking that they Commission assist them in cancelling their contract with Respondent.

The Respondent says that the Complainant entered a purchase transaction with their company in 2017 at which time they purchased an annual timeshare interest in a resort in Florida, not Tennessee. Respondent notes that the rescission period has long-since passed, and they deny any misrepresentations were made to the Complainant.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

35. 2023004431
Opened: 2/21/2023
First Licensed: 4/19/1985
Expires: 6/9/2023
History: None

This complainant was referred to TREC from another state's licensing board. Respondent is a TREC licensee.

Complainant alleged that Respondent sent one of their licensees ("Agent #1") a lead on a property knowing that it was a fake listing and an attempt to steal funds via wire-fraud. Complainant stated that based on the information they had available from Agent #1, Respondent had been notified by another potential victim ("Agent #2") that the listing was fraudulent a week before they sent the lead to Agent #1.

Respondent responded to the complaint via legal counsel. Counsel advised that they were notified by Agent #2 that the listing was fraudulent on the same day that Agent # 1 became aware of the fraud. Respondent provided documents including email communication with Agent # 2 corroborating the date of notice to Respondent and that Respondent acted immediately to remove the listing/lead from their system and flagged the address of the property should it be used again by anyone else. Respondent appears to have acted with due care, and there is no violation of TREC rules or statutes.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

- 36. 2023002371**
Opened: 2/27/2023
First Licensed: 11/13/1998
Expires: 12/8/2023
Type of License: Affiliate Broker
History: None

Complainant is ninety (90) years old, legally blind and is a long-time tenant in a home currently involved in probate proceedings to determine ownership. Respondent is the administrator of the estate in dispute, and there is also a pending motion to remove Respondent as administrator.

Complainant alleges that Respondent has acted in a malicious and deceitful manner in their attempts to evict Complainant. Complainant provided a copy of a court ruling from December 2022 in a related bankruptcy proceeding wherein Respondent was found to have perjured herself repeatedly during a hearing, held in contempt of court, and sanctioned.

Respondent responded to the allegations by contesting the perjury finding and stating that the complaint was related to a family dispute over ownership of the home, which was owned by Respondent's mother who passed away in July 2022. Respondent attached a lengthy letter which detailed a long history of discord between Respondent and their five siblings but also confirmed that Respondent was recently found in contempt of court for perjury, as well as suspected of forging documents related to the attempted eviction of Complainant.

Respondent's conduct is troubling but appears to be exempt from Commission jurisdiction as the ownership of the property is in dispute and Respondent may very well be the rightful owner of the home.

Recommendation: Dismiss and flag and refer to Tennessee Adult Protective Services.

Commission Decision: The Commission accepted counsel's recommendation.

37. 2023002901
Opened: 2/27/2023
First Licensed: 1/22/1992
Expires: 7/16/2023
Type of License: Affiliate Broker
History: None

Complainant is anonymous. Respondent is a TREC licensee.

Complaint consisted of a copy of Respondent's mug shot from a recent arrest for driving under the influence and violation of the implied consent law.

Respondent replied to the complaint by confirming that they did have a case pending for the referenced charges. As their case had not yet been heard, they advised they didn't have any additional information to provide.

Respondent has not violated any TREC rule or regulation, and Counsel recommends the complaint be closed.

Recommendation: Dismiss

Commission Decision: The Commission accepted counsel's recommendation.

38. 2023002201
Opened: 4/10/2023
Unlicensed
History: None

Complainant is a homeowner. Respondent is a homeowner's association management company. Complainant alleges that Respondent approved construction of projects that were expressly prohibited by the community covenants. Complainant provided copies of the closing documents from the purchase of their property that included the HOA covenants and restrictions as well as photographs of the projects that they claim are in violation of the restrictions.

Respondents replied to the complaint stating that they are an association management company, hired by developers to manage the homeowner's association during the construction period. Documents provided by the Respondent demonstrate that the projects Complainant pointed to were initially denied, then approved subject

to conditions. It is unclear whether the conditions were met, and the homeowners and HOA board were both considering litigation regarding the projects.

Counsel does not see where any of the acts Complainant reported come under the jurisdiction of the Commission.

Recommendation: Counsel's opinion is that Respondents did not violate TREC regulations and recommends the complaint be Dismissed.

Commission Decision: The Commission accepted counsel's recommendation.

**Aerial Carter:
New Complaints**

**39. 2023000061
Opened: 1/9/2023
First Licensed: 1/2/2019
Expires: 1/1/2025
Type of License: Affiliate Broker
History: None**

Complainant is anonymous. Respondent is an affiliate broker. Complainant alleges Respondent failed to renew their license prior to it expiring in violation of T.C.A § 62-13-307.

Respondent stated that they completed all the required renewal hours and paid the renewal fee.

Based on the information provided, it appears that Respondent has met the requirements for completing their hours and paying the fee. However, the Respondent did not complete all requirements prior to their license expiring. Respondent met the requirement of paying the fee the day after their license expired.

Counsel finds Complainant's allegations related to failing to renew sixty (60) days prior to their license expiring in violation of T.C.A § 62-13-307 to be founded. If a licensee fails to pay the renewal fee or fail to comply with any prerequisite or condition, their renewal may be "reinstated without examination within sixty (60) days after the expiration date of the license upon providing proof of compliance with

the prerequisites or conditions, including payment of any penalty fee arising from failure to comply with any prerequisite or condition to renewal prior to the expiration date of the license and payment of the renewal fee, plus an additional penalty fee of not more than one hundred dollars (\$100) per month.”

Based upon all these facts, Counsel recommends this matter be dismissed after licensee pays a fifty dollar (\$50) civil penalty.

Recommendation: Fifty Dollar (\$50) civil penalty.

Commission Decision: The Commission accepted counsel’s recommendation.

40. 2023000071
Opened: 1/9/2023
First Licensed: 12/11/2002
Expires: 12/13/2024
Type of License: Principal Broker
History: None

Complainant is Tennessee resident. Complainant is Affiliate Broker. Respondent is a Principal Broker. Complainant alleges Respondent posted two listings on social media that did not meet the requirements established by the Commission.

Respondent stated that they were unclear about which violation they were accused of but revised one of the social media posts to include more information about them and their company. The other listing has been removed from social media

The Complainant did not cite a specific violation in the complaint, so Counsel was unsure which statute or regulation had been violated. Counsel investigated and found that Respondent did update their social media listing and compared it with the guidelines.

Counsel believes that the Complainant may be referencing the advertisement requirements set forth in the Tennessee Comprehensive Rules and Regulations, however, the complaint is vague and does not clearly state the suspected violation. Counsel finds Complainant’s allegations related to the social media posts not conforming to the proper guidelines to be unfounded. The contact information for the social media post that is still online contains the website, firm name, telephone

number, and other required information matches the information listed in the Commission database according to Tenn. Comp. R. & Regs. 1260-02.-12.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

41. 2023000151
Opened: 1/9/2023
First Licensed: 10/14/2020
Expires: 10/13/2024
Type of License: Affiliate Broker
History: None

Complainant is a seller in a real estate transaction with Respondent. Respondent is an Affiliate Broker. Complainant alleges Respondent committed two ethical violations by taking possession of the property prior to the closing date and adding additional requirements with no notice.

Respondent provided several documents in their response with additional information regarding the real estate agreement.

The first alleged violation was taking possession of the property prior to closing. Respondent stated although they took the key out of the lockbox, it was done so the Buyer could do a walkthrough before the closing date while the Complainant was in another county. Additionally, the closing date was scheduled for the following day and the Respondent wanted to have the keys available for the Buyer at time of closing. The Complainant and Respondent agree that Buyer had a copy of the keys to the property and had the Complainant access to the property before the closing date.

Regarding the second alleged violation of adding additional requirements. The Buyer conducted a final walkthrough prior to closing and the Buyer added that the Complainant's personal property be removed at the time of closing. The parties previously agreed to have the Complainant maintain possession of the garage after closing for an agreed amount of time. The Complainant's personal property in question was not located in the garage but in the driveway beside the property.

Complainant would have been required to remove and all personal property prior to closing unless there was a prior agreement.

Overall, Counsel does not believe the Commission has jurisdiction over this claim, and it seems to be a contract dispute, although Counsel does not believe it would have merit.

Based on the information provided, Counsel finds Complainant's allegations related ethical violations to be unfounded. Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

42. 2022052141
Opened: 1/9/2023
First Licensed: 8/15/2003
Expires: 10/14/2024
Type of License: Real Estate Firm
History: None

Complainant is an out of state resident. Complainant is a buyer in a real estate transaction. Respondent is a Tennessee real estate firm. Complainant alleges Respondent misled them by failing to disclose the proper owners, placing an incorrect date on a document, later adding a signature to a document, and failing to return the earnest money paid to the firm.

Respondent stated that there was no failure to disclose the owner the property and the title would be clear at closing. The date and signature were minor issues that were caused by a failure to get the signature of the seller prior to sending it to the Complainant. Lastly, the earnest money is in a trust that has not been accessed by the Respondent. Respondent also attached court documents describing the details of the earnest money and has requested that the court decide on the proper action.

Based on the information provided, it appears that Respondent has fulfilled their duties and actions requested by Complainant are outside of the jurisdiction of the Commission.

Counsel finds Complainant's allegations related the above issues to be unfounded. Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

43. 2023000281
Opened: 1/18/2023
First Licensed: 5/22/2019
Expires: 5/21/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Complainant is a Broker. Respondent is an Affiliate Broker. Complainant alleges Respondent possibly acted as a Principal Broker without the proper licensing or education in violation of T.C.A. § 62-13-209.

Respondent stated that they have not engaged in any activity where they have held themselves out as a Principal Broker. Respondent communicated with Complainant after receiving the complaint. The main concern was Respondent requesting a commission for themselves and another agent and Respondent signed a check as a co-owner.

Counsel reached out to the Complainant and Respondent to get more clarity as no specific violation was alleged in the complaint.

Counsel received a response from Complainant via telephone. Complainant stated that they had a partnership with Respondent that began around December 2022. Complainant said the complaint was the result of a misunderstanding that has been resolved. Complainant stated that they do not believe Respondent violated any statutes or rules and they are no longer interested in pursuing this complaint.

Counsel received a response from Respondent via email. The response stated that Respondent had a recording of the conversation between them and Complainant. Counsel was able to listen to the recording. The conversation was between Respondent, Complainant, and an unnamed witness.

Counsel finds Complainant's allegations related to Respondent acting as a Principal Broker without the proper licensing or education to be unfounded. Respondent was acting within their role as a co-owner when they signed a commission check. Complainant was aware of the check being signed by Respondent and consented to the commission amount. Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

44. 2023000421
Opened: 1/18/2023
First Licensed: 10/12/2007
Expires: 10/11/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Complainant is a seller in a real estate transaction. Respondent is an Affiliate Broker. Respondent acted as the buyer's agent. Complainant alleges Respondent violated their duty when they did not collect the earnest money deposit ("deposit") and failing to communicate to Complainant's agent once they knew the deposit had not been received. As a result, the real estate transaction did not go through, and the Complainant's property was put back on the market after two weeks and they missed the opportunity to show the property during that time.

Respondent's Principal Broker ("Principal Broker") responded on their behalf. The response provided a timeline of events and the interactions with Complainant. Principal Broker stated that Respondent stayed in communication with Lender and seller's agent and informed the appropriate parties when it was clear the deal would not go forward.

Regarding the disclosure of information, the Respondent has a duty to all parties to disclose to each party to the transaction any adverse facts of which the licensee has actual notice or knowledge and provide services to each party to the transaction with honesty and good faith. T.C.A. § 62-13-403(2); T.C.A. § 62-13-403(4).

Regarding the deposit, Tennessee Code Annotated has specific requirements once funds have been received. T.C.A. § 62-13-321; T.C.A. § 62-13-323. Here, there is no duty prior to receiving the deposit.

Based on the information provided, it appears that Respondent has a duty to disclose information that would impact the real estate transaction and act in good faith but not regarding the deposit as they had not received it.

Counsel finds Complainant's allegations related to the delay in disclosing information to be unfounded. It does not appear that the Respondent delayed their communication to the proper parties and the property was able to go back on the market after a little over two weeks. Although it may have been stressful for the Complainant, Counsel did not find any extreme delay that would constitute misconduct. Based upon all these facts, Counsel recommends this matter be dismissed

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

45. 2023000771
Opened: 1/18/2023
First Licensed: 11/30/2015
Expires: 2/9/2025
Type of License: Real Estate Broker
History: None

Complainant is Tennessee resident. Complainant is a seller in a real estate transaction. Respondent is a Broker. Complainant alleges Respondent overstepped their role by stating that their client wanted to pursue a lawsuit against Complainant when the Respondent's client did not authorize Respondent to do that.

Complainant stated that the threat was communicated in a phone conversation. In the response, Respondent admitted that a phone call occurred between Respondent, Respondent's Principal Broker, Complainant's agent, and Complainant's Principal Broker but no threat was communicated.

Respondent further stated that they acted within the scope of their representation and only advised their client in the real estate transaction.

Counsel reached out to the parties mentioned in the complaint and response to get additional clarity regarding the contents of the phone conversation.

Counsel received a response from Respondent's Principal Broker stating that they remember the conversation and there was no threat of lawsuit against the Complainant.

Counsel received a response from Complainant's agent and Complainant's Principal Broker that they received the email, but no additional information was provided.

Complainant's main concern was that Respondent went outside the scope of their duties. Under Tennessee statute, a licensee who is engaged as an agent serves as an intermediary in negotiations between parties to a transaction. Tenn. Code. Ann. § 62-13-402(a). Additionally, a licensee owes a duty to their client to "obey all lawful instructions of the client when the instructions are within the scope of the agency agreement between licensee and licensee's client." Tenn. Code. Ann. § 62-13-404(1). However, based on the documents received, it appears that Respondent was working within the scope of their agreement. Furthermore, Respondent has a duty to be loyal to the interests of their client." Tenn. Code. Ann. § 62-13-404(2). Respondent can advise their client of their rights in a real estate transaction, and it is necessary to have that duty to their client.

Counsel finds Complainant's allegations related to acting outside of the scope of their agreement to be unfounded because no evidence was provided that Respondent violated any statutes or rules governed by the Commission. Counsel believes that Respondent represented their client's interest without overstepping their authority. Based upon all these facts, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

46. 2023001231

Opened: 1/18/2023

First Licensed: 9/24/2018

Expires: 9/23/2024 (E&O Suspension as of 1/15/2023)

Type of License: Affiliate Broker

History: None

Complainant is a Tennessee resident. Complainant is renting property from the Respondent. Respondent is an Affiliate Broker. Complainant alleges Respondent failed to update the move in inspection report with pictures they took.

Respondent's Director of Legal Services and Licensing ("Director") responded on Respondent's behalf. Director stated they have resolved the matter by including the pictures Complainant sent and updated the move in inspection report. Director also stated that Respondent attempted to contact Complainant to schedule a new move in inspection report, but Complainant refused to respond.

Counsel reached out the Respondent and Director to get confirmation of this communication and Respondent's license number. Respondent acknowledged email Counsel sent but did not provide additional information.

Counsel also received communications between another individual with the same name as Respondent stating that they never worked as an Affiliate Broker at the real estate agency in question. Counsel was unable to confirm that the Respondent is the individual Complainant interacted with.

Based on the information provided, it appears that Respondent has not made the updates. However, Counsel does not believe that the commission has authority over this matter. This matter is more appropriate for civil court if Respondent tried to sue Complainant for damages. Counsel believes this issue is a contract issue.

Based upon all these facts, Counsel recommends this matter be dismissed because the Commission has no authority in this matter.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

47. 2022051371
Opened: 1/30/2023
Unlicensed
History: None

Complainant is Tennessee resident and a real estate agent. Respondent is unlicensed. Complainant alleges Respondent has been advertising the sale of real estate on social media without a license and has been representing themselves as a real estate agent.

Respondent stated that they have held themselves out as a real estate agent. Respondent maintains that they are a wholesale realtor who makes it clear to all parties that they are not the owner, nor do they represent the seller. Respondent also stated that they go under contract for a property with a seller then markets the “equitable ownership in said property.”

When looking at wholesaling, the courts consider whether the unlicensed individual has a valid ownership interest in the subject property and how that wholesale transaction is executed. Case law states that when an assignor [or wholesaler] obtains ownership rights through a purchase agreement, they are contractually entitled to assign that right alone.

Here, if the Respondent purchased a contract for a property, it would create a valid ownership interest. However, Respondent did not provide evidence of purchase of a contract to any property or provide details as to how the wholesale transaction is executed. The Complainant attached social media posts where Respondent is advertising the sale of property without any indication of their role.

Although Respondent may have a personal ownership interest in the property, they are advertising and soliciting the sale of a property or purchase agreement with the expectation of receiving some form of compensation. Respondent has been posting advertisements on social media that could be misleading to a potential buyer. Respondent does not specify their role, listings are posted under their name on social media, and they provide no contact information for a licensed real estate agent.

Based upon all these facts, Counsel finds Complainant’s allegations related to Respondent misrepresenting themselves as a real estate agent via social media to be founded under T.C.A. § 62-13-301. It is unknown if the misrepresentation was inadvertent because Respondent did not provide any supporting documentation, but Respondent’s role needs to be clearly identified.

Therefore, Counsel recommends Respondent pay a Five Hundred Dollar (\$500) civil penalty for unlicensed activity.

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

Commission Decision: The Commission voted to assess a One Thousand Dollar (\$1,000.00) civil penalty.

48. 2022052641

Opened: 1/30/2023

First Licensed: 2/26/2014

Expires: 12/2/2023

Type of License: Principal Broker

History: None

Complainant is a resident of another jurisdiction Respondent is a Principal Broker. Complainant alleges Respondent failed to properly manage their Tennessee rental property.

Counsel finds Complainant's allegations related to the property management issue to be outside the scope of the Commission's jurisdiction. Under T.C.A. § 62-13-104 there are exceptions for jurisdiction in relevant part:

A resident manager for a broker or an owner, or employee of a broker, who manages an apartment building, duplex or residential complex where the person's duties are limited to supervision, exhibition of residential units, leasing or collection of security deposits and rentals from the property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker.

Tenn. Code Ann. § 62-13-104(E). Since this is one of the enumerated exemptions, it is not something that can be decided by the Commission. This action would be better suited for civil court.

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

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

Chair Franks adjourned the meeting at 10:45am CST.