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W.VA. REAL ESTATE COMMISSION

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v. **Formal Complaint No. C-17-010**

TERESA R. JOHNSON,
Licensed Salesperson
License No. WV0025306

Respondent.

CONSENT DECREE

The Respondent, Teresa R. Johnson (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Cheryl L. Dawson, its Chairman, enter into the following Consent Decree for the purpose of resolving the complaint filed against Respondent by the Commission. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in this Consent Decree concerning the proper disposition of these matters. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. The Commission is a state agency created by West Virginia Code § 30-40-1, *et seq.*, and is empowered to regulate the practice of real estate brokerage in the State of West Virginia.

2. Respondent is a licensed real estate salesperson in the State of West Virginia, holding license number WV0025306, was licensed with Rice Realty, LLC, from February 10,

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2014, through December 12, 2016, and is currently and has been licensed with Pearson Smith Realty, LLC, since July 1, 2016.

3. By letter dated October 17, 2016, Respondent's broker at Pearson Smith sent correspondence to the Commission which attached an unsigned and unfiled complaint on the Commission's form which set forth various allegations, including that Respondent was operating a side business and collecting rents in her own name for a client of Rice Realty; the broker at Pearson Smith ordered the practice terminated immediately.

4. Upon the Commission's investigation of the matter, it was determined that Respondent was indeed collecting rents without depositing same in a trust account, but that her broker at Rice Realty was also without knowledge of this enterprise.

5. At its regular meeting on December 14, 2016, the Commission initiated Formal Complaint No. C-17-010 against Respondent, to which Respondent timely responded.

6. In her response, Respondent admits that she provided property management services, was compensated for same, and did not run the contract through her brokerage.

7. The Commission, at its meeting on January 18, 2017, found probable cause to proceed against Respondent for violation of the West Virginia Real Estate License Act and Code related Rules.

8. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.

9. The Commission has incurred expenses in the prosecution of this Complaint in excess of Five Hundred Fifty Dollars ($550.00), which expenses include the Commission's legal expenses and a portion of the time expended by the Commission's investigator, but does not include other expenses incurred by the Commission in the investigation and prosecution of this Complaint.

CONCLUSIONS OF LAW

1. West Virginia Code § 30-40-1 *et seq.*, vests the Commission with the authority and responsibility to regulate real estate brokers, associate brokers and salespersons in the State of West Virginia.

2. West Virginia Code § 30-40-18(b) provides that "(f)unds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, **rental receipts**, auction proceeds and money held in escrow at closing." [emphasis added]

3. Respondent did not turn the rental receipts over to her broker or deposit in the broker's trust account, in violation of West Virginia Code § 30-40-18(b).

4. West Virginia Code § 30-40-19(a)(16) provides that the Commission may revoke, suspend or otherwise discipline a licensee if the licensee "(a)ccepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her employer who must be a broker."

5. Respondent accepted compensation directly from the owner of rental property for whom she provided property management services, in violation of West Virginia Code § 30-40-19(a)(16).

6. The Commission's related rule West Virginia Code R. § 174-1-16.2 sets forth the requirements for "Salesperson and associate broker with trust funds" and provides:

> Every real estate salesperson and associate broker who receives any trust funds shall immediately, or at the first opportunity, pay over or deliver the trust funds to the broker, under whom he or she is registered as a salesperson or associate broker. No real estate salesperson or associate broker shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker under whom he or she is licensed. Upon receipt of any trust money, the salesperson or associate broker shall immediately turn it over to his or her employing broker. The Commission will consider the failure of

a salesperson or an associate broker to comply with this rule to be a violation of W. Va. Code §§ 30-40-1 *et seq.*

7. Respondent's failure to deliver the rental receipts to her broker violates West Virginia Code R. § 174-1-16.2.

8. The Commission may assess administrative costs, which shall be placed in the account of the Commission. Any fine shall be deposited in the state treasury's general revenue account. W. Va. Code § 30-1-8(a).

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent is aware of her right to be represented by counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that she may pursue this matter through appropriate administrative proceedings and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent acknowledges the Findings of Fact set forth above, admits to the violations set forth above in the Conclusions of Law, and consents to the entry of the following Order:

ORDER

On the basis of the foregoing, the Commission hereby ORDERS as follows:

1. Respondent is hereby REPRIMANDED.

2. Respondent shall pay a fine in the amount of Five Hundred Dollars ($500.00).

3. Respondent shall also pay the costs associated with this Complaint in the amount of Five Hundred Fifty Dollars ($550.00).

4. The total payment of One Thousand Fifty Dollars ($1,050.00) shall be paid by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office within thirty (30) days of the entry of this Consent Decree by the Commission.

5. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of an Order of the Commission and may, upon action by the Commission, result in the summary suspension of Respondent's license until such time as Respondent achieves full compliance.

The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of Respondent's license. Respondent may request probationary reinstatement of the license through renewal of this Consent Decree, or execution of a new Consent decree which may contain different or additional terms. The Commission is not bound to comply with Respondent's request for probationary reinstatement.

In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of her license. Any such hearing shall be scheduled and conducted in accordance with the provisions of W. Va. Code §§ 30-1-8 and 30-40-1 *et seq*. and any procedural rules promulgated by the Commission.

At its discretion, the Commission also may schedule a hearing on its own initiative for the purpose of allowing the Commission to consider further discipline against Respondent based upon Respondent's violation of this Order of the Commission.

CONSENT DECREE AGREED TO BY:

Teresa R. Johnson
TERESA R. JOHNSON

2-17-2017
DATE

ENTERED into the records of the Real Estate Commission this ____ day of _____, 2017.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: Cheryl L. Dawson
CHERYL L. DAWSON,
COMMISSION CHAIRMAN