

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,

v.

Formal Complaint No. P-21-001

KIM LANDIS,
Licensed Real Estate Broker
License No. WV0012930

and

JENNIFER RAINES,
Licensed Real Estate Salesperson
License No. WV0029176

and

ANNIE SNYDER,
Licensed Real Estate Salesperson
License No. WV0021997
Respondents.

CONSENT DECREE

Respondent Kim Landis (“Respondent Landis”), Respondent Jennifer Raines (“Respondent Raines”), Respondent Annie Snyder (“Respondent Snyder”), the West Virginia Real Estate Commission (“Commission”) enter into the following Consent Decree for the purpose of resolving the above-styled complaint. As reflected in this Consent Decree, the parties have reached an agreement in which each Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. Respondent Landis is a licensed real estate broker in the State of West Virginia, holding license number WV0012930.

2. Respondent Raines is a licensed real estate salesperson in the State of West Virginia, holding license number WV0029176.

3. Respondent Snyder is a licensed real estate salesperson in the State of West Virginia, holding license number WV0021997.

4. At all times relevant, Respondent Landis served as the responsible broker for Respondent Raines and Respondent Snyder at Landis Realty in Davis, West Virginia.

5. On July 7, 2020, the Commission received a formal complaint filed by Douglas and Sherlyn West against all three respondents. The complaint concerns two real estate transactions in which the Wests were the sellers of two separate properties, both of which were listed for sale by Landis Realty.

6. The two subject properties are 146 Yoakum Run, Davis, West Virginia, and 914 Cabin Mountain, Davis, West Virginia.

7. Respondent Raines served as the listing agent for both properties. The Wests signed the Notice of Agency Relationship forms for both properties on December 10, 2018, and Respondent Raines indicates on each form that she is the listing agent for the sellers.

8. The Wests signed Listing Contracts for both properties on December 10, 2018. The parties to the Listing Contracts are the Wests and Landis Realty. Respondent Landis signed the Listing Contracts on behalf of the brokerage on December 12, 2018. In relevant part, the Wests

agreed to pay Respondent Landis a commission of six percent of the sales price for each property. Additionally, the Listing Contracts state that “Seller agrees that Broker may also represent the Buyer of the Property, which must be disclosed to the Seller and Buyer. The Broker is a DISCLOSED DUAL AGENT when representing the Seller and the Buyer in the sale of the Property.” (Capitalization in original).

9. The parties subsequently extended the expiration of the Listing Contracts to December 7, 2020.

10. On or about March 13, 2020, Respondent Landis represented a buyer for the 146 Yoakum Run property and submitted an offer to the Wests on the buyer’s behalf. When Respondent Landis submitted the Notice of Agency Relationship form to the Wests for their signature, she indicated that she and her brokerage Landis Realty represented the buyer only, as the buyer’s agent. The buyer signed the form on March 13, 2020, and the Wests signed electronically on March 14, 2020.

11. On or about May 2, 2020, Respondent Snyder represented a buyer for the 914 Cabin Mountain property and submitted an offer to the Wests on the buyer’s behalf. When Respondent Snyder submitted the Notice of Agency Relationship form to the Wests for their signature, she indicated that she and Landis Realty represented the buyer only, as the buyer’s agent. The buyer signed the form on May 2, 2020, and the Wests signed on May 4, 2020.

12. The Wests allege in their Formal Complaint that the respondents failed to properly disclose and document their dual agency roles and failed to perform in accordance with the accepted practices and ethics required of dual agents.

13. The Commission sent the Wests' Formal Complaint to each respondent for a response. Each respondent submitted a response to the Commission. With respect to the allegation that they each failed to disclose their respective dual agency in the two transactions, the respondents generally stated that there was no dual agency because none of the respondents represented both the buyer and the Wests in either of the transactions.

14. At its regularly-scheduled meeting on August 19, 2020, the Commission determined that probable cause existed to conclude that respondents' conduct in failing to disclose their dual agency violated the *West Virginia Real Estate License Act*.

CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq., the Commission is charged with the regulation of the practice of real estate brokerage in this State, and, thus, has jurisdiction over this Formal Complaint.

2. In relevant part, West Virginia Code § 30-40-7(1) authorizes the Commission to impose sanctions for violations of the *West Virginia Real Estate License Act*, including, but not limited to, an administrative fine not to exceed \$1,000 per day per violation; probation; revocation; suspension; restitution; additional education; denial of future license; downgrade of license; reprimand; and/or the return of compensation collected from an injured consumer.

3. West Virginia Code § 30-40-19(a)(19) authorizes the Commission to discipline a licensee if the licensee “[v]iolates any of the provisions of this article, any rule or any order or final decision issued by the commission.”

4. West Virginia Code § 30-40-26(d) states that “[e]very licensee shall disclose in writing, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.”

5. The Wests listed their properties for sale with Landis Realty, Respondent Landis’ brokerage. Consistent with the Listing Contract and the *Real Estate License Act*, commissions on those sales were required to be paid to Respondent Landis. Accordingly, Respondent Landis served as a dual agent for the purchase of 146 Yoakum Run because she represented, and owed a fiduciary duty to, both the buyer and the Wests. Respondent Landis’ failure or refusal to amend the Notice of Agency Relationship Form to indicate her dual agency violates West Virginia Code § 30-40-26(d).

6. Licensed real estate salespersons in the State of West Virginia can practice real estate only while under the supervision of a licensed real estate broker. A salesperson’s agency, therefore, is coterminous with that of his or her responsible broker.

7. Although Respondent Raines is the listing agent on both properties, the listings belong to the brokerage, Landis Realty. The duties Respondent Raines owed to the Wests as their listing agent runs concurrent with Respondent Landis’ duties as broker for Landis Realty. When another licensee within the same brokerage purports to represent a buyer for a listing held by that brokerage, both the listing agent and the buyer’s agent become dual agents. Accordingly, Respondent Raines and Respondent Landis served as dual agents on the sale of 184 Yoakum Run, and Respondent Raines and Respondent Snyder served as dual agents on the sale of 914 Cabin Mountain.

8. By failing or refusing to amend their respective Notices of Agency Relationship Forms, Respondent Raines and Respondent Snyder violated West Virginia Code § 30-40-26(d).

CONSENT

By signing below, each Respondent agrees to the following:

1. Respondents have had the opportunity to consult with 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 either Respondent to make this settlement other than as set forth herein. Respondents acknowledge that they may pursue this matter through appropriate administrative proceedings and are aware of their legal rights regarding this matter, but intelligently and voluntarily waive such rights.

2. Respondents acknowledge the Findings of Fact set forth above, admit that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consent to the entry of the following Order:

ORDER

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

1. Respondents shall each complete an educational course on the subject of Agency and submit a completion certificate for such course to Jerry Forren, the Commission's Executive Director, on or before June 30, 2021. This course shall be in addition to the continuing education required for annual renewal of the respondents' respective licenses.

2. Upon compliance with Paragraph #1, the Commission shall dismiss this Formal Complaint and this matter shall not be considered or reported as disciplinary action by the Commission.

3. If a respondent or respondents fails to comply with Paragraph #1, the non-complying respondent or respondents shall be formally reprimanded, which action shall be considered disciplinary action. The Commission shall immediately notify the non-complying respondent(s) via certified mail of the alleged violation of the Consent Decree. In the event that respondents contest the alleged violation of the Consent Decree, respondents are entitled to a hearing to challenge the alleged violation. 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.

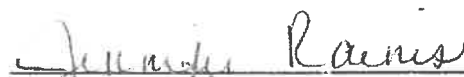
CONSENT DECREE AGREED TO BY:



Kim Landis

10/2/20

Date



Jennifer Raines

10/2/2020

Date



Annie Snyder

10/2/20

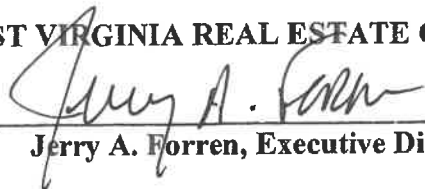
Date

ENTERED into the records of the Real Estate Commission this:

12th day of October, 2020.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:



Jerry A. Forren, Executive Director