

FEB 03 2016

W.VA. REAL ESTATE
COMMISSION

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-16-005

SPENCER WOODY,
Licensed Broker
License No. WV0024160*Respondent.*CONSENT DECREE

The Respondent, Spencer Woody (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 broker in the State of West Virginia, holding license number WV-000024160, and is the broker for Snowshoe Mountain, Inc. [Respondent's brokerage], which is owned by Intrawest.

3. On July 17, 2015, the Commission conducted a compliance audit of Snowshoe Mountain, Inc., and discovered that the trust fund account balance exceeded Two Hundred Fifty Thousand Dollars (\$250,000.00), the FDIC insured limit, and that the excess amounts were automatically swept (deposited) into an uninsured and interest-bearing institutional money fund, which interest was retained by Respondent's brokerage.

4. On or about August 18, 2015, the Commission initiated Formal Complaint No. C-16-005 against Respondent, which was responded to timely through Intrawest's corporate counsel.

5. The Commission, at its meeting on September 16, 2015, found probable cause to proceed against Respondent for violation of West Virginia Code §§ 30-40-18(c) and(e).

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

7. Respondent instituted a process for addressing the violation which involves a sweep of excess cash into non-interest-bearing, FDIC-insured accounts. The Commission has provisionally accepted this process such that Respondent's current process for meeting its trust account obligations with regard to funds on deposit in excess of FDIC-insured limits shall not result in further disciplinary action. Respondent will be provided sufficient notice should the process be determined to require further conditions, pre-requisites or changes in order for Respondent to continue using the current or a similar process.

8. The Commission has incurred expenses in the prosecution of this Complaint in excess of Six Hundred Fifty Dollars (\$650.00), which expenses relate solely to the Commission's legal expenses and do not include costs reflecting time expended by Commission staff and other expenses incurred by the Commission.

CONCLUSIONS OF LAW

1. West Virginia Code § 30-40-18(c) requires a broker to establish a trust fund account “at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss” – which amount is currently Two Hundred Fifty Thousand Dollars (\$250,000.00).

2. West Virginia Code § 30-40-18(e) states that “(n)o trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.”

3. The Commission rule on interest-bearing accounts is set forth in West Virginia Code R. § 174-1-16.3, which sets forth certain conditions which were not met by Respondent.

4. Respondent’s conduct, as admitted to in the response of corporate counsel, violates West Virginia Code §§ 30-40-18(c) and (e), and therefore provides grounds upon for which the Commission may impose discipline.

5. The Commission may assess administrative costs. West Virginia Code § 30-40-21(g). Costs shall be placed in the account of the Commission, and any fine shall be deposited in the state treasury’s general revenue account. West Virginia Code § 30-1-8(a).

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent is 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 either Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative proceedings and is aware of his 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:

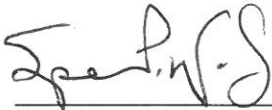
1. Respondent is hereby REPRIMANDED.
2. Respondent shall pay a fine in the amount of Five Hundred Dollars (\$500.00).
3. Respondent shall also pay the costs associated with this Complaint in the amount of Six Hundred Fifty Dollars (\$650.00).
4. The total payment of Eleven Hundred Fifty Dollars (\$1,150.00) 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 his 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:



SPENCER WOODY

1/16/16

DATE

ENTERED into the records of the Real Estate Commission this 17th day of ^{February}~~January~~, 2016.^{sc}

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL L. DAWSON, CHAIRMAN