

RECEIVED

JUL 22 2016

**W.VA. REAL ESTATE
COMMISSION**

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**WEST VIRGINIA
REAL ESTATE COMMISSION,**

Complainant,

v.

Complaint No. C-16-10

**GEORGE T. GARTEN,
Licensed Real Estate Broker
License No. WV-0004049**

Respondent.

CONSENT DECREE

Now comes the Respondent, George T. Garten (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Cheryl L. Dawson, its Chairman, for the purpose of resolving a 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 this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. The Commission is a state entity created by W. Va. Code § 30-40-1 *et seq.*, and is authorized to regulate the conduct of real estate brokers, associate brokers and salespersons.
2. Respondent is a broker licensed by the Commission, holding license number WV-0004049 and currently operating Greenway's Real Estate and Auction, Inc. ("Greenway"), in White Sulphur Springs, West Virginia.

3. The records of the Commission indicate the following with regard to the business address of Respondent:

- a. On October 20, 2014, the Commission received a change of business address form from Respondent changing his business address from 124½ N. Court Street, Lewisburg WV 24901 to PO Box 898, 60 East, Suite B, White Sulphur Springs, WV 24986; the effective date of the change was July 9, 2014.
- b. On May 11, 2015, the Commission received another change of address form from Mr. Garten correcting the new address that he provided in October to *60 East Main Street*, Suite B, in White Sulphur Springs.
- c. On September 11, 2015, the Commission received another change of address form from Respondent changing his business address from 60 East Main St., Suite B, White Sulphur Springs, WV 24986 to 33 E. Main St., White Sulphur Springs, WV 24986, with the same post office mailing address noted and an effective date of September 4, 2015.

4. On September 17, 2015, the Commission filed a complaint against Respondent, which alleged that Respondent had failed to ensure Greenway's licenses had been renewed (for the 2015-16 licensure year) prior to engaging in real estate activities, failed to make application to change his business address, and continued to operate at an unlicensed business location.

5. Respondent was served a copy of the Complaint; after not receiving a response, the Commission unsuccessfully attempted service again on November 19, 2015, via certified mail to the Post Office Box that had been provided as a mailing address effective July 9, 2014.

6. In early January 2016 the Commission spoke with Respondent, faxed him a copy of the Complaint to a number provided by Respondent, and still received no response, request for extension or any further acknowledgment of receipt of the Complaint although the Commission received a confirmation that the fax was sent.

7. At its meeting on February 17, 2016, the Commission proceeded to review the Complaint without response and found there was probable cause to indicate Respondent may

have violated the Real Estate License Act (West Virginia Code § 30-40-1 *et seq.*) or the Commission's legislative rules (West Virginia Code R. § 174-1-1 *et seq.*).

8. While a number of possible violations of the West Virginia Real Estate Act are presented with regard to Respondent's various office addresses, such as the untimely notice of the change of address in 2014 and the fact that the Court Street address in Lewisburg is still the address on Respondent's website even though the brokerage has been located in White Sulphur Springs for over eighteen months, the Commission, in its discretion, is not proceeding on the allegations relating to the change of office address upon Respondent's agreement to update the website to reflect the current physical address and to timely notify the Commission of future address changes in accordance with West Virginia Code § 30-40-17(a)(4).

9. The Commission makes the following findings with regard to the allegation that Respondent failed to ensure the renewal of the Greenway's licensees prior to Greenway's engaging in real estate activities:

- a. Respondent's broker's license:
 - i. On August 28, 2015, the Commission informed Respondent that his broker's license had been transferred to inactive status because no continuing education courses were listed on his 2015-16 renewal form;
 - ii. On September 10, 2015, Respondent provided documentation of sufficient hours of continuing education, after which Respondent's broker's license was renewed.
- b. Regarding one of Greenway's salespeople ("Salesperson #1"):
 - i. Salesperson #1 was in the process of renewing her 2015-16 license when, in early September, the Commission notified her that her salesperson's license could not be renewed until Respondent had renewed his broker's license.
 - ii. Salesperson #1's license was returned to active status upon the activation of the license of her supervising broker, but Salesperson #1 had engaged in unlicensed real estate activities without the supervision of her licensed broker due to Respondent's failure to renew his license.

- c. Regarding another Greenway salesperson ("Salesperson #2"):
- i. On August 28, 2015, the Commission informed Respondent and Salesperson #2 that Salesperson #2's license had been transferred to inactive status because no continuing education courses were listed on his 2015-16 renewal form.
 - ii. On November 9, 2015, Salesperson #2 provided sufficient documentation of the required hours of continuing education taken during the preceding licensure year, after which Salesperson #2's license was renewed.
 - iii. Salesperson #2 also engaged in unlicensed real estate activities without the supervision of his licensed broker due to Respondent's failure to renew his license and his failure to supervise Salesperson #2.

10. Since a salesperson can only engage in real estate activity through a licensed broker, and since Respondent was not licensed from July 1, 2015 through September 10, 2015, all real estate activity engaged in during that time by Respondent and the two salespeople supervised by him were conducted without proper licensure.

11. Since Salesperson #2 was not licensed from July 1, 2015 until November 9, 2015, but engaged in real estate activity during that time, Respondent failed to adequately supervise Salesperson #2 and allowed his unlicensed practice for over four months of the 2015-16 licensure year.

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

13. The Commission has incurred expenses in the prosecution of this complaint in an amount well in excess of One Thousand Eight Hundred Dollars (\$1,800.00), 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 § 30-40-1 *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 § 30-40-17(a)(4) requires every person holding a broker's license to "(m)ake application to the Commission before changing the address of any office or within ten days after any change."

3. The procedural rules of the Commission require the Commission, upon initiation or receipt of a Complaint, to provide a copy of the Complaint to the licensee for response to the allegations contained in the Complaint within twenty days of the date of service. West Virginia Code R. § 174-4-4.3.

4. West Virginia Code R. § 174-4-4.3 further provides that failure of the licensee to file a timely response may be considered an admission of the allegations in the Complaint, although the Commission may grant an extension of time to file a response.

5. The Complaint and requests for a response is considered properly served when sent to the licensee's last known address, and it is the responsibility of the licensee to keep the Commission informed of his or her current address. West Virginia Code R. § 174-4-4.4.

6. West Virginia Code § 30-40-7(1) gives the Commission the discretionary power to "impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer."

7. West Virginia Code § 30-40-17 relates to a broker's place of business and branch offices, including the display of license certificates.

8. In pertinent part, West Virginia Code § 30-40-17 provides:

(a) Every person holding a broker's license under the provisions of this article shall:

(1) Have and maintain a definite place of business within this state, which ... shall be designated in the license certificate issued by the commission and the broker may not transact business at any other location, unless such other location is properly licensed by the commission as a branch office ...

* * *

(4) Make application to the commission before changing the address of any office or within ten days after any change;

9. Respondent violated the provisions of West Virginia Code § 30-40-17 in several respects, including the untimely change of address in 2014, the continued use of that address up to the time of the filing of the Complaint and beyond, and Respondent's failure to provide the correct new address in 2014 until it was corrected in May of 2015.

10. West Virginia Code § 30-40-19(a)(19) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she "(v)iolates any of the provisions of [Article 40], any rule or any order or final decision issued by the Commission."

11. West Virginia Code R. § 174-1-13 is the legislative rule of the Commission governing licensure renewal.

12. It is the duty of all licensees to renew their licenses by June 30 of each year, and any licensee who operates without a license is in violation of the West Virginia Real Estate License Act. West Virginia Code R. §§ 174-1-13.1 and 13.2.

13. West Virginia Code R. § 174-1-13.4 provides that "(i)t is the responsibility of the broker to see that all licensees in his or her employ comply with [the continuing education] requirement prior to applying for a renewal of their licenses.

14. Respondent's engaging in real estate activities prior to the renewal of his broker's license and his failure to ensure that the licensees in his employ had complied with the continuing education requirements prior to their applying for a renewal of their licenses violate the rules set forth in West Virginia Code R. § 174-1-13 and therefore also violates West Virginia Code § 30-40-19(a)(19).

15. West Virginia Code § 30-40-19(a)(30) provides that the Commission has the authority to revoke, suspend or otherwise discipline a broker who "fails to adequately supervise all associate brokers and salespersons employed by him or her."

16. Respondent's failure to see that all his licensees had complied with the continuing education requirements prior to their applying for a renewal of their licenses and Respondent's allowing these licensees to engage in real estate activities without active licenses constitutes inadequate supervision in violation of the provisions of West Virginia Code § 30-40-19(a)(30).

17. The above violations render the Respondent's license subject to discipline by the Commission.

18. 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 has 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 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 consents to the findings above and to the entry of the following Order:

ORDER

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

1. Respondent is REPRIMANDED for violating the provisions of West Virginia Code § 30-40-17(a)(4) with regard to repeated failure to timely notify the Commission of its definite place of business and for continuing to advertise a place of business which was not designated on Respondent's license certificate.

2. Respondent, within thirty (30) days of entry of this Consent Decree, shall update the website of Greenway's Real Estate and Auction to reflect its current physical address and shall notify the Commission when the update is completed.

3. Respondent shall also timely notify the Commission of future address changes in accordance with West Virginia Code § 30-40-17(a)(4), and this disciplinary action shall be taken into account should the Commission take disciplinary action for any future finding of violation of West Virginia Code § 30-40-17(a)(4).

4. Respondent is REPRIMANDED for:

- a. engaging in real estate activities, including the supervision of other licensees, without an active license;

- b. in so doing, causing Salesperson #1 to engage in unlicensed real estate activities since she could not renew until she was under the supervision of a licensed broker; and
- c. failing to supervise Salesperson #2, who engaged in unlicensed real estate activities until satisfactorily renewing his license in November of 2015.

5. Respondent shall pay a fine in the following amounts for the violations set forth in the preceding paragraph:

- a. One Thousand Dollars (\$1,000.00) for engaging in real estate activities without an active license;
- b. Seven Hundred Fifty Dollars (\$750.00) for Respondent's unlicensed supervision of Salesperson #1 and for causing Salesperson #1, through no fault of her own, to be engaged in real estate activities without an active license;
- c. Five Hundred Dollars (\$500.00) for Respondent's unlicensed supervision of Salesperson #2; and
- d. Five Hundred Dollars (\$500.00) for his failure to supervise Salesperson #2, who engaged in real estate activities without an active license for several months.

6. The total amount of fines agreed to herein is Two Thousand Seven Hundred Fifty Dollars (\$2,750.00).

7. Respondent agrees to pay the Commission's administrative costs in this matter in the discounted amount of One Thousand Five Hundred Dollars (\$1,500.00).

8. The payments agreed to herein totaling Four Thousand Two Hundred Fifty Dollars (\$4,250.00) shall be paid by check or money order made payable to the State of West

Virginia and sent directly to the Commission's Office. The first payment shall be made within thirty (30) days of the entry of this Consent Decree by the Commission and shall be no less than One Thousand Dollars (\$1,000.00), which shall be for the partial payment of administrative costs. Subsequent payments of no less than Five Hundred Dollars (\$500.00) shall be made periodically, with the first additional Five Hundred Dollars (\$500.00) directed to the payment of the administrative costs assessed herein. The entire Four Thousand Two Hundred Fifty Dollars (\$4,250.00) shall be paid in full on or before December 31, 2016.

9. 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.

10. 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.

11. 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 West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.* and any procedural rules promulgated by the Commission.

12. 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.

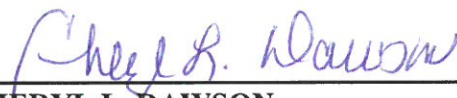
AGREED TO BY:


GEORGE T. GARTEN

6/22/2014
DATE

ENTERED into the records of the Real Estate Commission this 1ST day of AUGUST, 2016.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL L. DAWSON
Its: CHAIRMAN