

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-17-015

**HARLEY F. JEFFRIES, JR.
Licensed Associate Broker
Inactive License No. WV0011515**

Respondent.

CONSENT DECREE

The Respondent, Harley F. Jeffries, Jr. (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 associate broker in the State of West Virginia, holding license number WV0011515, which license became inactive as of March 8, 2017.

3. At the time of the matters giving rise to this Complaint, Respondent was an associate broker with Apex Realty Services L.L.C. in Bridgeport, WV 26330.

4. Commissioner Kathryn L. Martin acquired Apex Realty Services L.L.C. on or about January 24th, and from January 24 through March 8, 2017, Respondent was an associate broker with KLM Properties, Inc. Therefore, Commissioner Martin recused herself from all discussion regarding the investigation and discussion of this matter and the resulting complaint and resolution.

5. This matter came to the attention of this Commission through the filing of third-party Complaint P-17-012 wherein the Complainant, April D. Murray ["Ms. Murray"], was a buyer of property located in Clarksburg, West Virginia.

6. Ms. Murray was represented by Respondent and brought a complaint against the listing agent in connection with the property, which she saw on or about June 29, 2016, and subsequently purchased. The complainant in P-17-012 is referred to herein by name or as "Respondent's client" or "his client" and the Respondent in Complaint P-17-012 is referred to as "the listing agent."

7. Respondent's client attached to her complaint several documents, provided a chronology of events, and set forth several problems with the residence, the most serious of which was the presence of mold which an environmental service concluded created an unhealthy environment and would cost \$3,500.00 to remediate.

8. In reviewing Complaint P-17-012, the Commission, excluding Commissioner Martin, was of the opinion that Respondent owed a fiduciary duty to his client which may have been violated based on the allegations in P-17-012 and by motion initiated C-2017-015 at its meeting on February 15, 2017, which was mailed to Respondent by Certified Mail on February

23, 2017 (and the Complaint and accompanying cover letter are hereby amended to reflect those dates).

9. Respondent filed a timely response and admitted that he did not accompany his client to the basement during the showing of the property due to his physical limitations, pointed out the seller's disclosure stated that the flooding or drainage problem had been fixed and there was no presence of mold, and noted that the offer included the scheduling of a home inspection.

10. The listing agent made a June 18, 2016 home inspection available to Respondent and his client, which she accepted in part because of Respondent's reassurance that it was a recent inspection and his assertion to Ms. Murray that it would save her several hundred dollars if she used it.

11. An August 8, 2016, appraisal required an inspection of the water issue in the basement for which the listing agent made a recommendation of a contractor who inspected the property on August 18, 2016, and signed off on the property, which proceeded to closing on August 25, 2016.

12. Respondent admits that upon closing the mold in the basement was obvious and there was a gallon of mold control.

13. Respondent also admits that the contractor never provided evidence of his qualifications to make the determination regarding the water issues in the basement, but he did not raise this issue at the time the contractor's undated letter was presented prior to the closing.

14. The Commission, at its meeting on April 19, 2017, found probable cause to proceed against Respondent for violation of the West Virginia Real Estate License Act and related Rules.

15. The Commission finds that there were several things which Respondent should have done or not done in connection with this transaction, especially since he was unable to accompany his client to the basement, including but not limited to:

- a. Encouraging his client to accept the inspection offered by the listing agent;
- b. Not questioning the wisdom of his client's utilizing a contractor recommended by the listing agent who signed off on the property; and
- c. Not questioning the qualifications of the contractor.

16. The Commission further finds that the Complainant incurred and may continue to incur considerable expense in the inspection and remediation of the mold problem, which expenses directly relate to the wrongful actions of Respondent.

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

18. The Commission has incurred expenses in the prosecution of this Complaint in excess of Nine Hundred Dollars (\$900.00), 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. The Commission has the discretionary power and duty 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, ... restitution ... or the return of compensation collected from an injured consumer. West Virginia Code § 30-40-7(l).

3. West Virginia Code § 30-40-19(a)(31) provides that the Commission shall have full power to refuse a license for reasonable cause or to revoke, suspend or impose any other sanction against a licensee if the licensee: "breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction."

4. Respondent's actions set forth in the Findings of Fact above in connection with this real estate transaction constitutes a breach of the fiduciary duty he owed to his client, in violation of West Virginia Code § 30-40-19(a)(19)(a)(31).

5. 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 his 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 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 to the benefit of April D. Murray the amount of Two Thousand Five Hundred Dollars (\$2,500.00), which amount is awarded to Ms. Murray in part as a return of compensation collected from her as an injured consumer and received by Respondent, with the balance constituting restitution.
3. This Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid by certified check or money order made payable to April D. Murray and sent to the Commission's Office within thirty (30) days of the entry of this Consent Decree by the Commission for forwarding to the beneficiary.
4. Respondent shall also pay the administrative costs associated with this Complaint in the amount of Nine Hundred Dollars (\$900.00), which 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.
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.

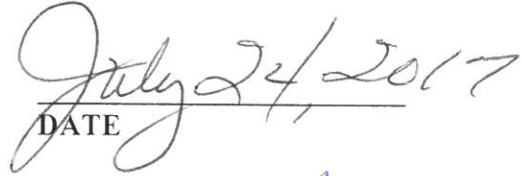
In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of his license. Any such hearing shall be scheduled and conducted in accordance with the provisions of W. Va. 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.

[signatures appear on next page]

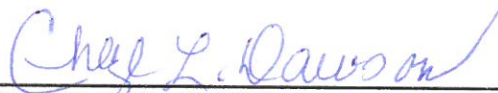
CONSENT DECREE AGREED TO BY:


HARLEY F. JEFFRIES


DATE

ENTERED into the records of the Real Estate Commission this 26th day of July, 2017.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL L. DAWSON,
COMMISSION CHAIRMAN

RECEIVED

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W.VA. REAL ESTATE
COMMISSION