

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

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W.VA. REAL ESTATE
COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-17-018

ISAAC NOYES SMITH V,
Associate Broker
License No. WV0028964

Respondent.

CONSENT DECREE

The Respondent, Isaac Noyes Smith V (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 WV0028964.

3. Respondent's former broker contacted the Commission regarding a property she had listed for lease to get advice on correcting an issue with her trust account with regard to the commission paid for the leasing of that property.

4. The lessor of that property had paid the fee directly to Respondent, who cashed at least two checks, each for about \$1,140.00, rather than delivering them to his former broker.

5. Upon the Commission's investigation of the matter, it was determined that Respondent, without consulting with his former broker, had agreed with the lessor that the earned commission could be paid in three (3) equal installments; the third check was paid to the former broker.

6. At its regular meeting on April 19, 2017, the Commission initiated Formal Complaint No. C-17-018 against Respondent, to which Respondent timely responded and admitted the allegations.

7. The Commission, at its meeting on May 24, 2017, found probable cause to proceed against Respondent for violation of the West Virginia Real Estate License Act and Code related Rules.

8. While Respondent contended in his response that he was entitled to ninety percent (90%) of the commission and was still due moneys from the third check, this assertion is contradicted by Respondent's former broker; the Commission was advised Respondent and his former broker have since agreed to the two-third / one-third split of the fee and makes no finding on same.

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

10. The Commission has incurred expenses in the prosecution of this Complaint in excess of Five Hundred Eighty-Five Dollars (\$585.00), which amount includes 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 § 30-40-19(a)(16) provides that the Commission may revoke, suspend or otherwise discipline a licensee if the licensee "(a)cccepts 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."
3. Respondent accepted compensation directly from the lessor of the leased property rather than from his broker, in violation of West Virginia Code § 30-40-19(a)(16).
4. 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 in part:

... 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...
5. Respondent's failure to deliver the commission to his broker violates this provision in West Virginia Code R. § 174-1-16.2.
6. 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 is prohibited from being licensed as a broker until no earlier than January 1, 2019, but may submit the necessary paperwork for a broker's license prior to that date and may continue to be licensed as an associate broker during this prohibition period.
3. Respondent shall pay a fine in the amount of Five Hundred Dollars (\$500.00).
4. Respondent shall also pay costs associated with this Complaint in the amount of Five Hundred Eighty-Five Dollars (\$585.00).
5. The total payment of One Thousand Eighty-Five Dollars (\$1,085.00) 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.

6. 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.

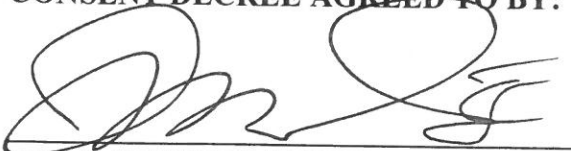
The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of Respondent's license. Respondent may request probationary reinstatement of the license through renewal of this Consent Decree, or execution of a new Consent 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.

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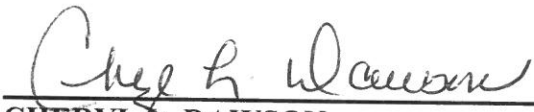
CONSENT DECREE AGREED TO BY:


ISAAC NOYES SMITH V

8/27/17
DATE

ENTERED into the records of the Real Estate Commission this 13 day of September 2017.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL D. DAWSON,
COMMISSION CHAIRMAN