



BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. C-17-023

MARCELLA CANTATORE
Licensed Broker
License No. WV-0026768

CONSENT DECREE

Now comes the Respondent, Marcella Cantatore (hereinafter at times "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 and one of her licensees, Mary Ellen Curran. 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, as the state entity created to regulate the conduct of real estate brokers, associate brokers and salespersons, has jurisdiction over this Complaint.
2. Respondent is a real estate broker licensed by the Commission, holding license number WV-0026768, and serves as broker for Middleburg Real Estate of WV dba Atoka Properties, 10 E. Washington Street, Middleburg, VA 20118.

3. On June 20, 2017, the Commission initiated the above-styled complaint against Respondent alleging that Respondent failed to ensure that one of her salespersons, Mary Ellen Curran (“Salesperson Curran”), was properly licensed with Respondent prior to allowing Salesperson Curran’s to engage in real estate activities on behalf of Respondent’s brokerage.
4. The Respondent filed a timely response, admitting the allegations in the Complaint and stating that they “turned themselves in” and rectified the situation upon learning of the oversight, hoping for leniency by the Commission.
5. The following is a brief recitation of undisputed facts giving rise to this Complaint:
 - a. On or about May 14, 2016, the broker that held Salesperson Curran’s license returned it to the Commission, and the Commission changed its records to change the license status to Inactive.
 - b. The license status remained inactive until June 12, 2017, when a Change of Employing Broker form was received and processed to activate Salesperson Curran’s license with her new broker, Respondent Cantatore.
 - c. During the period in which Salesperson Curran’s license was inactive, May 14, 2016 through June 12, 2017, she conducted real estate business, and Respondent Cantatore accepted the services of Salesperson Curran, who was not properly licensed.
6. The Commission, at its meeting on July 26, 2017, found probable cause to proceed solely against Respondent upon a finding that the allegations, if true, constituted violations of various provisions of West Virginia Code §§ 30-40-1 *et seq.*
7. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.
8. The Commission has incurred expenses in the prosecution of this Complaint in an amount in the estimated amount of Three Hundred Ninety Dollars (\$390.00), which expenses relate 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 § 30-40-7 gives the Commission all the powers set forth in West Virginia Code § 30-1-1 *et seq.* and additional powers, including 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, required additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer.”
3. West Virginia Code § 30-40-19(a)(19) provides that the Commission shall have the full power to refuse a license for reasonable cause or to revoke, suspend or impose any other sanction against a licensee if the licensee “violates any of the provisions of this article, any rule or any order or final decision issued by the commission.”
4. West Virginia Code § 30-40-17(a)(5) provides that every person holding a broker's license under the provisions of this article shall “maintain in his or her custody and control the license of each associate broker and salespersons employed by him or her.”
5. Respondent Cantatore did not have custody or control of a license for Salesperson Curran from May 14, 2016 through June 12, 2017, in violation of West Virginia Code § 30-40-17(a)(5).

6. West Virginia Code § 30-40-19(a)(23) 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 “continues in the capacity of or accepts the services of any broker, associate broker or salespersons or any other person who is not properly licensed.”
7. Respondent Cantatore accepted the services of Salesperson Curran, who was not properly licensed from May 14, 2016 through June 12, 2017, in violation of West Virginia Code § 30-40-19(a)(23).
8. West Virginia Code § 30-40-19(a)(30) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensed broker if the broker “[f]ails to adequately supervise all associate brokers and salespersons employed by him or her.”
9. Respondent, in allowing Salesperson Curran to engage in real estate transactions while she was not properly licensed, failed to adequately supervise Salesperson Curran, in violation of West Virginia Code § 30-40-19(a)(30).
10. 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. West Virginia Code § 30-1-8(a).

CONSENT

Respondent, by signing below, agrees to the following:

1. Respondent is aware of her right 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

she may pursue this matter through appropriate administrative proceedings and is aware of her 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:

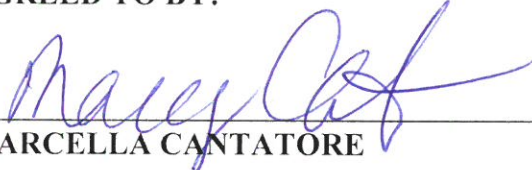
1. Respondent Cantatore is REPRIMANDED and is ORDERED to pay to the State of West Virginia, by and through the Commission, a fine in the total amount of One Thousand Dollars (\$1,000.00) for her violations of West Virginia Code § 30-40-17(a)(5), (23) and (30).
2. Respondent shall pay administrative costs associated with this matter in the amount of Three Hundred Ninety Dollars (\$390.00).
3. The total payment of One Thousand Three Hundred Ninety (\$1,390.00) shall be paid by certified check or money order payable to the State of West Virginia and sent directly to the Commission's office within thirty (30) days of the date of entry of the Consent Decree.
4. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, by Respondent shall constitute a violation by Respondent of an Order of the Commission and may, upon Board action, result in the summary suspension of Respondent license until such time as Respondent achieves full compliance.

The Commission shall immediately notify Respondent via certified mail of the alleged violation and whether there is a summary suspension of his license. Respondent may request reinstatement of her license, which shall be probationary, 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 the violating Respondent's license, she may request a hearing to seek reinstatement of her 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.

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.

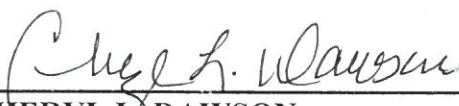
AGREED TO BY:


MARCELLA CANTATORE

9/18/17
DATE

ENTERED into the records of the Real Estate Commission this 18 day of October, 2017.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL L. DAWSON,
Its Chairperson