

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

v.

**Complaint No. C-18-006**

**EDWARD HARLAN STAATS, III  
Licensed Real Estate Broker  
License No. WV-0026804**

*Respondent.*

**CONSENT DECREE**

The Respondent, Edward Harlan Staats, III (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 above-styled complaint that has been filed against Respondent. 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**

- I. 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, at the time of the transaction which gave rise to this Complaint, was a licensed salesperson in West Virginia for 1<sup>st</sup> Service Real Estate, LLC, which was owned by Respondent with Mary Lou Sholes as the broker of record.
3. On July 11, 2016, Respondent became a broker licensed by the Commission, holding broker license number WV-0026804, and became the supervising broker for 1<sup>st</sup> Service Real Estate, LLC.
4. From approximately July 2009 through October 2015, Respondent was a listing agent for Fannie Mae ("Seller") under a Master Listing Agreement.
5. On or about January 16, 2014, Respondent listed a Fannie Mae property for sale at 988 May Ridge Road in Ellenboro, West Virginia, with a list price of \$36,900 (hereinafter "the Fannie Mae property").
6. The remarks portion of the MLS listing for the Fannie Mae property read as follows:  
"This is a Fannie Mae HomePath Property. NO MINERAL RIGHTS. Private setting on 40+ acres. Home has little value. No heat source."
7. Based primarily on a spreadsheet provided by the Respondent, the following offers were made on the Fannie Mae property, with the following action taken thereon:
  - a. On February 6, 2014, S. Kenily ("Buyer Kenily") submitted an offer of \$35,000 through Respondent, which offer was rejected, and the next day Buyer Kenily submitted the same offer, also through Respondent, which offer was annotated as "fall through." Respondent states this was due to lack of financing.

- b. On February 9, 2014, S. Colvin submitted an offer of \$60,000 through Respondent, which offer was "rejected." Respondent recalls this was also due to lack of financing, although if it was rejected for lack of financing it is unclear why the spreadsheet would similarly be annotated as "fall through" to indicate the above-list-price offer was initially accepted.
- c. On February 11, 2014, L. Bartlett submitted a full-price Offer of \$36,900 through another agent, which offer was rejected.
- d. Also on February 11, 2014, W. Rea ("Mr. Rea") submitted a full-price offer through a third agent, which offer was also rejected.
- e. There is no indication that Respondent, at this point in time and on behalf of Seller, notified L. Bartlett and Mr. Rea, or their agents, of the two duplicate offers, requesting and providing a deadline for them to make a highest and best offer.
- f. The spreadsheet shows that on March 24, 2014, Buyer Kenily, through Respondent, again submitted an offer of \$35,000, which offer was again rejected. This may be the same offer as one provided in document form by Respondent dated February 14, 2014.
- g. On March 25, 2014, Buyer Kenily, through Respondent, again submitted an offer of \$35,000, which offer was accepted.
- 8. Buyer Kenily is a long-time friend of Respondent.
- 9. Buyer Kenily's February offers included an owner-occupant certificate. Respondent signed a notification that he would notify Fannie Mae if he had any concern that the certification

was false, when he knew or should have known the certificate was false since the dwelling on the property was uninhabitable.

10. Regarding Mr. Rea's offer of February 11, 2014, the Commission's investigation revealed this was a cash offer which included an earnest money check for \$1,000. The Commission's investigation reveals that the next day, Mr. Rea's agent called Respondent, who told the agent that Mr. Rea's offer was rejected and another was accepted, which statement was not true. Respondent disputes this fact.

11. Regarding the requirement that a Notice of Agency Agreement appear in every transaction file as to each offer and be retained for five years:

- a. Respondent contends Buyer Kenily signed such a Notice, but there is no such document in the file;
- b. Respondent contends any Notice signed by S. Colvin should be in the file maintained by Respondent's former broker, who was the actual agent of S. Colvin. However, since the transaction was consummated by Respondent and his brokerage, the transaction file should be housed at his brokerage; and
- c. While no Notice was signed by the Seller, the Commission accepts Respondent's contention that Fannie Mae had actual notice of the dual agency with regard to some of the offers based on the entries on the spreadsheet.

12. The following are undisputed facts with regard to the Fannie Mae property after Buyer Kenily's March 25<sup>th</sup> offer was accepted and the property was transferred:

- a. The property was transferred on March 28, 2014, with Respondent's brokerage receiving a commission of \$2,050;
- b. The property was purchased with funds Respondent contends were loaned by him and his wife to Buyer Kenily although there are no loan documents or other indicia of a loan;
- c. On or about May 21, 2014, Buyer Kenily conveyed the property to Respondent and his wife by Quit-Claim Deed without consideration; and
- d. On or about August 19, 2014, Respondent and his wife signed a five-year Oil and Gas Lease with BB Land, LLC and received a check for \$110,000 from BB Land LLC.

13. Thereafter, Mr. Rea, who made one of the rejected offers set forth above, filed a civil suit in federal court against Respondent and others, and, although the settlement is filed under seal, the property was deeded to Mr. Rea upon the payment of \$35,000.

14. At its regular meeting on September 20, 2017, this complaint was initiated by the Commission and was served upon Respondent.

15. After an extension of time in which to respond, counsel for Respondent filed a timely response denying that this was a straw-party transaction and stating, among other things, that:

- a. Neither Respondent nor his principal had knowledge of the mineral rights;
- b. As of the date of the response (and to date), Respondent still has no knowledge whether the property retains the mineral rights;

- c. Respondent's representation in the listing that there were no mineral rights was with the knowledge and advice of his former broker, which contention is not supported by the Commission's investigation; and
  - d. The conveyance of the Fannie Mae Property by Buyer Kenily to Respondent was in return for forgiveness of the loan since Buyer Kenily had lost his job, had a death in the family, and no longer wished to own the property.
16. The Commission found probable cause to proceed against Respondent at its meeting on December 18, 2017.
17. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.
18. A screenshot of the offers provided by Respondent offer no definitive answers as to why S. Colvin's offer of \$60,000 was rejected, why the February 11<sup>th</sup> offers for the list price of \$36,900 were rejected rather than countered, or why Buyer Kenily's fourth offer of \$35,000 was accepted.
19. The Commission's investigation was hampered by its inability to communicate with Seller's representative in the transaction in part because Respondent contended he could provide no contact information to Seller's representative and was further hampered by Respondent's failure to provide the complete transaction file, despite repeated requests by the Commission.
20. While the Commission finds the Seller's actions to be illogical, it has no information to indicate that Respondent played any role in Seller's decisions regarding the handling of the offers.

21. The Commission finds:

- a. Respondent's remarks in the listing agreement tended to dissuade potential purchasers from having interest in the property, and if Respondent knew nothing about the mineral rights it was misleading or false to state, much less accentuated by the use of capital letters, "NO MINERAL RIGHTS;"
- b. Based on the Commission's investigations, various contentions by Respondent, such as being instructed by his former broker regarding the listing and having no knowledge about the mineral rights, would be facts in dispute should this matter have proceeded to hearing;
- c. It strains credulity that Respondent loaned Buyer Kenily the money to purchase the property without any documentation regarding the loan or that a mere two months later Buyer Kenily no longer wanted to own that property and, even though Respondent had had no interest in the property prior to that time, was again willing to help his friend by accepting the property in return for forgiveness of the undocumented debt. If Respondent had no interest in the property, it could have been put back on the market and sold;
- d. While there is circumstantial evidence of a straw-party transaction, which is a serious violation of the West Virginia Real Estate Licensing Act, the Commission is willing to settle this matter without a finding or admission that Respondent engaged in such; and

- e. While Respondent profited significantly from the chain of events, the Commission accepts Respondent's contention that his profit to a large extent was expended in the defense of the related civil action and that he otherwise suffered from publicity related to some of the events set forth above.
22. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.
23. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$2,500.00, which expenses relate to the Commission's legal expenses and a portion of the investigative costs of the Commission, but does not include all the time expended by Commission staff and 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(l) gives the Commission all 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."



3. W. Va. Code § 30-40-19(a)(2) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “[m]akes any substantial misrepresentation.”
4. Respondent’s communication to Mr. Rea’s agent on February 12, 2014, that another offer had been accepted was a substantial misrepresentation in violation of W. Va. Code § 30-40-19(a)(2).
5. W. Va. Code § 30-40-19(a)(3) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “[m]akes any false promises or representations of a character likely to influence, persuade or induce a person involved in a real estate transaction.”
6. West Virginia Code § 30-40-19(a)(4) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise.
7. West Virginia Code § 30-40-19(a)(5) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee who uses misleading or false advertising.
8. Respondent is in violation of W. Va. Code §§ 30-40-19(a)(3), (4) and (5) because the remark in the listing that the property had “NO MINERAL RIGHTS” was a representation in a medium of advertising of a character likely to influence a person involved in a real estate transaction.

9. Pursuant to W. Va. Code § 30-40-19(a)(7), the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[a]cts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts."
10. Respondent's failure to have a notice of agency agreement in the file violates W. Va. Code § 30-40-19(a)(7).
11. West Virginia Code § 30-40-19(a)(37) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee "(e)ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing."
12. Respondent's course of conduct throughout this transaction constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing in violation of W. Va. Code § 30-40-19(a)(37).
13. West Virginia Code § 30-40-26(d) states that "[e]very licensee shall disclose in writing, on the notice of agency relationship form promulgated by the [C]ommission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate."
14. West Virginia Code R. § 174-1-22.1 also states that "the licensee shall execute this written notice prior to any party signing any contract for representation, offer to purchase, to sell, or to exchange real estate for which a broker's license is required."

15. West Virginia Code R. § 174-1-22.16 states: "In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt of notice of agency disclosure, the licensee shall sign and date a written declaration setting forth the facts of the refusal."
16. The Notice of Agency Agreement is of the many records which must be preserved for five years following the consummation of any real estate transaction. West Virginia Code § 30-40-19(a)(28) and West Virginia Code R. § 174-1-16(a).
17. At least as to the Seller and Buyer Kenily, Respondent's inability to provide a Notice of Agency Agreement or a declarations of refusal to sign same prior to the signing of documents requiring such a notice or declaration violates West Virginia Code § 30-40-26(d) and West Virginia Code R. §§ 174-1-22.1 and 22.16, or, if such documents were signed but not preserved, violates West Virginia Code § 30-40-19(a)(28) and West Virginia Code R. § 174-1-16(a).
18. The Commission may assess administrative costs. W. Va. 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 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's broker's license is hereby **REVOKED** for a period of two (2) years for the violations set forth herein. Such revocation is stayed immediately for a period of up to eighteen (18) months, provided Respondent complies with the provisions of this Consent Decree, to-wit:

- a. Respondent shall enroll in an approved course required for a broker license within thirty (30) days of the entry of this order;
- b. Respondent shall take and successfully complete the course within twelve (12) months from the date of entry of this order and provide to the Commission a course completion certificate;
- c. Respondent shall again take and pass the broker licensing examination within eighteen (18) months from the date of entry of this order;
- d. During the last two months of the 18-month period, Respondent shall provide the Commission with a criminal history records check performed in accordance with the process utilized by the Commission for new applicants and requested no more than three (3) months prior to its provision to the Commission;

- e. The above times may be extended upon good cause shown by Respondent, which shall include the unavailability of required courses, and
  - f. Upon Respondent's successful completion of the course, passage of the broker licensing exam and provision of a criminal history records check deemed acceptable by the Commission, the revocation shall not take effect and the order for same shall be rescinded or voided so long as Respondent has otherwise complied with the provisions of this consent decree.
2. Upon Respondent's failure to take and successfully complete the course within twelve (12) months or his failure to pass the broker test within eighteen (18) months from the date of entry of this order unless the Commission has agreed in writing to a request by Respondent for additional time, or his failure to provide an updated criminal history records check deemed acceptable to the Commission, the Commission, without further action and at any time after the expiration of the 12- or 18-month period, may notify Respondent by certified mail that the stay has been lifted and that his broker's license is revoked for two (2) years from the date of his receipt of such notice.
3. During the period of stay, Respondent shall comply with the West Virginia Real Estate License Act and related Legislative Rules. In the event Respondent engages in conduct during the period and as a result is named in a Complaint for which the Commission finds probable cause to proceed, the Commission may consider the finding of probable cause a good-faith basis for the summary suspension of Respondent's license pursuant to the provisions of West Virginia Code §30-1-8(e)(1).

4. Respondent shall pay a fine of One Thousand Dollars (\$1,000.00) for the violations set forth in this Consent Decree.
5. Respondent shall pay the administrative costs associated with this Complaint in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).
6. The total payment of Three Thousand Five Hundred Dollars (\$3,500.00) in fines and administrative costs agreed to herein shall be paid by check or money order payable to the State of West Virginia and sent directly to the Commission's office within sixty (60) days of the entry of this Consent Decree.
7. Any non-compliance by Respondent with the requirements of this Consent Decree or any addendum hereto, or a Commission Order related to this Complaint, without the prior written consent of the Commission, shall constitute a violation of an Order of the Commission and may, upon Commission action, result in the lifting of the stay of revocation of Respondent's license or the non-renewal of same until such time as he achieves full compliance. In the event the stay of the revocation of Respondent's license is lifted, the Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the lifting of the stay of revocation of Respondent's license. In the event Respondent contests the allegations of violation of the Consent Decree resulting in the lifting of the stay, Respondent may request a hearing to seek review of the Commission's action. 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.

8. If at any time during the stay of revocation Respondent engages in conduct and as a result a new complaint is filed against Respondent and probable cause is found based on the allegations set forth in the new complaint, the finding of probable cause may be deemed a finding that Respondent's continuation in the licensed activity constitutes an immediate danger to the public, and the Commission may summarily suspend Respondent's license in accordance with the provisions of W. Va. Code § 30-1-8(e)(1) until such time as a hearing is held on the new complaint or it is otherwise resolved. Upon a finding of probable cause resulting in the summary suspension of Respondent's license, the Commission shall notify the Respondent via certified mail of the Commission's action.

9. The events giving rise to this Consent Decree may be considered in the determination of the kind and extent of sanctions against Respondent for any subsequent violations of the West Virginia Real Estate Licensing Act and related rules.


AGREED TO BY:

  
EDWARD HARLAN STAATS, III

6-19-2018  
DATE

ENTERED into the records of the Real Estate Commission this 20<sup>th</sup> day of June, 2018.

**WEST VIRGINIA REAL ESTATE COMMISSION,**

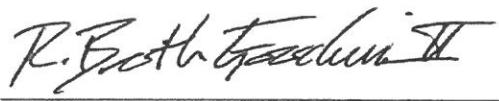
By:   
**CHERYL L. DAWSON,**  
**Its Chairperson**

**Prepared by:**

Debra L. Hamilton (WV Bar No. 1553)  
Deputy Attorney General  
OFFICE OF ATTORNEY GENERAL

*Counsel for West Virginia Real Estate Commission*

**Approved by:**

  
R. Booth Goodwin (WV Bar No. 7165)  
Goodwin & Goodwin, LLP

*Counsel for Respondent*



**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

**V.**

**Complaint No. C-18-006**

**EDWARD H. STAATS, III  
Licensed Real Estate Broker  
License No. WV-0026804,**

*Respondent.*

**CONSENT DECREE ADDENDUM**

Respondent Edward H. Staats, III ("Respondent") and the Complainant West Virginia Real Estate Commission ("Commission") hereby enter into the following Consent Decree Addendum for the sole purpose of extending certain deadlines required by the original Consent Decree agreed to by Respondent and entered by the Commission on June 20, 2018, resolving the above-styled complaint. For the purpose of this Addendum, the parties acknowledge the following:

1. On June 20, 2018, the Commission entered into its records a Consent Decree through which Respondent agreed to certain terms and conditions, violations of which may result in the revocation of Respondent's real estate brokers license.

2. Relevant to this Addendum, Respondent agreed to (a) enroll in an approved course for a broker license within 30 days of entry of the Consent Decree; (b) successfully complete the course within twelve months from the entry of the Consent Decree and provide the Commission a course completion certificate; and (c) pass the broker licensing examination within 18 months of the entry of the Consent Decree.

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3. The Consent Decree provides that Respondent's failure to comply with the above terms, without good cause or an agreement providing additional time, may result in the revocation of Respondent's broker's license for a period of 2 years.

4. Respondent timely enrolled in an approved broker licensing course, but failed to complete the course within the required timeframe. In fact, other than enrolling, Respondent failed to complete any portion or module of the course. Having failed to complete the course, Respondent, therefore, could not comply with the requirement to take and pass the broker licensing examination. Consequently, under the terms of the Consent Decree, the Commission was authorized to revoke Respondent's broker's license for two years.

5. However, rather than revoke Respondent's license, the Commission has elected to offer Respondent one last chance to comply with the requirements of the Consent Decree by extending certain deadlines as described more fully below.

6. Other than the extension of deadlines and waiver of the post-revocation hearing set forth below, all remaining requirements in the Consent Decree remain in full force and effect.

Therefore, Respondent AGREES and the Commission ORDERS as follows:

(A). Respondent shall immediately enroll in an approved course for a broker license, and provide the Commission evidence of registration no later than **December 1, 2019**;

(B). Respondent shall complete at least one of the three required course modules no later than **March 1, 2020**, and provide the Commission written evidence of completion within 10 days of completion;

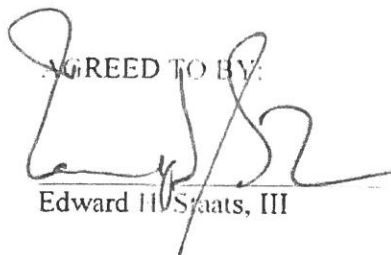
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(C). Respondent shall complete the entire course (all three modules) no later than **June 1, 2020**, and provide the Commission written evidence of completion within 10 days of completion;

(D). Respondent shall pass the brokers examination no later than **July 1, 2020**; and

(E). Respondent's failure to comply with any of the above requirements may result in the immediate revocation of his broker's license for a period of 2 years. In the event Respondent fails to comply with any of the above requirements, the Commission shall notify Respondent by certified mail or personal service of the revocation of his license, and Respondent waives any right to a hearing to challenge the revocation of his license.

Respondent acknowledges that he has read, understands, and voluntarily agrees to the terms of this Consent Decree Addendum. He further acknowledges that he has had opportunity to consult with legal counsel before signing below.

AGREED TO BY:  
  
Edward H. Staats, III

10/8/19  
Date

ENTERED into the records of the Real Estate Commission this 17 day of  
OCTOBER, 2019.

  
Robert D. Kennen, Chairman