

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

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JAN 18 2018

WEST VIRGINIA REAL ESTATE COMMISSION,

*W.VA. REAL ESTATE
COMMISSION*

Complainant,

v.

Formal Complaint No. C-18-008

E. KAY BOOTH

Licensed Salesperson

License No. WV0023777

Respondent.

CONSENT DECREE

The Respondent, E. Kay Booth (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Kathryn L. Martin, its Vice-Chairman, enter into the following Consent Decree for the purpose of resolving the complaint filed against Respondent by the Commission. Chairman Dawson recused herself from all discussion and action on this Complaint. 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 brokerages in the State of West Virginia.

2. Respondent is a licensed real estate salesperson in the State of West Virginia, holding license number WV0023777 with Old Colony Company of Beckley.

3. This matter came to the attention of this Commission through the filing of a third-party Complaint P-18-004 wherein the Complainant, Jess H. Lowery (“Mr. Lowery”), was a walk-in client of Respondent, requesting to make an offer on a foreclosure property owned by the Department of Veterans Affairs (“VA”), hereinafter referred to as “the property.”

4. Respondent signed a notice of agency relationship on August 18, 2017, simultaneous with Mr. Lowery’s signing an offer and paying a deposit.

5. Mr. Lowery brought a complaint against the listing broker in connection with the property, alleging a violation based on the fact that his offer was not accepted.

6. In reviewing Complaint P-18-004, the Commission, excluding Chairman Dawson, was of the opinion that Respondent owed a fiduciary duty to her client which may have been violated based on the allegations in P-18-004 and by motion initiated C-2018-08 at its meeting on October 18, 2017, which was mailed to Respondent by Certified Mail on October 20, 2017.

7. The complaint alleged that Respondent did not understand VA forms and procedures, to the detriment of her client, Mr. Lowery.

8. Respondent filed a timely response, stating that she was familiar with VA forms and guidelines and was fulfilling the fiduciary duty she owed to Mr. Lowery.

9. The Commission, at its meeting on December 18, 2017, found probable cause to proceed against Respondent.

10. The Commission finds that:

- a. Respondent failed to use the special form required for VA-owned properties and otherwise did not follow special instructions on the listing regarding the VA property, such as the Lender Pre-Approval letter, and therefore the offer could not be submitted;

- b. Respondent never made a back-up offer upon being informed by the listing broker on August 23rd that the property was under contract; and
- c. Respondent did not enter the property with Mr. Lowery, rendering allegations regarding the timing of the signing of the required Hold Harmless form moot.

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

12. The Commission has incurred expenses in the prosecution of this Complaint in excess of Two Hundred Sixty Dollars (\$260.00), which expenses include only a portion of the Commission's legal expenses, and does not include 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)(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."

3. Respondent's actions set forth in the Findings of Fact above in connection with the property constitutes a breach of the fiduciary duty she owed to her client, in violation of West Virginia Code § 30-40-19(a)(19)(a)(31).

4. 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 her 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 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 is hereby REPRIMANDED.
2. Respondent shall pay the administrative costs associated with this Complaint in the amount of Two Hundred Sixty Dollars (\$260.00), which shall be paid by 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.

3. 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.

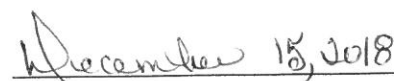
In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of her license. Any such hearing shall be scheduled and conducted in accordance with the provisions of W. Va.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

CONSENT DECREE AGREED TO BY:



E. KAY BOOTH



DATE

ENTERED into the records of the Real Estate Commission this 24 day of January,
2011.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:


KATHRYN L. MARTIN,
COMMISSION VICE-CHAIRMAN