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W.VA. REAL ESTATE
COMMISSION

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. C-18-016

RALPH JOSEPH MILLER
Licensed Broker
License No. WV-0014040

TERESA BALDUS RUGELEY
Licensed Associate Broker
License No. WV-0002497

MARK PETER MADORE
Licensed Broker
License No. WV-0001026

DONALD KEITH HARE
Licensed Salesperson
License No. WV-0025073

CONSENT DECREE

Now comes the Respondents, Ralph Joseph Miller (hereinafter at times "Respondent Miller"), Teresa Baldus Rugeley (hereinafter at times "Respondent Rugeley"), Mark Peter Madore (hereinafter at times "Respondent Madore"), Donald Keith Hare (hereinafter at times "Respondent Hare") (collectively the "Respondents") and the West Virginia Real Estate Commission (hereinafter "Commission"), by Kathryn L. Martin, its Vice-Chairman (Chairman Cheryl L. Dawson having been recused), for the purpose of resolving a complaint filed against Respondents by the Commission. As reflected in this Consent Decree, the parties have reached an agreement in which Respondents agree and stipulate 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 Miller is a real estate broker licensed by the Commission, holding license number WV-0014040, and serves as the broker of Old Colony Company of Greater Kanawha Valley, 1205 Virginia Street E, Charleston, WV 25301.
3. Respondent Rugeley is a real estate associate broker licensed by the Commission, holding license number WV-0002497, and serves as an associate broker for Old Colony Company of Greater Kanawha Valley, 1205 Virginia Street E, Charleston, WV 25301. Respondent Miller and Respondent Rugeley are at times referred to as “the Old Colony Respondents.”
4. Respondent Madore is a real estate broker licensed by the Commission, holding license number WV-0001026, and serves as broker for Family First Realty Co., Inc. dba Family First Realty, 2 Chase Drive, Hurricane, WV 25526.
5. Respondent Hare is a real estate salesperson licensed by the Commission, holding license number WV-0025073, and serves as a salesperson for Family First Realty, 2 Chase Drive, Hurricane, WV 25526. Respondent Madore and Respondent Hare are at times referred to as “the Family First Realty Respondents.”
6. On December 18, 2017, the Commission initiated the above-styled complaint against Respondents, which was served on December 26, 2017.

7. The following is a brief recitation of the facts giving rise to this Complaint:
 - a. Respondent Rugeley listed a property for sale which was owned by a family member.
 - b. On or about September 30, 2017, Respondent Hare (representing the Buyers) submitted an offer to purchase the property which was accepted by the sellers on October 4, 2017.
 - c. There were two Purchase Agreement Addendums: One addendum reduced the purchase price from \$285,000 to \$280,000 (the appraised value). The second addendum extended the closing date.
 - d. The Sellers and Buyers executed a separate agreement, drafted by someone at Family First Realty other than Respondents, entitled Release and Hold Harmless wherein the sellers agreed to pay the buyers at closing \$15,000 to cover any and all repairs to the property.
 - e. No Addendum to the Purchase Agreement was prepared to document this change in terms even though Respondent Rugeley and Respondent Hare were aware of this separate agreement prior to closing.
 - f. Neither the closing attorney nor the lender was aware of this cash back arrangement, and the \$15,000 payment from the Sellers to the Buyers was not reflected on the Settlement Statement that was prepared by the closing attorney.
8. Respondent Miller and Respondent Madore were named in the complaint based on their duties to supervise their licensees named in the Complaint.
9. Respondent Madore and Respondent Hare each filed a timely response, admitting the allegations in the Complaint and stating that the “regrettable oversight” was in part due to the

Buyers needing a larger home quickly in order to be approved for their adoption of three young foster children.

10. The Old Colony Respondents filed a timely joint response, admitting the allegations in the Complaint and stating that, while Respondent Miller was aware of the transaction, he was not aware of any of the matters set forth in the Complaint until receipt of same.

11. The Commission, at its meeting on January 24, 2018, found probable cause as to all respondents upon a finding that the allegations, if true, constituted violations of various provisions of West Virginia Code §§ 30-40-1 *et seq.* as to each respondent.

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

13. The Commission has incurred expenses in the prosecution of this Complaint in the amount of at least Eight Hundred Dollars (\$800.00), 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 § 30-40-19(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.”

5. Respondent Miller and Respondent Madore failed to adequately supervise their respective licensees in this transaction, in violation of West Virginia Code § 30-40-19(a)(30).

6. West Virginia Code § 30-40-19(a)(33) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “(r)epresents to any lending institution, or other interested party either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.”

7. West Virginia Code § 30-40-26(f) every licensee to “make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.”

8. Respondent Rugeley and Respondent Hare’s knowledge of their respective client’s agreement to pay and receive an amount in excess of the true and actual sale price of the real estate, which payment was not reflected in the contract or other documents of the transaction

prepared by the licensee, constitutes a violation by both Respondent Rugeley and Respondent Hare of West Virginia Code § 30-40-19(a)(33) and West Virginia Code § 30-40-26(f).

9. 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

Respondents, by signing below, agree to the following:

1. Each Respondent signing this Consent Decree is aware of his or 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 the signing Respondent to make this settlement other than as set forth herein. Each signing Respondent acknowledges that he or she may pursue this matter through appropriate administrative proceedings and is aware of his or her legal rights regarding this matter, but intelligently and voluntarily waives such rights.
2. Each signing 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 to the extent it is agreeing to sanctions specific to that signing Respondent.
3. If all Respondents do not settle, each signing Respondent acknowledges that their consent to this settlement shall be offered as evidence in any hearing which may be held regarding this Complaint, and the signing Respondent agrees to cooperate in any proceeding which may be had against any non-settling Respondent.

ORDER

On the basis of the foregoing, the Commission hereby **ORDERS** as follows:

1. Respondent Miller is REPRIMANDED and is ORDERED to pay to the State of West Virginia, by and through the Commission, a fine in the amount of Five Hundred Dollars (\$500.00) for his violations of West Virginia Code § 30-40-19(a)(30).
2. Respondent Rugeley 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 §§ 30-40-19(a)(33) and 30-40-26(f).
3. Respondent Madore 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 Five Hundred Dollars (\$500.00) for his violations of West Virginia Code § 30-40-19(a)(30).
4. Respondent Hare 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 his violations of West Virginia Code §§ 30-40-19(a)(33) and 30-40-26(f).
5. Respondents shall pay administrative costs associated with this matter in the amount of Eight Hundred Dollars (\$800.00), such amount to be equally divided by the Old Colony Respondents and the Family First Realty Respondents, or Four Hundred Dollars (\$400.00), to be paid by Old Colony Respondents and Four Hundred Dollars (\$400.00) to be paid by Family First Realty Respondents. Within each brokerage, this amount may be divided between the Old Colony Respondents and the Family First Realty Respondents as they may agree, with each of the Old Colony Respondents and each of the First Family Realty Respondents being liable for the full amount to be paid by that brokerage.

6. The Old Colony Respondents shall pay a total amount of One Thousand and Nine Hundred Dollars (\$1,900.00); and the Family First Realty Respondents shall pay a total amount of One Thousand and Nine Hundred Dollars (\$1,900.00).

7. These payments shall be paid by 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.

8. Within thirty (30) days of the entry of this Consent Decree, Respondents shall provide to the Commission a document signed by the real estate appraiser, an official with the lending institution, and the closing attorney involved in this transaction which indicates these entities were made aware of the amount in excess of the true and actual sale price of the real estate which was paid at or around the time of closing but which was not reflected in the contract or other documents related to this transaction.

9. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, by any Respondent shall constitute a violation by that Respondent of an Order of the Commission and may, upon Board action, result in the summary suspension of the non-compliant Respondent's license until such time as that Respondent achieves full compliance.

The Commission shall immediately notify the non-compliant Respondent via certified mail of the alleged violation and whether there is a summary suspension of his or her license. That Respondent may request reinstatement of his or 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 a non-compliant Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of that Respondent's license, he or she may request a hearing to seek reinstatement of his or 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 a Respondent based upon that Respondent's violation of this Order of the Commission.

AGREED TO BY:

OLD COLONY RESPONDENTS



RALPH JOSEPH MILLER

3/22/18

DATE



TERESA BALDUS RUGELEY

3/22/18

DATE

FAMILY FIRST REALTY RESPONDENTS

MARK PETER MADORE

DATE

DONALD KEITH HARE

DATE

ENTERED into the records of the Real Estate Commission this 18 day of April,
2018.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: _____


KATHRYN L. MARTIN,
Its Vice-Chairperson