

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-20-006(A)

**WILLIAM R. MELTON,
Licensed Real Estate Broker
License No. WV-0016599**

Respondent.

CONSENT DECREE

Respondent William R. Melton ("Respondent"), and the West Virginia Real Estate Commission ("Commission") enter into the following Consent Decree for the purpose of resolving the above-styled complaint. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. Respondent is a licensed real estate broker in the State of West Virginia, holding license number WV-0016599. Respondent is broker of record for Infinity Realty, LLC, and Preferred Property Management, LLC.

2. Licensed real estate salesperson Misty Eskew is the owner of Infinity Realty, LLC, ("Infinity") and operates the company from her residence in Saint Albans, West Virginia. Ms. Eskew is the only person licensed with Infinity under Respondent's supervision.

3. On August 2, 2019, Commission Investigator Heather Casdorph conducted a compliance audit of Infinity. Misty Eskew was present; Respondent was not. Ms. Casdorph discovered that Respondent had established two bank accounts for Infinity: (1) an Operating account, which was used for security deposits and rental receipts; and (2) a Sales account, which was used for earnest money deposits related to sales and deposits of earned sales commissions.

4. During the audit, Ms. Eskew stated that her computer system had recently crashed and she was unable to provide accurate trust account records for Ms. Casdorph to review. Ms. Casdorph gave Ms. Eskew two weeks to provide the records, and scheduled a follow-up visit for August 16, 2019.

5. To ensure that Respondent and Ms. Eskew would be prepared for the August 16, audit, Ms. Casdorph emailed them on August 6, and listed all of the trust account information she expected them to provide.

6. Respondent and Ms. Eskew were present for the August 16, audit. However, neither Respondent nor Ms. Eskew could provide correct Trust Forms; neither Respondent nor Ms. Eskew could provide records for a Security Trust Account; and neither Respondent nor Ms. Eskew could provide records for a Rental Trust Account. Respondent seemed unaware that accurate trust account records were not available.

7. Respondent and Ms. Eskew agreed to provide Rental Trust Account records by Monday, August 19, and accurate records for the Security Trust Account by noon on Tuesday, August 20.

8. On August 23, Ms. Eskew sent Ms. Casdorff corrected Trust Forms. However, neither Respondent nor Ms. Eskew provided accurate and balanced trust account records to the Commission by the Commission's October 9, 2019, meeting.

9. On October 16, 2019, the Commission initiated Formal Complaint C-20-006 against both Respondent and Ms. Eskew.

10. On November 7, 2019, Ms. Eskew submitted a letter in response to the Formal Complaint, but failed to not only respond to any of the allegations against her, but also failed to provide any of the requested trust account records. Instead, Ms. Eskew *requested permission* to provide the Commission with the trust account documents that Ms. Casdorff had repeatedly requested since August 2, 2019. The Commission need not grant a licensee permission to provide documents that Commission staff has requested through a compliance audit.

11. Respondent submitted a separate response to the Commission on November 15, 2019. Generally, Respondent stated that Ms. Eskew led him to believe that she had provided Ms. Casdorff with all of the required trust account records; acknowledged his error by failing to inspect Infinity's trust records; and acknowledged that he improperly allowed Ms. Eskew to act as broker for Infinity.

12. On December 2, 2019, Ms. Casdorff emailed Respondent and Ms. Eskew to remind them that neither of them had provided complete and accurate trust account records and to advise

them that that the matter would be on the Commission's December 18, 2019, meeting agenda. Ms. Casdorph again provided a detailed listing of the information she was requesting.

13. On December 3 and December 16, Respondent emailed Ms. Casdorph and detailed his unsuccessful attempts to contact Ms. Eskew regarding the requested trust account records.

14. On December 18, prior to the Commission's meeting, Ms. Eskew emailed Ms. Casdorph information related to the Security Trust account, which was inaccurate and not reconciled. Despite Ms. Casdorph's request, Ms. Eskew still provided no records for the Rental Trust account.

15. At its regular meeting on December 18, the Commission considered all of the information received on the matter and determined that there was probable cause to conclude that Respondent's and Ms. Eskew's above-referenced conduct violated the *West Virginia Real Estate License Act*.

CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq., the Commission is charged with the regulation of the practice of real estate brokerage in this State, and, thus, has jurisdiction over this Formal Complaint.

2. In relevant part, West Virginia Code § 30-40-7(l) authorizes the Commission to impose sanctions for violations of the *West Virginia Real Estate License Act*, including, but not limited to, an administrative fine not to exceed \$1,000 per day per violation; probation; revocation; suspension; restitution; additional education; denial of future license; downgrade of license; reprimand; and/or the return of compensation collected from an injured consumer.

3. West Virginia Code § 30-40-19(a)(19) authorizes the Commission to sanction a licensee if the licensee “[v]iolates any provisions of this article, any rule or any order or any final decision issued by the commission[.]”

4. West Virginia Code § 30-40-18(i) states that

[t]he broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received and other pertinent information concerning the transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.

5. West Virginia Code § 30-40-19(a)(29) authorizes the Commission to sanction a licensee if the licensee “[f]ails to maintain adequate records on the broker’s ‘trust fund account[.]’”

6. In the case of a broker, West Virginia Code § 30-40-19(a)(30) authorizes the Commission to sanction the broker if he or she “fails to adequately supervise all associate brokers and salespersons employed by him or her[.]”

7. In the case of a broker, West Virginia Code § 30-40-19(a)(35) authorizes the Commission to sanction the broker if he or she “[l]ends a broker’s license to any person, including a salesperson, or permits a salesperson to operate as a broker [.]”

8. Finally, West Virginia Code § 30-40-19(a)(37) authorizes the Commission to sanction 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[.]”

9. Respondent failed to maintain accurate trust account records as broker of record for Infinity in violation of West Virginia Code §§ 30-40-18(i) and 30-40-19(a)(29); failed to adequately

supervise Ms. Eskew in violation of West Virginia Code § 30-40-19(a)(30); lent his broker's license to Ms. Eskew, allowing her to operate as a broker for Infinity in violation of West Virginia Code § 30-40-19(a)(35); and engaged in conduct demonstrating improper dealing in violation of West Virginia Code § 30-40-19(a)(37).

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity 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 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 that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consents to the entry of the following Order:

ORDER

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

1. Respondent shall pay a fine in the amount of \$3,000.

2. Respondent is hereby placed on probation for a period of six months, during which Respondent shall comply with the following conditions:

(a) Within 10 business days of the entry of this Consent Decree by the Commission, Respondent shall provide the Commission with all requested records, as determined by Ms. Casdorff, related to Infinity's trust accounts. Respondent is directed to contact Ms. Casdorff immediately to coordinate the submission of records.

(b) Upon Respondent's compliance with condition 2(a) above, Respondent's fine shall be reduced from \$3,000 to \$1,500, payable by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office by the end of the six-month probation period.

(c) Respondent shall reimburse the Commission its costs associated with this Complaint, and attorney fees, in the amount of \$455, payable by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office by the end of the six-month probation period.

3. Any failure by Respondent to comply with the terms of this Consent Decree, without the prior written consent of the Commission, shall result in (1) the immediate suspension of Respondent's broker's licenses for a period of one year commencing upon the Commission's issuance of a notice of violation of the Consent Decree, and (2) restoration of the full amount of the fine in the amount of \$3,000, which shall be due within ten days of Respondent's receipt of the notice of violation of the Consent Decree.

In the event Respondent contests the alleged violation of the Consent Decree, Respondent may request a hearing to challenge the alleged violation only. 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:

William R. Melton
William R. Melton

2/24/2020
Date

ENTERED into the records of the Real Estate Commission this:

24th day of February, 2020.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: Jerry A. Forren
Jerry A. Forren, Executive Director