

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,

v.

Formal Complaint No. C-23-033

KIMBERLY A. KOWALSKI,
Licensed Real Estate Broker
License No. WV0024261

And

LISA D. SMITH
Licensed Real Estate Salesperson
License No. WV0028400
Respondents.

RECEIVED

MAY 08 2023

*West Virginia
Real Estate Commission*

CONSENT DECREE

Respondent Kimberly A. Kowalski (“Respondent Kowalski”), Respondent Lisa D. Smith (“Respondent Smith”), 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 Kowalski is a licensed real estate broker in the State of West Virginia, holding license number WV0024261. Respondent Kowalski is the broker for Mountaineer Properties of West Virginia, LLC, in Buckhannon, West Virginia.

2. Respondent Smith is a licensed real estate salesperson in the State of West Virginia, holding license number WV0028400. Respondent Smith practices under the supervision of Respondent Kowalski.

3. During a January 12, 2023, audit by the Commission's auditor/investigator, it was discovered that Seller's Notice of Agency form, signed by the sellers and buyers, was missing from the respondents' file for the sale of 109 Hilltop Drive, Philippi, West Virginia. Respondent Smith represented the buyers in the sale.

4. Respondent Kowalski advised the auditor/investigator that the seller's agent did not send respondents the Seller's Notice of Agency.

5. Respondent Kowalski subsequently sent the auditor/investigator the Seller's Notice of Agency, however, the signatures were dated after the closing date for the sale.

6. On February 22, 2023, the Commission initiated the present complaint against respondents.

7. In response to the complaint, respondents acknowledged their oversight in failing to maintain a copy of the Seller's Notice of Agency in their file.

8. At its regular meeting on April 19, 2023, the Commission considered all of the information received on the matter and determined that there was probable cause to conclude that Respondents' conduct violated the *West Virginia Real Estate License Act*, and authorized the proposal of this Consent Decree to resolve the matter.

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(1) 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 rule...issued by the commission[.]”

4. The Commission’s Legislative Rule provides as follows with respect to the Notice of Agency:

Agency form required. -- The notice of agency relationship and consent form prescribed by the Commission discloses the party or parties the licensee is representing to all parties to the real estate transaction. A notice of agency relationship and consent form shall be signed by the licensee and the client at the time the agency relationship is created. Prior to the initiation of negotiations, each licensee’s agency form shall be signed by all parties. The broker shall provide a copy to each person executing an agency form and shall maintain a copy of each signed form in the transaction file. All members of a team must be listed on or attached to any Notice of Agency Relationship form signed by a team member.

W.Va. Code R. § 174-1-16.1.

5. Respondents’ failure to maintain the Sellers’ Notice of Agency violates the above-quoted rule and renders their licenses subject to discipline by the Commission.

CONSENT

By signing below, Respondents agree to the following:

1. Respondents have 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 Respondents to make this settlement other than as set forth herein. Respondents acknowledge that they may pursue this matter through appropriate administrative proceedings and are aware of their legal rights regarding this matter, but intelligently and voluntarily waive such rights.

2. Respondents acknowledge the Findings of Fact set forth above, admit that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consent to the entry of the following Order:

ORDER

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

1. Within six months of the entry of this Consent Decree, respondents shall each complete 3.5 hours of continuing education on the subject of agency. The 3.5 hours required by this paragraph are in addition to the hours required for renewal of respondents' respective licenses.

2. Upon timely completion of this course and submission of completion certificates to the Commission, the present complaint shall be dismissed and no disciplinary action shall be recorded against respondents.

3. If either respondent fails to timely complete the course required above without the prior written approval of the Commission, then the non-complying respondent(s) shall be reprimanded and shall each pay a fine of \$500.00 within 30 days of the receipt of notice of non-compliance from the Commission.

CONSENT DECREE AGREED TO BY:

Kimberly A. Kowalkoski
KIMBERLY A. KOWALSKI
KOWALKOSKI

5-5-23
Date

Lisa D. Smith
LISA D. SMITH

5-5-23
Date

ENTERED into the records of the Real Estate Commission this:

_____ day of _____, 2023.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: _____
Keri L. Ferro, Executive Director