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BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**WV REAL ESTATE
COMMISSION**

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. L-17-019

**LYNN E. KENNEDY
Licensed Salesperson
License No. WV-0004781**

**MICHAEL JAMES BELL
Licensed Broker
License No. WV-0028792**

Respondents.

**CONSENT DECREE
AS TO RESPONDENT BELL**

Now comes the Respondent, Michael James Bell (hereinafter at times "Respondent Bell" and the West Virginia Real Estate Commission (hereinafter "Commission"), by Cheryl L. Dawson, its Chairman, for the purpose of resolving a complaint filed against Respondent Lynn E. Kennedy ("Respondent Kennedy") and Respondent Bell (collectively at times "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 Complaint as to Respondent Kennedy was settled on March 5th, 2018 ("the Kennedy Settlement"). The Commission, having approved this agreement with Respondent Bell, 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 Bell is a real estate broker holding broker license number WV-0028792 and at the time of the matters which gave rise to this Complaint and was and currently is the broker of record for West Teays Properties, LLC, West Teays Properties Referrals, LLC and Valley Girls Property Professionals, LLC (hereinafter at times "Valley Girls"), all in Scott Depot, West Virginia. Respondent Bell is also an attorney.
3. Respondent Kennedy is a real estate salesperson licensed by the Commission, holding license number WV-0004781, working under the supervision of Respondent Bell.
4. Respondents formed Valley Girls Property Professionals, LLC on or about April 12, 2017, and both are part owners of Valley Girls.
5. Respondent Bell became broker of record for Valley Girls Property on May 10, 2017, and Respondent Kennedy first became licensed under Respondent Bell on May 3, 2017.
6. Complaint L-17-019 was filed by Angie McCown ("Broker McCown" or "Complainant McCown") and Josh McGrath ("Broker McGrath" or "Complainant McGrath") (collectively, they are at times collectively referred to herein as Respondent Kennedy's "former brokers" or "Original Complainants").
7. Broker McGrath is the broker of record for Real Estate Central, LLC; at some point prior to the time relevant to this complaint, Broker McGrath formed West Virginia Rentals & Property Management, LLC ("WV Rentals"), with Broker McCown as its broker of record; these Original Complainants then transferred Real Estate Central's property management business to WV Rentals.

8. Respondent Kennedy was a salesperson working for the Original Complainants until the circumstances which gave rise to this Complaint which are set forth in part below.
9. The references to “Owners” herein refer to all or some of the owners of property who were under contract with Real Estate Central or WV Rentals to provide property management services as of May 1, 2017.
10. Complaint L-17-019 was received by the Commission on May 15, 2017, and served upon Respondents.
11. Respondent Bell, on behalf of both Respondents, filed a timely response, and the Commission, at its meeting on June 20, 2017, found probable cause to proceed against both Respondents upon a finding that the allegations, if true, constituted violations of various provisions of West Virginia Code §§ 30-40- 1 *et seq.*
12. The following procedural developments are noted:
 - a. Respondent Bell, on behalf of both Respondents, participated in a status conference call with the appointed Administrative Law Judge (“ALJ”) which resulted in a Scheduling Order entered on August 15, 2017, setting the hearing for November 28-29, 2017;
 - b. On October 27, 2017, in accordance with the Scheduling Order, the Commission served its Initial Exchange of Relevant Documents and its Initial Disclosure of Potential Fact Witnesses, together with the Commission’s Notice of Hearing and Statement of Charges and, by subsequent agreement of the parties, Respondent Bell made disclosures on behalf of both Respondents on November 10, 2017. Sometime around the middle of November, the Commission was notified that Respondents had each obtained separate counsel, Respondent Kennedy, by

- counsel, moved for a continuance, and the parties agreed to continue the hearing to January 12, 2018, for which a Revised Notice of Hearing and Statement of Charges was served;
- c. On January 4th, Respondent Bell, by counsel, again requested a continuance, stating that the parties were “close to achieving a complete agreed resolution to this matter” and requesting to address the full Commission prior to any hearing;
 - d. Although the matter was not close to being completely resolved, the parties and the ALJ agreed to hold a status conference on January 12th in lieu of the hearing, resulting in another scheduling order with a new hearing date of March 6 and 7, 2018;
 - e. The Chair of the Commission agreed to grant Respondents an informal conference before the Commission, which was held on January 24, 2017;
 - f. Settlement negotiations continued, and a proposed joint settlement was tendered to Respondents on February 8, 2018;
 - g. With neither Respondent having signed a settlement agreement as of February 27, 2018, Counsel for the Commission provided the disclosure set forth in the Amended Scheduling Order agreed to at the January 12, 2018 status conference and provided the ALJ with an update regarding the matter.
13. The following is a brief recitation of facts which all parties contend are undisputed:
- a. On May 1, 2017, Respondent Kennedy emailed Broker McCown and Broker McGrath, attaching a letter on WV Rentals’ letterhead informing her former brokers of her 30-day notice of resignation, saying she would do all she could to make the transaction [sic] as smooth as possible.

- b. At about the same time, Respondent Kennedy sent similar 30-day notices of resignation, also on WV Rentals' letterhead, to all the Owners of property under management contract with WV Rentals and stated her availability during that time "to transition the properties accordingly."
- c. Original Complainant McCown texted Respondent Kennedy to cease all contact with WV Rentals' Owners.
- d. Shortly thereafter, on May 1st, Respondent Kennedy sent another email to selected Owners, attaching a letter on Valley Girls letterhead which identified her as the "Owner and Property Manager" of Valley Girls and invited these Owners to "come with [her] on [her] new adventure."
- e. This email also attached a notice to terminate the property management contract with WV Rentals, an agreement to obtain property management services from Valley Girls, and various other forms to effectuate this transfer.
- f. Neither of the emails sent to the Owners explained that the Owners could continue with WV Rentals, which caused much confusion both to the Owners and to WV Rentals and resulted in Broker McCown emailing the Owners on the afternoon of May 1st to apologize for the confusion and to assure them that other licensed professionals were available to manage their property.
- g. On April 25th, 2017, Respondent Kennedy emailed Respondent Bell, attaching the letters to Owners set forth above and stating: "The first will go to all owners, the second the ones I want to retain ..."

- h. Via a text message, Respondent Bell stated that he reviewed the letters and that they looked great, although he questioned why the checks should not be made to their new company.
 - i. After learning that Respondent Bell was going to be Respondent Kennedy's new supervising broker, on May 3, 2017, the Original Complainants, by counsel, sent a cease and desist letter to Respondent Bell, who responded by letter dated May 4, 2017, stating that Respondent Kennedy was an "at will employee" who was "not under the terms of a no compete agreement."
 - j. The confusion continued over the course of at least the next two months, with WV Rentals not receiving notice of which Owners were transferred to Valley Girls and other issues arising as a result of the unforeseen and sudden occurrences described above.
14. Respondent Bell contends the following:
- a. that he interpreted the word "inducement" to mean monetary consideration, but acknowledges that the Commission's interpretation does not require monetary consideration to create an inducement and further acknowledges that the Commission could prove a violation under its interpretation; and
 - b. that he offered to send the signed cancellation notices from the Owners to counsel for WV Rentals, but this offer was declined by the Original Complainants, through their counsel, because they wanted to receive them directly from the Owners. The Commission does not find this contention relevant to the scope of this partial settlement and makes no finding regarding same.

15. Respondent Bell disputes the statement set forth as undisputed in the Kennedy Settlement regarding her reliance on Respondent Bell set forth in Paragraph 13.i. and has no knowledge to dispute or not dispute Valley Girls' leasing of property still under contract with and managed by WV Rentals set forth in Paragraph 13.l.
16. Respondent Kennedy has admitted that:
- a. she contacted the Owners under contract with her former brokers in an attempt to persuade them to move their business to Valley Girls, in violation of various provisions of the West Virginia Real Estate License Act; and
 - b. her actions constituted an inducement under the West Virginia Real Estate License Act which caused, at least in part, many of the Owners to break their contract with WV Rentals for the purpose of substituting a new contract with Valley Girls and other serious violations of the West Virginia Real Estate License Act.
17. Respondent Bell admits that the communications constituting the inducement were made with his knowledge, support and approval, in violation of his duty to supervise, and further admits to other serious violations of the West Virginia Real Estate License, as more specifically set forth in this Consent Decree.
18. The Commission finds that these violations caused financial loss and foreseeable additional expenses to the Original Complainants, thereby giving rise to the availability of restitution being paid to them by Respondent Kennedy, which issue it not addressed in this partial settlement.
19. Respondent Bell agreed to be primarily responsible for the administrative costs agreed to herein.

20. Respondent Bell agrees to settle the Complaint informally through the entry of this Consent Decree.

21. The Commission has incurred expenses in connection with this complaint in an amount in excess of Eight Thousand Five Hundred Dollars (\$8,500.00), which expenses relate to the Commission's legal expenses incurred in connection with preparation for hearing on three different occasions, as well as time expended by Commission staff in the review and investigation of Complaint L-17-019 and amounts billed by the ALJ.

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)(15) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "(i)nduces any

person to a contract to break the contract for the purpose of substituting a new contract with a third party.”

4. Respondent Kennedy, in contacting the Owners in an attempt to encourage them to break their property management contract with WV Rentals and follow her to Valley Girls, violated West Virginia Code § 30-40-19(a)(15).

5. 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.”

6. Respondent Bell, in approving and defending Respondent Kennedy’s actions which violated West Virginia Code § 30-40-19(a)(15), failed to adequately supervise Respondent Kennedy, in violation of West Virginia Code § 30-40-19(a)(30).

7. W. Va. 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.”

8. Respondent Bell’s actions constituted or demonstrated incompetency and improper dealing, in violation of W. Va. Code § 30-40-19(a)(37).

9. West Virginia Code § 30-40-19(a)(39) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “(n)egotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker.”

10. Each and every attempted solicitation of WV Rentals' Owners or acquisition of tenants for properties still under contract with WV Rentals approved by Respondent Bell constitutes a violation of West Virginia Code § 30-40-19(a)(39).

11. 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

Respondent Bell, by signing below, agrees to the following:

1. Respondent Bell 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 Bell to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative and/or court proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent Bell consents to the findings above and the entry of the following Order.

3. Respondent Bell acknowledges that his consent to this settlement shall be offered as evidence in any hearing which may be held regarding this Complaint, and he agrees to cooperate in any proceeding which may be had against Respondent Bell, including providing sworn testimony at the hearing to matters set forth in this Consent Decree.

ORDER

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

1. Respondent Bell's broker's license is hereby **REVOKED** for a period of two years for the violations set forth herein. Such revocation is stayed immediately for a period of up to eighteen (18) months, provided Respondent Bell complies with the provisions of this Consent Decree, to-wit:

- a. Respondent Bell is **PROHIBITED** from serving as broker of record for any real estate firm but may serve as the firm's associate broker;
- b. The current brokerages for which Respondent Bell is broker of record shall cease all real estate activities and operations immediately until such time as a new broker is approved by the Commission;
- c. All signs, materials, websites and other forms of advertising or public relations that show Respondent Bell as the broker of record shall be removed, destroyed, taken down, or otherwise nullified as soon as practicable and no later than seven (7) days from the date of entry of this Consent Decree, unless the brokerage(s) obtain(s) a new broker of record, in which case signs, materials, websites and other forms of advertising or public relations must be modified to reflect the new broker within the prescribed timeframe;
- d. Respondent Bell agrees to take and successfully complete the course required for a broker license, provide to the Commission a course completion certificate, and then again take and pass the broker licensing examination;

- e. Upon Respondent Bell's successful completion of the course and passage of the broker licensing exam, the revocation shall not take effect so long as Respondent Bell has otherwise complied with this consent decree;
 - f. Upon Respondent Bell's failure to pass the broker test within eighteen (18) months, unless the Commission has agreed in writing to Respondent Bell's request for additional time, the Commission, without further action and at any time after the expiration of the 18-month period, may notify Respondent Bell that the stay has been lifted and that his broker's or associate broker's license is revoked for two years from the date of his receipt of such notice.
2. During the period of stay, Respondent Bell shall comply with the West Virginia Real Estate License Act and related Legislative Rules. In the event Respondent Bell 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 Bell's license pursuant to the provisions of West Virginia Code §30-1-8(e)(1).
3. So long as Respondent Bell is otherwise in compliance with this Consent Order and any related Addenda or Order entered by the Commission or ALJ, Respondent Bell may request in writing to be allowed additional time to pass the broker examination.
4. Respondent Bell shall pay **RESTITUTION** to the Original Complainants in the amount of Four Thousand Dollars (\$4,000.00).
5. Respondent Bell shall pay Six Thousand Dollars (\$6,000.00) of the administrative costs incurred to date.
6. The total payment of Ten Thousand Dollars (\$10,000.00) in restitution 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 on or before June 30, 2018, which amounts shall be at least monthly in an amount not less than Two Thousand Five Hundred Dollars (\$2,500.00), with the first payment due and owing on or before March 31, 2018.

7. Any non-compliance by Respondent Bell 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 Bell'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 Bell'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.

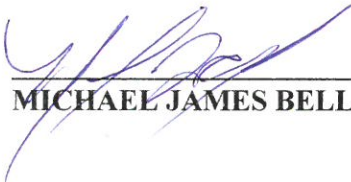
8. If during any time the stay of revocation is in effect, a new complaint is filed against Respondent Bell and probable cause is found based on the allegations set forth in the new complaint, the finding of probable cause may be deemed a finding that Respondent Bell's continuation in the licensed activity constitutes an immediate danger to the public, and the Commission may summarily suspend Respondent Bell'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.

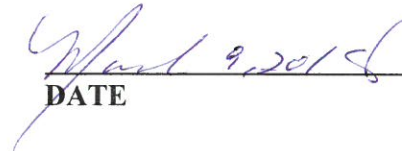
9. The events giving rise to this Consent Decree may be considered in the determination of the kind and extent of sanctions against Respondent Bell for any subsequent violations of the West Virginia Real Estate Licensing Act and related rules.

10. This Consent Decree constitutes a full and final settlement with Respondent Bell as to this matter, which remains pending as to Respondent Kennedy on the issue of restitution.

AGREED TO BY:




MICHAEL JAMES BELL



DATE

ENTERED into the records of the Real Estate Commission this 11th day of April, 2018.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 

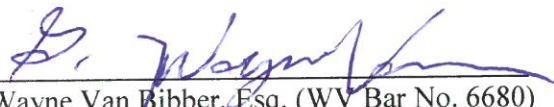
CHERYL L. DAWSON,
Its Chairperson

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Dated: 3/17/18

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