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**OCT 07 2016**

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION** **W.VA. REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**BENJAMIN MICHAEL MOORE,  
Licensed Salesperson  
License No. WV0023143**

**Formal Complaint No. P-16-013**

**SANDRA MICHAEL CAMPBELL,  
Licensed Associate Broker  
License No. WV 0006705**

**CONSENT DECREE**

Now comes the Respondents, Benjamin Michael Moore ("Respondent Moore") and Sandra Michael Campbell ("Respondent Campbell") (collectively "Respondents"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Kathryn L. Martin, its Vice-Chairman, for the purpose of resolving a complaint filed against Respondents by Charles T. Miller (hereinafter at times "Complainant"). Commissioners Dawson and Zaferatos recused and absented themselves from all discussion and resolution of this matter. 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 Benjamin Michael Moore is a real estate salesperson licensed by the Commission, holding license number WV0023143, employed by Old Colony Real Estate Co. in Charleston, West Virginia.

3. Respondent Sandra Michael Campbell is an Associate Broker with Old Colony Real Estate Co. in Charleston, West Virginia and is licensed by the Commission, holding license number WV0006705.

4. On September 24, 2015, Respondent Campbell signed a Buyer's Agency Agreement with potential Buyers of a property located in St. Albans, West Virginia (hereinafter at times "the subject property"), which agreement commenced on September 8, 2015.

5. The Notice of Agency Relationship, showing Respondent Campbell of Old Colony Company of Charleston as the Buyer's agent, was signed by the potential Buyers and both Respondents on September 23, 2015, and by Complainant and his wife the next day.

6. On September 24, 2015, a Purchase Agreement for the subject property was signed by Complainant and his wife and the potential Buyers which indicated that a \$500.00 earnest money deposit had been paid with the offer.

7. Addenda were signed at the same time as the Purchase Agreement, one making the agreement contingent on sale of purchaser's property and a miscellaneous provision relating to flood insurance.

8. The signatures of the potential Buyers on these documents were electronically signed, as they were out-of-town.

9. Sellers and potential Buyers entered into a Mutual Cancellation of Purchase Agreement and Addendum, with Buyers' signatures again being electronic.

10. The Mutual Cancellation of Purchase Agreement and Addendum indicated that no Earnest Money had been deposited.

11. The Complaint states that Sellers' agreement to cancel contemplated forfeiture of the \$500.000 earnest money deposit, and Respondents' failure to collect and hold same prompted the filing of this Complaint.

12. In a timely response, Respondents admit they failed to collect the earnest money deposit, stating they reminded Sellers' agent that it would not be collected until the potential Buyers were back in town.

13. The Commission found probable cause to proceed against Respondents at its meeting on November 18, 2015.

14. The Commission finds that the Purchase Agreement should not have noted an earnest money deposit since no earnest money had been collected at that time.

15. The Commission accepts Respondents' representation, by counsel, that most of the work on this real estate transaction was done by Respondent Moore, but also finds that Respondent Campbell was involved in the transaction as the primary agent for the Buyer as reflected in the Buyer's Agency Agreement and the Notice of Agency Relationship.

16. The Commission has incurred expenses in the prosecution of this complaint in excess of \$850.00, which expenses relate solely 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 in West Virginia Code § 30-40-7 (l) 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. W. Va. Code §30-40-26(f) states: “Every broker, associate broker and salesperson owes certain inherent duties to the consumer which are required by virtue of the Commission granting a license under this article. The duties included, but are not limited to: mak(ing) certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.”

4. The Commission may assess administrative costs. West Virginia Code § 30-40-21(g). Costs shall be placed in the account of the Commission, and 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. Respondents are represented by counsel and execute 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 and/or court proceedings and

are aware of their legal rights regarding this matter, but intelligently and voluntarily waive such rights.

2. Respondents admit they never collected the earnest money under the terms and conditions of a real estate transaction and admit they violated W. Va. Code § 30-40-26(f).

3. Respondents consent to the findings above and the entry of the following Order affecting their conduct as a real estate salesperson or broker.

### **ORDER**

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

1. Respondents are hereby **REPRIMANDED**.
2. Respondent Moore shall pay a fine in the amount of Five Hundred Dollars (\$500.00).
3. Respondent Campbell shall pay a fine in the amount of Two Hundred Fifty Dollars (\$250.00).
4. Respondents shall also pay the costs associated with this Complaint in the discounted amount of Eight Hundred Fifty Dollars (\$850.00), which may be split between the Respondents, but each Respondent is jointly and severally liable for the full payment of the costs agreed to herein.
5. The total payment of One Thousand Six Hundred Dollars (\$1,600.00) shall be paid by certified 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 by the Commission.
6. 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 the non-compliant Respondent's license until such time as the non-compliant Respondent achieves full compliance.

The Commission shall immediately notify the non-compliant Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of the non-compliant Respondent's license. The non-compliant 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 the non-compliant Respondent's request for probationary reinstatement.

In the event the non-compliant Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of the non-compliant Respondent's license, the non-compliant Respondent 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 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.

**AGREED TO BY:**

  
BENJAMIN MICHAEL MOORE

8/16/16  
DATE

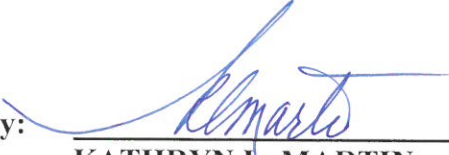
  
SANDRA MICHAEL CAMPBELL

8/16/16  
DATE

[Commission Signature Appears Next Page]

ENTERED into the records of the Real Estate Commission this 20<sup>th</sup> day of October, 2016.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:   
KATHRYN L. MARTIN,  
COMMISSION VICE-CHAIRMAN