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**MAY 06 2016**

**W.VA. REAL ESTATE  
COMMISSION**

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**IN THE MATTER OF:**

**JONI NELSON-HOWARD  
Licensed Real Estate Broker  
License No. WV-0021703**

**Formal Complaint No. P-16-001**

**CONSENT DECREE**

Now comes the Respondent, Joni Nelson-Howard (hereinafter "Respondent"), 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 by Priscilla Fenton Hament (hereinafter at times "Complainant"). As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates 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 is a real estate broker licensed by the Commission, holding license number WV-0021703.
3. Respondent entered into a listing agreement with Complainant and her sister (at times referred to herein as "the Sellers") on April 30, 2015, for the sale of property in Buckhannon, West Virginia (hereinafter at times "the subject property").

4. The listing agreement gave Respondent the exclusive right to sell the subject property, with no express authority for Respondent to also represent a potential buyer.
5. Complainant signed the Notice of Agency Relationship on April 29, 2015; Respondent and Complainant's sister signed this required Commission document the next day, April 30th.
6. Thereafter, Respondent showed the property to the eventual Buyer, who was not represented by an agent at the time Respondent showed Buyer the house.
7. Buyer signed a Purchase Agreement on May 18, 2015, which was not accepted by the Sellers.
8. Thereafter, the Complaint alleges various communications among Respondent, the Sellers and the Buyer which resulted in a higher offer made in a Purchase Agreement dated May 19, 2015, which was accepted by the Sellers and signed on May 20, 2015.
9. Respondent at some point contacted Richard Strader, the Executive Director of the West Virginia Real Estate Commission, regarding whether she could also represent the Buyer and the proper course of action for doing so.
10. According to Respondent, she was advised by the Commission's Executive Director that both Buyer and Sellers would need to sign a new Notice of Agency Relationship and the Commission concurs that, had Sellers agreed to the dual agency and had the parties signed a new Notice, this would have been an acceptable course of action.
11. Rather than preparing a new Notice of Agency Relationship, Respondent revised the existing Notice of Agency Relationship which had been signed by the Sellers in April and obtained Buyer's signature on the document (with no date of Buyer's signature).
12. Complainant declined to sign the revised Notice of Agency Relationship and instead had a lawyer represent Sellers in the transaction.

13. The sale proceeded without Respondent representing either the Sellers or the Buyer, and Respondent waived her sales commission.

14. Subsequently, one of the Sellers filed this Complaint and, after reviewing the filings including a response, the Commission found probable cause to proceed against Respondent at its meeting on August 18, 2015.

15. The Commission finds that the attempted representation of the Buyer through the revision to the Notice of Agency Agreement and the non-disclosure of the revised agency agreement to Sellers prior to presenting them with the Purchase Agreement signed by Buyer indicate Respondent has insufficient understanding of the West Virginia Real Estate License Act and Legislative Rules and the forms required or utilized in real estate transactions.

16. The Commission makes no findings regarding any resulting alleged damages to Complainant.

17. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$1,250.00, 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 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 § 30-40-19(a)(7) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “(a)cts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts.”

4. Respondent’s attempted representation of the Buyer through the revision to the Notice of Agency Agreement and the non-disclosure of the revised agency agreement to Sellers prior to presenting them with the Purchase Agreement signed by Buyer violated the prohibition set forth in W. Va. Code § 30-40-19(a)(7).

5. West Virginia Code § 30-40-26(d) states that “[e]very licensee shall disclose in writing, on the notice of agency relationship form promulgated by the [C]ommission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.”

6. West Virginia Code R. § 174-1-22.1 further states that “the licensee shall execute this written notice prior to any party signing any contract for representation, offer to purchase, to sell, or to exchange real estate for which a broker’s license is required.”

7. West Virginia 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’s attempted representation of the Buyer through the revision to the Notice of Agency Agreement and the non-disclosure of the revised agency agreement to Sellers prior to presenting them with the Purchase Agreement signed by Buyer violated West Virginia Code R. § 30-40-26(d) and West Virginia Code R. § 174-1-22.1 and constituted or demonstrated incompetency and improper dealing, in violation of W. Va. Code § 30-40-19(a)(37).

9. The Commission may assess administrative costs. West Virginia Code § 30-40-821(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**

Respondent, by signing below, agrees to the following:

1. Respondent 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 to make this settlement other than as set forth herein.

2. Respondent acknowledges that she may pursue this matter through appropriate administrative and/or court proceedings and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

3. Respondent admits that she revised the existing Notice of Agency Relationship rather than prepare a new one, as advised, and accepts the Commission’s conclusion that, in so doing, she violated the West Virginia Real Estate License Act and the rules of the Commission set forth herein.

4. Respondent consents to the findings above and the entry of the following Order affecting her conduct as a real estate broker.

### **ORDER**

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

1. Respondent is hereby **REPRIMANDED**.
2. Prior to December 31, 2016, Respondent shall complete a total of seventeen and one-half (17.5) hours of approved continuing education in West Virginia real estate law, including at least one approved class on Agency, and Respondent shall submit documentation to the Commission demonstrating successful completion of each class or course.
3. Respondent is **ORDERED** to pay to the State of West Virginia, by and through the Commission, a fine in the amount of \$500.00.
4. Respondent is **ORDERED** to pay the costs incurred by the Commission in the amount of \$1,250.00.
5. The total payment of \$1,750.00 shall be paid by certified check or money order made payable to the State of West Virginia and is to be sent directly to the Commission Office within 30 days of the date of 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 Respondent's license until such time as Respondent achieves full compliance.
7. The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of Respondent's license. 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 Respondent's request for probationary reinstatement.

8. In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of 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 Respondent based upon Respondent's violation of this Order of the Commission.

**AGREED TO BY:**

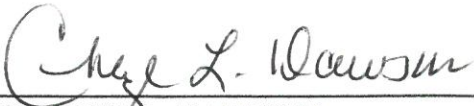
  
**JONI NELSON HOWARD**

4/5/2016  
**DATE**

ENTERED into the records of the Real Estate Commission this 15 day of June, 2016.

**WEST VIRGINIA REAL ESTATE COMMISSION,**

By:

  
**CHERYLL L. DAWSON**  
**COMMISSION CHAIRMAN**