

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. P-16-004

MICHELLE L. MARTIN

Licensed Real Estate Salesperson # WV-0024561,

Respondent.

CONSENT DECREE

Now comes the Respondent, Shelly L. Martin (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, for the purpose of resolving a complaint filed against Respondent by third parties for which the Commission found probable cause to proceed in the name of the Commission. 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 complaint. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. The Commission is a state entity created by W. Va. Code § 30-40-1 *et seq.*, and is authorized to regulate the conduct of real estate brokers, associate brokers and salespersons.
2. Respondent is a salesperson licensed by the Commission, holding license number WV-0024561, under Kathryn L. Martin (hereinafter referred to as "Broker"), the Broker of KLM Properties, Inc., which has offices in Morgantown and Bridgeport, West Virginia.

3. This complaint, P-16-004, was filed by Brett J. Green and Tara N. Kurilchick (hereinafter referred to as "Complainants") alleging, among other things, the following:

- a. Complainants' residence was listed with another brokerage, and Complainants were notified that another realtor wanted to show the property, for which an appointment was set for April 8, 2015;
- b. On that day, Complainants' motion-activated security camera alerted Complainants of detected motion, and they observed a woman in various parts of the house, including the kitchen, for over 30 minutes;
- c. One kitchen drawer contained medicine, and the woman placed her purse on the counter and poured pills into a plastic bag (orange fiber pills and white ibuprofen);
- d. The business card left on the counter identified the woman as Respondent.

4. Thereafter, Complainants contacted Respondent's Broker, who went to Complainants' home and confirmed that Respondent, her daughter, was there to find pills and not show the home to a client, assured Complainants that Respondent would seek treatment and otherwise tried to rectify the situation.

5. Upon receipt of P-16-004 against Respondent and her Broker on July 17, 2015, the Commission served the complaint upon both of them and received timely responses dated August 5, 2015.

6. Respondent did not deny any of the allegations except to say she did not enter the children's bedrooms and did not obtain any of Complainants' personal information. In her response, she indicated that since April 8, 2015, her Broker was in possession of Respondent's lockbox key, which she had used five times on vacant property; that Broker always accompanied her to show or enter an occupied property; that the items removed from Complainant's home were returned to them; that she received treatment and was drug-free at the time of the response; that others in the brokerage were handling her few listings; and that she was surrendering her real estate salesperson license.

7. Respondent's Broker, in her response, also confirmed the allegations and some of the statements in Respondent's response, set forth some of Respondent's history as a sales agent, said that she had employed Respondent at Broker's office in Bridgeport since the incident, indicated that Respondent was intending to move out-of-state, and advised the Commission that she had set up a random drug testing program as a result of the incident.

8. Broker returned Respondent's salesperson license to the Commission with a cancellation date of August 6, 2015.

9. At its meeting on August 18, 2015, the Commission found probable cause to proceed against Respondent on the Complaint.

10. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.

11. The Commission has incurred expenses in the prosecution of this complaint in the amount of Three Hundred Ninety Dollars (\$390.00), 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(l) gives the Commission all 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, require 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)(37) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she “[e]ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.”

4. Respondent’s conduct with regard to matters set forth in the complaint, to which Respondent has admitted, violate West Virginia Code § 30-40-19(a)(37), and specifically are evidence of bad faith, untrustworthiness, and dishonest and fraudulent dealing, and renders the Respondent’s license subject to discipline by the Commission.

5. 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

By signing below, Respondent agrees to the following:

1. Respondent is not 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. Respondent acknowledges that she may pursue this matter through appropriate administrative proceedings and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent consents to the findings above and to the entry of the following Order revoking her license.


ORDER

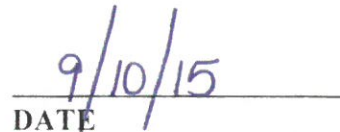
On the basis of the foregoing, the Commission hereby ORDERS as follows:

1. Respondent's license is **REVOKED**.
2. Respondent agrees to pay the Commission's costs in this matter in the amount of Three Hundred Ninety Dollars (\$390.00).
3. Payment shall be by certified check or money order made payable to the State of West Virginia and sent directly to the Commission Office.
4. Respondent is ineligible for applying for a license until after the expiration of two years from the date of revocation as evidenced by the entry date of this Consent Decree pursuant to West Virginia Code § 30-1-21(f) and is ineligible thereafter unless and until she has paid the costs agreed to in this Consent Decree.

* Should be 30-40-19(f)
5. 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 further action of the Commission, including the filing of additional charges.

AGREED TO BY:



MICHELLE L. MARTIN


DATE

ENTERED into the records of the Real Estate Commission this:

14th day of September, 2015.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
RICHARD E. STRADER,
EXECUTIVE DIRECTOR