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

IN THE MATTER OF:

**JONATHON CRAIG ALLISON,
Licensed Broker
License No. WV0027907**

Formal Complaint No. P-16-009

CONSENT DECREE

Now comes the Respondent, Jonathon Craig Allison ("Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Cheryl Dawson, its Chairman, for the purpose of resolving a complaint filed against Respondents by Barry J. Shafer (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 Jonathan Craig Allison is a real estate broker licensed by the Commission, holding license number WV0027907 and serving as the broker for various entities in Charleston, West Virginia, which utilize the name "Property Elite."
3. On September 14, 2015, Complainant Barry Shafer filed a Complaint with the Commission alleging that Respondent had conveyed sensitive financial information regarding

the Complainant to another member of Complainant's family ["the family member"] involving the sale of the family home which Complainant was trying to purchase ["the family home"].

4. Respondent filed a timely response stating that he owed no fiduciary duty to Complainant, who had his home listed with a company other than Respondent's, but that he did owe a fiduciary duty to the family member, who was a current client of Property Elite in the same subdivision as Complainant's home and was concerned Complainant would take less than market value for his home since Complainant wanted to purchase the family home.

5. Respondent contended that the disclosure of sensitive financial information was in accordance with his fiduciary duties to the family member.

6. The Commission found probable cause to proceed against Respondent at its meeting on November 18, 2015, and there was no motion for reconsideration of that finding despite Respondent's request for same.

7. The Commission finds that the Notice of Agency Relationship promulgated and required by this Commission sets forth an agent's "duties to *both* the buyer and the seller in any transaction:" which includes "(a) duty of honest and fair dealing and good faith."

8. The Notice goes on to state that an "agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties" set forth on the Commission's form, which implies that agents obtain confidential information which should not be revealed.

9. Here, the sensitive financial information of Complainant was disclosed to a family member to whom Respondent may have owed fiduciary duties in connection with other real estate matters, but Respondent was not obligated to share Complainant's financial information, nor should he have done so.

10. The Commission finds the disclosure violated the duty of fair dealing owed to Complainant as a potential buyer in a transaction as required by the Notice of Agency Relationship quoted above.

11. The Commission finds Respondent's disclosure of Complainant's sensitive financial information to his family member constituted or demonstrated untrustworthiness and improper conduct, in violation of W. Va. Code § 30-40-19(a)(37).

12. The Commission has incurred expenses in the prosecution of this complaint well in excess 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 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 §30-40-19(a)(37) states: "The commission shall have full power to refuse a license for reasonable cause or to 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."

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

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. 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 consents to the findings above and the entry of the following Order affecting his 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. Respondent shall pay a fine in the amount of Two Hundred Dollars (\$200.00).

3. Respondent shall also pay the costs associated with this Complaint in the discounted amount of Three Hundred Ninety Dollars (\$390.00).

4. The total payment of Five Hundred Ninety (\$590.00) 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.

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 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 Respondent's license. The 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.

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 his 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:



JONATHON CRAIG ALLISON

2/24/16

DATE

ENTERED into the records of the Real Estate Commission this 9 day of march, 2016.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:



CHERYL L. DAWSON,
COMMISSION CHAIRMAN