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JUN 19 2018

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**W.VA. REAL ESTATE
COMMISSION**

IN THE MATTER OF:

**WILLIAM STEPHEN SHULTZ
Licensed Broker
License No. WV-0003463**

Complaint No. P-18-015

CONSENT DECREE

Now comes the Respondent, William Stephen Shultz (hereinafter at times "Respondent" or "Respondent William Shultz"), 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 William Shultz and Christopher Brian Shultz by David Campbell and Clark Bottner, the "initial Complainants" in P-18-015. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent William Shultz 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 Complaint as to Respondent Christopher Brian Shultz, which on April 18, 2018, was consolidated with C-18-020, remains pending. The Commission, having approved this agreement with Respondent William Shultz, 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 William Shultz is a broker doing business as Cricky, Inc. dba Shultz Realty, 1101 South George Street, Charles Town, West Virginia 25414, holding broker license number WV-0003463.
3. Respondent William Shultz is the father of Christopher Brian Shultz (“Christopher Shultz”) and Charles Shultz, another salesperson with Shultz Realty. This complaint was dismissed as to Charles Shultz at the Commission’s meeting on February 28, 2018, and this complaint as to Christopher Shultz was consolidated with Complaint C-18-020 on April 18, 2018, for separate handling.
4. Christopher Shultz, who goes by the name “Cricky,” is a real estate salesperson licensed by the Commission, holding expired and therefore inactive license number WV-0007944, who was working under the supervision of Respondent William Shultz at the time of the circumstances which gave rise to this Complaint.
5. Complaint P-18-015 was filed on December 3, 2017, by the initial Complainants, David Campbell and Clark Bottner, who are the owners of Cross Island Development, Inc., which is part of a family of companies that includes two LLCs in which Christopher Shultz is also a partner – Butlers Bridge, LLC and Cave Quarters LLC.
6. The Complaint alleges as follows:
 - a. Issue #1 (Butlers Bridge, LLC): After a closing, the closing attorney transferred \$5,550 (the commission due Shultz Realty for the transaction) to Butlers Bridge, and the balance which was due Butlers Bridge of \$38,818.20 was wrongfully paid to Shultz Realty. Money from this overpayment to Shultz Realty was withdrawn by Christopher Shultz several times and has not been fully returned to Butlers Bridge.

- b. Issue #2 (Cave Quarters, LLC): A \$25,000 earnest money payment was made by Cross Island Development, Inc., on behalf of Cave Quarters, LLC, and deposited into non-trust accounts of Shultz Realty and then transferred to other accounts controlled by Respondent and Christopher Shultz; this earnest money has not been returned despite a release of those funds having been signed by the sellers.
- c. Respondent and Christopher Shultz signed an agreement to repay \$75,000 to the initial Complainants, but no payments were forthcoming. Thereafter, Respondent William Shultz and his spouse provided a verbal promise to repay that amount, of which \$13,000 was paid, leaving \$62,000 unpaid at the time the complaint was filed.

7. Timely responses were filed by Respondent William Shultz and by Charles Shultz; no response was received from Respondent Christopher. Neither of the responses dispute the facts alleged in the Complaint.

8. The Commission, at its meeting on February 28, 2018, found probable cause to proceed against Respondent William Shultz and Christopher Shultz in Complaint P-18-015 upon a finding that some of the allegations, if true, constituted violations of various provisions of West Virginia Code §§ 30-40- 1 *et seq.*

9. Respondent William Shultz admits that he has personal knowledge of the truth of at least some of the allegations as to Christopher Shultz and admits his licensee's actions constitute a failure to supervise on the part of Respondent.

10. Although this complaint as to Christopher Shultz was consolidated with Complaint C-18-020 on April 18, 2018, for separate handling, findings set forth herein shall be deemed admissions by Respondent William Shultz whether referenced in any settlement of the pending

complaints against Christopher Shultz or in any hearing which may be held on Consolidated Complaints C-18-015 and C-18-020.

11. The Commission finds that funds that were entrusted to Respondent and Christopher Shultz that did not belong to them were not deposited into Respondent's trust account as required, were not accounted for, and were not remitted within a reasonable time, which occurred either with Respondent's knowledge or without his adequate supervision of Christopher Shultz.

12. The Commission, during its investigation of this matter and the investigation resulting in Complaint C-18-020 against Christopher Brian Shultz, learned that Respondent was aware that Christopher Shultz had some degree of dependency on prescription painkillers and was not exemplifying highly professional standards, as evidenced by the issues alleged in C-18-020 and admitted by Christopher Shultz in a Consent Decree resolving C-17-017.

13. The Commission finds that Respondent let his role as Christopher Shultz's father hamper his role as supervisor of Christopher Shultz as one of the salespersons in Respondent's brokerage.

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

15. The Commission has incurred expenses in connection with this complaint in an amount in excess of \$1,000.00, which expenses relate to the Commission's legal expenses, as well as time expended by Commission staff in the review and investigation of Complaint P-18-015, and other expenses incurred by the Commission in the prosecution and resolution of the Complaint.

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 § 30-40-18(a), (b) and (f) provides:
 - (a) “Every person licensed as a broker under the provisions of this article who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain one or more trust fund accounts in a recognized financial institution and shall place all funds therein: Provided, That nothing contained herein shall require a broker to maintain a trust fund account if the broker does not hold any money in trust for another party.
 - (b) Funds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds and money held in escrow at closing.
 - (f) The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: Provided, That nothing contained herein prevents the broker from depositing a maximum of one hundred dollars of his or her own money in the trust fund account to maintain a minimum balance in the account.”
4. Respondent’s failure to deposit the initial complainant’s earnest money and the commingling of the earnest money with other accounts violates W. Va. Code §§ 30-40-18(a) and

(f), which violation in turn breaches the fiduciary duty owed to his principal under W. Va. Code § 30-40-19(a)(31).

5. W. Va. Code § 30-40-19(a)(8) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee “fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others.”

6. W. Va. Code § 30-40-19(a)(9) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee “commingles moneys belonging to others with his or her own funds.”

7. Respondent’s failure to account for or to repay the earnest money and his allowing the earnest money to be commingled with other funds violates W. Va. Code §§ 30-40-19(a)(8) and (9).

8. 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.”

9. Respondent William Shultz’s admission regarding the veracity of many of the allegations as to Christopher Brian Shultz evidences his failure to supervise him, constituting a violation of West Virginia Code § 30-40-19(a)(30).

10. 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 William Shultz, by signing below, agrees to the following:

1. Respondent is aware of his right to be 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.

ORDER

On the basis of the foregoing, the Commission hereby **ORDERS** as follows with respect to Respondent William Shultz:

1. Respondent William Shultz is hereby **REPRIMANDED** and is **ORDERED** to pay to the State of West Virginia, by and through the Commission, a fine in the amount of Two Thousand Dollars (\$2,000.00) for the violations set forth above.
2. Respondent shall pay **RESTITUTION** to the initial Complainants in the amount of Forty Five Thousand Dollars (\$45,000.00).
3. The restitution amount may be paid in accordance with such payment schedule as may be agreed to by the Respondent and initial Complainants, and an accounting shall be signed by one or both of the initial Complainants and provided to the Commission on or before December 31, 2018, and, if not paid in full at that accounting, again on March 31 and June 30, 2019.

4. A copy of this Consent Decree shall be sent via certified mail to the initial Complainants.
5. Respondent's FY2019-2020 license shall not be renewed unless and until the Commission has received an accounting which provides proof that the restitution amount has been paid in full or a document stating that the timeframe for payment was extended or that the full restitution payment was forgiven by the initial Complainants.
6. Respondent shall pay administrative costs associated with this matter in the amount of One Thousand Dollars (\$1,000.00).
7. Respondent's FY2018-2019 license shall not be renewed unless and until the amount of his fine and the administrative costs agreed to herein, a total of Three Thousand Dollars (\$3,000.00), has been paid in full. Such amount 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.
8. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, by Respondent shall constitute a violation by Respondent William Shultz of an Order of the Commission and upon Board action, result in the summary suspension of Respondent William Shultz's license until such time as Respondent William Shultz achieves full compliance.

The Commission shall immediately notify Respondent via certified mail of the alleged violation and whether there is a summary suspension of his license. Respondent may request reinstatement of his license, which shall be probationary, 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 the violating Respondent's license, he may request a hearing to seek reinstatement of his 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 William Shultz based upon his violation of this Order of the Commission.

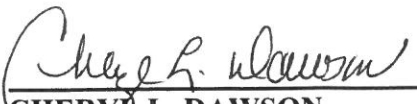
AGREED TO BY:


WILLIAM STEPHEN SHULTZ

June 15, 2018
DATE

ENTERED into the records of the Real Estate Commission this 20th day of June, 2018.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL L. DAWSON,
Its Chairperson