

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

**v.**

**Formal Complaint  
No. P-18-018**

**MICHAEL P. THOMPSON,  
Licensed Associate Broker  
License No. WV-0009727**

*Respondent.*

**CONSENT DECREE**

Respondent, Michael P. Thompson (“Respondent”), and the West Virginia Real Estate Commission (“Commission”) enter into the following Consent Decree for the purpose of resolving the above-styled complaint. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

**FINDINGS OF FACT**

1. Respondent is a licensed real estate associate broker in the State of West Virginia, holding license number WV-0009727. Respondent is licensed with Realcorp, LLC, which specializes in commercial and industrial real estate transactions.

2. On or about November 13, 2013, Respondent entered into an “Exclusive Brokerage Agreement to Sell or Lease” with JAK Properties, Inc., for the purpose of listing for sale a piece of property located at 13 Kanawha Boulevard, West, Charleston, West Virginia.

3. The agreement contained the following language:

The initial term of this agreement shall be for a six (6) month period beginning November 7, 2013 and ending, May 6, 2014. After the initial term, this agreement shall continue on a month-to-month basis until terminated in writing by either party with such termination being effective on the last day of the month in which said termination notice is given.

4. Following the end of the initial six-month term of the listing, neither party terminated the agreement in writing. Respondent thereafter continued to actively market the property.

5. In or around June of 2017, JAK Properties, Inc. engaged in discussions with its lender (United Bank) and the third-party lienholder on the subject property to enter into a deed in lieu of foreclosure transaction. Respondent became aware of these discussions and, in August of 2017, asserted a right to collect a commission from a transaction in which title was transferred with the agreement of the seller via assignment of the lender’s interest in the deed of trust and eventual private foreclosure sale to the assignee of the lender’s interest in the deed of trust.

6. JAK Properties, Inc. disputed Respondent’s right to collect a commission from a transaction in which title was transferred with the agreement of the seller via assignment of the lender’s interest in the deed of trust and eventual private foreclosure sale to the assignee of the lender’s interest in the deed of trust, and ultimately terminated the listing agreement in writing.

7. On January 31, 2018, JAK Properties, Inc. filed a Formal Complaint with the Commission against Respondent, contending that the above-quoted provision in the listing agreement is unlawful. By letter dated March 8, 2018, Respondent, by counsel, responded to the Formal Complaint. By letter dated March 20, 2018, JAK Properties, Inc. submitted a reply to Respondent's response.

8. The Commission considered all the filings and the applicable law, and at its March 21, 2018, meeting, determined that there was probable cause to proceed with this Formal Complaint.

### CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq., the Commission is charged with the regulation of the practice of real estate brokerage in this State, and, thus, has jurisdiction over this Formal Complaint.

2. In relevant part, West Virginia Code § 30-40-7(l) authorizes the Commission to impose sanctions for violations of the *West Virginia Real Estate License Act*, including, but not limited to, an administrative fine not to exceed \$1,000 per day per violation; probation; revocation; suspension; restitution; additional education; denial of future license; downgrade of license; reprimand; and/or the return of compensation collected from an injured consumer.

3. West Virginia Code § 30-40-19(a)(19) authorizes the Commission to sanction a licensee if the licensee “[v]iolates any of the provisions of [the *West Virginia Real Estate License Act*], any rule or order or final decision issued by the commission.”

4. West Virginia Code § 30-40-26(b) provides as follows:

Any contract in which a broker is obligated to represent a principal to a real estate transaction shall contain a definite expiration date, and no provision may be included in any contract whereby the principal is required to notify the broker of his or her intention to cancel the contract after the definite expiration date.

5. Respondent's "Exclusive Brokerage Agreement to Sell or Lease" in which it agreed to represent JAK Properties, Inc. contained a provision whereby the agreement continued on a month-to-month basis until terminated in writing by either party. There is probable cause to conclude that Respondent's inclusion of the provision its listing agreement violates West Virginia Code § 30-40-26(b) and subjects him to discipline by the Commission.

### **CONSENT**

By signing below, Respondent agrees to the following:

8. Respondent has had the opportunity to consult with 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 proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

9. Respondent acknowledges the Findings of Fact set forth above, admits that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consents to the entry of the following Order:

### **ORDER**

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

1. Respondent shall pay a fine in the amount one-thousand dollars (\$1,000.00) payable to the State of West Virginia.

3. Respondent shall also reimburse the Commission its costs associated with this Complaint and its attorney fees, in the amount of seven-hundred forty-one dollars (\$741.00).


5. The total payment of one-thousand seven-hundred forty one dollars (\$1,741.00) shall be paid within thirty (30) days of the entry of this Consent Decree by the Commission by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office.

6. Respondent shall immediately take action necessary to ensure that its current and future agreements comply with West Virginia Code § 30-40-26(b).

7. 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 result in the summary suspension of Respondent's license until such time as Respondent achieves full compliance. 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. In the event Respondent contests the alleged violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent is entitled to a hearing to challenge the alleged violation. 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.

**CONSENT DECREE AGREED TO BY:**

  
\_\_\_\_\_

**Michael P. Thompson**

4/10/2018

\_\_\_\_\_  
**Date**

**ENTERED into the records of the Real Estate Commission this:**

10 day of April, 2018.

**WEST VIRGINIA REAL ESTATE COMMISSION,**

By:   
\_\_\_\_\_

**Cheryl Dawson, Chair**