

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. P-19-013

BETTY J. MOORE,
Licensed Associate Broker
License No. WV-0024045

Respondent.

CONSENT DECREE

RECEIVED

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W.V. REAL ESTATE
COMMISSION

Respondent Betty J. Moore (“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-0024045.
2. On February 26, 2019, the Commission received a Formal Complaint against Respondent by Dorothy R. Smith and William F. Smith (collectively, the “Smiths”). At all times relevant, the Smiths were the owners of real estate located at 25 Flat Top Lake, Ghent, West Virginia (“subject property”).

3. On August 16, 2018, Michael and Natalie Cochran and Larry and Daphne Jessup entered into contract to purchase the subject property. Respondent served as the agent for Michael and Natalie Cochran (“Buyers”). Upon information and belief, the Buyers intended to purchase the property for Natalie Cochran’s parents, Larry and Daphne Jessup.

4. The contract price for the property was \$800,000, all cash, with no contingencies.

5. According to the contract, the Buyers agreed to pay the Smiths earnest money in the amount of \$10,000, which Respondent delivered to the Smiths by check on or about August 17, 2018. This earnest money check was returned for insufficient funds, resulting in Respondent delivering \$10,000 in cash to the Smiths on August 20, 2018.

6. The Buyers were unable to present the funds necessary to close the transaction on multiple scheduled closing dates throughout September and early October 2018. While the parties communicated by phone and text messaging regarding the changes to the closing dates, Respondent did not reduce these changes to writing for the parties’ agreement.

7. The Smiths notified Respondent that they had made an offer on a lot in Myrtle Beach, South Carolina, which was contingent on the Buyers closing the transaction on the subject property.

8. Respondent contacted the Buyers, and on or about October 5, 2018, the Buyers sent the Smiths \$137,500.00 through Larrick Law Office in Beckley, West Virginia. These funds were intended to be applied toward the Smiths’ purchase of a lot in Myrtle Beach, and were to be applied to the purchase price of the subject property. These funds were deposited directly into the Smith’s banking account, with no written modification or addendum to the purchase agreement.

9. On or about October 16, 2018, the Smiths and the Buyers signed an Addendum to Purchase Agreement, prepared by Respondent, which stated as follows:

Buyers shall have an extension to close the [subject property] on or before 10/19/18 without penalty charges. Beginning on 10/22/18, \$1,000 per diem will be added daily for every business day that property has not closed. The penalty charges will be due upon closing.

10. The Buyers never closed on the subject property.

11. At its regular meeting on April 16, 2019, the Commission considered all of the information received on the matter and determined that there was probable cause to conclude that Respondent's above-referenced conduct violated the *West Virginia Real Estate License Act*.

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(1) 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 provisions of this article, any rule or any order or any final decision issued by the commission[.]”

4. West Virginia Code § 30-40-26(f) states that “[e]very licensee shall make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.”

5. West Virginia Code § 30-40-18(b) requires that earnest money deposits be deposited into a licensed real estate broker’s trust account.

6. Respondent’s failure to amend the purchase agreement to address the changes to the closing date and the Smiths’ receipt of the \$137,500.00 from the Buyers violates West Virginia Code §§ 30-40-26(f), and renders her license subject to discipline by the Commission.

7. Additionally, Respondent’s failure to place the \$10,000 earnest money deposit and the \$137,500.00 from the Buyers into her broker’s trust account violates West Virginia Code § 30-40-18(b), and renders her license subject to discipline by the Commission.

CONSENT

By signing below, Respondent agrees to the following:

1. 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 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 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 is hereby reprimanded.
2. Within 6 months of entry of this Consent Decree, Respondent shall complete a continuing education course on the subject of contract law. This requirement is in addition to the annual continuing education requirement for all licensees.
3. Respondent shall reimburse the Commission its costs associated with this Complaint and its attorney fees, in the amount of \$676.00.
4. The total payment of \$676.00 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.
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 result in further disciplinary action, including, but not limited to, suspension of Respondent's license. The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree. In the event Respondent contests the alleged violation of the Consent Decree, 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:

Betty J. Moore
Betty J. Moore

6/28/19
Date

ENTERED into the records of the Real Estate Commission this:

1st day of October, 2019.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: Jerry A. Forren
Jerry A. Forren, Executive Director