

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

**V.**

**Formal Complaint No. P-23-039**

**CLARENCE EDWARD HAYMAKER  
Licensed Real Estate Broker  
License No. WVB220300848**

**And**

**PATRICK SCHNEBLE  
Licensed Real Estate Salesperson  
License No. WV0028532**

*Respondents.*

**CONSENT DECREE**

Respondent Clarence Edward Haymaker (“Respondent Haymaker”), Respondent Patrick Schneble (“Respondent Schneble”), 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 and stipulate 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 Haymaker is a licensed real estate broker in the State of West Virginia, holding license number WVB220300848. As of September 8, 2022, Respondent Haymaker is the responsible broker for RE/MAX 1<sup>st</sup> Realty in Charles Town, West Virginia.

2. Respondent Schneble is a licensed real estate salesperson in the State of West Virginia, holding license number WV0028532. Respondent Schneble is licensed with RE/MAX 1<sup>st</sup> Realty and practices under the supervision of Respondent Haymaker.

3. On or about March 9, 2023, the Commission received a Formal Complaint filed against the Respondents by Eric Arkfeld. Mr. Arkfeld is a licensed real estate appraiser in the State of West Virginia.

4. Mr. Arkfeld's complaint alleges that Respondents have manipulated appraiser independence requirements in federal law by including language in real estate sales contracts that prohibits him from accessing the subject property to perform an appraisal.

5. Mr. Arkfeld included with his complaint excerpts from three separate real estate sales contracts involving Respondents' clients. Each contract contains language prohibiting Mr. Arkfeld from accessing the subject property. In two of the three contracts, Melody Rhinehart is also prohibited from accessing the subject property. Upon information and belief, Ms. Rhinehart is also a licensed real estate appraiser. Two of the three transactions occurred prior to Respondent Haymaker becoming broker for RE/MAX 1<sup>st</sup> Realty.

6. Respondents submitted a response to the Formal Complaint in which they do not dispute the facts alleged by Mr. Arkfeld, that is, they do not dispute including language in sales contracts that prohibits Mr. Arkfeld from entering the subject property. Indeed, Respondents state the following: "[Respondent Schneble] consulted with multiple lenders over the years who advised that we cannot pick our appraisers, but we absolutely have the right to prevent an appraiser from being involved in the transaction and to write an addendum stating that the individual is not allowed on the property."

7. Respondents acknowledge in their response that the basis for prohibiting Mr. Arkfeld from accessing the subject properties is that Mr. Arkfeld rendered appraisal reports in the past that reflect values below what Respondents believe was the correct value of the property at issue. Respondents contend that they are merely executing their fiduciary responsibility to their clients by excluding Mr. Arkfeld from performing appraisals on the real estate that their clients are seeking to purchase or sell.

8. At its regular meeting on June 28, 2023, the Commission considered all of the information received on the matter and determined that there was probable cause to conclude that Respondents' 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(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)(37) authorizes the Commission to sanction a licensee if he or she “[e]ngages in any act or conduct which constitutes or demonstrates . . . improper dealing[.]”

4. Appraiser Independence Requirements are set forth in 15 U.S.C. § 1639e, known as the federal Truth in Lending Act. The requirements, in relevant part, are as follows:

(a) In general

It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

(b) Appraisal independence

For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, *coerces*, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

15 U.S.C. § 1639e (emphasis added).

5. Federal regulation, 12 C.F.R. § 226.42(b)(1), defines a “covered person” to include any person who provides “settlement services” as that term is defined in 12 U.S.C. § 2602(3). The

definition of “settlement services” includes, among other things, “services rendered by a real estate agent or broker.” Accordingly, Commission licensees are covered persons under this law.

6. Federal regulations provide as follows with respect to “coercion”:

(c) Valuation of consumer's principal dwelling—

(1) Coercion. In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

*(D) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and*

(E) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

12 C.F.R. § 226.42(c) (emphasis added).

7. Therefore, a Commission licensee potentially violates the Appraiser Independence requirements when he or she excludes an appraiser from conducting an appraisal on the subject property because that appraiser, in the past, rendered a value that did not meet a “predetermined threshold,” i.e., the contract price.

8. Respondents' conduct in prohibiting Mr. Arkfeld from performing appraisals on real estate that their clients sought to purchase or sell because of their belief that Mr. Arkfeld's past appraisals were incorrectly low, in addition to potentially violating the Appraiser Independence Requirement in the federal Truth in Lending Act, may also constitute "improper dealing" under West Virginia Code § 30-40-19(a)(37), if proven at hearing.

### **CONSENT**

By signing below, Respondents agree to the following:

1. Respondents have had the opportunity to consult with counsel and execute 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 Respondents to make this settlement other than as set forth herein. Respondents acknowledge that they may pursue this matter through appropriate administrative proceedings and are aware of their legal rights regarding this matter, but intelligently and voluntarily waive such rights.

2. Respondents acknowledge the Findings of Fact and Conclusions of Law set forth above and consent to the entry of the following Order. However, Respondents dispute that their actions violate the Appraiser Independence Requirements in the federal Truth in Lending Act or the West Virginia Real Estate License Act, but agree to the entry of this Consent Decree in order to resolve this matter without the expense and uncertainty of further litigation.

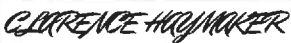

### **ORDER**

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

1. Respondents shall cease and desist from initiating or encouraging the exclusion of any licensed real estate appraiser from performing an appraisal on real estate that their clients seek to purchase or sell, when the prohibition is based on Respondents' belief that the appraiser has, in the past, rendered an appraisal on any property that was below a predetermined threshold or contract price. Nothing in this paragraph shall be construed as prohibiting the exclusion of an appraiser based on upon reasons other than Respondents' belief that the appraiser has, in the past, rendered an appraisal on any property that was below a predetermined threshold or contract price.

2. 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 Respondents' licenses. The Commission shall immediately notify Respondents via certified mail of the alleged violation of the Consent Decree. In the event Respondents contest the alleged violation of the Consent Decree, they are entitled to a hearing to challenge the alleged violation.

**CONSENT DECREE AGREED TO BY:**

 CLARENCE E. HAYMAKER	<small>dotloop verified 10/23/23 7:44 AM EDT PUIT-EQG9-MODN-4090</small>	_____
		<b>Date</b>
 PATRICK SCHNEBLE	<small>dotloop verified 10/22/23 11:35 PM EDT RNJF-XXKR-BTXS-0F3G</small>	_____
		<b>Date</b>

ENTERED into the records of the Real Estate Commission this:

23<sup>rd</sup> day of October, 2023.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:   
Keri L. Ferro, Executive Director