

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,  
*Complainant,*

v.

KENNETH F. LOWE, JR.,  
Licensed Real Estate Broker  
License No. WVB200300629  
*Respondent.*

RECEIVED  
MAY 05 2022  
Formal Complaint No. C-22-027  
West Virginia  
Real Estate Commission

CONSENT DECREE

Respondent Kenneth F. Lowe, Jr. (“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 broker in the State of West Virginia, holding license number WVB200300629.
2. At all times relevant, Respondent served as the responsible broker for Cricky, Inc. dba Shultz Realty, located in Charles Town, West Virginia.
3. On September 28, 2021, Christopher (“Cricky”) Shultz, the owner of Shultz Realty, passed away. After Cricky’s passing, it was discovered that approximately \$75,000 was missing from Shultz Realty’s rental trust account.

4. On or about October 27, 2021, Respondent's son, Tripp Lowe, contacted the Commission's investigator, Robert Rucker, to report that funds were missing from the trust account. Mr. Lowe informed Investigator Rucker that Shultz Realty intended to repay the missing funds by obtaining a loan for \$80,000 to make payments to the owners of the missing funds. Mr. Lowe provided Investigator Rucker with a report that listed those people that were owed money and the amount due to each. The owners were also notified that Shultz Realty was no longer managing rental property.

5. On or about November 29, 2021, Investigator Rucker contacted Mr. Lowe to request a meeting and status update regarding the repayments with him, Respondent, and Charles Shultz, licensed salesperson with Shultz Realty and Cricky's brother. Investigator Rucker also requested copies of bank statements for the trust account from January through November of 2021.

6. The aforementioned meeting occurred on December 14, 2021. Prior to the meeting, Mr. Lowe informed Investigator Rucker that all of the owners signed releases and all those who were owed money were paid. Mr. Lowe also provided Investigator Rucker with an updated list demonstrating that final payments were made, as well as the requested bank statements.

7. At the December 14, 2021, Respondent informed Investigator Rucker that he authorized Cricky's wife, Michele Shultz, to have signature authority on the trust account. Ms. Shultz did not hold a real estate license, and thus, was not permitted to have signature authority on the trust account pursuant to West Virginia Code § 30-40-18(h).

8. Upon review of the records, Investigator Rucker discovered that, from January through November of 2021, eighty (80) checks were written to Cricky and were cashed for a total of

\$80,325. Ms. Shultz signed each of the checks, in addition to six (6) other checks, which were written to Ms. Shultz for “pay” and signed by her for a total of \$10,500.

9. During the meeting, Respondent acknowledged that he did not reconcile the trust account bank statement, and Mr. Shultz stated that no one did so. Respondent stated that he asked Mr. Shultz if the trust account funds were in the account and that Mr. Shultz confirmed that they were without verifying the same.

10. On January 3, 2022, the Commission initiated the present Complaint against Respondent alleging violations concerning failure to maintain complete authority and control over all aspects of the trust fund account including signature authority, failure to maintain adequate trust fund account records, and breach of fiduciary duty owed in real estate transactions.

11. On January 20, 2022, Respondent submitted a written response to the complaint. Respondent stated that he was aware that Ms. Shultz was a signatory to the operating account, but did not realize that she was a signatory to any trust account. Respondent asserted that once he learned that unauthorized distributions had occurred from the trust account, he and Mr. Shultz informed the Commission, and he, Mr. Shultz and Mr. Lowe obtained a loan and paid those customers owed due to the missing funds in the trust account. Respondent acknowledged his mistake in relying on others to make sure that Shultz Realty’s matters were being properly handled.

12. At its regularly-scheduled meeting on February 16, 2022, the Commission determined there was probable cause to conclude that Respondent violated the *West Virginia Real Estate License Act*, and authorized the proposal of this Consent Decree.

## 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 § 30-40-18(h) provides that a broker “shall be the designated trustee of the [trust fund] account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority.”

4. West Virginia Code § 30-40-19(a)(29) authorizes the Commission to sanction a licensee if the licensee “[f]ails to maintain adequate records on the broker’s ‘trust fund account’[.]”

5. Grounds exist to sanction Respondent under West Virginia Code § 30-40-18(h) and West Virginia Code § 30-40-19(a)(29).

## 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 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.

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:

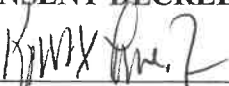
**ORDER**

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

1. Respondent is hereby reprimanded.
2. Within nine (9) months of entry of this Consent Decree, Respondent shall complete nine (9) hours of continuing education of the Broker Course Module 3 on the subject of trust topics. This requirement is in addition to the annual continuing education requirement for all licensees necessary for license renewal. Respondent shall submit proof of completion of the nine (9) hours of continuing education to the Commission.
3. Respondent shall reimburse the Commission its costs associated with this Complaint, which include its attorney fees totaling \$403.
4. Respondent shall pay the costs within thirty (30) days of the entry of this Consent Decree 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. 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.

**CONSENT DECREE AGREED TO BY:**

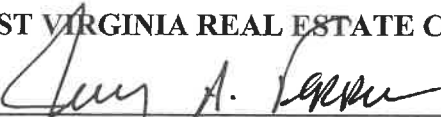
  
\_\_\_\_\_  
Kenneth F. Lowe, Jr., Broker

  
\_\_\_\_\_  
Date

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

 day of , 2022.

WEST VIRGINIA REAL ESTATE COMMISSION,

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