

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

West Virginia Real Estate Commission,

Complainant,

V.

Formal Complaint No. C-23-018

**Susan W. DeTemple,
Licensed Real Estate Broker
License No. WV0001938**

Respondent.

CONSENT DECREE

Respondent Susan W. DeTemple (“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 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 is a licensed real estate broker in the State of West Virginia, holding license number WV0001938.
2. At all times relevant, Respondent served as the broker for RD Properties, Inc., located in Huntington, West Virginia.
3. On December 14, 2022, the Commission initiated the present Formal Complaint against Respondent concerning Respondent’s trust account. Specifically, during an August 19, 2022,

audit, the Commission's auditor/investigator, Robert Plume, met with Respondent's office manager and noted that Respondent's property management trust account could not be verified or reconciled because of an update to Respondent's trust account software. Respondent was not present for the August 19, 2022, audit. Mr. Plume gave Respondent an August 31, 2022, deadline to provide the required trust account reports.

4. Respondent did not provide any reports to Mr. Plume by the August 31, 2022, deadline. Mr. Plume emailed the office manager on September 9 requesting an update.

5. Respondent did not reply to Mr. Plume's September 9 email. By September 27, Respondent still had not provided the reports to Mr. Plume, prompting Mr. Plume to send another email.

6. On October 7, Respondent's office manager emailed Mr. Plume and stated that she had not been able to provide the required trust account reports because of ongoing issues with the software vendor and the lack of assistance within the brokerage.

7. Mr. Plume emailed Respondent's office manager on November 15 and November 30 asking for an update on the reports required in the August 19, 2022, audit that had yet to be provided.

8. As of the Commission's December 14, 2022, Respondent had not provided the reports, causing the initiation of the present Complaint against Respondent.

9. Following the initiation of the Complaint on December 14, the office manager emailed the reports to Mr. Plume on February 15, 2023, the deadline for Respondent's response to the Complaint.

10. At its February 22, 2023, meeting, 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*, and authorized the proposal of this Consent Decree to resolve the 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 he or she “[v]iolates any provisions of this article, any rule or any order or final decision issued by the commission[.]”

4. West Virginia Code § 30-40-18(i) states as follows:

The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received and other pertinent information concerning the transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.

5. Similarly, the Commission's Legislative Rule requires the following:

Records. -- Every broker shall maintain all records required by the Commission for a minimum of five (5) years. Required records include but are not limited to books, contracts, closing documents, trust account records, and other documents necessary for the Commission to conduct its audits and investigations. These records may be kept in any electronic format that is accessible to the Commission. The records shall be provided to the Commission upon request and shall also be open to inspection by the Commission through its duly authorized representative(s) at the broker's usual place of business and at all times during regular business hours. The broker shall provide sufficient space to permit the Commission's inspection of the records without interference by other users of the property.

W.Va. Code R. § 174-1-10.3.

6. Respondent's failure to provide her property management trust account records until February 15, 2023, approximately five months after the Commission's audit, violates West Virginia Code § 30-40-18(i) and 174 CSR 1 § 10.3, 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. Respondent shall pay a fine in the amount of \$1,000.00.
3. Respondent is assessed the Commission's costs, to include its attorney fees, in the amount of \$420.00.
4. Within six months of the entry of this Consent Decree, Respondent shall complete the "Module 3" of the required pre-license education course for brokers. Respondent shall submit to the Commission documentation evidencing completion of the course within the timeframe set forth herein.
5. The total payment of \$1,420.00 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. 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:

Susan W. DeTemple
Susan W. DeTemple

June 02, 2023
Date

ENTERED into the records of the Real Estate Commission this:

6th day of *June*, 2023.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: *Keri L. Ferro*
Keri L. Ferro, Executive Director