

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. P-23-017

**ELIZABETH MAY FIDLER,
Licensed Real Estate Broker
License No. WV0006719**

and

**DONELL HOLBERT,
Licensed Real Estate Salesperson
License No. WVS210301750**

Respondents.

CONSENT DECREE

Respondent Elizabeth May Fidler (“Respondent Fidler”), Respondent Donell Holbert (“Respondent Holbert”), 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 as 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 Fidler is a licensed real estate broker in the State of West Virginia, holding license number WV0006719. Respondent Fidler is the responsible broker for Castles and Creeks Real Estate Company, LLC, in Summersville, West Virginia.

2. Respondent Holbert is a licensed real estate salesperson in the State of West Virginia, holding license number WVS210301750. Respondent Holbert is licensed with Castles and Creeks Real Estate Company, LLC, and practices under Respondent Fidler's supervision.

3. On or about November 21, 2022, the Commission received a Formal Complaint against respondents from Scott Hammerbeck and Karen Wilson of Elkview, West Virginia, concerning Mr. Hammerbeck's and Ms. Wilson's efforts to purchase a property located at 378 Fire Tower Road, Craigsville, West Virginia.

4. Respondent Holbert represented Mr. Hammerbeck and Ms. Wilson as their buyers' agent.

5. Respondent Fidler was the listing agent for 378 Fire Tower Road, and, therefore, represented the seller, Kim Mills.

6. On January 4, 2022, the parties entered into a contract for the purchase of 378 Fire Tower Road. Mr. Hammerbeck and Ms. Wilson paid a \$500 earnest money deposit, as required under the contract.

7. Shortly thereafter, despite having a contract in place, the seller decided not to go through with the sale and removed the property from the market. The earnest money was returned to Mr. Hammerbeck and Ms. Wilson.

8. Despite practicing in the same brokerage, respondents completed two separate Notice of Agency Relationship Forms.

9. Respondent Fidler signed a Notice of Agency Relationship Form on August 9, 2021, indicating she represented only the Seller. The Seller signed this form, but the signature is not dated.

The Buyers [Mr. Hammerbeck and Ms. Wilson] signed Respondent Fidler's form on January 4, 2022.

10. Respondent Holbert signed a different Notice of Agency Relationship Form on January 4, 2022, indicating she represented only the Buyer. The Buyers [Mr. Hammerbeck and Ms. Wilson] signed this form on January 1, 2022. The Seller signed this form on January 4, 2022.

11. At no time did either respondent present the either party with a new Notice of Agency Form indicating that respondents were "dual agents," obtaining the parties' consent to respondents' representation of both the Seller and Buyer in this transaction.

12. At its January 18, 2023, meeting, the Commission considered all of the information received on the matter and determined that there was probable cause to conclude that Respondents' conduct violated the *West Virginia Real Estate License Act*. The Commission authorized the proposal of this Consent Decree to resolve the matter.

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)(12) authorizes the Commission to sanction a licensee if the licensee “[f]ails to disclose, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, buyer or both[.]”

4. West Virginia Code § 30-40-19(a)(19) authorizes the Commission to sanction a licensee if the licensee “[v]iolates . . . any rule . . . issued by the commission[.]”

5. The Commission’s Legislative Rule provides as follows with respect to agency consent and disclosure:

16.2. Dual agency. -- A licensee may not be the agent for both the buyer and the seller without first obtaining the written consent of both the buyer and the seller.

16.3. Corrected form. -- If change in a licensee’s agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a corrected form and immediately present it to all parties to the transaction. The corrected form must be dated and must be acknowledged in writing by all parties.

W.Va. Code R. §§ 174-1-16.2 and 16.3.

6. West Virginia Code § 30-40-19(a)(37) authorizes the Commission to sanction a licensee if the licensee “[e]ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing[.]”

7. Respondents’ conduct violates West Virginia Code §§ 30-40-19(a)(12) and (37), as well as sections 16.2 and 16.3 of the Commission’s Legislative Rule, 174 CSR 1.

CONSENT

By signing below, Respondents agree to the following:

1. Respondents have 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 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 set forth above, admit that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consent to the entry of the following Order:

ORDER

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

1. Respondents are reprimanded.
2. Respondent Fidler is fined \$2,000, which shall be paid to the State of West Virginia and sent to the Commission's office within thirty (30) days of the entry of this Consent Decree.
3. Respondent Holbert is fined \$1,000, which shall be paid to the State of West Virginia and sent to the Commission's office within thirty (30) days of the entry of this Consent Decree.
4. Both respondents shall complete a continuing education course on the subject of agency within 6 months of the entry of this Consent Decree. This course is in addition to the seven (7) hours required for annual renewal of respondents' respective licenses.
5. Respondents are assessed the Commission's costs, including its attorney fees, in this matter, totaling \$784.00. Each respondent shall bear one-half of this amount, \$392.00, which shall be

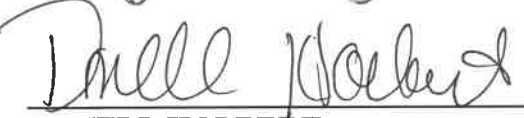
paid to the State of West Virginia and sent to the Commission's office within thirty (30) days of the entry of this Consent Decree.

6. In the event that either respondent fails to comply with any term of this Consent Decree, without the prior written approval from the Commission, the non-complying respondent shall be subject to further discipline, including but not limited to immediate suspension of the respondent's license until such time as the respondent comes into compliance.

CONSENT DECREE AGREED TO BY:


ELIZABETH MAY FIDLER

3-2-2023
Date

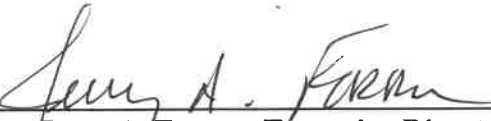

DONELL HOLBERT

3/2/2023
Date

ENTERED into the records of the Real Estate Commission this:

9th day of March, 2023.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
Jerry A. Forren, Executive Director