

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

v.

**Formal Complaint No. P-19-001**

**CONNIE LOU PERRY,  
Licensed Broker  
License No. WV0003186**

**and**

**LOUIS DEAN PERRY,  
Licensed Associate Broker  
License No. WV0017489**

*Respondents.*

**CONSENT DECREE**

Respondents Connie Lou Perry (“Respondent Connie Perry”) and Louis Dean Perry (“Respondent Dean Perry”), 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 Respondents agree 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 Connie Perry is a licensed real estate broker in the State of West Virginia, holding license number WV0003186. Respondent Connie Perry is the broker of record for Perry Realty in Berkeley Springs, West Virginia.



State of West Virginia  
Office of the Attorney General  
812 Quarrier Street, 2nd Floor  
Charleston, WV 25301

RECEIVED

OCT 26 2018

W.VA. REAL ESTATE  
COMMISSION

Patrick Morrisey  
Attorney General

(304) 558-8989  
Fax (304) 558-4509

October 9, 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Connie L. Perry, Broker  
Perry Realty  
71 N. Washington Street  
Berkeley Springs, WV 25301

Re: *W.Va. Real Estate Commission v. Connie L. Perry and Louis Dean Perry,*  
*Formal Complaint No. P-19-001*

Dear Ms. Perry:

I represent the West Virginia Real Estate Commission and assist with the handling of its Formal Complaints. As you're aware, the Commission recently determined that probable cause exists to conclude that both your and Louis Dean Perry's alleged conduct in the above-referenced complaint violated the *West Virginia Real Estate License Act*. However, in order to resolve this complaint without proceeding through the formal hearing process, the Commission has authorized me to offer the enclosed Consent Decree to you and Mr. Perry.

You will find that the Consent Decree contains specific findings related to the Complaint, as well as an agreed-to penalty for you and Mr. Perry. Please be aware that should the matter go to formal hearing, the Commission may expand the violations alleged. And, if the Commission prevails at the hearing, it may impose sanctions more severe than those provided in this Consent Decree and assess additional administrative costs.

Please review the Consent Decree, and, if acceptable to you and Mr. Perry, please sign and return it to the Commission no later than twenty (20) days from receipt of this correspondence. If you have any questions, please do not hesitate to contact me at (304) 558-8989.

Sincerely,

  
Anthony D. Eates II  
Deputy Attorney General

cc. Jerry A. Forren, WVREC

2. Respondent Dean Perry is a licensed real estate associate broker in the State of West Virginia, holding license number WV0017489. Respondent Dean Perry is licensed with Perry Realty in Berkeley Springs, West Virginia, under the supervision of Respondent Connie Perry.
3. Respondent Dean Perry was the listing agent on a property located at 147 Tower Circle, Berkeley Springs, West Virginia. The seller was Rebekah L. Metzler.
4. On or about June 7, 2018, Maureen Thomas and Ms. Metzler entered into a sales contract for the 147 Tower Circle property at a price of \$125,000, with an initial closing date of July 12, 2018. According to the contract, Respondent Dean Perry served as a dual agent for the parties.
5. Under the contract, Ms. Thomas made a deposit in the amount of \$500 into Respondent Connie Perry's escrow trust account. With respect to the deposit, the contract provided that "such deposit shall be held by Agent until contract is ratified at which time Agent will deposit in escrow until the date of settlement and then applied to the purchase price, or returned to Purchaser if the title to the property is not marketable."
6. Under the contract, the sale was contingent upon satisfactory results from a wood-destroying insect inspection and radon testing. The cost for the wood-destroying inspect inspection was to be paid by the seller, Ms. Metzler. The cost of the radon testing was to be paid by the purchaser, Ms. Thomas.
7. The sale did not proceed to closing. Respondents indicate that, on or about June 29, 2018, Ms. Thomas requested to be released from the contract due to "health issues." Ms. Thomas indicates that she did not request to be released from the contract, but, rather, requested to delay the closing date.

8. On or about June 29, 2018, Respondent Dean Perry sent Ms. Thomas a "Release of Obligations/Earnest Money Deposit Created Under Contract of Sale" for her signature. This form indicated that the \$500 deposit previously made by Ms. Thomas would be used to pay for the wood-destroying insect inspection and radon testing, with any remainder being paid to Ms. Metzler. However, this form was never signed by any party.

9. Nevertheless, Respondents used the \$500 deposit to pay \$58.30 for the wood-destroying insect inspection; \$125 for the radon testing; and paid the remainder of \$316.70 to Ms. Metzler.

10. On August 20, 2018, Ms. Thomas filed a Formal Complaint with the Commission against Respondents.

11. By separate letters dated September 7, 2018, Respondents submitted written responses to the Formal Complaint, denying any wrongdoing.

12. The Commission considered all the filings and the applicable law, and at its September 19, 2018, meeting, determined that there was probable cause to proceed with this Formal 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(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 of the provisions of this article, any rule or any order or final decision issued by the commission.”

4. West Virginia Code § 30-40-18(f) states that

[t]he broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: *Provided*, That nothing contained herein prevents the broker from depositing a maximum of one hundred dollars of his or her own money in the trust fund account to maintain a minimum balance in the account.

5. 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.”

6. The sales contract signed by Ms. Metzler and Ms. Thomas did not permit the \$500 deposit to be used to pay for the wood-destroying insect inspection, the radon testing, or to be paid to Ms. Metzler under the facts of this case. Furthermore, the “Release of Obligations/Earnest Money Deposit Created Under Contract of Sale” sent to Ms. Thomas, which did call for the deposit to be used for such payments, was never signed. Accordingly, there was no written authorization for the trust funds to be used in the manner used by Respondent Connie Perry.

7. Accordingly, by using the \$500 deposit to pay for the wood-destroying insect inspection and the radon testing, and returning the remainder to Ms. Metzler, Respondent Connie Perry utilized trust funds in a manner inconsistent with her fiduciary obligations in relation to the trust funds, in violation of West Virginia Code § 30-40-18(f).

8. In addition, by using trust funds to pay for inspection and testing without written authorization, Respondent Connie Perry demonstrated bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing, in violation of West Virginia Code § 30-40-19(a)(37).

9. By relying upon an unsigned "Release of Obligations/Earnest Money Deposit Created Under Contract of Sale" to advise his responsible broker to use the \$500 deposit to pay for the wood-destroying insect inspection, the radon testing, with the remainder to be paid to Ms. Metzler, Respondent Dean Perry demonstrated bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing, in violation of West Virginia Code § 30-40-19(a)(37).

### **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 acknowledges 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 stipulate to the Findings of Fact set forth above, admit to the violations set forth in the Conclusions of Law above, and consent to the entry of the following Order:

### **ORDER**

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

1. Respondent Connie Perry is reprimanded and shall pay a fine in the amount of \$500 payable to the State of West Virginia. The fine shall be paid by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office within thirty (30) days of the entry of this Consent Decree by the Commission.

2. Respondent Dean Perry is reprimanded and shall pay a fine in the amount of \$500 payable to the State of West Virginia. The fine shall be paid by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office within thirty (30) days of the entry of this Consent Decree by the Commission.

3. Respondent Connie Perry shall immediately return the earnest money in the amount of \$500 to the Commission, made payable to Maureen Thomas. The Commission will forward the earnest money to Ms. Thomas.

4. Respondents shall each complete an approved continuing education course on the subject of license law within 6 months of the entry of this Consent Decree and submit evidence of such completion to the Commission. This requirement is in addition to the continuing education required for annual license renewal.

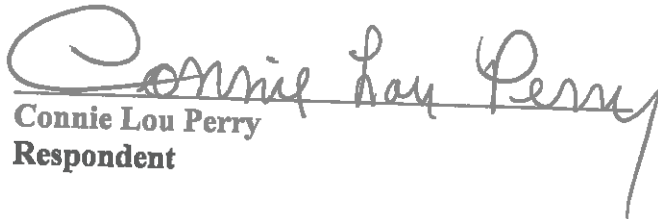
5. Respondent Connie Perry shall reimburse the Commission its costs associated with this Complaint and its attorney fees, in the amount of \$845 by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office within thirty (30) days of the entry of this Consent Decree by the Commission.

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 the immediate suspension of Respondents' respective licenses until such time as

Respondents achieve full compliance. The Commission shall immediately notify Respondents via certified mail of the alleged violation of the Consent Decree and the suspension of their respective licenses. In the event either Respondent contests his or her alleged violation of the Consent Decree, the subject 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.

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 the Respondents based upon the violation of this Order of the Commission.

**CONSENT DECREE AGREED TO BY:**

  
\_\_\_\_\_  
Connie Lou Perry  
Respondent

10-19-18  
Date

  
\_\_\_\_\_  
Louis Dean Perry  
Respondent

10-19-18  
Date

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

26 day of October, 2018.

**WEST VIRGINIA REAL ESTATE COMMISSION,**



By   
\_\_\_\_\_  
**Jerry A. Forren**  
**Executive Director**