

**BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION**

**WEST VIRGINIA REAL ESTATE COMMISSION,**

*Complainant,*

**V.**

**Formal Complaint No. C-10-040**

**ROGER MULLINS,**

*Respondent.*

**CONSENT DECREE**

The Respondent, Roger Mullins (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, enter into the following Consent Decree for the purpose of resolving a complaint that has been filed against Respondent. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in this Consent Decree concerning the proper disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

**Findings of Fact**

1. The Commission is a state agency created by West Virginia Code § 30-40-1, *et seq.*, and is empowered to regulate the practice of real estate brokerage in the State of West Virginia.
2. Respondent is a licensed real estate salesperson in the State of West Virginia. At all times relevant, his responsible broker was Kaye Ford, Ford Realty Company, in Montgomery, West Virginia.
3. Respondent is also a licensed auctioneer with Mountaineer Auctions in Clendenin, West Virginia.

4. On or about January 5, 2010, Respondent submitted to the Commission an application for a real estate broker's license. With his application he submitted a list of fifty-eight (58) real estate transactions between the years 2005 and 2009 in an effort to demonstrate the real estate experience required for a broker's license.

5. On April 29, 2010, after investigation into Mr. Mullins' application, the Commission voted to initiate Formal Complaint C-10-040, alleging that the fifty-eight (58) transactions which Mr. Mullins submitted demonstrate that he engaged in real estate brokerage without the required license. Mr. Mullins responded to the Complaint in writing dated May 24, 2010, and asserted that the transactions are covered by the "auction exemptions" provided in the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq.

6. West Virginia Code § 30-40-5(c)(9) provides that certain auctions are exempt from the licensure requirements in *Real Estate License Act*. To qualify under this exemption, the person conducting the auction must be licensed by the Department of Agriculture and must be retained to conduct the auction by: (A) a receiver or trustee in bankruptcy; (B) a fiduciary acting under the authority of a deed of trust or will; or (C) a fiduciary of a decedent's estate.

7. On or about April 26, 2011, the Commission amended the complaint to specifically identify the non-exempt transactions at issue. By letter dated May 19, 2011, Respondent responded to the amended complaint.

8. Nine (9) of the fifty-eight (58) transactions submitted by Mr. Mullins are not covered by the "auction exemption" cited above. The transactions are as follows:

- (1). April 2006 - 18 Greenmont Lane, Stollings, West Virginia
- (2). May 2006 - 1603 Whitney Street, Charleston, West Virginia
- (3). April 2007 - 151 Kelly Hill Road, Clendenin, West Virginia

- (4). August 2007 - 2 Quick Road, Pinch , West Virginia
- (5). August 2007 - 2009 Preston Street, Charleston, West Virginia
- (6). May 2008 - 399 Big Otter Highway, Ivydale, West Virginia
- (7). August 2008 - 1802 Louden Heights Road, Charleston, West Virginia
- (8). September 2009 - 150 Trace Fork Road, Charleston, West Virginia
- (9). September 2009 - 1402 Lyndale Drive, Charleston, West Virginia

9. In transactions (1), (2), (3) and (6), accepted compensation from persons other than his employing broker, Kay Ford.

10. Moreover, in transactions (1), (2), (3) and (6), Respondent placed the deposit received at the time of the auction into his own trust account associated with his auction company, Mountaineer Auctions.

#### **Conclusions of Law**

1. Pursuant to West Virginia Code § 30-40-19(a)(16), the Commission shall have the full power to revoke, suspend or impose any other sanction against a licensee if the licensee “[a]ccepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her employer who must be a broker.”

2. Respondent’s conduct in transactions (1), (2), (3) and (6) cited above violates West Virginia Code § 30-40-19(a)(16) in that he accepted compensation at the time of the auction from persons other than his broker.

#### **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 consents to the following Order:

**Order**

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

1. Respondent's salespersons license is suspended for a period of ninety (90) days, however the suspension shall be stayed and Respondent shall be placed on probation for a period of one year. As a condition of probation, Respondent shall:

- A. Pay a fine in the amount of five-hundred dollars (\$500.00), payable to the State of West Virginia, within thirty (30) days of the entry of this Consent Decree by the Commission;

- B. Pay the costs associated with this Complaint in the amount of seven-hundred and seventy-nine dollars (\$779.00), to the Commission within thirty (30) days of the entry of this Consent Decree by the Commission; and

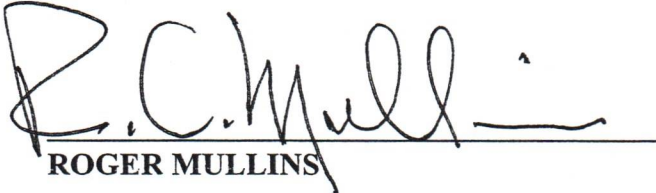
- C. Otherwise comply with all provisions of the *West Virginia Real Estate License Act*.

2. Respondent shall conduct all non-exempt auctions in the name of and under the direct supervision of his employing broker.

3. Any failure by the Respondent to comply with the requirements of this Order, without the prior written consent of the Commission, shall constitute a violation of this Consent Decree. The Commission shall immediately notify Respondent via certified mail of the specific nature of the alleged violation. In the event Respondent contests an alleged violation of this Consent Decree,

Respondent may request a hearing on the alleged violation of this Order. Hearings shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.*

**AGREED TO BY:**

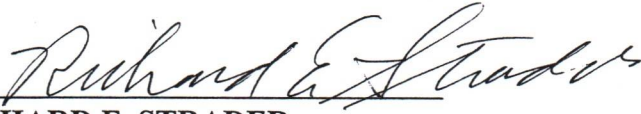
  
\_\_\_\_\_  
ROGER MULLINS

6-29-11  
DATE

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

30<sup>th</sup> day of June, 2011.

**WEST VIRGINIA REAL ESTATE COMMISSION,**

By:   
\_\_\_\_\_  
**RICHARD E. STRADER,**  
**EXECUTIVE DIRECTOR**

