

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**WEST VIRGINIA REAL ESTATE COMMISSION,
*Complainant,***

V.

Complaint No. C-11-022

**JOHN M. JAMES,
Licensed Real Estate Broker
License No. WV-0011011**

Respondent.

FINAL ORDER

Upon review of the record in the above-styled matter, the West Virginia Real Estate Commission hereby ADOPTS, with the modifications set forth in “Commission’s Modifications to Hearing Examiner’s Proposed Findings of Fact, Conclusions of Law and Recommended Order” attached thereto, the Hearing Examiner’s Findings of Fact, Conclusions of Law and Recommended Order [“Recommended Order”] submitted on April 29, 2014.

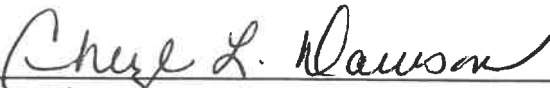
Based on the Hearing Examiner’s Recommended Order, as modified, the Commission hereby ORDERS as follows:

1. That Respondent’s broker license is hereby REVOKED;
2. That Respondent pay a fine in the amount of Ten Thousand Dollars (\$10,000.00);
and
3. That Respondent pay the costs associated with this Complaint in the amount of \$40,000.00.

Respondent shall be ineligible to apply for a new broker license until after the expiration of two years from the date of revocation and shall remain ineligible to apply for a new license until all terms and conditions of this Final Order have been fulfilled.

ENTERED this 11th day of June, 2014.

WEST VIRGINIA REAL ESTATE COMMISSION


Cheryl L. Dawson
Chairman

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,**

V.

Complaint No. C-11-022

**JOHN JAMES
Broker & License No. WV 0011011 (Suspended)
Respondent.**

**COMMISSION'S MODIFICATIONS TO HEARING EXAMINER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

This is a matter involving a complaint against John James, Broker Licensee No. WV-0011011, alleging various violations of *W.Va. Code 30-40-1, et seq.*, through his actions in managing the proceeds of a real estate sale and through his participation in a straw party transaction. The undersigned conducted the hearing in this matter on February 20 and 21, 2014, and now tenders her findings of fact, conclusions of law and recommendation to the Commission.

PROCEDURAL HISTORY

1. On November 19, 2010, the West Virginia Real Estate Commission filed a formal complaint against the Respondent, John M. James, Complaint No. C-11-022. The Complaint alleging purported wrongful acts surrounding the "Salyers Transaction" and the "Wilshire Credit Transaction."
2. These transactions were the subject of two complaints which were consolidated for hearing on May 10, 2007, and resulted in a Final Order against Respondent. This Final Order was reversed by the Circuit Court of Raleigh County by Order dated

Court Order dated October 18, 2010, and James' response to the complaint." The Commission then found that probable cause existed to proceed to hearing against James, and suspended his real estate broker's license pending the hearing and disposition of the matter.

8. On March 2, 2011, the Respondent filed a Petition for Writ of Prohibition with the Circuit Court of Raleigh County, attempting to prohibit the Commission from proceeding with Complaint No. C-11-022 by incorporating arguments made in prior proceedings. The Court granted the Respondent's request for a stay of his suspension pending the decision on the petition.
9. By Order entered May 28, 2011, the Circuit Court of Raleigh County held that the West Virginia Real Estate Commission had authority to proceed with Complaint No. C-11-022. The Court denied the Writ of Prohibition and lifted the stay previously imposed on the suspension of the Respondent's license.
10. By Order entered June 9, 2011, the Commission once again suspended the Respondent's license pending the outcome of the hearing on Complaint No. C-11-022.
11. On October 5, 2011, the Commission issued a Notice of Hearing regarding Complaint No. C-11-022, and Hearing Examiner Jack McClung, who presided over the prior hearing, was assigned to again preside over the matter.
12. On October 20, 2011, the Respondent filed another Motion to Dismiss, seeking to dismiss the Complaint that was the subject of the October 5, 2011, Notice of

notice of October 5, 2011, after which Respondent moved for a continuance and filed a motion that Hearing Examiner McClung recuse himself, which he did voluntarily.

18. The undersigned granted the motion for continuance and ~~Commission then~~ set the matter for hearing on February 20, 2014.
19. On January 23, 2014, the Respondent filed his Renewed Motion to Dismiss Complaint C-11-022 (Third Complaint).
20. On February 6, 2014, the Commission filed its Motion to Strike Respondent's Renewed Motion to Dismiss or, in the Alternative, Adoption of Prior Response in Opposition to Respondent's Motion to Dismiss.
21. On February 11, 2014, the undersigned Hearing Examiner submitted Findings of Fact, Conclusions of Law and a Recommended Order suggesting that the Commission strike the Respondent's Renewed Motion to Dismiss as being procedurally improper and barred by the doctrines of res judicata and the law of the case.
22. By Order entered February 19, 2014, the Commission adopted the Recommended Decision in its entirety, and ordered the Respondent's Motion to Dismiss as stricken from the record, having been previously denied, with two circuit courts allowing the matter to proceed to hearing.
23. On February 20, 2014, the evidentiary hearing commenced before the undersigned Hearing Examiner, with Debra Hamilton, Deputy Attorney General, appearing on

EXHIBITS

JOINT EXHIBITS

1. Real Estate Contract to Purchase
2. Welcome Home Realty fax to D. Salyers
3. Letter from James to Salyers, July 15, 2005
4. Appraisal Invoice
5. HUD-1 Statement, August 1, 2005
6. Fax note, August 2, 2005
7. Fax to James, August 17, 2005
8. Letter to Salyers from James, August 17, 2005
9. Check, \$2,500
10. Contract to Purchase, January 7, 2005
11. Terminated Listing Agreement, February 2, 2005
12. Contract of Sale, Boley Street, February 7, 2005
13. Agency Relationship Statement
14. Counteroffer
15. Land Contract, February 15, 2005
16. Check
17. HUD-1 Statement
18. Deed, James to Grose, February 16, 2005
19. Deed, Grose to James, March 7, 2005
20. Grose Statement
21. Wilshire Complaint
22. Answer to Wilshire Complaint

COMMISSION EXHIBITS

1. HUD-1 Statement, August 1, 2005
2. Walbrown Invoice, August 9, 2005
3. Salyer Complaint
4. Answer to Salyer Complaint
5. Contract to Purchase, August 28, 2004
6. Complaint
7. Contract to Purchase, December 3, 2004
8. Contract to Purchase, December 28, 2004
9. Contract to Purchase, January 20, 2005
10. Letter to Manerchia
11. Letter, James to Strader

~~before the Commission.~~

6. On November 19, 2010, the West Virginia Real Estate Commission filed a formal Complaint against the Respondent, John M. James, namely, Complaint No. C-11-022. The Complaint alleged that the Respondent engaged in two separate purportedly wrongful acts, both of which were the subject matter of the two complaints which had previously gone to hearing, to wit:
 - a. The "Salyers Transaction" involved a sale of property in which the Respondent purportedly withheld money from the proceeds and paid the same to a creditor of the seller, without authorization to do so. The "Salyers Transaction" had been the subject of a formal complaint filed by Don Salyers against the Respondent on August 29, 2005 (Complaint No. P-06-005) alleging misappropriation of funds, violation of the code of ethics, conspiracy to commit fraud and professional misconduct. Commission Exhibit No. 3.
 - b. The second matter, the "Wilshire Credit Transaction" involved the sale of real property through a straw party transaction in which the Respondent purportedly received personal benefit or gain. The "Wilshire Credit Transaction" had been the subject of a formal complaint filed by the Wilshire Credit Corporation against the Respondent on August 9, 2005 (Complaint No. P-06-003) alleging concealment, breach of fiduciary duty and failure to disclose true identity in a real estate purchase. Joint Exhibit No. 21.
7. .
8. As set forth in the Procedural History *supra*, these complaints went to hearing, which hearing included the testimony of witnesses which were unavailable to testify in the

11. The Salyers' property was the last tract of a 183.26-acre tract which Respondent had contacted him about for which there had been two previous sales in 2003 or 2004. James, Tr. Vol. 1 at 27-28, 31, 42.
12. In or about early 2000, Walbrowm Real Estate and Appraisal Services ("Walbrowm") conducted an appraisal of the 183.26-acre tract. Salyers, 5/10/2007 Tr. at 101-02; James, Tr. Vol. 1 at 119-20.
13. At the time of the appraisal, the property was owned by Jerry Dean Salyers, the son of Don Salyers. Mr. Salyers made the phone call to arrange for the appraisal on behalf of his son. The Property was transferred to Salyers from his son on May 21, 2003. Salyers, 5/10/2007 Tr. at 101-02; James, Tr. Vol. 1 at 119-20.;
14. On or about April 4, 2000, Walbrowm generated an invoice addressed to Mr. Don Salyers for \$2,500 for services rendered to Jerry Dean Salyers in appraising the 183.26-acre tract. The invoice was not presented to Mr. Salyers at either of the two prior sales in 2003 or 2004. Respondent's Exhibit 1; Salyers, 5/10/2007 Tr. at 101-02; James, Tr. Vol. 1, pp. 119-20; Joint Exhibit 4, p. 2.;
15. Mr. Salyers moved to South Carolina in 2000 and became a resident of South Carolina. Salyers, 5/10/2007 Tr. at 84, 106, 148;; James, Tr. Vol. 1, pp. 91-92.
16. On or about June 29, 2005, Don Salyers signed a Real Estate Contract to Purchase, whereby he agreed to sell the residual 5.10-acre tract to Kathleen Moxey and Keith Wilt for the sum of \$28,000. Joint Exhibit No. 1.

Mr. Salyers or the 5.10-acre tract and the title examination for the transaction did not note any such lien. He also testified that he sold the previous parcels where the invoice was not a lien against the property. James, Tr. Vol. 1, pp. 45-50, 52, 82, 128, 145-47.

24. There is no evidence that the Walbrown appraisal invoice was a valid lien on the 5.10-acre tract that Mr. James brokered for Mr. Salyers. Salyers, 5/10/2007 Tr. ~~Vol. 1~~, pp. 101-02; Larrick, Tr. Vol. I, p. 160.
25. Mr. James testified that he wrote a letter dated July 15, 2005, to Mr. Salyers enclosing the Walbrown invoice and noting "We can deduct this from closing if that is O.K. with you, and if not owed, please contact me so we can remedy the mistake." He testified that he mailed the letter to Mr. Salyers' South Carolina address on July 15, 2005, and later faxed the letter to Mr. Salyers on July 27, 2005. Joint Exhibit 3; James, Tr. Vol. 1, pp. 39-40, 53.
26. There is no proof that Mr. Salyers did or did not receive the fax or the mailed letter. Unlike other exhibits, the fax cover sheet is devoid of any indication that the fax went through. However, Don Salyers testified at a prior hearing that he did not receive either the fax or the mailed copy of the bill. Salyers, 5/10/2007, Tr. ~~Vol. 1~~, pp. 101-102.
27. During the week of July 18, 2005, Mr. Salyers traveled to West Virginia and met with the Respondent James at the Welcome Home Realty office. Salyers, 5/10/2007 Tr., pp. 105-07, 127-28, 152; James, Tr. Vol. 1, pp.52-54, 97.

33. At closing, on behalf of Salyers, James signed the closing statement, and authorized the deduction of \$2500 from the proceeds of the sale of the Property for purposes of paying Walbrown's appraisal invoice dated April 8, 2000. James, Tr. Vol. 1 at 57; Joint Exhibit 5.
34. The authorization from Salyers for James to sign on his behalf and the signed deed were not received until after the closing, although the Power of Attorney form as to who Salyers was authorizing to sign on his behalf was blank. Commission Exhibit 3; James, Tr. Vol. 1 at 83-84.
35. After receipt of the deed and Power of Attorney, attorney Alan Larrick completed the real estate transaction, recorded the deed, and sent the proceeds of the sale to Salyers. James, Tr. Vol. 1 at 80, 93; Larrick, Tr. Vol. 1 at 159.
36. Attorney Larrick testified that he would not have deducted the \$2,500 for payment of the Walbrown invoice had it not been approved by the seller's agent, Mr. James, upon whom he relied. He noted that he thought it unusual to have a five-year-old bill paid at a closing, but he had no knowledge as to whether the bill was valid, and had no knowledge whether it had been paid. Larrick, Tr. Vol. I at 160, 164-170.
37. On August 2, 2005, the Respondent James sent a fax to Salyers with the wrong fax number. The fax made no mention of the \$2,500 deduction or the amount of the sale proceeds and did not include a copy of the settlement statement. James, Tr. Vol. I at 58-59; Joint Exhibit 6.
38. Salyers did not receive a copy of the settlement statement from Respondent and had to request a copy of same. Salyers, 5/10/2007 Tr. at 110-14, 168.

45. James did not reference the July 18, 2005, facsimile that he claimed to have sent to Salyers in James' "memorandum for the record" (Commission Exhibit 4, p. 5) and did not offer any such fax into evidence during the hearing. To the contrary, Mr. James testified that Salyers was in his office on the July 18, 2005. James, Tr. Vol. I at 35, 39, 96-97.
46. Although James' written responses and documents, as referenced above, relating to the number of times James claimed he informed Salyers of James' intent to withhold \$2,500 from the proceeds of the sale of the property are all inconsistent, at no time within any of said responses or documents did James claim that he attempted to contact Salyers by telephone, even though Salyers was available by phone. Salyers, 5/10/2007 Tr. at 166, 209.
47. On June 21, 2011, Don Salyers executed a notarized written withdrawal of his complaint and stated that he did not wish to have the allegations against Mr. James included in a new complaint. Respondent's Exhibit 2.

COUNT II (BOLEY STREET PROPERTY)

48. Josephine Manerchia was a certified nurse assistant moving from Delaware to West Virginia in 2004, looking to purchase a home near her new employment with Raleigh General Hospital. Manerchia, 5/10/2007 Tr. Vol. II, pp. 241, 255.
49. For assistance with the purchase of a home, Manerchia employed as a buyer's agent Jeanetta Mason, a licensed real estate salesperson who at all times was employed by Welcome Home Realty. A Notice of Agency Relationship was included in all contracts

representing Ms. Manerchia. James, Tr. Vol. II at 24-25; Commission Exhibit 8; Commission Exhibit 9.

55. Notwithstanding the fact that Welcome Home Realty represented Manerchia as her buyer's agent on all four of the above-referenced purchase contracts, the Respondent James testified that he never had more than an introductory relationship with her. James, Tr. Vol. II at. 17-18, 26; 43-44; Commission Exhibits 5, 7, 8, 9.
56. The evidence established that James knew that Manerchia wanted to purchase the property at 108 Boley Street and was directly involved in Welcome Home Realty's agency relationship with Manerchia. Manerchia, 5/10/2007 Tr. at 277; Joint Exhibit 15; Commission Exhibit 10.
57. On January 7, 2005, the Respondent James and Welcome Home Realty entered into a listing agreement with Wilshire Credit Corporation to sell the property located at 108 Boley Street, Oak Hill, West Virginia. The date of the Wilshire listing agreement was 34 days after the last contract to purchase the Boley Street property was signed by Ms. Manerchia and eight (8) days prior to the closing date of January 15, 2005, proposed in the last contract with Ms. Manerchia. Joint Exhibit No. 10; Commission Exhibit No. 7.
58. In the event the December 3, 2004, contract with Ms. Manerchia was still in effect, on January 7, 2005, the Respondent and Welcome Home Realty owed a fiduciary duty to both Wilshire Credit Corporation and Josephine Manerchia. James, Tr. Vol. II at 28; Joint Exhibit 10.

- termination would take effect five days from the date of the letter, on February 7, 2005. James, Tr. Vol. II at 40-41; Joint Exhibits No. 11 and No. 21.
65. On February 7, 2005, the last date of the listing agreement, James contacted Wilshire Credit, with an offer from Roy Grose to purchase 108 Boley Street for \$18,000.00. The contract of sale listed Welcome Home Realty as the seller's broker and Welcome Home Realty as the buyer's broker. It provided for a \$2,000 commission to be paid to Welcome Home Realty. James, Tr. Vol. II at 47; Joint Exhibit 12.
66. Roy Grose was a friend of the Respondent James who had purchased four or five investment properties through James in the past. James, Tr. Vol. II at 46-48.
67. The Respondent James testified that he guessed there may have been a double agency although that is not reflected in the notice of agency relationship. James, Tr. Vol. II at 49; Joint Exhibit 13.
68. The Respondent James did not disclose to Wilshire his relationship with Grose. Joint Exhibit 21.
69. By contract and contract addendum executed February 14, 2005, Wilshire Credit accepted the offer and entered into a contract to sell 108 Boley Street to Grose, agreeing to pay James a \$2,000.00 sales commission. Joint Exhibit 14.
70. The Real Estate Purchase Contract Counteroffer & Addendum signed by Grose and Wilshire Credit states that the listing broker, the Respondent James, received and placed into the trust fund account of Welcome Home Realty earnest money from Grose in the amount of \$1,000.00. The Respondent James testified that he received a \$1,000 check from Grose for deposit into the trust account. However, there is no

75. James allowed Grose to work on the Boley Street property prior to the February 24, 2005 closing date. Grose made repairs to the floor, replaced broken glass and light bulbs, repaired drywall and installed closets and doors. James did not notify Wilshire Credit that he permitted Grose to enter upon and work on the property prior to closing. James, Tr. Vol. II at 62-63, 71-72, 85, 223, 247, 180-181.
76. James also allowed Manerchia to move into the Boley Street property on February 22, 2005, two days prior to the scheduled closing. James was physically present when Manerchia moved into 108 Boley Street. James did not require Manerchia to pay any deposit or rent, nor did he require her to sign a lease or other documents. Manerchia, 5/10/2007 Tr. at 240-41; James, Tr. Vol. II at 58-59, 62-64, 71-72, 78; Respondent's Exhibit 5.
77. James did not provide notice to Wilshire Credit that Manerchia moved into 108 Boley Street prior to the closing. He later advised Wilshire Credit that she moved in on February 25, 2005, the date of the closing. James, Tr. Vol. II at 60, 101-02; Commission Exhibit 10.
78. On February 17, 2005, a hearing was conducted before Judge John W. Hatcher, Jr. in the Circuit Court of Fayette County, West Virginia, in the matter of *City of Oak Hill v. Roy L. Grose*, Civil Action No. 04-C-161(H). Judge Hatcher ordered that Mr. Grose must comply with prior court orders and bring his residence in compliance with the planning and zoning regulations of the City of Oak Hill. Respondent Exhibit No. 3.
79. The Respondent James testified that on February 23, 2005, one day before the scheduled closing between Grose and Wilshire Credit for the 108 Boley Street

James received a commission of \$2,000.00 from Wilshire Credit. James Tr. Vol. II at 50; Joint Exhibit 17.

85. James testified that he spent the \$2,000 commission on making repairs to the Boley Street property. There is no documentary evidence of such repairs. James Tr. Vol. II, p. 50.
86. By deed dated and notarized February 16, 2005, and recorded on February 25, 2005, in the office of the Clerk of the County Commission of Fayette County, West Virginia, in Deed Book No. 610, page 521, DLJ Mortgage Capital REO, LLC, by Wilshire Credit Corporation, its attorney-in-fact, conveyed to Roy L. Grose Lot 108 of the Revised Boley Addition, Oak Hill District, Fayette County, West Virginia. The stated consideration in the deed is \$18,000. Joint Exhibit No. 18.
87. By deed dated March 7, 2005, and recorded on March 18, 2005, in the office of the Clerk of the County Commission of Fayette County, West Virginia, in Deed Book No. 611, page 59, Roy L. Grose conveyed to John M. James Lot 108 of the Revised Boley Addition, Oak Hill District, Fayette County, West Virginia. The stated consideration in the deed is \$20,000. The second page of the deed has a handwritten notation stating "Deed prepared by John M. James." Joint Exhibit No. 19.
88. There are no canceled checks or other indicia of money ever being exchanged between James and Grose. James, Tr. Vol. II at 87-88, 93.
89. There is no evidence of any communication between James and Grose regarding Manerchia's occupancy of the premises or any rental contracts or other

Miss Manerchia.” Mr. Grose did not mention the Court Order James claims was the reason Grose transferred the property to James. Joint Exhibit No. 20.

94. The Respondent admitted to Manerchia that he, James, purchased 108 Boley Street in Grose’s name. Manerchia, 5/10/2007 Tr. at 240, 254-55-276.

95. The Respondent James acknowledged that, while an agent’s fiduciary duties to the seller and the buyer are different, the agent must always act in the best interest of their principal. James, Tr. Vol. II, p. 33.

96. Notwithstanding his testimony, the Respondent James offered no documentary evidence corroborating his testimony that Grose paid a \$1,000.00 earnest money deposit to James. Grose did not mention the earnest money deposit in any of his statements. Likewise, there is no evidence that James spent the \$2,000 commission on repairing the Boley Street property; that the repairs were intended to be a loan to Grose; nor that Grose was required to or intended to repay the \$2,000 to James. Tr. Vol. II, pp. 90-93; Respondent’s Exhibits No. 5 and 6.

97. The evidence reflects that the Respondent James used his friend Roy Grose as a straw purchaser to acquire 108 Boley Street from his principal, Wilshire Credit, while personally paying the \$18,000.00 sale price and still receiving the \$2,000.00 commission previously rejected by Wilshire Credit.

DISCUSSION

The *West Virginia Real Estate License Act, W.Va. Code §30-40-1, et seq.*, charges the West Virginia Real Estate Commission with determining whether the actions of a real estate salesperson or broker warrant the imposition of disciplinary action, sanctions or other

improper dealing; by conducting himself in an untrustworthy, dishonest, fraudulent or improper manner; and by not making certain that all the terms and conditions of the Salyers transaction were contained in the contract prepared by him.

The Respondent asserts that he acted properly at all times, insisting that the invoice from Walbrown Realty was a lien against the Salyer property that he was obligated to pay out of the sale proceeds. Mr. James was adamant that the five-year-old invoice, submitted for services rendered to a third party, constituted a valid lien, even though everything in his training and background pointed otherwise. As the Respondent acknowledged, the debt was not a judgment lien; it was not a mechanic's and materialman's lien; nor was it noted as a lien in the title report of the closing attorney. As an experienced realtor, the Respondent knew or should have known what constituted a valid lien that would have warranted withholding the debt from the property proceeds. His testimony in this regard is not credible.

Likewise, there is no credible evidence that the Respondent properly notified his client, Mr. Salyers, of every element of the property transactions as required. His purported letters and faxes to Mr. Salyers conveniently do not contain any registered or certified mail evidence, nor do the fax reports have any time or date transaction stamped across the top. Mr. Salyers testified that he did not receive the letters and faxes. Mr. James testified that he sent the fax regarding the invoice to Mr. Salyers on the same day that Mr. Salyers was in his office. There is no logical explanation as to why the Respondent did not hand the invoice to his client during that visit, nor is there any credible testimony as to why they did not discuss the matter.

The evidence supports the Commission's allegation that Mr. James did not properly represent his client, Mr. Salyers, but rather acted as a dual agent, first as selling broker for Mr.

failing to disclose on the notice of agency relationship form whether Respondent represented the seller, the buyer, or both prior to their signing the contract for representation by Respondent or the contract for the sale or purchase of 108 Boley Street.

The Respondent asserts that it is of no consequence that he made an offer to purchase the real estate from his principal ~~principle~~, Wilshire Credit Corporation, and did not compromise or violate his agency relationship with them. That, however, is not the issue. The crux of the complaint by the Commission is that the Respondent, by and through his business, Welcome Home Realty, had a dual fiduciary obligation to both Wilshire and to Josephine Manerchia. He signed on to sell the Boley Street property for Wilshire, knowing full well that Ms. Manerchia was interested in it, and did not disclose this to his client. Although it could be argued that Wilshire knew or should have known about Manerchia's interest in the property through her prior contracts, that does not establish that Wilshire knew that the Respondent still represented her at the time of the listing agreement. That relationship should have been disclosed.

Likewise, the entire transaction with Roy Grose is suspect from the beginning. While the Respondent attempts to paint the matter as a straw party transaction made to help a friend in need, there is no evidence to support that claim. The statements from Mr. Grose never mention that he intended to purchase the property and then was unable to do so because of financial difficulties or because of the Circuit Court order. His statements reflect, rather, that he was trying to help out a friend, James, and got caught in a tangled net that ensnares those who attempt to deceive.

3. Mr. Salyers did not owe the appraisal debt since he was not the owner of the property at the time of the appraisal, the services were rendered to a third party, and the invoice was not a lien against the property at the time of the sale by Salyers.
4. Any deduction for the invoice could only be lawfully done with the knowledge and authorization of Salyers.
5. Pursuant to the provisions of *W.Va. Code §30-40-19(a)(7)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee acts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts.
6. Simultaneously, James represented Walbrown Realty for purposes of collecting an alleged debt, without the knowledge and written consent of Salyers, in violation of *W. Va. Code §30-40-19(a)(7)*.
7. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(8)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others.
8. The Respondent James failed to remit the full purchase price of the property to his client, Salyers, by improperly withholding \$2,500 and paying the same to Walbrown without the knowledge or consent of Salyers, in violation of *W. Va. Code §30-40-19(a)(8)*.

15. The Respondent James failed to make certain in any contract prepared by James, and between James and Salyers, that James additionally represented Walbrown and that \$2500 of the real estate purchase amount received on behalf of Salyers would be paid to Walbrown, in violation of *W. Va. Code §30-40-19(a)(19)* and *§30-40-26(f)*.
16. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(2)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee makes any substantial misrepresentation.
17. James unlawfully misrepresented to his principal, Wilshire Credit Corporation, that Grose was the purchaser of the Boley Street property, when he knew that Grose was unable to purchase the property and that he, James, would be the true purchaser via a straw party transaction, all in violation of *W. Va. Code §30-40-19(a)(2)*.
18. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(3)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee makes any false promises or representations of a character likely to influence, persuade or induce a person involved in a real estate transaction.
19. James misrepresented to the seller that Grose was the purchaser of 108 Boley Street, where such misrepresentation was likely to induce the seller to sell 108 Boley Street to James through Grose, and where such misrepresentation caused the seller to pay a \$2,000 commission to James, in violation of *W. Va. Code §30-40-19(a)(3)*.
20. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(4)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee pursues a

26. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(31)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction.
27. By and through the unlawful actions of James, James breached the fiduciary duty owed to his principal, in violation of *W. Va. Code §30-40-19(a)(31)*.
28. Pursuant to the provisions of *W.Va. Code §30-40-19(a)(34)* the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee fails to disclose to an owner the licensee's true position if he or she directly or indirectly through a third party, purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase the property.
29. James unlawfully failed to disclose to the seller that James was the actual purchaser of 108 Boley Street, in violation of *W. Va. Code §30-40-19(a)(34)*.
30. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(37)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee engages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.
31. The Respondent's actions concerning the real estate transaction demonstrate bad faith, untrustworthiness, or dishonest, fraudulent or improper dealings in violation of *W. Va. Code §30-40-19(a)(37)*.
32. Pursuant to the provisions of *W. Va. Code §30-40-19(a)(19)*, the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee violates

XC: Debra L. Hamilton, Esq.
Thomas K. Fast, Esq.



JOHN H. REED, III, VICE CHAIRMAN
HURRICANE

CAROL H. PUGH, SECRETARY
BECKLEY

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REAL ESTATE COMMISSION**

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RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

FORMAL COMPLAINT

C-11-022

Instructions:

Please type or print clearly in black pen or ink only on the front side of each page. Complete all applicable sections of this form fully and accurately. Attach legible copies of contracts and all other documents relating to your complaint. Please do not use a "Highlighter" on any of the documents you submit with your complaint due to the fact these marks do not copy well. You should provide all information which you know or can discover with reasonable investigation. If you wish to file affidavits from persons who have personal knowledge of the facts and circumstances involved in this complaint, the affidavits must be verified before a Notary Public in order to be admissible. For assistance in completing or submitting this Complaint, contact the Real Estate Commission. If more space is needed, attach extra sheets.

Please note:

The Real Estate Commission regulates real estate licensees. The Commission is not empowered to enforce, interpret, modify, rescind or cancel listing agreements, purchase and sale agreements or any other contract, or to order the return of earnest money, award damages, settle real estate commission fee disputes or otherwise settle claims. If a licensee is found guilty of a violation of the Real Estate License Act or Legislative Rule, the Commission has authority to take disciplinary action against that licensee. The Real Estate Commission cannot provide private legal advice or services.

I. PLAINTIFF(S) INFORMATION

Name(s): West Virginia Real Estate Commission Action of November 12, 2010
Address: 300 Capitol Street, Suite 400, Charleston, WV 25301
Telephone: (Home) _____ (Work) 304-558-3555 (Cell) _____
Occupation(s): _____

II. DEFENDANT (LICENSEE) INFORMATION

1. Name John M. James
license type: Broker Associate Broker Salesperson Don't Know
Firm Name Welcome Home Realty
Address 122 East Main Street, Oak Hill, WV 25901
Telephone 304-469-6600 Responsible Broker _____

2. Name _____
license type Broker Associate Broker Salesperson Don't Know
Firm Name _____
Address _____
Telephone _____ Responsible Broker _____

COPY

III. GENERAL INFORMATION ABOUT COMPLAINT

1. Type of real estate transaction: (check one)

- Residential Commercial Industrial Timeshare Unimproved Land Lease Option
 Other (describe) _____

2. Date(s) of transaction(s): _____

3. Other pertinent information: _____

4. (I have/ have not) contacted the persons complained about and attempted to resolve this matter.
Person and dates contacted:

Results: _____

5. (I have/ have not) retained an attorney to assist me in resolving this matter.

Attorney's name _____ Telephone _____

Attorney's address _____

May we contact your attorney about this matter? _____

6. List the names of all other agencies and associations with whom you already have or intend to file a complaint:

7. This complaint involves the same or related matters which are the subject of a civil lawsuit which (check one)

- has been completed has been filed in a court of law may be filed in a court
 will be filed in a court of law don't know

Court name _____ Case # _____

Court address _____

Type of action _____

Case status _____

10. (I am / am not) willing to appear under oath as a witness to cross examination concerning the allegations made in this complaint. (The Complainant's unwillingness to testify may be the basis for the Commission dismissing the Complaint after its investigation and preliminary consideration.) If you are not willing to testify, state reasons:

11. Attach clear copies of ALL pertinent documents and papers which directly or indirectly relate to this Complaint.

IV. VERIFICATION OF COMPLAINT

I understand a copy of this Complaint, including any and all documents, may be given to any person or firm against whom I have complained and any other regulatory agency which may have an interest in the information contained herein.

I (we), the Plaintiff(s), hereby certify that all the information submitted herein is true and correct to the best of my(our) knowledge and belief.

Dated this 19 _____ day of November _____, 20 10 _____

Plaintiff(s)
Signature(s): Richard E. Strader, Executive Director



Attachment A

During all times relevant herein, James was the real estate broker of record for Welcome Home Realty, located at 1438 Main Street, Oak Hill, West Virginia, 25901.

During the summer of 2005, James represented Don Salyers, for purposes of marketing and selling 5.10 acres of property (hereinafter "Property"), located in Oak Hill, West Virginia.

Mike Walbrown's real estate brokerage firm, Walbrown Real Estate and Appraisal Services, LLC, served as the co-seller's agent with James in the sale of the Property.

Salyers had previously moved to and resided in the state of South Carolina since approximately the year 2000.

On or around June 29, 2005, Salyers signed a real estate purchase contract agreeing to sell the Property for \$28,000.

In the contract, Welcome Home Realty was listed as the listing broker, and Walbrown Real Estate and Appraisal Services, LLC, as the co-operating broker.

By contract, Welcome Home Realty and Walbrown Real Estate and Appraisal Services, LLC, split a 10% sales commission, to be paid by Salyers from the proceeds of the sale of the Property.

No where in the contract did it state that Salyers would pay to Welcome Home Realty, Walbrown Real Estate and Appraisal Services, LLC, John James, or Mike Walbrown any other monetary amount other than the sales commission.

On or around July 14, 2005, Walbrown presented James with a copy of an invoice, in the amount of \$2,500.00, relating to an appraisal performed by Walbrown on April 4,

2000. The appraisal listed the borrower as Jerry Dean Salyers, who is the son of Don Salyers.

It was James intent to collect the alleged debt of \$2,500.00 from Salyers, through the proceeds of the sale of the Property, to pay to Walbrown.

The closing on the sale of the Property occurred in Beckley, West Virginia, on August 1, 2005. At the time of the closing, Salyers was in South Carolina. For purposes of representing Salyers at the closing of the sale of the Property, Salyers had previously given James power-of-attorney to represent Salyers.

At closing, on behalf of Salyers, James signed the closing statement.

James authorized the deduction of \$2,500.00 from the proceeds of the sale of the Property, for purposes of paying the appraisal fee of Walbrown, as reflected in the Walbrown appraisal invoice dated April 8, 2000.

At no time did James obtain the written or verbal permission of Salyers to authorize the deduction of \$2,500.00 from the sale of the Property from Salyers' sale proceeds.

James did not have authority to authorize the deduction of \$2,500.00 at closing for payment to Walbrown. Further, James did not inform Salyers until after the closing that James had caused the amount of \$2,500.00 to be deducted from the sale proceeds for payment to Walbrown for the alleged appraisal debt.

In 2004, Josephine Manerchia, a certified nurse assistant, moved from Delaware to West Virginia. Manerchia had accepted employment with Raleigh General Hospital, located in Raleigh County, West Virginia.

For purposes of purchasing a home, Manerchia employed Jeanetta Mason, a licensed

real estate salesperson, as her buyer's agent.

During all times relevant herein, Mason was employed by Welcome Home Realty as a real estate salesperson. Mason's office was located within Welcome Home Realty.

On August 28, 2004, Manerchia entered into a contract to purchase a home located at 108 Boley Street, Oak Hill, West Virginia (hereinafter "Boley Property"). Manerchia agreed to purchase the Boley Property for \$19,000.00. The contract, however, fell through.

On December 3, 2004, Manerchia again entered into a contract to purchase the Boley Property. Manerchia agreed to purchase the Boley Property for \$19,800.00. The contract fell through again.

On December 28, 2004, Manerchia entered into a contract to purchase property located at 202 Summit Street, Sophia, West Virginia, for \$27,000.00. The contract fell through.

On January 20, 2005, Manerchia agreed to purchase property located at 401 West Cherokee Street, Beckley, West Virginia, for \$50,000.00. The contract was rejected.

Welcome Home Realty represented Manerchia as her buyer's agent on all four contracts.

During Manerchia's search for a property, in order to perform her job at the hospital, Manerchia commuted between Delaware and West Virginia, and lived in a hotel.

James assisted Mason with the representation of Manerchia as a buyer's agent for all four above-referenced contracts.

James was aware that Manerchia had come from Delaware, and was seeking to purchase a home.

On January 7, 2005, James entered into a listing agreement with Wilshire Credit

Corporation to sell the Boley Property.

The listing agreement specified that the Boley Property was for sale for the amount of \$19,900.00, and that in the event James sold the Boley Property, James would receive a \$2,000.00 sales commission.

Shortly after becoming the listing agent and seller's broker of the Boley Property, James offered to purchase the Boley Property for \$17,900.00, contingent upon Wilshire Credit additionally paying to James a \$2,000.00 sales commission.

James attempted to purchase the Boley Property for investment purposes, and had no intention of moving into the Boley Property.

Wilshire Credit rejected James' offer, and offered to sell the Boley Property to James for \$19,900.00. Additionally, in the event James accepted Wilshire Credit's offer, Wilshire Credit stated it would not pay a \$2,000.00 commission to James. James rejected Wilshire Credit's offer.

On February 2, 2005, Wilshire Credit terminated its listing agreement with James.

On February 3, 2005, James contacted Wilshire Credit, and stated that he had a buyer, Roy Grose, that had agreed to purchase the Boley Property for \$18,000.00. Grose was a good friend and business partner of James. James did not disclose to Wilshire his relationship with Grose.

Wilshire Credit accepted the offer, and agreed to pay James a \$2,000.00 sales commission.

By contract and contract addendum executed February 14, 2005, Wilshire Credit entered into a contract to sell the Boley Property to Grose. Within the contract and addendum, James stated that he had received and placed into the trust fund account of

Welcome Home Realty earnest money from Grose in the amount of \$1,000.00.

Further, the addendum of the contract provided that “earnest money held in Welcome Home Realty (Listing Broker) and released to Wilshire within 48 hours after both parties have executed contracts.”

In the Notice of Agency Relationship, James indicated that he represented the seller only, and not Grose.

The closing on the Boley Property was set for February 24, 2005.

On February 15, 2005, and before the closing of the Boley Property, James drew up a land contract between Grose and Manerchia to sell the Boley Property to Manerchia for \$25,000.00.

In said contract, the contract also provided that Manerchia would rent the Boley Property for \$300.00 a month until such time she purchased the Boley Property.

Despite the fact that Welcome Home Realty had represented Manerchia as a buyer’s agent on four separate occasions, including twice on the Boley Property, in the February 15, 2005, contract, James stated on the Notice of Agency Relationship disclosure that he represented Grose as the seller’s agent, and not Manerchia as the buyer’s agent.

Manerchia moved into the Boley Property on February 22, 2005, two days prior to the closing on the Boley Property between Grose and Wilshire Credit. Neither James nor Grose expected Manerchia to move into the Boley Property on February 22, 2005, but Manerchia had no where else to go.

Although James claimed that Grose purchased the Boley Property, James himself attempted to collect \$300.00 rent from Manerchia when Manerchia moved into the Boley Property on February 22, 2005.

On February 23, 2005, one day before the scheduled closing on the Boley Property, James claimed that Grose informed James that Grose could not purchase the Boley Property due to certain legal issues not relevant herein.

At that time, James claimed that he "loaned" Grose \$18,000.00 for purposes of purchasing the Boley Property.

James did not enter into a written contract with Grose for the \$18,000.00 loan.

On February 23, 2005, James wrote a check for \$18,000.00, from the trust fund account of Welcome Home Realty, for purposes of purchasing the Boley Property.

On February 24, 2005, the Boley Property closed, and \$2,000.00 was paid to James from Wilshire Credit as a sales commission for selling the Boley Property.

On February 25, 2005, the Boley Property was deeded to Roy Grose from Wilshire Credit, and entered into the records of Fayette County, West Virginia.

By deed dated March 7, 2005, Roy Grose deeded the Boley Property to James. The deed was admitted to the record in Fayette County on March 18, 2005.

Grose did not pay to James a \$1,000.00 earnest money deposit for the purchase of the Boley Property from Wilshire Credit. James used Grose as a straw purchaser to purchase the Boley Property from Wilshire Credit for \$18,000.00 and receive a \$2,000.00 commission, for purposes of renting and selling the Boley Property to Manerchia for a profit.

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

v.

COMPLAINT 11-022

**JOHN JAMES,
DEFENDANT.**

ANSWER

Comes now John James by counsel Darl W. Poling, and without waiving his objection to the re-filing of this Complaint, files this response to the Complaint which has been re-filed against him by the West Virginia Real Estate Commission.

For purposes of clarity, this response will be broken down into Counts according to the parties involved.

SALYERS COUNT

1. The portion of the Complaint pertaining to Don Salyers is barred by the doctrines of collateral estoppel and res adjudicata based upon the recent rulings of the Circuit Court of Raleigh County, West Virginia.
2. The Complaint is barred by the statute of limitations and is not timely filed.
3. The portion of the Complaint pertaining to the Defendant's representation of Don Salyers from June 2005 fails to state a violation of any specific duty or obligation of the Defendant as agent for Don Salyers.
4. The Defendant denies that at any time during his representation of Don Salyers that he improperly authorized the deduction of \$2,500.00 from the proceeds of

sale.

5. The Defendant prior to the closing on the Salyers transaction provided a copy of the Walbrown appraisal invoice to Salyers by facsimile transmission to the last known contact number the Defendant had for Salyers.
6. That prior to the closing, the Defendant did not receive any objection from Mr. Salyers to the payment of the appraisal fee.
7. That the Defendant submitted the appraisal invoice to the closing attorney and the closing attorney, not the Defendant issued payment of the appraisal fee.
8. That the Defendant did not receive any portion of the appraisal fee in question.
9. That the Power of Attorney issued by Mr. Salyers did in fact authorize the Defendant to take any and all action necessary to complete the closing of the transaction.
10. That after the transaction was closed, Mr. Salyers voiced his objection to the payment of the appraisal fee and the fee was promptly returned by Walbrown Real Estate and Appraisal Services, LLC.
11. That Mr. Salyers suffered no harm by the temporary confusion surrounding the payment of the appraisal fee by the closing attorney.

MANERCHIA/WILSHIRE CREDIT COUNT

12. The portions of the Complaint pertaining to Josephine Manerchia and Wilshire Credit Corporation are barred by the doctrines of collateral estoppel and res adjudicata based upon the recent rulings of the Circuit Court of Raleigh County, West Virginia.

13. The Complaint is barred by the statute of limitations and is not timely filed.
14. The portion of the Complaint pertaining to the Defendant's dealings with Josephine Manerchia in August 2004 fails to state a violation of any specific duty or obligation of the Defendant to Ms. Manerchia.
15. The Defendant admits the portion of the Complaint that alleges that Welcome Home Realty for a period of time represented Ms. Manerchia, as a buyer's agent, in several failed attempts to purchase homes in the Raleigh County and Fayette County area.
16. The Defendant denies that he or any member of his firm acting improperly in any manner in their dealings with Ms. Manerchia.
17. The Complaint references the Defendant's attempt to buy the Wilshire Credit property located at 108 Boley Street, Oak Hill, West Virginia, and the Defendant admits that he did make an offer to purchase the property and that the offer violated no laws, rules or regulations of the State of West Virginia.
18. The Defendant asserts that Wilshire Credit rejected his offer to purchase the Boley Street property and the Defendant continued to market the property.
19. The Defendant admits that Wilshire Credit notified him that his listing agreement for the Boley Street property was being terminated or not renewed.
20. That on or about February 3, 2005, after his listing agreement had ended, the Defendant notified Wilshire Credit that he had a buyer for the property by the name of Roy Grose.
21. The Defendant admits that Roy Grose was an acquaintance of his and that he approached Mr. Grose about buying the Boley Street property because he knew


- that Mr. Grose had bought investment property in the past.
22. The Defendant denies the allegation that he was a business partner of Roy Grose.
 23. The Defendant denies that he had any type of mutual business relationship with Roy Grose that would require disclosure to Wilshire Credit.
 24. The Defendant admits that he submitted Mr. Grose's offer to purchase the Boley Street property to Wilshire Credit and Wilshire Credit accepted Mr. Grose's offer with the Defendant to receive a commission for the sale.
 25. The Defendant asserts that the transaction between Wilshire Credit and Grose was an arms length contract with all terms fully disclosed to Wilshire Credit and accepted by Wilshire Credit.
 26. That prior to the closing on the purchase of Boley Street by Mr. Grose, the Defendant acting as agent for Mr. Grose, contacted Ms. Manerchia to see if she would be interested in the Boley Street property with Mr. Grose "owner financing" the property since she had been unable to qualify for bank financing to purchase the property.
 27. The Defendant admits that a contract was prepared for Ms. Manerchia to buy the property from Mr. Grose with specific terms in the contract.
 28. The Defendant admits the allegations that prior to the closing with Wilshire Credit and Grose, that Ms. Manerchia unexpectedly and without permission from anyone, moved into the Boley Street property.
 29. The Defendant admits the allegations that prior to the Wilshire Credit closing, Mr. Grose contacted him to try and back out of the transaction because of financial problems Mr. Grose was experiencing based upon recent court proceedings.

30. The Defendant admits that he agreed to loan the money to Mr. Grose based upon his knowledge of Mr. Grose's past business and financial standing.
31. The Defendant admits that he received a \$2,000.00 commission for Mr. Grose's purchase of the Wilshire property, as was specified in the contract signed by Wilshire Credit and Mr. Grose.
32. The Defendant admits that after the Boley Street property was deeded to Grose that Grose informed the Defendant that he could not re-pay the loan based upon continuing financial hardship and Mr. Grose further advised the Defendant that Mrs. Grose wanted the loan resolved, and therefore, Mr. Grose offered the property to James in satisfaction of the loan obligation.
33. The Defendant denies that Grose was a straw party in this transaction and asserts that Grose himself has previously advised the West Virginia Real Estate Commission investigator as such.
34. The Defendant asserts that the Complaint fails to allege any violation of any duty to Ms. Manerchia.
35. The Defendant asserts that the Complaint fails to specifically identify any violation of a legal duty to Wilshire Credit.
36. The Complaint fails to specify any violation of any law, rule or regulation by the Defendant.

Wherefore, the Defendant re-asserts the doctrines of collateral estoppel and res adjudicata as barring the Commission from proceeding on this Complaint, but without waiving said defenses and assertions, the Defendant having fully responded to the allegations filed against him, demands that the Complaint be dismissed for failing to state a cause of action against the Defendant and for

failing to specifically notify the Defendant of the specific violations for which he is being prosecuted, and the Defendant demands such other relief as is just, including his attorney fees associated with the defense of this frivolous and malicious action.

Respectfully submitted,
JOHN JAMES
By Counsel



Darl W. Poling WV State Bar #4915
Poling Law Offices
P. O. Box 762
Beckley, WV 25802
304-255-0191

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF RALEIGH, TO WIT:

John Merritt James, a credible person having knowledge of the facts
set out in the foregoing Answer

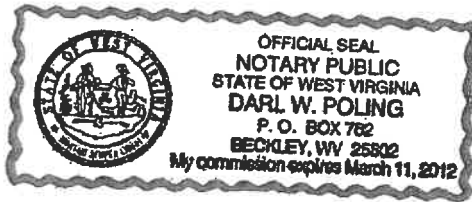
and whose name is signed thereto, being first duly sworn, says that the facts and allegations contained
herein are true, except insofar as they are therein stated to be upon information and belief, and insofar
as they are therein stated to be upon information and belief, he believes them to be true.

John Merritt James

Taken, subscribed and sworn to before me this the 2nd day of February,
2011.

My Commission expires:

March 11, 2012
Darl W. Poling
NOTARY PUBLIC

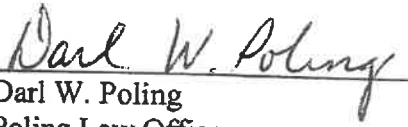


CERTIFICATE OF SERVICE

I, Darl W. Poling counsel for John James, do hereby certified that a true and exact copy of the foregoing ANSWER has been served upon the following parties by fax and by United States mail, postage paid, this the 2nd day of February, 2011, as follows:

Gregory G. Skinner, Esquire
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
fax (304)-558-0140

West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
fax (304)- 558-6442


Darl W. Poling
Poling Law Offices
P.O. Box 762
Beckley, WV 25802
304-255-0191
WV State Bar ID #4915

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION.

WEST VIRGINIA REAL ESTATE COMMISSION,

v.

Complaint Dated October 5, 2011

JOHN JAMES,
DEFENDANT.

ANSWER

Comes now John James by counsel Thomas K. Fast, and subject to his now pending Motion to Dismiss, files this response to the Complaint dated October 5, 2011, which has been filed against him by the West Virginia Real Estate Commission.

For purposes of clarity, this response will be broken down into Counts according to the parties involved.

1. There has not been a finding of probable cause by the West Virginia Real Estate Commission on the complaint dated October 5, 2011.
2. The Defendant raises insufficiency of legal notice as a defense to this complaint dated October 5, 2011.

SALYERS COUNT

3. Don Salyers has withdrawn his complaint. See Exhibit A, attached hereto and incorporated herein by reference.
4. The portion of the Complaint pertaining to Don Salyers is barred by the doctrines of collateral estoppel and res adjudicata.
5. The Complaint is barred by the statute of limitations and is not timely filed.
6. The portion of the Complaint pertaining to the Defendant's representation of Don Salyers from June 2005 fails to state a violation of any specific duty or obligation of the Defendant as agent for Don Salyers.

7. The Defendant denies that at any time during the representation of Don Salyers that he improperly authorized the deduction of \$2,500.00 from the proceeds of sale.
 8. The Defendant prior to the closing on the Salyers transaction provided a copy of the Walbrown appraisal invoice to Salyers by facsimile transmission to the last known contact number the Defendant had for Salyers.
 9. That prior to the closing, the Defendant did not receive any objection from Mr. Salyers to the payment of the appraisal fee.
 10. That the Defendant submitted the appraisal invoice to the closing attorney and the closing attorney issued payment of the appraisal fee.
 11. That the Defendant did not receive any portion of the appraisal fee in question.
 12. That the Power of Attorney issued by Mr. Salyers did in fact authorize the Defendant to take any and all action necessary to complete the closing of the transaction.
 13. That after the transaction was closed, upon Mr. Salyers voicing his objection to the payment of the appraisal fee, the fee was promptly returned by Walbrown Real Estate and Appraisal Services, LLC.
 14. That Mr. Salyers suffered no harm by the temporary confusion surrounding the payment of the appraisal fee by the closing attorney.
- WILSHIRE CREDIT COUNT**
15. The portions of the Complaint pertaining to Wilshire Credit Corporation are barred by the doctrines of collateral estoppel and res adjudicata.
 16. The Complaint is barred by the statute of limitations and is not timely filed.
 17. The Defendant denies that he or any member of his firm acting improperly in any


manner in their dealings with Wilshire Credit.

18. The Complaint references the Defendant's attempt to buy the Wilshire Credit property located at 108 Boley Street, Oak Hill, West Virginia, and the Defendant admits that he did make an offer to purchase the property and that the offer violated no laws, rules or regulations of the State of West Virginia.
19. The Defendant asserts that Wilshire Credit rejected his offer to purchase the Boley Street property and the Defendant continued to market the property.
20. The Defendant states that Wilshire Credit notified him by letter dated February 2, 2005, that his listing agreement for the Boley Street property was being cancelled effective five days from the date of said letter.
21. That on or about February 7, 2005, the Defendant notified Wilshire Credit that there was an offer for the property by one Roy Grose.
22. The Defendant admits that Roy Grose was an acquaintance of his and that he approached Mr. Grose about buying the Boley Street property because he knew that Mr. Grose had brought investment property in the past.
23. The Defendant admits that he submitted Mr. Grose's offer to purchase the Boley Street property to Wilshire Credit and Wilshire Credit accepted Mr. Grose's offer with the Defendant and for the Defendant to receive a commission for the sale.
24. The Defendant asserts that the transaction between Wilshire Credit and Grose was an arms length contract with all terms fully disclosed to Wilshire Credit and accepted by Wilshire Credit.
25. The Defendant admits that he received a \$2,000.00 commission for Mr. Grose's purchase of the Wilshire property, as was specified in the contract signed by Wilshire Credit and Mr. Grose.

26. The Defendant denies that Grose was a straw party in this transaction and asserts that Grose himself has previously advised the West Virginia Real Estate Commission investigator as such.
27. The Defendant asserts that the Complaint fails to specifically identify any violation of a legal duty to Wilshire Credit.
28. The Complaint fails to specify any violation of any law, rule or regulation by the Defendant.

WHEREFORE, the Defendant re-asserts the doctrines of collateral estoppel and res adjudicata as barring the Commission from proceeding on this Complaint, dated October 5, 2011, but without waiving said defenses and assertions, the Defendant having fully responded to the allegations filed against him, demands that the Complaint be dismissed for failing to state a cause of action against the Defendant and for failing to specifically notify the Defendant of the specific violations for which he is being prosecuted, failure to find probable cause, insufficiency of legal notice, and the Defendant demands such other relief as is just, including his attorney fees associated with the defense of the frivolous and malicious action.

Respectfully Submitted,
JOHN JAMES
By Counsel


Thomas K. Fast (WVSB#6312)
FAST LAW OFFICE L.C.
201 North Court Street
Post Office Box 420
Fayetteville, West Virginia 25840
Telephone: 304.574.0777
Facsimile: 304.574.0623
Counsel for Respondent

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION
WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint Dated October 5, 2011

JOHN JAMES,

Licensed Real Estate Broker,

Licensee No. 0011011,

Respondent.

CERTIFICATE OF SERVICE


I hereby certify that I have served the foregoing **RESPONDENT'S ANSWER TO THE OCTOBER 5, 2011, COMPLAINT (FOURTH COMPLAINT)** upon the following by depositing the same as indicated, in the regular course of the United States Mail, First Class, postage prepaid, at the address indicated, on this the 21st day of October, 2011.

The original to:

Jack McClung, Hearing Examiner
221 Washington Street, East
Charleston, West Virginia 25311-2218

Copy to:

Gregory G. Skinner, Senior Assistant Attorney General
Office of the West Virginia Attorney General
1900 Kanawha Boulevard, East, Building 1, Room E-26
Charleston, West Virginia 25305
Counsel for the WV Real Estate Commission



Thomas K. Fast (WVSB#6312)
FAST LAW OFFICE L.C.
201 North Court Street
Post Office Box 420
Fayetteville, West Virginia 25840
Telephone: 304.574.0777
Facsimile: 304.574.0623