

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,  
*Complainant,*

V.

Complaint No. C-13-031

TERRELL TURNER,  
Licensed Real Estate Salesperson  
License No. WV-0023953  
*Respondent.*

**FINAL ADMINISTRATIVE ORDER**

Upon review of the record in the above-styled matter, the West Virginia Real Estate Commission hereby ADOPTS, in its entirety, the Hearing Examiner's Recommended Decision, dated March 10, 2014, which is attached hereto and incorporated by reference herein. Based on the Hearing Examiner's Findings of Fact and Conclusions of Law, the Commission hereby ORDERS as follows:

1. The Respondent's license is REVOKED;
2. The Respondent shall pay restitution to Douglas Montgomery in the amount of twenty-three thousand seven hundred forty-seven dollars and fifty cents (\$23,747.50), which shall be reduced by such amount as Respondent may prove was paid in connection with the related criminal matter.

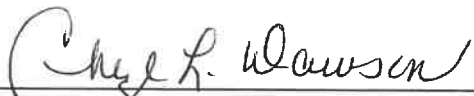
3. The Respondent shall pay a fine in the amount of five-thousand dollars (\$5,000.00), made payable to the State of West Virginia.

4. The Respondent shall reimburse the Commission its costs and legal fees associated with this proceeding, which total three thousand two hundred sixty-eight dollars and twenty-five cents (\$3,268.25), made payable to the State of West Virginia.

5. That, in addition to all other requirements as prescribed by law, the Respondent shall not be eligible for reinstatement of licensure until the above restitution, fine and costs are paid in full.

ENTERED this \_\_\_26th\_\_\_ day of \_\_\_\_\_ March \_\_\_\_\_, 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. L-13-031**

**TERRELL TURNER,**

**Respondent.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF  
HEARING EXAMINER**

This is a matter involving a complaint against Terrell Turner, Licensee No. WV-0023953, alleging theft of funds and other improper or illegal actions that could warrant suspension, revocation of license and other forms of disciplinary action. The matter was heard by the undersigned Hearing Examiner on January 22, 2014, who now tenders her findings of fact, conclusions of law and recommendation to the Commission.

**PROCEDURAL HISTORY**

On or about June 25, 2013, Douglas Montgomery, the broker and owner of Hallmark Realty in Martinsburg, West Virginia, filed a Formal Complaint with the West Virginia Real Estate Commission ("Commission") alleging that Terrell Turner "had been managing properties in addition to those that we were aware of and was requiring tenants to pay him personal in cash or in Money Orders made out to Terrell Turner which he then kept for personal use. In other instances he was charging higher than normal deposits without the knowledge of the property Owners. He then kept those pet deposits for himself. He also held security deposits, against our policy, and when asked to produce them admitted that he had used that money as well."

The Commission served the Formal Complaint on the Respondent on June 27, 2013, and directed him to respond within twenty (20) days.

On October 17, 2013, the West Virginia Real Estate Commission met and found probable cause to proceed with disciplinary action against the Respondent.

On December 17, 2013, the Commission issued a Notice of Hearing and Statement of Charges against Terrell Turner, was sent to the Respondent Douglas Montgomery on December 20, 2013, Certified Mail, Return Receipt Requested. The receipt card was signed and returned to counsel for the West Virginia Real Estate Commission. A second Notice of Hearing and Statement of Charges was sent to the Respondent at a different address. That Notice was returned to the sender, noting that the forwarding time had expired.

The matter was taken up for hearing by the undersigned Hearing Examiner on January 22, 2013, at the offices of the West Virginia Real Estate Commission in Charleston, West Virginia. Debra L. Hamilton, Deputy Attorney General, and Executive Director Richard Strader appeared on behalf of the Commission. The Respondent did not appear, either in person or by counsel.

After the hearing the undersigned established a time frame for the submission of proposed findings of facts, conclusions of law and briefs. Counsel for the Commission timely submitted proposed findings of facts and conclusions of law on March 4, 2013. The Respondent again failed to submit any pleading or proposed findings.

## HEARING EXHIBITS

Exhibit No. 1	Formal Complaint
Exhibit No. 2	Notice of Hearing and Statement of Charges
Exhibit No. 3	Certified Mail Cards
Exhibit No. 4	US Postal Service Tracking Information
Exhibit No. 5A	Deposit Summary 1/16/2014 6:00 p.m.
Exhibit No. 5B	Deposit Summary 1/16/2014 6:01 p.m.
Exhibit No. 6	Prosecuting Attorney Letter of 1/8/2014

Commission's Proposed Findings of Fact and Conclusions of Law

## ISSUES

1. Did the Respondent, Terrell Turner, violate the Real Estate License Act and rules of the West Virginia Real Estate Commission, specifically *W.Va. Code* §30-40-19(a)(8), (9) (22) and (37), and *W.Va. Code of State Rules* 174-1-16.2, by failing to account for or remit, within a reasonable time, moneys coming into his possession which belongs to others; commingling moneys belonging to others with his funds; committing a material fraud, misrepresentation, concealment or other device whereby another person relied on the word, representation or conduct of the licensee; and/or otherwise engaging in any act or conduct which constituted or demonstrated bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing?
2. Should the West Virginia Real Estate Commission revoke, suspend or otherwise discipline the Licensee Terrell Turner?

## FINDINGS OF FACT

After reviewing the record, the exhibits admitted into evidence and the testimony of witnesses, and after assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the undersigned Hearing Officer makes the following findings of fact and conclusions of law:

1. The West Virginia Real Estate Commission (“the Commission”) is a state agency created pursuant to the provisions of *W.Va. Code § 30-40-1, et seq.* The Commission is charged with regulating the practice of real estate brokerage in the State of West Virginia. No person may act as a real estate broker, associate broker or salesperson without first obtaining a license from the Commission. *W.Va. Code §30-40-3.*
2. The Respondent, Terrell Turner, was licensed by the Commission, holding License Number WV-0023953. Prior to May 3, 2013, the Respondent was employed by Hallmark Realty LLC (“Hallmark”) in Martinsburg, West Virginia, as a real estate agent and rental property manager.
3. On June 25, 2013, one of the owners and brokers of Hallmark, Douglas Montgomery, filed a Formal Complaint with the Commission against the Respondent Terrell Turner. The Formal Complaint alleged that Terrell Turner “had been managing properties in addition to those that we were aware of and was requiring tenants to pay him personal in cash or in Money Orders made out to Terrell Turner which he then kept for personal use. In other instances he was charging higher than normal deposits without the knowledge of the property Owners. He then kept those pet deposits for himself. He also held security

deposits, against our policy, and when asked to produce them admitted that he had used that money as well.”

4. The Commission served the Formal Complaint on the Respondent on June 27, 2013, and directed him to respond within twenty (20) days. The Respondent did not respond in any way.
5. On October 17, 2013, the West Virginia Real Estate Commission met and found probable cause to proceed with disciplinary action against the Respondent.
6. On December 17, 2013, the Commission issued a Notice of Hearing and Statement of Charges against Terrell Turner, was sent to the Respondent Douglas Montgomery on December 20, 2013, Certified Mail, Return Receipt Requested. The receipt card was signed and returned to counsel for the West Virginia Real Estate Commission. A second Notice of Hearing and Statement of Charges was sent to the Respondent at a different address. That Notice was returned to the sender, noting that the forwarding time had expired.
7. The Respondent did not reply or respond to the Notice of Hearing and Statement of Charges, either personally or by counsel.
8. The Notice of Hearing and Statement of Charges stated with appropriate citation that failure of the Respondent to submit an answer to the Complaint constituted an admission of the allegations in the Complaint.
9. The matter was taken up for hearing by the undersigned Hearing Examiner on January 22, 2013, at the offices of the West Virginia Real Estate Commission in Charleston, West Virginia. Debra L. Hamilton, Deputy Attorney General, and

Executive Director Richard Strader appeared on behalf of the Commission. The Respondent did not appear, either in person or by counsel.

10. Executive Director Strader testified as to the attempts to serve the Respondent with the Complaint and Notice of Hearing and Statement of Charges. He testified as to the receipt of the certified mail return receipt card, signed by the Respondent that reflected actual notice and service of the December 17, 2013, Notice of Hearing and Statement of Charges.
11. Douglas Montgomery testified at the hearing regarding the criminal actions that arose from the same allegations giving rise to his Formal Complaint. Mr. Montgomery testified that in the matter of *State of West Virginia v. Terrell Turner*, Case No. 13-B-73 filed in the Magistrate Court of Berkeley County, West Virginia, the Respondent had been offered a plea agreement for one count of felony embezzlement. The Respondent received a sentence of one to ten years in prison and a \$2,000 fine. His sentence was suspended for five years' probation, under the condition that he pay \$23,747 in restitution. Mr. Montgomery's testimony reflected information received by him from the Berkeley County Prosecutor's Office, Hearing Exhibit No. 6, as well as updated information he received regarding the amount of restitution.
12. Mr. Montgomery explained how the Respondent had improperly taken or re-directed funds from tenants and owners of property managed by him. He calculated that the amounts for which Respondent had provided receipts from Hallmark's receipt book, but which were not deposited into Hallmark's trust accounts, totaled \$38,567.50. In addition, \$23,747.00 of the receipted amounts



belonged to tenants and owners who could provide proof of their payments to Respondent. Hearing Exhibits No. 5A and 5B represented a breakdown of the funds and amounts taken by the Respondent over a three-year period.

13. Mr. Montgomery testified that upon discovering the actions of the Respondent and determining the verifiable amounts taken by him, Mr. Montgomery took the funds from his personal savings and deposited them to the escrow account of Hallmark Realty, LLC, to be held in trust as repayment to tenants and owners of the properties involved.

14. Since Mr. Montgomery had paid the tenants and property owners out of the escrow account, any restitution paid by the Respondent as a result of his criminal plea bargain would be paid to Mr. Montgomery.

15. The testimony of Richard Strader and Douglas Montgomery was found to be credible and reliable.

16. The West Virginia Real Estate Commission, by its counsel, submitted its proposed findings of facts and conclusions of law on March 4, 2014. The Respondent failed to submit anything.

## **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 the actions of a real estate salesperson or broker warrant the imposition of disciplinary action, sanctions or other measures. The Act sets forth various criteria that the Commission must consider in reviewing a complaint, and the Commission has the burden of proving that by reasonable cause that disciplinary action is warranted. *W.Va. Code § 30-40-19(a)*.

Factors that the Commission must consider include whether the licensee has been convicted of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion, conspiracy to defraud, any other similar offence, a crime involving moral turpitude or a felony. Other factors include acts or conduct that constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing. *W.Va. Code §30-40-19(a)*.

The applicable rules for the Commission also permit disciplinary action upon satisfactory proof that the applicant has been convicted of a felony or is engaged in conduct, or committed other acts, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. *CSR §174-4-3*.

The evidence is undisputed that the Respondent, Terrell Turner, Turner managed properties in addition to those sanctioned by his Broker, Hallmark Realty and Douglas Montgomery. He further requiring tenants to pay him personally in cash or in money orders, which he then kept for personal use and did not turn over to his Broker, as required by law. The Respondent further charged tenants higher than normal security or damage deposits without the knowledge of the property owners, and again kept the difference for himself. As a result of his dishonesty, the Respondent profited by at least \$27,747.50, sums that his supervising Broker, Mr. Montgomery, had to pay out of his own account in order to compensate the tenants and owners who had been victimized.

The Commission has broad discretion in suspending a license or imposing disciplinary actions, and must only show that its decision was reasonable under the circumstances. In this matter, given that the Respondent has admitted to his

wrongdoing, has been convicted of the same, has failed and refused to respond to the Formal Complaint of Statement of Charges filed by the Commission, the Commission has more than met its burden of proof.

### **CONCLUSIONS OF LAW**

1. The West Virginia Real Estate Commission is charged with protecting the public interest from the unauthorized, unqualified and unregulated practice of real estate brokerage. *W.Va. Code §30-40-1, et seq.*
2. The West Virginia Real Estate Commission has the burden of proving that it had probable cause to impose disciplinary action against the Respondent's license to practice real estate in the State of West Virginia.
3. Failure of a licensee to file a timely response to a Complaint may be considered an admission of the allegations in the Complaint. *W.Va. Code §30-40-20(c).*  
The Respondent failed to respond to the Formal Complaint in this matter, thereby admitting to the truth of the allegations contained therein.
4. If a Respondent has been served proper notice of hearing and fails to appear in person at the hearing, the presiding officer may proceed to conduct the hearing, and the Respondent shall be bound by the results of such hearing to the same extent as if present. *174 C.S.R. §4-7.1.* The Respondent failed to appear at the hearing of this matter, and further failed to file any responsive or defensive pleadings therein. As such, the Respondent is bound by the results of the hearing to the same extent as if present.
5. Every real estate salesperson and associate broker who receives any trust funds shall immediately, or at the first opportunity, pay over or deliver the trust funds to

the broker, under whom he is registered. Moreover, no salesperson or broker shall collect any money in connection with any real estate brokerage transaction except in the name of and with the consent of the licensed real estate broker under whom he is licensed. 174 C.S.R. §1-16.2. The failure of a salesperson or an associate broker to comply with the provisions of 174 C.S.R. §1-16.2 constitutes a violation of the provisions of *W.Va. Code* §30-40-1.

6. The Respondent failed to promptly pay over or deliver trust funds to his supervising broker, and further collected money in his own name and not in the name of the broker under whom he was licensed. The Respondent is in violation of 174 C.S.R. §1-16.2 and *W.Va. Code* §30-40-1.
7. The Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belongs to others. *W.Va. Code* §30-40-19(a)(8).
8. The Commission has the authority to suspend or revoke a real estate license if a licensee commingles moneys belonging to others with his or her own funds. *W.Va. Code* § 30-40-19(a)(9).
9. By failing to remit to his broker certain rents and deposits, as well as managing properties of which Hallmark was not aware and accepting rents for same which he retained for this personal use, Respondent's conduct was in violation of the provisions of *W.Va. Code* §30-40-19(a)(8) and (9).
10. The Commission may revoke, suspend or impose any other sanction against 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. *W.Va. Code §30-40-19(a)(37)*.

11. The Respondent's violations of *W.Va. Code §30-40-19(a)(8)* and (9) evidence conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, and dishonest, fraudulent or improper dealing, in violation of *W.Va. Code §30-40-19(a)(37)*.

12. The Commission has the discretionary power to impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer. *W.Va. Code §30-40-7(l)*.

13. The Commission has the authority to assess administrative costs for the costs of this proceeding, which costs shall be placed in the account of the Commission. *W.Va. Code §30-1-8(a)*.

14. The West Virginia Real Estate Commission has sustained its burden of proof.

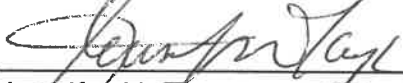
### **RECOMMENDATION**

Based on the foregoing Findings of Fact and Conclusions of Law, and on the basis of the evidence, the undersigned Hearing Examiner recommends Based on the credible evidence presented, as well as the admissions of Respondent based on his failure to respond to the Formal Complaint or Statement of Charges, and his failure to appear at

the hearing of which he had notice, it is recommended that the Commission impose one or more sanctions as considered appropriate in the circumstances for the discipline of the Respondent.

It is further recommended that such sanction include, at a minimum, the revocation of the real estate license of Terrell Turner and an order requiring restitution to Douglas Montgomery in the amount of Twenty Three Thousand Seven Hundred and Forty-seven dollars and fifty cents (\$23,747.50), reduced by such amount as Respondent may prove was paid in connection with the related criminal matter.

Respectfully submitted March 10, 2014.

  
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Jennifer N. Taylor, WWSB 4612  
Hearing Examiner  
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Charleston, WV 25301  
304.342.1887