

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

V.

Complaint No. C-14-022

Vickie L. Jenkins,
Licensed Real Estate Broker
License No. WV-0021005

Respondent.

FINAL ADMINISTRATIVE ORDER

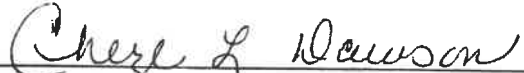
Upon review of the record in the above-styled matter, the West Virginia Real Estate Commission hereby ADOPTS, in its entirety, the Hearing Examiner's Recommended Decision dated January 7, 2015, which is attached hereto and incorporated by reference herein. Based on the Hearing Examiner's Findings of Fact and Conclusions of Law, the Commission hereby ORDERS as follows:

1. The Respondent is REPRIMANDED.
2. The Respondent shall reimburse the Commission its costs and legal fees associated with this proceeding, which total eight thousand three hundred twenty-six dollars and ninety cents (\$8,326.90), within 60 days of the entry of this Order, by certified check or money order made payable to the State of West Virginia and sent directly to the Commission Office.
3. Non-compliance with any requirement of this Final Administrative Order by Respondent Jenkins, without the prior written consent of the Commission, shall constitute a violation of an Order of the Commission. The Commission shall notify Respondent Jenkins in writing of the

alleged non-compliance, providing a time by which Respondent must fully comply or be subject to further disciplinary action by the Commission as a result of a complaint initiated by the Commission alleging non-compliance with an Order of the Commission.

ENTERED this // day of February, 2015.

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-14-022

**VICKIE L. JENKINS
Licensed Real Estate Broker
License No. WV-0021005,**

Respondent.

**HEARING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

This matter comes before the undersigned hearing examiner for hearing on a Notice Of Hearing And Statement Of Charges (Joint Exhibit 1) issued against the Respondent Vickie L. Jenkins (hereinafter "Respondent") by Complainant West Virginia Real Estate Commission (hereinafter "Commission"), with the August 4, 2014, "Answer of Vickie L. Jenkins to Statement of Charges" of record.

This matter came on for evidentiary hearing on August 6, 2014, in the Conference Room of the West Virginia Real Estate Commission's offices located at 300 Capitol Street, Suite 400, Charleston, West Virginia. The Complainant Commission appeared by its counsel, Debra L. Hamilton, Deputy Attorney. The Commission was also present by its Executive Director, Richard Strader. Respondent appeared in person and by her counsel, Monte L. Williams and Chelsea Brown Prince. The hearing proceeded under notice on the Statement of Charges set forth therein, Respondent agreeing to waive the 30-day notice requirement. Joint Exhibit 1; Hearing Transcript ("Tr.") at 23

All witnesses were sworn, documents were received into evidence, the hearing was recorded electronically, and a transcript prepared and distributed to the parties. After a review of the record and exhibits admitted into evidence at the hearing of this matter, after assessing

the credibility of all testimony of witnesses of record and weighing the evidence in consideration of the findings as to credibility, and after consideration of the proposed findings of fact and conclusions of law as were filed by the parties, the undersigned hearing examiner makes the following findings of fact, conclusions of law, and proposed order.

To the extent that these findings and conclusions are inconsistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are rejected by the hearing examiner. Conversely, to the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are accepted and adopted. To the extent that the testimony of any witness is not in accordance with these Findings and Conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed or submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

The hearing examiner was and is satisfied that all records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations. The hearing examiner was and is satisfied that the witnesses brought on by the parties were credible and truthful except as noted below. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below.

STATEMENT OF CHARGES

The Statement Of Charges (Joint Exhibit 1) against Respondent Jenkins alleges the following violations of W. Va. Code § 30-40-1 *et seq.*

1. Upon receipt on September 5, 2013, of a Complaint (No. P-14-009) (Joint Exhibit 2A) against Respondent, the Commission considered the Complaint at its meeting held October 17, 2013, tabled it at that time in order to obtain additional information. By letter of October 29, 2013,

to Respondent, the Commission provided her a copy of the Complaint and requested by that letter that Respondent Jenkins

. . . furnish it [the Commission] with a copy of the entire contents of your file(s) regarding the listing/sale/rental of the property which was the subject of the complaint. Also, include any other documentation in your possession which relates to the listing/sale/rental of this property.

Joint Exhibit 2.

The letter requested that the requested documentation be provided to the Commission by November 6, 2013. Joint Exhibit 2.

The record reflects that the Respondent's documentation (Joint Exhibit 3) was received by the Commission on November 18, 2013.

The Statement of Charges filed in this matter alleged, at Paragraph 7, that the documentation provided by Respondent and received by the Commission on November 18, 2013, was ". . . incomplete documentation . . ." ". . . based on what brokers are legally required to maintain in their property files." The Statement of Charges further alleged, at Paragraph 12, that "Respondent's failure to timely provide an entire copy of her file as requested, as well as the incomplete nature of Respondent's file, violates W. Va. Code § 30-40-19(a)(24) and Commission Rule 174 C.S.R. § 4-4.6.c."

2. The Statement of Charges further alleged, at Paragraph 15, that there was a lack of documentation in Respondent's file as to the subject matter, in violation of W. Va. Code § 30-40-19(a)(28).

3. The Statement of Charges further alleged, at Paragraph 17, that Respondent failed to adequately supervise a salesperson in her office (Huffman)

" . . . by listing the property and otherwise giving the appearance that Respondent's brokerage was the List Office in connection with the listing/sale/rental of the property while allowing the salesperson to proceed as though it was a private listing/sale/rental not associated with Respondent's brokerage, in violation of W. Va. Code §30-40-19(a)(30).

4. The Statement of Charges filed in this matter further alleged, at Paragraph 19, that "Respondent's actions in allowing the property to be listed through Respondent's brokerage while

allowing the listing/sale/rental to proceed as a private matter undertaken by her salesperson is tantamount to lending the salesperson her broker's license or allowing the salesperson to operate as a broker, in violation of W. Va. Code § 30-40-19(a)(35)."

5. The Statement of Charges filed in this matter further alleged, at Paragraph 21, that "Respondent's actions in not properly following legal requirements regarding her brokerage's listings or making its role in the listing/sale/rental of the property clear constitutes or demonstrates improper dealing, in violation of W. Va. Code § 30-40-19(a)(37)."

FINDINGS OF FACT

1. Respondent Vickie L. Jenkins is a broker licensed by the Commission, holding license number WV-0021005 and owns a real estate brokerage in Kingwood, West Virginia.

2. The property at issue (hereafter "the property"), in Morgantown, West Virginia, was property owned by one of her salespeople (hereafter "Salesperson Huffman"), who was also listed as the List Agent. Joint Exhibit 3-1.

3. Salesperson Huffman had been with Respondent's brokerage for four or five years, but now lives in Florida. Tr. at 24.

4. The facts which gave rise to this Complaint came to the attention of the Commission when Complaint P-14-009 was filed by Curtis B. Walker and Jennifer Walker ("the Walkers") against Salesperson Huffman. In that complaint, the Walkers indicated that they had been "deceived by real estate agent Crystal Huffman" as a result of the real estate transaction related to 110 Crimson Sky Drive and complained that they had not received their security deposit back due to fabricated charges manufactured by Ms. Huffman. The Complaint asserted that Ms. Huffman never indicated that Real Estate by Vickie Jenkins would not be responsible for the rental history. Joint Exhibit 2A.

5. As is the practice of the Commission, the Commission made Respondent Jenkins aware of the complaint filed by the Walkers against Salesperson Huffman, but did not enclose a copy of the Complaint so that Respondent would contact the salesperson. Commission Exhibit 2; Tr. at 88, 109-110.

6. In connection with the Commission's investigation of Complaint P-14-009, Respondent Jenkins was requested by the Commission, by letter dated October 29, 2013, to furnish a copy of the entire contents of her file(s) regarding the listing/sale/rental of the property which was the subject of the complaint, as well as any other documentation in Respondent's possession relating to the listing/sale/rental of the property. Joint Exhibit 2.

7. Salesperson Huffman provided Respondent Jenkins with a copy of Complaint P-14-009, and she was aware of the complaint prior to receiving the Commission's request for the file(s) on the property. Commission Exhibit 2; Joint Exhibit 2A; Tr. at 36, 148.

8. Respondent testified at the hearing of this matter that the October 29, 2013, letter was received in her office on November 6, 2013, and that in response to the request for documentation therein she "grabbed everything out of my file that had to do with the complaint that was attached and put it right back in the mail on the 8th (November 8, 2013)." Tr. at 37-42.

9. The following was provided by Respondent in response to the said Commission's request:

(the following "-#" are not marked on the documents but added here for clarification)

Joint Exhibit 3-1: The MLS residential rental listing #10085027;

Joint Exhibit 3-2: A deposit ticket for the \$2,000.00 for "Crimson Sky" dated May 1, 2012;

Joint Exhibit 3-3: A check for \$2,000.00 payable to Salesperson Huffman dated May 1, 2012; and

Joint Exhibit 3-4: The Walkers' lease agreement dated April 23, 2012.

10. The residential rental listing (Joint Exhibit 3-1) referenced an option to purchase an MLS sales listing, which was not part of the file materials provided by Respondent. Joint Exhibit 3.

11. Based on what brokers are legally required to maintain in their property files and the contents of Respondent's file on the property based on her response to the request for the entire file, the Commission initiated the instant complaint against Respondent in connection with the listing and leasing of the property at its regular meeting on December 17, 2013. Joint Exhibit 4.

12. Respondent timely responded to the Complaint, which included the statement that she “had sent all the information I [she] actually had.” Joint Exhibit 5; Tr. at 49.

13. At its meeting on January 15, 2014, the Commission found probable cause to proceed against Respondent for violation of several subsections of West Virginia Code § 30-40-19, and this matter was later noticed for hearing. Joint Exhibit 1.

14. On March 24, 2014, Respondent, through counsel, provided the following additional documents:

Joint Exhibit 6A: A copy of the lease agreement;

Joint Exhibit 6B: A copy of the \$2,000 check to Salesperson Huffman;

Joint Exhibit 6C: A bank statement reflecting the \$2,000.00 credit (05/01/12) and debit (check #1575 debited on 05/02/12) and the deposit ticket;

(the following “-#” are not marked on the documents included in Exhibit D of Joint Exhibit 6 but are added here for clarification)

Joint Exhibit 6D-1: Notice of Agency Relationship signed on November 1, 2011, reflecting Salesperson Huffman’s affiliation with Respondent’s brokerage and that she is acting as the agent for herself as the Seller;

Joint Exhibit 6D-2: Listing Contract between Respondent as Broker and Salesperson Huffman as Seller;

Joint Exhibit 6D-3: Full Report;

Joint Exhibit 6D-4: Property Disclosure Statement;

Joint Exhibit 6D-5: The MLS residential sales listing #10083018 referenced in the rental listing; and

Joint Exhibit 6D-6: Real Estate Purchase Agreement and another broker’s Notice of Agency Relationship dated March 2, 2012, which was not signed by Salesperson Huffman as the Seller.

15. By affidavit signed on April 15, 2014, Respondent stated that the documents produced on March 24, 2014, “were maintained in the file since the date of their creation” (Joint Exhibit 7), by that admitting that the said documents were in her file at the time she initially provided documents (Joint Exhibit 3).

16. Respondent states she misunderstood the request and, rather than providing the entire file as requested, got only the one document related to the rental – the MLS rental listing – from the

file and obtained a copy of the lease from Salesperson Huffman and the financial documents from the brokerage's accounting office. Joint Exhibit 3; Tr. at 50, 58-60, 136-37, 141.

17. Salesperson Huffman's files were in Respondent's Morgantown office, and she did not provide Respondent with documents from her file until moving to Florida. Tr. at 148-149.

18. The MLS listings provided by Respondent do not show all the fields detailed on the MLS. Tr. at 32-33.

19. The sales listing began in November of 2011 and the file was started, but there were no offers so the property was put on the rental market in March of 2012. Tr. at 35-36.

20. Respondent's brokerage is named as the List Office on both the residential sale MLS and the residential rental MLS. Joint Exhibits 3-1 and 6D-5.

21. While the listing agreement (Joint Exhibit 6D-3) has an end date of April 27, 2012, the rental listing has an expiration date of June 20, 2012 (Joint Exhibit 3-1) and the sales listing has an expiration date of May 15, 2012 (Joint Exhibit 6D-5).

22. While Respondent repeatedly takes the position that the listing ended on April 27, 2012, that cannot be established due to conflicting information in the MLS listings and the fact there was no rental listing agreement between Respondent and Salesperson Huffman similar to the sales agreement. Joint Exhibits 3-1, 6D-2, 6D-5.

23. Salesperson Huffman identified herself to the Walkers as being affiliated with Respondent's brokerage through the use of her business card, email logo and other means. Joint Exhibit 2A; Tr. at 106, 114, 166-67.

24. Because Respondent's brokerage is listed as the List Office on both MLS listings, Respondent cannot reasonably take the position that this was a private matter between Salesperson Huffman and the Walkers. Joint Exhibits 3-1 and 6D-5; Tr. at 82.

25. The Walkers believed that Respondent and her brokerage were involved in the rental transaction until Respondent told her it was a private matter. Tr. at 113.

26. A listing belongs to the broker, the brokerage is responsible for all listings on which it is listed as the List Office, and Respondent was clearly identified as the broker for both the rental and sale of the property. Joint Exhibits 3-1 and 6D-5; Tr. at 29, 76-77, 108.

27. Respondent also had a duty to supervise Salesperson Huffman and did not adequately supervise Salesperson Huffman in connection with the property, especially since the matter involved real property owned by Salesperson Huffman and there are best practices to ensure that a licensee's personal and real estate license business are kept separate and clearly identified. Commission Exhibit 1; Tr. at 77, 82.

28. Respondent had no communications with the Walkers other than emails written after the fact regarding the security deposit, which were not made available to the Commission or made a part of the record even though they would have been responsive to the Commission's request. Tr. at 45, 72.

29. Respondent did not make a copy of the check but stated that Salesperson Huffman must have brought it to the brokerage on May 1, the date of the deposit into the trust account. Tr. at 53.

30. It can be inferred that the check was made payable to the brokerage, since it was deposited in the trust account. Joint Exhibits 3-2 and 6C.

31. Respondent did not ask Salesperson Huffman to return the check and clarify to the Walkers that the brokerage was not involved because the check was written during the listing period and, Respondent contends, the law therefore required that it be deposited into the trust account. Tr. at 53-54.

32. Salesperson Huffman agreed that it was normal protocol for the check to be made payable to the brokerage since it was listed through the MLS. Tr. at 150.

33. When the listing expired apparently had no bearing on the deposit of the check since Respondent did not realize the four-day time frame between the signing of the lease and the purported end date for the listing until preparing for this hearing. Tr. at 52.

34. After depositing the check into the trust account, Respondent then wrote a check for the entire \$2,000.00 to Salesperson Huffman. Joint Exhibits 3-2, 3-3, 6B and 6C.

35. Respondent has done this for other associates in her office. Tr. at 156.

36. Respondent chose to not take a commission from the rental. Tr. at 118-19.

37. Respondent's file should have contained a rental management agreement and documentation explaining the deposit into the real estate trust fund account and the disbursement of the funds from the trust fund account to Salesperson Huffman. Tr. at 75, 81.

38. Although Respondent testified that she is not a rental company, the brokerage does some rentals in connection with sales listings, but does not use a rental agreement form. Tr. at 49-50; Respondent's Exhibit 1.

39. ARELLO, the Association of Real Estate License Law Officials of which the West Virginia Real Estate Commission is a member, publishes "Supervising Broker Best Practices" which includes a best practice for a licensee selling, purchasing or leasing out personally owned real property which advises that a broker must be very clear that all the regulations must be followed, including the payment of any fee or commission to the brokerage. Commission's Exhibit 1.

40. This best practice cautions a broker that if one of its licensees utilizes the brokerage, the broker may be included in the complaint and, thus, a licensee's personal and real estate license business should be kept separate and clearly identified. Commission's Exhibit 1.

41. Nothing in the best practices contradicts anything in the law administered by the Commission. Tr. at 108.

42. Respondent Jenkins was not familiar with ARELLO. Tr. at 67.

43. Rather than acting in a manner that conformed with the best practices set forth in the ARELLO publication (Commission's Exhibit 1), Respondent Jenkins did not require the payment of fees, allowed Salesperson Huffman to utilize the brokerage, and otherwise allowed her licensee's personal transaction to be identified with and not separated from the brokerage.

44. Respondent's involvement in this matter, including the acceptance, deposit and immediate disbursement of the \$2,000.00 check from the Walkers written to the brokerage, evidences the unclear and misguided role of Respondent's brokerage in the listing/sale/rental of the property and renders Respondent responsible for same.

45. Restitution in this matter is unnecessary since the Walkers brought suit against Salesperson Huffman, resulting in a payment to the Walkers in resolution of the suit. Respondent's Exhibit 2.

CONCLUSIONS OF LAW

1. The Commission is a state entity created by W. Va. Code § 30-40-1 *et seq.*, which vests the Commission with the authority and responsibility to regulate real estate brokers, associate brokers and salespersons in the State of West Virginia.
2. 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.*
3. 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 measures. W. Va. Code § 30-40-19(a).
4. The rules of the Commission permit disciplinary action as considered appropriate in the circumstances for the discipline of the licensee. W. Va. Code R. § 174-4-8.1.b.
5. Since no stricter standard of proof is set forth in Article 40 or the procedural rules of the Commission (West Virginia Code § 30-40-21 and West Virginia Code R. § 174-4-1 *et seq.*), the Commission has the burden of proving by a preponderance of the evidence that disciplinary action is warranted.
6. West Virginia Code § 30-40-7(l) gives the Commission all 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.”
7. West Virginia Code R. § 174-4-4.6.c. of the Procedural Rules of the Commission states that “every licensee has an affirmative duty to assist the Commission ... in investigations performed by the Commission.”

8. Although the record reflects that Respondent's initial response to the Commission's requests for documents was in good faith, it was incomplete and therefore nevertheless a violation of Respondent's duty to assist the "Commission ... in investigations performed by the Commission", in violation of W. Va. Code R. § 174-4-4.6.c.

9. West Virginia Code § 30-40-19(a)(24) authorizes sanctions against any licensee who "fails to disclose any information within his or her knowledge or to produce any document, book or record in his or her possession for inspection of and copying by the commission. ..."

10. Respondent's untimely provision of additional documentation, through her counsel, evidences Respondent's prior failure to disclose information, documents, books or records requested by the Commission, in violation of West Virginia Code § 30-40-19(a)(24).

11. Respondent's failure to timely provide an entire copy of her file as requested, as well as the incomplete nature of Respondent's file, violates W. Va. Code § 30-40-19(a)(24) and Commission rule 174 C.S.R. § 4-4.6.c., all as was alleged in the Statement of Charges filed in this matter.

12. West Virginia Code § 30-40-19(a)(28) authorizes sanctions against any licensee who "fails to preserve for five years records relating to any real estate transaction."

13. The preservation of records implies there are records to be preserved. Here, there is a lack of documentation in the file for the property, including no residential rental listing agreement and no explanation regarding the receipt and disbursement of moneys from Respondent's trust account. This lack of documentation relating to this real estate transaction violates W. Va. Code § 30-40-19(a)(28), as was alleged in the Statement of Charges filed in this matter. .

14. A "salesperson" is defined as a person employed or engaged by or on behalf of a broker to do or deal in any activity included in (Article 40), in the name of and under the direct supervision of a broker, other than an associate broker. W. Va. Code § 30-40-4(m).

15. Because a salesperson acts only in the name of and under the direct supervision of a broker, a broker is responsible for all of the activities of his or her salespersons and has a legal duty to supervise those activities.

16. West Virginia Code § 30-40-19(a)(30) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensed broker if the broker “[f]ails to adequately supervise all associate brokers and salespersons employed by him or her.”

17. Respondent failed to adequately supervise Salesperson Huffman by listing the property and otherwise giving the appearance that Respondent’s brokerage was the List Office in connection with the listing/sale/rental of the property while allowing the salesperson to proceed as though it were a private listing/sale/rental not associated with Respondent’s brokerage, in violation of W. Va. Code § 30-40-19(a)(30), as alleged in the Statement of Charges filed in this matter.

18. West Virginia Code § 30-40-19(a)(35) authorizes sanctions against any licensee who “(l)ends a broker’s license to any person, including a salesperson, or permits a salesperson to operate as a broker.”

19. The Statement of Charges filed in this matter alleges that Respondent’s actions in allowing the property to be listed through Respondent’s brokerage while allowing the listing/sale/rental ostensibly to proceed as a private matter undertaken solely by her salesperson is “tantamount to lending the salesperson her broker’s license or allowing the salesperson to operate as a broker,” in violation of W. Va. Code § 30-40-19(a)(35), as alleged in the Statement of Charges filed in this matter.

20. The facts of this matter do not, however, support a conclusion of law that Respondent did, in fact, lend her broker’s license to her salesperson. While Respondent did fail to properly supervise her salesperson in this matter, mere failure to supervise does not constitute the lending of a broker’s license. It is therefore concluded that Respondent did not lend her broker’s license or allow her salesperson to operate as a broker as alleged in the Statement of Charges filed in this matter.

21. West Virginia Code § 30-40-19(a)(37) authorizes sanctions against any licensee who “[e]ngages in any act or conduct which constitutes or demonstrates ... improper dealing.”

22. Respondent’s actions in not properly following legal requirements regarding her brokerage’s listings and making her brokerage’s role in the listing/sale/rental of the property clear have been found to constitute violations as to production of documents, record keeping, and failure

to supervise her salesperson, as hereinbefore stated. This case involves the failure of Respondent in such essentially administrative duties of a broker, but there are no allegations apart from such administrative matters as to any improper dealing by Respondent with any client. The facts of this case do not, therefore, support a conclusion that Respondent committed any personal act that constitute or demonstrates improper dealing within the meaning of the provisions of W. Va. Code § 30-40-19(a)(37), and as alleged in the Statement of Charges filed in this matter.

23. The Commission has therefore proven by a preponderance of the evidence the allegations stated in the Statement of Charges in part and failed to prove such allegations in part.

24. The above violations as proven render the Respondent's license subject to discipline by the Commission. W. Va. Code § 30-40-19(a).

25. The Commission may assess administrative costs, which shall be placed in the account of the Commission. Any fine shall be deposited in the state treasury's general revenue account. West Virginia Code § 30-1-8(a); W. Va. Code R. § 174-4-8.1.b.

RECOMMENDED ORDER

Based on the above Findings of Fact and Conclusions of Law, the recommended decision of the undersigned hearing examiner is as follows:

1. That as to the allegations stated in the Statement of Charges filed in this matter against Respondent Vickie L. Jenkins by Complainant West Virginia Real Estate Commission:

a. that the allegations of the Statement of Charges that Respondent failed to timely provide an entire copy of her file as requested, as well as the incomplete nature of Respondent's file, and thereby violated the provisions of W. Va. Code § 30-40-19(a)(24) and Commission rule 174 C.S.R. § 4-4.6.c., be SUSTAINED;

b. that the allegation in the Statement of Charges that Respondent failed to maintain adequate documentation and thereby violated the provisions of W. Va. Code § 30-40-19(a)(28) be SUSTAINED;

c. that the allegation in the Statement of Charges that Respondent failed to adequately supervise a salesperson employed by her and thereby violated the provisions of West Virginia Code § 30-40-19(a)(30) be SUSTAINED;

d. that the allegation in the Statement of Charges that Respondent's actions in this matter were tantamount to lending the salesperson her broker's license or allowing the salesperson to operate as a broker, and thereby violated the provisions of W. Va. Code § 30-40-19(a)(35), all as alleged in the Statement of Charges filed in this matter, NOT BE SUSTAINED;

e. that the allegation in the Statement of Charges that Respondent's actions in this matter constitutes or demonstrates improper dealing and thereby violated the provisions of W. Va. Code § 30-40-19(a)(37), all as alleged in the Statement of Charges filed in this matter, NOT BE SUSTAINED; and, therefore,

that the Statement of Charges filed in this matter be SUSTAINED in part and NOT SUSTAINED in part as aforesaid, and that any objection or defense thereto by Respondent as to those parts sustained be DENIED.

2. The above violations as sustained render the Respondent's license subject to discipline by the Commission pursuant to the provisions of W. Va. Code § 30-40-19(a)

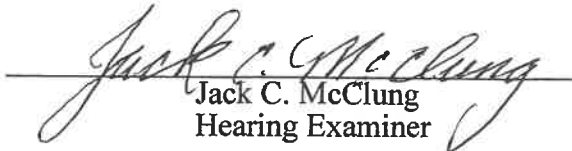
3. The Commission may assess administrative costs, which shall be placed in the account of the Commission. Any fine shall be deposited in the state treasury's general revenue account. West Virginia Code § 30-1-8(a); W. Va. Code R. § 174-4-8.1.b.

4. The Commission does not seek restitution in this matter.

5. Based on the credible evidence presented and after consideration of such matters of mitigation as have been presented by Respondent, it is therefore recommended that the Commission

impose such sanctions as it considers appropriate under the circumstances of this matter for the discipline of the Respondent Vickie L. Jenkins.

Recommended this 7th day of January, 2015.



Jack C. McClung
Hearing Examiner