

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

**WEST VIRGINIA
REAL ESTATE COMMISSION,**

Complainant,

v.

Formal Complaint No. C-14-031

**GARY L. ROWE,
Licensed Salesperson
License No. WV-0026988**

Respondent.

CONSENT DECREE

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

FINDINGS OF FACT

1. The Commission, as the State entity created to regulate the conduct of real estate brokers, associate brokers and salespersons, has jurisdiction over this Complaint.

2. Respondent is a licensed salesperson in the State of West Virginia, holding license number WV-0026988.

3. On March 27, 2014, the Commission initiated the above-styled complaint against Respondent alleging that Respondent failed to notify the Commission of the revocation of his auctioneer's license (#1681) by the head of the West Virginia Department of Agriculture, who concurred with the Auctioneer Board of Review, which has jurisdiction over such licenses.

4. The revocation was for Respondent's failing to pay moneys due and owing his auctioneering clients in a timely manner and engaging in fraudulent, dishonest and incompetent conduct, both of which are grounds for discipline under the laws enforced by the Commission.

5. The Commission received correspondence from Respondent's counsel requesting a copy of the complaint, which was provided under cover dated May 22, 2014, and an extension of time in which to respond, which was granted.

6. Respondent's counsel did not file a response and did not respond to repeated communications from the Commission.

7. In part based on Respondent's and his counsel's failure to respond, which may be considered an admission of the allegations in the Complaint under West Virginia Code § 30-40-20(c) and Commission Rule § 174-4-4.3, the Commission, at its meeting on June 11, 2014, found probable cause to proceed against Respondent Rowe for violations of West Virginia Code §§ 30-40-19(a)(37) and (45).

8. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.

9. The Commission has incurred expenses in the prosecution of this Complaint in an amount in excess of seven hundred eighty dollars (\$780.00), which expenses relate solely to the Commission's legal expenses and do not include costs reflecting time expended by Commission staff and other expenses incurred by the Commission.

CONCLUSIONS OF LAW

1. West Virginia Code § 30-40-1 *et seq.* vests the Commission with the authority and responsibility to regulate real estate brokers, associate brokers and salespersons in the State of West Virginia.

2. West Virginia Code § 30-40-19(a)(8) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee “[f]ails, within a reasonable time, to account for or remit moneys or other assets coming into his or her possession, which belong to others.”

3. West Virginia Code § 30-40-19(a)(9) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she “[c]ommingles moneys belonging to others with his or her own funds.”

4. The grounds for the revocation of Respondent's auctioneer license relating to the non-payment or misappropriation of moneys are evidence that Respondent has failed, within a reasonable time, to account for or remit moneys or other assets coming into his or her possession, which belong to others and/or is evidence of the commingling of moneys belonging to others with his or her own funds, in violation of W. Va. Code § 30-40-19(a)(8) and/or (9), as well as the standards which are enforced by the Department of Agriculture through the Auctioneer Board of Review.

5. 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 bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.”

6. The grounds for the revocation of Respondent’s auctioneer license relating to the non-payment or misappropriation of moneys are evidence that Respondent has engaged in acts or conduct which constitute or demonstrate bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing, in violation of W. Va. Code § 30-40-19(a)(37), as well as the standards which are enforced by the Department of Agriculture through the Auctioneer Board of Review.

7. West Virginia Code § 30-40-19(a)(45) authorizes sanctions against any licensee who “[i]s disciplined by another jurisdiction if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in [W. Va. Code § 30-40-1 *et seq.*].”

8. The Department of Agriculture’s finding that Respondent failed to pay over moneys to his auctioneering clients in a timely manner and engaged in fraudulent, dishonest or incompetent conduct is the same as or equivalent to the prohibitions found in W. Va. Code §§ 30-40-19(a)(8), (9) and (37) and provides grounds for sanctions under W. Va. Code § 30-40-19(a)(45).

9. 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); W. Va. Code R. § 174-4-4.3.”

10. 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. W. Va. Code § 30-1-8(a).

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent acknowledges the Findings of Fact set forth above, does not contest the violations set forth above in the Conclusions of Law, and consents to the entry of the following Order:

ORDER

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

1. Respondent's license is **REVOKED**.
2. Respondent shall pay a fine in the amount of three hundred dollars (\$300.00), payable to the State of West Virginia.
3. Respondent shall also pay the costs associated with this Complaint in the amount of seven hundred eighty dollars (\$780.00).
4. The total payment of one thousand eighty dollars (\$1,080.00) shall be paid within ninety (90) days of the entry of this Consent Decree by the Commission. Payments may be made in installments of no less than \$250.00 each and shall be made by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office.

5. Respondent is ineligible for applying for a license until after the expiration of two years from the date of revocation as evidenced by the entry date of this Consent Decree pursuant to W. Va. Code § 30-1-21(f) and is ineligible thereafter unless and until he has complied with all the terms of this Consent Decree.

6. Any deviation from the requirements of this Consent Decree without the prior written consent of the Commission shall constitute a violation of an Order of the Commission and may result in further action taken by the Commission.

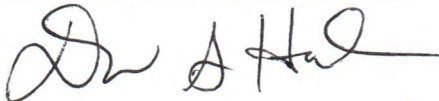
CONSENT DECREE AGREED TO BY:



GARY L. ROWE, Individually

12/11/14

DATE




Counsel for Gary Rowe

ENTERED into the records of the Real Estate Commission this:

9th day of December, 2014.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 

RICHARD E. STRABER,
EXECUTIVE DIRECTOR