

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-15-025

**EMILY SHORTALL,
Licensed Salesperson,
License No. WV-0029886**

Respondent.

CONSENT DECREE

The Respondent, Emily Shortall (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 was unlicensed in West Virginia at the time of the actions giving rise to this Complaint, but on April 27, 2015, became a salesperson licensed by the Commission, holding

license number WV-0029886 under John Sambuco, the Broker of J & J, LLP dba Harvey Goodman Realtor (HGR) [hereinafter the HGR broker].

3. The HGR broker is also a broker in Ohio and had become the supervising broker for Respondent in Ohio at a time when Respondent was in the process of moving from North Carolina to St. Clairsville, Ohio.

4. During this time, Respondent mailed at least 127 postcards to businesses in the Ohio Valley, many of which were sent to businesses located in West Virginia, which stated in large type that HGR as 'HRGRentals' [sic] "is now offering 3rd party property management services in the Ohio Valley" and which then described Respondent's return to the Ohio Valley after an illustrious national career in the property management business [hereinafter at times referred to as "Respondent's mailing"].

5. Respondent also printed two business cards, one which named Respondent as the President of Property Management of Harvey Goodman Realtor Property Management" [Business Card #1] and another naming her the Vice President of Core Realty Holdings (CRH) Management, Inc. [Business Card 2].

6. None of these businesses – HRGRentals, Harvey Goodman Realtor Property Management or Core Realty Holdings (CRH) Management, Inc., is registered with the Commission.

7. This complaint, dated April 30, 2015, was initiated by the Commission at its meeting against the HGR Broker and Respondent on April 22, 2015, and was served upon both for response.

8. The Commission received timely responses from both the HGR broker and Respondent which made it clear that the HGR broker knew nothing about the mailing, had not paid

for the mailing, and had not approved or authorized the mailing or "the marketing of 'HRGRENTALS', 'HGR Rentals', 'HGR', or any other fictitious name involved in the mailing."

9. In further response, the HGR Broker had never seen Business Card #1 despite his name being on the card, nor had he approved or authorized its creation or content or employed Respondent as its President of Property Management.

10. Similarly, the HGR Broker had no affiliation with Core Realty Holdings (CRH) Management, Inc.[Business Card #2], and in fact did not offer property management services "in any form as part of our business."

11. Respondent corroborated her broker's response and further stated that, based on feedback from the mailing, there appeared to be a market for property management in the Wheeling area

12. Based on the response received, the Commission found probable cause to proceed against Respondent at its meeting on May 27, 2015.

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

14. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$390.00, 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 § 30-40-3 states: "It shall be unlawful for any person to engage in or carry on, directly or indirectly, or to advertise or hold himself or herself out as engaging in or carrying on the business or act in the capacity of a real estate broker, associate broker or salesperson within this state without first obtaining a license as provided for in this article.
3. West Virginia Code § 30-40-7(1) 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."
4. As set forth in West Virginia Code § 30-40-7(1), Respondent came under the jurisdiction of the administrative powers of the Board when she became a licensee.
5. W. Va. Code § 30-40-19(a)(2) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[m]akes any substantial misrepresentation."
6. W. Va. Code § 30-40-19(a)(3) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[m]akes any false promises or

representations of a character likely to influence, persuade or induce a person involved in a real estate transaction.”

7. As set forth in the above Findings of Fact, Respondent’s mailing and business cards made several substantial misrepresentations, including the use of fictitious business names and position titles, which were intended to market or other induce persons, including people and businesses in West Virginia, to utilize the purported property management services, thereby violating West Virginia Code § 30-40-19(a)(2) and (3).

8. West Virginia Code § 30-40-19(a)(4) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise.

9. West Virginia Code § 30-40-19(a)(5) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee who uses misleading or false advertising.

10. West Virginia Code R. § 174-1-9.2 states that salespersons may not advertise any property under their own names and that all advertising by a salesperson must be under the direct supervision of and in the name of the employing broker.

11. Respondent’s mailing and business cards utilized names that were not registered with the Commission, were not associated with a broker, or, in the case of Business Card #1, named the HGR broker without his knowledge or approval, thereby violating West Virginia Code § 30-40-19(a)(4) and (5) and West Virginia Code R. § 174-1-9.2.

12. West Virginia Code § 30-40-19(a)(22) provides that the Commission may revoke, suspend or otherwise discipline a licensee if the licensee “[c]ommits or is a party to any material

fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or other device whereby any other person relies upon the word, representation or conduct of the licensee.”

13. Respondent is in violation of W. Va. Code § 30-40-19(a)(22) because Respondent’s mailing and business cards, which constitute violations of § 30-40-19(a)(2), (3), (4) and (5), were misrepresentations which were relied upon by people expressing interest in her purported property management services, which prompted her to become licensed in West Virginia.

14. West Virginia Code § 30-40-19(a)(37) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee “(e)ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.”

15. Respondent’s misrepresentations which constitute violations of § 30-40-19(a)(2), (3), (4), (5) & (22) also 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).

16. The Commission may assess administrative costs. W. Va. Code § 30-40-21(g). Costs shall be placed in the account of the Commission, and any fine shall be deposited in the state treasury’s general revenue account. West Virginia 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

execution of a new Consent Decree which may contain different or additional terms. The Commission is not bound to comply with Respondent's request for probationary reinstatement.

In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of her license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.* and any procedural rules promulgated by the Commission.

At its discretion, the Commission also may schedule a hearing on its own initiative for the purpose of allowing the Commission to consider further discipline against Respondent based upon Respondent's violation of this Order of the Commission.

AGREED TO BY:



EMILY SHORTALL

6/18/15
DATE

ENTERED into the records of the Real Estate Commission this:

23rd day of June, 2015.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
RICHARD E. STRADER,
EXECUTIVE DIRECTOR