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BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

NOV 22 2013

WEST VIRGINIA REAL ESTATE COMMISSION,

ATTORNEY GENERAL'S
OFFICE

Complainant,

v.

Formal Complaint No. L-13-013

DEREK W. HOUCHINS,
Licensed Associate Broker
License No. WV-0022394

Respondent.

CONSENT DECREE

The Respondent, Derek W. Houchins (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, execute this Consent Decree for the purpose of resolving a Formal Complaint 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, Conclusions of Law and Order set forth herein 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 associate broker, holding associate broker's license number

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\$500 + costs

WV-0022394, and is currently associated with Tom Johnson Real Estate, Inc. in Lewisburg, West Virginia.

3. On November 27, 2012, Shonna L. Ruble, the broker for United Country Freedom Real Estate (hereinafter "Broker Ruble" and "Freedom Real Estate") in Peterstown, West Virginia, filed a complaint with the Commission alleging, in part, as follows:

a. Respondent served as an associate broker with the Peterstown office of Freedom Real Estate until November 15, 2012, on which date he removed all his personal belongings from the office.

b. On Friday, November 16, 2012, Respondent returned to Freedom Real Estate, where Respondent and Broker Ruble disagreed regarding Respondent's existing listings, and Respondent left, keeping keys to Freedom Real Estate.

c. On Monday, November 19, 2012, Broker Ruble returned to Freedom Real Estate and found nearly all of Respondent's listings (files) and the keys associated with those listings missing.

d. The clients of the missing listings had been contacted by Respondent and advised the listings were now with Coldwell-Banker.

5. By written response dated December 12, 2012, Respondent did not deny the allegations, instead stating that the Commission does not enforce ethics complaints and, without providing dates, stating that he had not returned to Freedom Real Estate since he was asked to leave.

6. Based on the allegations, the date of Respondent's severance from Freedom Real Estate was November 15, 2012, at which time he had an associate broker's license with Stuart and Watts Realty Referrals.

7. Based on Respondent's response, the Commission found probable cause to proceed

against Respondent at its regular meeting on May 22, 2013.

8. Upon receipt of a proposed Consent Decree, Respondent requested leave to file a more substantive response to the allegations, which leave was granted, and Respondent denied or explained the allegations, admitting that he contacted some of the listings but denying that he showed the listings, attempted to sell any of the listings, or took the listings to his new broker until after the listing with Broker Ruble had expired.

9. Respondent verbally stated that all the listings contacted were listings he had taken to Freedom Real Estate, and the Commission makes no finding regarding which listings were contacted, whether they were originally contracts with Respondent, or the nature of Respondent's contact with those sellers.

10. The Commission finds that at the time of Respondent's contact, the listings were the property of Broker Ruble.

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

12. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$650.00, 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. Pursuant to West Virginia Code § 30-40-19(a), the Commission may suspend, revoke or impose any other sanction against a license who is found to have committed any of the violations set forth in that subsection.

3. A listing agreement is a contract between the Broker and the Seller, and even when a salesperson secures a listing he or she does so in the name of and on behalf of the Broker since only a broker can legally conduct real estate business. W. Va. Code §30-40-4(c) and (m).

4. West Virginia Code § 30-40-19(a)(15) authorizes sanctions against any licensee who “(i)nduces any person to a contract to break the contract for the purpose of substituting a new contract with a third party.”

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 ... improper dealing.”

6. Respondent’s actions in contacting listings at a time when the listing agreement was with Broker Ruble, even though there is no finding that Respondent attempted to induce the seller to break any contract with Broker Ruble, constitute or demonstrate improper dealing, in violation of W. Va. Code § 30-40-19(a)(37).

7. 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).

CONSENT

Respondent, by signing below, 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 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, admits to 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 is REPRIMANDED.

2. Within 30 days of the entry of this Consent Decree, Respondent shall pay a fine in the amount of five hundred dollars (\$500.00), plus the Commission's costs in this matter in the amount of six hundred and fifty dollars (\$650.00), for a total payment of eleven hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the State of West Virginia and sent directly to the Commission Office.

3. The fine and costs may be made in payments by check or money order made payable to the State of West Virginia and sent directly to the Commission Office or through automatic withdrawals as agreed to and administered by the Commission.

If submitted in partial payments, the \$650.00 in costs shall be paid first, in such amounts and by such dates as may be agreed to in writing by the Commission, which writing may be in the form of an email communication.

The \$500.00 fine shall be paid on or before June 30, 2014, payable in amounts no less than

\$100.00 per payment.

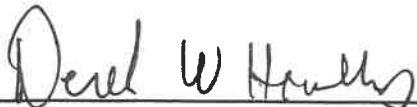
4. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of an Order of the Commission and may, upon action by the Commission, result in the summary suspension of Respondent's license until such time as Respondent achieves full compliance.

The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of Respondent's license. Respondent may request probationary reinstatement of the license through renewal of this Consent Decree, or 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 his 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.

CONSENT DECREE AGREED TO BY:



DEREK W. HOUCHINS, Individually

DATE 11-17-2013

ENTERED into the records of the Real Estate Commission this:

18th day of November, 2013

WEST VIRGINIA REAL ESTATE COMMISSION,

By:



**RICHARD E. STRADER,
EXECUTIVE DIRECTOR**