

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,

V.

Complaint No. P-07-026

BETH TAYLOR
Licensed Real Estate Broker
License No. 0001234,
Respondent.

FINAL 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, which is attached hereto and incorporated by reference herein. This matter is hereby DISMISSED from the Commission's docket.

ENTERED this 11th day of December, 2008.

WEST VIRGINIA REAL ESTATE COMMISSION



John Reed
Vice-Chairman

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. P-07-026

**BETH TAYLOR,
Licensed Real Estate Broker
License No. 0001234**

Respondent.

HEARING EXAMINER'S RECOMMENDED DECISION

This matter came on for hearing before the undersigned on June 18, 2008, pursuant to Notice of Hearing and Statement of Charges dated March 18, 2008. The West Virginia Real Estate Commission (hereinafter Commission) appeared by Anthony Eates, Assistant Attorney General, and called as witnesses Bruce Winkelman, Kathi Riegel, and Kevin Hypes. The Respondent appeared Pro Se, testified on her own behalf, and called no witnesses.

All witnesses were sworn, documents were received into evidence, and the hearing was recorded electronically.

After a review of the record and exhibits admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the undersigned Hearing Examiner makes the following Findings of Fact and Conclusions of Law. 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 adopted by the Hearing Officer. Conversely, to the extent that the same are inconsistent with these findings and conclusions, they are rejected. 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 and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

FINDINGS OF FACT

1. The Commission is a state agency created by West Virginia Code § 30-40-1 *et seq.*, and is empowered to regulate the practice of real estate brokerage in the State of West Virginia.
2. Respondent is a licensed real estate broker and is subject to the Commission's license requirements.
3. In 2003, Respondent served as the responsible broker for her employee, Kathi Reigel, licensed real estate salesperson.
4. Ms. Reigel was the listing agent for a piece of property located in Harrison County, West Virginia, owned by a Ronald Hodges. (Complainant's Ex. 3.)
5. Respondent's agency listed the Hodges property for \$1,100,000.

6. In late March 2003, Peter D. Barlow made an offer to purchase the property for \$1,000,000. Mr. Barlow was represented by Bruce Winkelmann, Broker, then with Adrian Properties in Tyler County, West Virginia.

7. The parties contracted for the sale of the property for \$1,000,000. Mr. Barlow signed the contract on March 28, 2003, and Mr. Hodges signed on April 2, 2003. (Complainant's Ex. 1.)

8. The contract required that the deed be delivered on or before April 28, 2003. *Id.*

9. The contract expired before the parties completed the transaction.

10 Kathi Riegel testified that in late June 2003, Mr. Barlow and his then wife, Karen Shannon Barlow, signed an Addendum to the original contract that extended the scheduled closing date to late July 2003; that the Barlows signed the Addendum on June 26, in Kathi Riegel's presence; that she informed Mr. Winkelman that the Barlows had signed the Addendum and that she had planned to forward it to Mr. Hodge, her client, for his signature; that when she informed the Respondent of the June 2003 Addendum, Respondent demanded that Ms. Riegel deliver all of the documents regarding the sale to her office; that she in fact did deliver all of the documents including the June 2003 Addendum, to Respondent's office on Washington Avenue in Clarksburg, West Virginia. (Tr. 29, 59-60, 61, 73-74. Complainant's Ex. 4.)

11. The parties never completed the transaction and Mr. Hodge sold the property at auction. (Complainant's Ex. 4.)

12. With the assistance of Mr. Winkelmann, Mr. Barlow made several unsuccessful requests to obtain a copy of the June 2003 Addendum from the Respondent. (Tr. 30-31.) As a result, Mr. Barlow filed a complaint with the Commission in late 2003 in order to obtain a copy of the addendum from the Respondent. (Tr. 81.)

13. In response to the 2003 complaint, Respondent submitted a copy of a document to the Commission purporting to be the June 2003 addendum sought by Mr. Barlow. (Tr. 81; See Complainant's Ex 2.)

14. Believing this document to be the requested addendum, the Commission dismissed the 2003 complaint.

15. As a result, in January 2007, Mr. Barlow filed a second, substantially similar, complaint (the subject of this hearing) to obtain the June 2003 addendum. (Complainant's Ex. 5.)

16. By letter to the Respondent dated May 2, 2007, the Commission requested a copy of the June 2003 Addendum. (Complainant's Ex. 7.)

17. In addition, on September 11, 2007, the Commission served the Respondent with a subpoena duces tecum demanding production of her documents

regarding the transaction between Mr. Barlow and Mr. Hodges, which would include the June 2003 Addendum.¹ (Complainant's Ex. 8.)

18. The Respondent responded that she never possessed the addendum that was signed by Mr. and Mrs. Barlow in Kathi Reigel's presence in June 2003. (See Complainant's Exs. 6 and 9.)

19 Neither the complainant or his purported Power of Attorney testified in this matter.

20. The three individuals involved in the transaction which is the subject of this hearing and who testified stood to gain financially if the sale was consummated.

21. Kathi Riegel testified that she kept copies of everything in her real estate file but later destroyed such copies including the missing "Addendum". (Tr.64-65.)

22. There is no evidence indicating that Mr. Hodges, the seller, ever signed the Addendum which would have no legal efficacy without both the signature of the seller and the buyer.

23. An addendum to an expired contract would not appear to the undersigned to have any legal effect.

¹The Respondent disputed receiving the subpoena, despite the fact that she responded to it in writing. The subpoena was addressed to the Respondent at her Salem, West Virginia address and personally served on the Respondent's daughter who resides there with her mother. Apparently, at the time, the Respondent was at a second home in Florida. See Return of Service attached to Complainant's Exhibit 8.

24. The credibility of both the Respondent and Kathi Riegel are called into question because they simply do not like each other. The Respondent's testimony relating to Kathi Riegel is sprinkled throughout with derogatory remarks about Ms. Riegel. On the otherhand, Ms. Riegel states unequivocally that she doesn't even speak to the Respondent, Beth Taylor. (See Complainant's Exhibit 4.)

25. Kathi Riegel testified that she personally delivered all of the paperwork concerning the Hodges property, including the Addendum signed by Mr. Barlow and his wife Karen in her presence, to Beth Taylor at Ms. Taylor's office in Clarksburg pursuant to Ms. Taylor's orders. (Tr. 61-62.)

26. Beth Taylor in her testimony adamantly denied that Ms. Riegel delivered the file to her office and insisted that the portion of the file she possessed was faxed by Ms. Riegel in segments. (Tr. 134-135.)

27. As a result of the conflicting nature of this key testimony, the undersigned Hearing Examiner finds that the Commission did not meet its burden of proving the charges against the Respondent by a preponderance of the evidence.

28. Therefore, the Commission failed to meet its burden of proving that the Respondent possessed the June 2003 Addendum allegedly signed by Mr. Barlow and his wife, and failed to comply with the Commission's request and subpoena for such Addendum.

CONCLUSIONS OF LAW

1. West Virginia Code § 30-40-19(a)(13) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[f]ails to voluntarily furnish copies of the notice of agency relationship, listing contract, sale contract, lease contract or any other contract to each party executing the same."

2. West Virginia Code § 30-40-19(a)(41) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[f]ails or refuses, on demand, to furnish copies of a document to a person whose signature is affixed to the document."

3. West Virginia Code § 30-40-19(a)(24) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[f]ails 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 or its duly authorized representatives."

4. The Board failed to prove by a preponderance of the evidence that the Respondent violated West Virginia Code §§ 30-40-19(a) (13)and/or 30-40-19(a)(41) and/or § 30-40-19-(a)(24).

RECOMMENDED ORDER

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it recommended that the Board take no disciplinary action against the license of Beth Taylor, and that this matter be dismissed.

ENTERED this 1st day of December, 2008.



JACK C. McCLUNG
HEARING EXAMINER



**State of West Virginia
Real Estate Commission**

300 Capitol Street, Suite 400
Charleston, West Virginia 25301
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MORGANTOWN

ROBERT R. VITELLO
CHARLESTON
JERRY D. ZAFERATOS
BECKLEY
RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

December 11, 2008

Beth A. Taylor
142 Salem Street
Salem, WV 26426

VIA CERTIFIED MAIL
7005 1160 0002 7940 2996

RE: Complaint #P-07-026

Dear Ms. Taylor:

Please find enclosed the Final Order, in the above referenced matter, which was entered into the records of the West Virginia Real Estate Commission on December 11, 2008.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Strader".

Richard E. Strader
Executive Director

Enclosure

cc: Anthony Eates



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RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

December 11, 2008

Peter Barlow
c/o Ronald Fletcher
RR 1, Box 62
Middlebourne, WV 26149

RE: Complaint #P-07-026

Dear Mr. Barlow

Please find enclosed the Final Order, in the above referenced matter, which was entered into the records of the West Virginia Real Estate Commission on December 11, 2008.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Strader".

Richard E. Strader
Executive Director



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RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

TO: Office of The Secretary of State

FROM: Richard E. Strader, Executive Director
West Virginia Real Estate Commission

DATE: December 11, 2008

RE: Final Order

Enclosed for filing in the State Register, is a final order entered into the records of the West Virginia Real Estate Commission on December 11, 2008.