

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

IN THE MATTER OF:

PAT EARHART
Licensed Real Estate Broker
License No. WV-0014416

Complaint No. P-08-043

CONSENT DECREE

Now comes the Respondent, PATEAREHART (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, for the purpose of resolving a 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 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 is a state entity created by W. Va. Code § 30-40-1 *et seq.*, and is authorized to regulate the conduct of real estate brokers, associate brokers and salespersons.
2. Respondent is a real estate salesperson licensed by the Commission, holding license number WV-0014416.

3. Respondent is employed by Jones & Jordan Realty Pros LLC and is supervised by licensed real estate broker Kevin Kinzer.
4. Respondent was contacted by Lawrence Harrell for the purposes of installing a specific model of modular home by Excel Homes on a property he already owned.
5. On March 19, 2008, Respondent used a "Contract to Purchase Real Estate" form document to memorialize an agreement with Lawrence Harrell to install the Excel Homes for a sum of One Hundred Eighty-one Thousand Seventy-five Dollars and Thirty-two Cents (\$181, 075.32) on Mr. Harrell's property located at 9th Street, Bradley, West Virginia.
6. According to the agreement, the "Buyer" was to pay twelve thousand, nine hundred seventy-five dollars and fifty-one cents (\$12,975.51) for a deposit to order the Excel Home with the balance due when the modular home was delivered to the property.
7. The agreement further provides the "Seller" agrees to pay a six percent (6%) commission totaling ten thousand eight hundred sixty-four dollars and fifty-one cents (\$10,864.51) to be paid at the completion of the modular home installation.
8. Mr. Harrell initialed and signed this form document on the lines specified for "Buyer," and Kevin Kinzer of Jones & Jordan Realty Pros LLC initialed and signed the form document as the "Seller."

9. According to a hand-written addition to the agreement of March 19, 2008, the "[b]uyer is putting deposit on Excel home to order it. Final payment to Excel Homes when house is brought to property."
10. On March 19, 2008, Mr. Harrell issued check number 1003 in the amount of twelve thousand, nine hundred seventy-five dollars and fifty-one cents (\$12,975.51) made payable to "Dream Home Constructions" to Respondent as a deposit to order the Excel Home.
11. Mr. Harrell further claims that he was informed that the home would be ready in three to four weeks and that he had a thirty (30) day right to cancel this transaction.
12. Approximately three to four weeks after entering into the contract, Mr. Harrell contacted Respondent regarding the installation of the Excel Home, at which time the Respondent informed him that it had not been ordered.
13. Upon being notified that the Excel Home had not been ordered, Mr. Harrell informed Respondent that he wanted to cancel the transaction and for his deposit payment to be refunded.
14. Respondent claims that despite the fact that the Excel Home was not ordered, the work she performed choosing options for the Excel Home, making arrangements for contractors and securing permits constitutes the ten thousand, eight hundred sixty-four dollars and fifty-one cents (\$10,864.51) commission and that if Mr. Harrell is entitled to any of the initial deposit, he is only entitled to a refund of two

thousand, one hundred eleven dollars and one cent (\$2,111.01) which is the difference of the initial deposit less Respondent's alleged commission.

15. Respondent has failed to repay Mr. Harrell any of his deposit for the Excel Home that was never ordered.
16. On or about May 22, 2008, Mr. Harrell filed this complaint with the Commission.
17. After making a finding of probable cause, the Commission issued a Statement of Charges and the hearing on this matter was originally noticed for hearing on May 15, 2009. After several continuances, the matter was scheduled for hearing on November 4, 2009. Prior to convening the hearing, the parties engaged in settlement discussions and the hearing was stayed pending the Commission's acceptance of the terms discussed and contained herein.

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. The Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee "[v]iolates any provisions of this article, any rule or any order or final decision issued by the commission." W. Va. Code § 30-40-19(a)(19).
3. West Virginia Code § 30-40-19(a)(37) provides that the Commission has the authority to revoke, suspend or otherwise discipline 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."

4. Respondent's use of a "Contract to Purchase Real Estate" for the previously described transaction demonstrates improper dealing and is therefore in violation of West Virginia Code § 30-40-19(a)(37).
5. The Commission may impose one or more of the following sanctions as considered appropriate in the circumstances for the discipline of a licensee, including but 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." W. Va. Code § 30-40-7(l).

CONSENT

Respondent, by affixing her signature hereon, 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.
2. 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.

3. Respondent acknowledges that she may pursue this matter through appropriate administrative and/or court proceedings, and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.
4. Respondent admits that her use of the form document entitled "Contract to Purchase Real Estate" in her dealings with the Complainant in this matter was improper.
5. Respondent accepts the findings set forth above and consents to the entry of the following Order affecting her conduct as a real estate salesperson.

ORDER

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

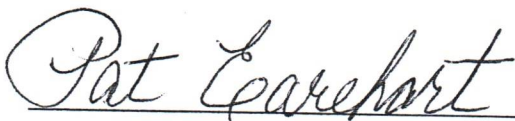
1. Respondent is hereby **REPRIMANDED** and is **ORDERED** to pay to the State of West Virginia, by and through the Commission, a fine in the amount of five hundred dollars (\$500.00), plus costs in the amount of one thousand, one hundred forty-two dollars and fifty cents (\$1,142.50), for a total payment of one thousand, six hundred forty-two dollars and fifty cents (\$1,642.50). Such payment shall be tendered to the Commission in full within thirty (30) days of the date of entry of the Consent Order. Payment shall be made by certified check or money order and be made payable to the State of West Virginia, and sent directly to the Commission.
2. Respondent is further **ORDERED** to refund the money from the deposit paid by Mr. Harrell pursuant to the improper use of the form document entitled "Contract to

Purchase Real Estate" totaling twelve thousand, nine hundred seventy-five dollars and fifty-one cents (\$12,975.51) and remit such refund to the Commission made payable to Lawrence Harrell.

3. The Commission also **ORDERS** that, within six (6) months of entry of this Consent Decree, Respondent shall complete a seven (7) hour "in classroom" educational course on the subject of Ethics and report successful completion of such hours to the Board. Completion of this course shall be in addition to the annual continuing education requirements necessary for license renewal.
4. This Consent Decree constitutes a full and final settlement of this matter before the Commission and shall be closed upon the execution of this Consent Decree by the parties, the full payment of the civil penalty and administrative costs and successful completion of the terms contained herein.
5. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of this Order, and result in the immediate suspension of Respondent's license. The Commission shall immediately notify Respondent via certified mail of the specific nature of the charges, and the suspension of Respondent's license. Respondent may request reinstatement of the probationary license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Commission is not bound to comply with Respondent's request.

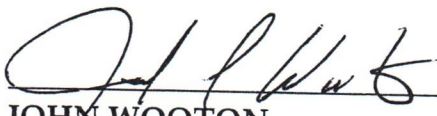
6. In the event Respondent contests an alleged violation of this Consent Decree, if any, which results in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of her license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.*
7. Further, in the discretion of the Commission and in the event Respondent violates the provisions of the instant Consent Decree, the Commission may schedule a hearing on its own initiative for the purpose of allowing the Commission the opportunity to consider further discipline against Respondent's license.

AGREED TO BY:


PAT EAREHART, Individually

12-7-09
DATE

REVIEWED BY:


JOHN WOOTON
Counsel for the Respondent

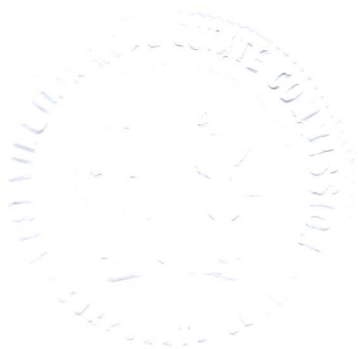
12-11-09
DATE

ENTERED into the records of the Real Estate Commission this:

16th day of December, 2008
execution of a new agreement, which the Commission is not bound to comply with

WEST VIRGINIA REAL ESTATE COMMISSION,

By: Richard E. Strader
RICHARD E. STRADER,
EXECUTIVE DIRECTOR



RECORDED INTO THE RECORDS OF THE REAL ESTATE