

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,

V.

Complaint No. P-09-012

MICHELLE KANODE,
Licensed Real Estate Salesperson
License No. WV-0023147
Respondent.

CONSENT DECREE

The Respondent, Michelle Kanode (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 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 salesperson and is subject to the Commission's license requirements.
3. At all times relevant, Respondent served as an agent with Assist-2-Sell in Princeton, West Virginia. Kevin Kinzer the Respondent's responsible broker.
4. The Respondent owned a property located at Route 1, Box 181K (Dan Hale Reservoir Road), Bluefield, West Virginia (hereinafter referred to as "Property").
5. On July 31, 2008, the Respondent executed an Exclusive Right to Sell Listing Contract with Assist-2-Sell, her employing broker's company, to list the Property for \$109,900. The Listing Contract was effective for a period of three (3) months and provided for a commission of \$2995 if sold by Assist-2-Sell.
6. Respondent signed the Listing Contract as Property owner and as representative of Assist-2-Sell.
7. In the section entitled "Remarks," the Listing Contract states, "Contract void if property purchased by Susan Windle (Bobby) or Charles Williby or Tim Jackson."

8. Respondent also advertised the Property as "For Sale By Owner" at a price of \$99,500.

9. On August 4, 2008, Respondent contracted to sell the Property to Timothy Jackson and Kathy Rector for \$95,000. Respondent drafted the contract herself. The handwritten contract notes that Jackson and Rector paid a \$1000 deposit, but allows for refund of the deposit only if (1) Jackson and Rector are not approved for financing or (2) if the Property does not close by fault of the Respondent. The Respondent failed to provide a contingency in the contract for a home inspection.

10. Per the contract, closing was scheduled for September 15, 2008.

11. During their negotiations, Jackson and Rector were aware that Respondent was a licensed real estate salesperson and an agent with Assist-2-Sell.

12. Jackson and Rector obtained an inspection of the Property on August 9, 2008. The inspector discovered numerous problems with the Property, including but not limited to, lack of felt under new roof shingles, rot damage around the chimney, amateur workmanship on siding, damaged windows, cracked foundation, rusty support column, possible wood eating insects, lack of pipe on pressure valve, and rusted duct and flue exhaust pipe on furnace. Most serious were the defects with the electrical wiring, where the inspector found several improper and unenclosed splices, loose end wires and crowded and double-tapped circuits.

13. Based on the inspection, Jackson and Rector notified Respondent that they did not wish to purchase the Property.

14. Despite several attempts by Jackson and Rector, Respondent refused to refund their \$1000 deposit.

15. Jackson and Rector filed a Formal Complaint with the Commission on November 19, 2008.

CONCLUSIONS OF LAW

1. West Virginia Code § 30-40-19(a)(22) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensed broker if the broker “[c]ommits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or other device whereby any other person relies on the word, representation or conduct of the licensee.”

2. By drafting the contract herself and intentionally failing to provide a contingency for a home inspection on a Property which had substantial defects, the Respondent created an improper appearance of impropriety for a licensee through which she could wrongfully convert Jackson and Rector’s \$1000 earnest money deposit for her own uses. Respondent’s conduct in this regard violates West Virginia Code § 30-40-19(a)(22).

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. The Respondent's actions in (1) drafting the contract herself, (2) intentionally failing to provide a contingency for a home inspection on a Property which was shown to have substantial defects and (3) refusing to return Jackson and Rector's deposit demonstrate improper dealing, in violation of West Virginia Code § 30-40-19(a)(37).

5. The above violations render the Respondent's license subject to discipline by the Commission.

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 she may pursue this matter through

appropriate administrative, and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent 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's license is hereby **SUSPENDED** for a period of six (6) months. The entirety of suspension shall be stayed, and Respondent shall be placed on probation for a period of one year, during which the Respondent shall comply with the following terms and conditions:

a. Respondent shall pay to the State of West Virginia, by and through the Commission, a fine in the amount of \$1,000.00, plus administrative costs in the amount of \$576.00, for a total payment of \$1,576.00. Such payment shall be tendered to the Commission in full within 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 is to be sent directly to the Commission.

b. Respondent shall make restitution to Timothy Jackson and Kathy Rector in the amount of \$1,000.00. Respondent shall make restitution in full within 30 days of entry

of this Consent Decree and present the Commission with documentation demonstrating that restitution has been made.

c. Prior to the end of the one-year probation period, Respondent shall complete a seven-hour "in classroom" educational course on the subject of ethics. Completion of this course shall be in addition to the annual continuing education requirements necessary for licensure renewal.

2. Any deviation from the requirements of this Order, without the prior written consent of the Commission, shall constitute a violation of this Consent Decree, and result in the immediate suspension of Respondent's license for the remainder of the suspension previously stayed by this Order. The Commission shall immediately notify Respondent via certified mail of the specific nature of the charges, and the suspension of Respondent's license. In the event Respondent contests an alleged violation of this Consent Decree which results in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement of her license. The hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.*

Further, in the discretion of the Commission and in the event Respondent violates the provisions of this 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.

CONSENT DECREE AGREED TO BY:

Michelle Kanode
MICHELLE KANODE, Individually

7-6-09
DATE

ENTERED into the records of the Real Estate Commission this:

9th day of July, 2009

WEST VIRGINIA REAL ESTATE COMMISSION,

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

