

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

V.

**Formal Complaint Nos. P-10-028,
P-10-036 and P-10-037**

MURRAY DEARBORN,

Respondent.

CONSENT DECREE

The Respondent, Murray Dearborn (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 three (3) complaints that have 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 these matters. 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 broker in the State of West Virginia. At all times relevant, he served as broker for Black Bear Woods Owners Association, Inc.
3. On or about January 11, 2010, the Commission received a Formal Complaint filed against Respondent by James and Christi Dant (P-10-028). The Complaint alleges, in part, that

Respondent commingled funds from Black Bear Woods' rental trust account with funds in its general operating account.

4. On or about March 18, 2010, the Commission received a Formal Complaint filed against Respondent by Marie-Jeanne Verhassel (P-10-036). This Complaint, like the Dant Complaint, alleges, in part, that Respondent commingled funds from Black Bear Woods' rental trust account with funds in its general operating account.

5. On or about March 25, 2010, the Commission received a Formal Complaint filed against Respondent by Paul Jacobs (P-10-037). This Complaint, like the Dant and Verhassel Complaints, alleges, in part, that Respondent commingled funds from Black Bear Woods' rental trust account with funds in its general operating account.

6. The Dants, Ms. Verhassel and Mr. Jacobs are property owners within Black Bear Woods Resort.

7. Between March 23 and 26, 2010, the Commission's investigator and deputy director audited Respondent's rental trust fund account for the period of January 1, 2009 through March 26, 2010. The audit revealed that from January 1, 2009 through February 28, 2010, the rental trust account monies were used on a monthly basis to cover payroll expenses. The monies would be withdrawn from the rental trust account and placed into the operating account. The account was then reimbursed from the commissions earned on the rental management business the following month. The withdrawals from the rental trust account during this period totaled \$72,580.00. As of March 24, 2010, the rental trust account had been reimbursed.

8. As of March 25, 2010, the rental trust account was again underfunded in the amount of \$5114.99. This shortage was caused by the fact that the rental trust account was used to pay credit card fees and for homeowner expenses. When the homeowner reimbursed the company for the expenses, the reimbursement was deposited into the operating account, not the rental trust account. On March 25, 2010, an electronic deposit in the amount of \$5114.99 was made from Davis/High Valley Realty Company to the rental trust account in order to make the account solvent.

Conclusions of Law

1. West Virginia Code § 30-40-18(f) prohibits a broker from commingling his or her own funds with trust funds or from utilizing the trust funds in any manner that would violate his or her fiduciary obligations in relation to the trust funds.

2. In addition, West Virginia Code § 30-40-19(a)(9) authorizes the Commission to suspend or revoke a real estate license if the licensee “[c]ommingles moneys belonging to others with his or her own funds.”

3. If proven by the Commission at hearing, the Respondent’s conduct as revealed by the Commission’s audit would violate West Virginia Code §§ 30-40-18(f) and 30-40-19(a)(9), and therefore would provide grounds upon which the Commission may impose discipline. The Respondent denies any intentional violation of the law or wrongdoing in this matter.

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 he may pursue this matter through appropriate administrative proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent agrees to the entry of the following Order:

Order

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

1. Respondent's broker's license is hereby suspended for a period of six (6) months, however, the suspension is hereby STAYED and Respondent is placed on probation for a period of six (6) months, during which he shall comply with the following terms and conditions:

A. Respondent is ORDERED to pay a fine in the amount of three-thousand dollars (\$3,000.00), payable to the State of West Virginia, within sixty days (60) days of the entry of this Consent Decree by the Commission;

B. Prior to the conclusion of the six (6) month term of probation, Respondent shall complete either of the two following conditions relating to additional education:

(1). Respondent shall complete the twenty-hour (20) law portion of the Pre-License Education course. This course is in addition to the seven (7) hours of continuing education required annually for renewal of the Respondent's broker's license; or

(2). Respondent shall complete a continuing education course in ethics (7 hours) and license law (3.5 hours) and an third course in either landlord/tenant law (7 hours) or risk

management (7 hours). These courses, totaling 17.5 hours, are in addition to the seven (7) hours of continuing education required annually for renewal of the Respondent's broker's license.

C. Respondent shall pay the Commission's costs in the matter in the amount of one-thousand one-hundred and thirty dollars and fifty cents (\$1,130.50) within sixty (60) days of the entry of this Consent Decree by the Commission.

2. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of this Order. The Commission shall immediately notify Respondent via certified mail of the specific nature of the alleged violation. In the event Respondent contests an alleged violation of this Consent Decree, Respondent may request a hearing on the alleged violation of this Order. Hearings shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.*

AGREED TO BY:

M. Dearborn
MURRAY DEARBORN

⁹ ^{AGS}
10/14/11
DATE

ENTERED into the records of the Real Estate Commission this:

22nd day of September, 2011.

WEST VIRGINIA REAL ESTATE COMMISSION,

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