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DEC 11 2013

WEST VIRGINIA REAL ESTATE COMMISSION,

ATTORNEY GENERAL'S OFFICE

Complainant,

V.

Complaint No. P-14-013

**CHARLES BOGGS III,
Licensed Real Estate Broker
License No. WV-0025355**

Respondent.

CONSENT DECREE

Now comes the Respondent, Charles Boggs III (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 by the Commission. 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 broker licensed by the Commission, holding license number WV-0025355 and is associated with the firm River Valley Properties LLC.
3. On October 1, 2013, Matthew Perno ("Complainant") filed a complaint against Respondent which alleged that Respondent had received earnest money in the amount of \$500.00

next
\$100 & costs

\$ 19 (8)

from Complainant on August 4, 2013 on a real estate sales contract between Respondent as seller and Respondent as buyer which was cancelled on September 15, 2013, and the money had not been refunded as of the date of the complaint.

4. Respondent, in his response of October 28, 2013, stated he was out of town from September 3rd through 22nd, that this was explained to Complainant's agent at the time of the contract's cancellation, but that the earnest money was refunded by check dated October 1, which check had cleared by the date of the response.

5. At its meeting on November 15, 2013, the Commission found probable cause to proceed against Respondent for violation of West Virginia Code § 30-40-19(a)(8) .

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

7. The Commission has incurred expenses in the prosecution of this complaint in the amount of \$260.00, 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. West Virginia Code § 30-40-7(1) gives the Commission all the discretionary power to "impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are 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.”

3. West Virginia Code § 30-40-19(a)(8) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she “[f]ails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belongs to others.”

4. Twenty-five days from the date of cancellation to the refunding of the earnest money paid on such contract is not a reasonable time to remit moneys in a licensee’s possession which belongs to others.

5. Respondent’s untimely return of money belonging to complainant is a violation of West Virginia Code § 30-40-19(a)(8).

6. The above violation renders the Respondent’s license subject to discipline by the Commission.

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

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 consents to the findings above and 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. Respondent shall pay a fine in the amount of \$100.00 for his violation of West Virginia Code § 30-40-19(a)(8).
3. Respondent agrees to pay Commission's costs in this matter in the amount of two hundred sixty dollars (\$260.00).
4. The payments agreed to herein shall be paid within 30 days of the entry of this Consent Decree by ^{CC or MD} check made payable to the State of West Virginia and sent directly to the Commission Office.
5. 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.

AGREED TO BY:



CHARLES BOGGS III


12-2-13

DATE

ENTERED into the records of the Real Estate Commission this:

9th day of December, 2013.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
RICHARD E. STRADER,
EXECUTIVE DIRECTOR