

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

19(a)(9)  
CSRI-17

WEST VIRGINIA REAL ESTATE COMMISSION,

*Complainant,*

Agreement  
attached  
fine

v.

Complaint No. P-14-020

REBECCA KIMBERLY LAREW,  
Licensed Real Estate Salesperson  
License No. WV-0009390,

*Respondent.*

CONSENT DECREE

Now comes the Respondent, Rebecca Kimberly Larew (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-0009390.

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3. On November 30, 2014, Naral F. Hotsinpiller (“Complainant”) filed a complaint against Phyllis A Carr, a salesperson at Stevens Realty & Management in Parsons, West Virginia, who represented the Complainant Buyer [“Buyer’s Realtor”], and Respondent, a broker at I Spy Real Estate, LLC, in Morgantown, West Virginia, who represented the Seller in connection with a purchase agreement on a single family property in Parsons, West Virginia.

4. The complaint alleged as follows:

- a. On August 1, 2013, Complainant signed a purchase agreement on a single family property in Parsons, West Virginia, after which Complainant became aware of various legal requirements and expenses associated with issues regarding flood insurance;
- b. Complainant’s position is that the realtors had an ethical and/or legal obligation to disclose the new federal laws regarding flood insurance and the implications on Complainant’s purchase;
- c. Complainant voided the contract and cancelled the sale, alleging at the time of the filing of the Complaint that Respondent had refused to return the \$500.00 earnest money paid to I Spy Realty.

5. Both Respondent and Buyer’s agent were served a copy of the Complaint, and both responded to the allegations with supporting documents.

6. Respondent, in her response dated December 17, 2013, stated, among other things, as follows:

- a. That the check written to her brokerage on August 1, 2013, had been deposited by Respondent’s Realty in their trust account and had not been sent to Broker Larew until after a check was written from Respondent’s trust account on October 10, 2013;
- b. A survey provided by the Seller did not mention the new federal law, but Complainant’s lender should have informed Complainant of the federal flood insurance requirements in accordance with the Truth and Lending Act [sic]; and
- c. The Seller eventually agreed to return the \$500 earnest money, after which Respondent issued a check made payable to Complainant for \$500.00 dated December 13, 2013, a copy of which was included in the Response.

7. The Buyer's agent, in her response dated December 23, 2013, stated, among other things, as follows:

- a. The check for the earnest money was mistakenly put in her broker's trust account and, upon discovery, rewritten and sent to Broker Larew's realty;
- b. Complainant had been informed about the possible non-return of the earnest money if she changed her mind about the sale;
- c. She and Complainant also talked about flood insurance and that Complainant would need to talk with an insurance company;
- d. After several communications between Buyer's agent and her brokerage with Broker Respondent's company, the Buyer's agent was informed that the money would be returned to the Buyer but, despite requesting confirmation of same, did not know at the time of the response whether the earnest money had been returned; and
- e. At the time Respondent showed the property to Complainant, the listing agreement between the Seller and Respondent's company had expired.

8. The independent investigation of the Commission revealed that Respondent did not deposit the October 10, 2013, check until October 21, 2013.

9. Based on the responses received, at its meeting on March 26, 2014, the Commission found probable cause to proceed solely against Respondent for violation of West Virginia Code § 30-40-19(a)(9) and Commission Rule 174-1-17 in connection with the delayed deposit of the earnest money.

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

11. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$390.00, 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(l) 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)(9) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she “[c]ommingles moneys belonging to others with his or her own funds.”
4. Commission Rule 174 CSR 1-17 defines commingling as, among other things, “failure to deposit or place trust funds received in: ... (3) a trust fund account by the next business day following receipt.”
5. Respondent’s failure to deposit the October 10, 2013, check until October 21, 2013, as defined by Commission Rule 174-1-17, constitutes the commingling of moneys belonging to others with her funds in violation of West Virginia Code § 30-40-19(a)(9).
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 she may pursue this matter through appropriate administrative proceedings and is aware of her 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 \$500.00 for her violation of West Virginia Code § 30-40-19(a)(9) and 174 CSR 1-17.
3. Respondent agrees to pay Commission's costs in this matter in the amount of three hundred ninety dollars (\$390.00).
4. The payments agreed to herein shall be paid within 30 days of the entry of this Consent Decree by certified check or money order 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 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.* 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:**

  
REBECCA KIMBERLY LAREW  
*Rebecca Kimberly Larew*

*May 5, 2014*  
\_\_\_\_\_  
DATE

**ENTERED into the records of the Real Estate Commission this:**

7<sup>th</sup> day of May, 2014.

**WEST VIRGINIA REAL ESTATE COMMISSION,**

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