

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

*Agreement of
6/2/14*

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

**Consolidated Complaint Nos. P-14-042
P-14-043**

**GREG ALLMAN
Licensed Real Estate Broker # WV-0003866,**

**ALISHA PATTERSON
Licensed Real Estate Salesperson # WV-0010594,**

Respondent.

CONSENT DECREE

Now comes the Respondents, Greg Allman (hereinafter "Respondent Allman") and Alisha Patterson ("Respondent Patterson) and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, for the purpose of resolving two complaints filed against Bob Baker ("Salesperson Baker"), against whom the Commission did not find probable cause, and one each against Respondent Allman and Respondent Patterson by third parties, against whom the Commission found probable cause to proceed in the name of the Commission. As reflected in this Consent Decree, the parties have reached an agreement in which Respondents agree and stipulate to the Findings of Fact and Conclusions of Law set forth in this Consent Decree concerning the proper disposition of these complaints, which have been consolidated into one 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. This complaint involves the sale of property in Ronceverte, West Virginia (“the property”) in which Salesperson Baker and Respondent Allman were named in Complaint P-14-042 by the seller of the property (“Complainant Seller”), and Salesperson Baker and Respondent Patterson were named in Complaint in P-14-043 by a potential buyer of the property (“Complainant Buyer”).
3. Respondent Allman is a broker licensed by the Commission, holding license number WV-0003866, who does business as Greenbrier Real Estate Service (“GRES”) in Lewisburg, West Virginia, and was the broker for the property.
4. Respondent Patterson is a salesperson licensed by the Commission, holding license number WV-0010594, who is associated with GRES and who represented Complainant Buyer in connection with the property.
5. Salesperson Baker is a salesperson licensed by the Commission, holding license number WV-0024395, who is associated with GRES and who was the listing agent for the property, representing the Complainant Seller.
6. These complaints related to a rather complex set of times and circumstances occurring prior and subsequent to the Memorial Day weekend of 2014, during which time Salesperson Baker was recovering from surgery, Complainant Buyer’s offers to purchase the property were belatedly communicated to Complainant Seller, and another offer on the property (“Offer C” or “the accepted offer”) was accepted by Complainant Seller even though Complainant Buyer had offered to buy the property for more than the accepted purchase price.

7. Upon receipt of each complaint, the Commission served same upon Respondents and Salesperson Baker.

8. At its meeting on August 13, 2014, the Commission found probable cause to proceed against Respondents on both complaints and consolidated them into one Formal Complaint being brought in the name of the Commission, in effect dismissing Salesperson Baker.

9. The basis for the finding of probable cause can be summarized as follows:

- a. Respondent Allman agreed to assist Salesperson Baker with pending matters during his recovery from surgery and on May 18th was provided a communication regarding needed assistance with a pending offer on the property (Offer A for \$100,000 from potential Buyer X, which was rejected).
- b. Offer A was increased to Offer B for \$108,000 on May 20, which was also rejected by Complainant Seller, and offer B was increased to Offer C for \$115,000 on or about May 22.
- c. On the Friday of Memorial Day Weekend (May 23), Respondent Patterson indicated to Complainant Buyer that any offer on the property had to be made that day, as Respondent Patterson would be out of town for the next several days.
- d. Complainant Buyer emailed an offer of \$100,000 with contingencies to Respondent Patterson, who forwarded same to Salesperson Baker. It is unknown when Salesperson Baker became aware of this offer or whether he communicated it to Respondent Allman.
- e. On May 30th Offer C was delivered to Respondent Broker's realty (GRES), and Salesperson Baker notified Complainant Seller of the signed offer without mentioning the offer from Complainant Buyer.
- f. Respondent Patterson returned the same day (May 30), informed Complainant Buyer that her offer had been rejected even though it had not even been presented to Complainant Seller, informed Complainant Buyer that another offer had come in, and advised Complainant Buyer she should make her "highest and best offer immediately".
- g. On the evening of May 30, Complainant Buyer increased her offer to \$110,000, still with contingencies and via email, which offer was forwarded by Respondent Patterson to Salesperson Baker.

- h. Salesperson Baker met with Complainant Seller the next day (May 31), at which time Complainant Seller learned for the first time of Complainant Buyer's May 23rd offer and was not told it had been increased to \$110,000.
- i. On May 31st, Complaint Buyer requested an escalation clause to \$117,000, which took her offer higher than Offer C, but Respondent Patterson did not promptly notify Respondent Allman or Salesperson Baker of the increased offer, nor did she take steps to formally write it up until several days later at the request of Respondent Allman.
- j. The completed purchase agreement, which indicated acceptance on May 31st at 2:30 p.m., had not been submitted as of June 2nd when Complainant Seller emailed Respondent Allman with concerns similar to the allegations in Seller's complaint.
- k. On June 3rd, Respondent Patterson informed Complainant Buyer that the completed purchase agreement had not been delivered and wrote up Complainant Buyer's highest offer (although with the incorrect name of Complainant Buyer). Complainant Buyer asked for a day to think about it, and the unsigned offer was sent by Respondent Patterson to Respondent Allman.
- l. Without addressing the unsigned offer from Complainant Buyer, which was higher than the accepted offer, and the concerns of Complainant Seller regarding the various parties' failure to inform her of Complainant Buyer's increased offers, on June 4th Respondent Allman delivered the signed purchase agreement to Buyer X's agent and Complainant Seller.

10. The Commission notes that on June 4th Complainant Buyer informed Respondent Patterson she would not be signing the purchase agreement, but finds that the miscommunications and non-communications among the GRES licensees resulted in breaches of fiduciary duty to both Complainant Seller and Complainant Buyer.

11. The Commission proceeded against Respondent Allman rather than Salesperson Baker with regard to the duties owed Complainant Seller since Respondent Allman had agreed to perform the fiduciary obligations of Listing Agent during Salesperson Baker's recuperation, in addition to having a general duty to supervise his salespeople.

12. The Commission finds that Respondent Allman did not meet his fiduciary obligations to Complainant Seller and failed to supervise both Salesperson Baker and Respondent Patterson with regard to various aspects of this transaction.

13. The Commission finds that Respondent Patterson did not meet her fiduciary obligations to Complainant Buyer and failed to reduce bona fide offers to writing.

14. On January 8, 2015, Respondent Allman held an office meeting instituting a written policy addressing and attempting to alleviate issues similar to those that arose in these Complaints.

15. The parties, including both Respondents, have agreed to settle the Complaints informally through the entry of this Consent Decree.

16. The Commission has incurred expenses in the prosecution of this Complaint in an amount in excess of \$1250.00, 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 § 30-40-19(a)(30) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensed broker if the broker “[f]ails to adequately supervise all associate brokers and salespersons employed by him or her.”

3. Ensuring that all salespersons associated with your brokerage reduce offers to writing, convey all offers to the seller, and otherwise act in accordance with their fiduciary duties is part of the supervision required of a broker pursuant to West Virginia Code § 30-40-19(a)(30).

4. Respondent Allman's failure to ensure that Complainant Buyer's offers were reduced to writing and communicated to Complainant Seller constitutes a failure to supervise, in violation of W. Va. Code § 30-40-19(a)(30).

5. W. Va. Code §30-40-19(a)(31) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if the licensee breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction.

6. Respondent Allman breached fiduciary duties owed to his principal, Complainant Seller, and Respondent Patterson breached fiduciary duties owed to her principal, Complainant Buyer, in violation of W. Va. Code §30-40-19(a)(31).

7. West Virginia Code § 30-40-19(a)(43) provides that the Commission has the authority to revoke, suspend or otherwise discipline a licensee if he or she "[f]ails to reduce a bona fide offer to writing."

8. Respondent Patterson failed to timely and accurately write up Complainant Buyer's emailed offers as formal purchase agreements to be presented to Complainant Seller, in violation of W. Va. Code §30-40-19(a)(43).

9. Respondents' conduct found to have violated one or more of the provisions of the West Virginia Code as set forth above renders the Respondents' licenses subject to discipline by the Commission.

10. The Commission may assess administrative costs. West Virginia Code § 30-40-21(g). Costs shall be placed in the account of the Commission, and any fine shall be deposited in the state treasury's general revenue account. West Virginia Code § 30-1-8(a).

CONSENT

By signing below, Respondents agree to the following:

1. Respondents are represented by counsel and execute 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 Respondents to make this settlement other than as set forth herein. Each Respondent acknowledges that he or she may pursue this matter through appropriate administrative proceedings and is aware of his or her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondents consent 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. Respondents are REPRIMANDED for the violations set forth above.

2. Respondent Allman shall pay a portion of the Commission's costs in this matter in the discounted amount of Five Hundred Dollars (\$500.00), for which Respondent Allman may seek contribution from Respondent Patterson.

4. The administrative costs agreed to herein totaling Five Hundred Dollars (\$500.00) 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 by Respondent Allman, 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 Allman's license until such time as Respondent achieves full compliance.

The Commission shall immediately notify Respondent Allman via certified mail of the alleged violation of the Consent Decree and the summary suspension of his 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 the 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 W. Va. Code §§ 30-1-8 and 30-40-1 *et seq.* and the procedural rules of 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 Allman's violation of this Order of the Commission.

AGREED TO BY:


GREG ALLMAN

1-23-15
DATE


ALISHA PATTERSON

1/23/15
DATE

ENTERED into the records of the Real Estate Commission this:

30th day of January, ²⁰¹⁵~~2014~~.

WEST VIRGINIA REAL ESTATE COMMISSION,

By:


**RICHARD E. STRADER,
EXECUTIVE DIRECTOR**

Counsel for Commission:

Debra L. Hamilton, Deputy Attorney General (WV State Bar # 1553)
State Capitol, Building 1
Charleston WV 25305
304-558-2522

Counsel for Respondents:

Barry L. Bruce (WV State Bar # 511)
101 West Randolph Street
P.O. Box 388
Lewisburg WV 24901
304-645-4182