

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,
Complainant,

v. Formal Complaint No. P-24-026

KENNETH HARRY JUDY,
Licensed Real Estate Salesperson
License No. WV0028887,

and

LYNN HARPER JUDY,
Licensed Real Estate Salesperson
License No. WV0028886,
Respondents.

CONSENT DECREE

Respondent Kenneth Harry Judy ("Respondent Kenneth Judy"), Respondent Lynn Harper Jud)"Respondent Lynn Judy"), and the West Virginia Real Estate Commission ("Commission") enter into the following Consent Decree for the purpose of resolving the above-styled complaint. As reflected in this Consent Decree, the parties have agreed to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. Respondent Lynn Judy is a Licensed Real Estate Salesperson in the State of West Virginia, holding License No. WV 0028886.
2. At all relevant times, Respondent Lynn Judy practiced real estate with EXP Realty, LLC, under the supervision of Angela M. Crawford, Licensed Real Estate Broker.

3. At all times relevant, Respondent Lynn Judy as agent for EXP Realty, LLC, was the listing company and represented the owners of Lots 346 and 347 in Ashton Woods in Moorefield District, Hardy County, West Virginia.

4. At all relevant times, Alisha Lowery, agent for Lost River Trading Post Realty represented the purchaser, Nathalie Winters.

5. The owners of Lots 346 and 347 entered into a listing contract with Respondent Lynn Judy and EXP Realty, LLC, to sell Lots 346 and 347 of Ashton Woods Subdivision on South Branch Mountain Road in Moorefield, West Virginia. This was a joint listing of both Lots MLS#WVHD2001648 and which listing contained information, directions, photographs and other particulars for both contiguous lots.

6. Lot 346 of the Ashton Woods Subdivision contained a small clearing and entrance developed off of South Branch Mountain Road and Lot 347 of Ashton Woods Subdivision had no clearing and was undisturbed.

7. Lot 346 of Ashton Woods contains 20.16 acres and Lot 347 of Ashton Woods contains 20.22 acres, both of which are described by Plat of Survey prepared by L & W Enterprises of record in the Hardy County Clerk's Office in Map Book 7 at page 42.

8. Also on August 16, 2023, Respondent Lynn Judy through EXP Realty, LLC, did list Lot 347 of Ashton Woods to the multiple listing service identified as MLS#WVHD2001650 and which MLS listing did contain particulars regarding Lot 347 and various pictures, a few of which photographs overlapped both Lot 346 and Lot 347 of Ashton Woods.

9. At the time of the listing, Respondent Lynn Judy practicing with the EXP Realty, LLC, did cause advertising signage to be placed at the excavated entrance of Lot 346, which is on the opposite boundary of the parcel to where Lots 346 and 347 of Ashton Woods Subdivision

adjoin. The signage for Lot 347 was placed along South Branch Mountain Road in the ground by a metal bracket sign holder. The Complaint in this matter alleges that there was only one sign visible.

10. August 23, 2023, prospective buyer, Nathalie Winters, with her agent Alisha Lowery, visited South Branch Mountain Road intending to view and potentially purchase the Lot that had been cleared. Further, prospective buyer, Nathalie Winters stated that the advertising signage incorrectly identified the cleared lot as Lot 347.

11. On August 26, 2023, Nathalie Winters made an offer to purchase Lot 347 of Ashton Woods, Hardy County, West Virginia, for a purchase price of One Hundred Sixteen Thousand Four Hundred Dollars (\$116,400.00); which offer was accompanied by Notice of Agency Relationship of Alisha Lowery as Buyer's Agent affiliated with Lost River Trading Post Realty; also accompanying the offer was the MLS Listing #WVHD2001650 and Plat of Survey identifying both Lots 346 and 347 of Ashton Woods. Subsequently, on August 27, 2023, the Sellers, John Boyle and Bernardo Gonzalez Heres did accept the offer and it became ratified at that time.

12. The prospective Buyer, Nathalie Winters did secure the services of W. Joseph Milleson, Jr., Attorney at Law, in Romney, West Virginia, who prepared the deed for Lot 347 of Ashton Woods Subdivision and thereafter closed the transaction and recorded the deed among the Hardy County Clerk's Office in Deed Book 370 at page 382. The said Lot No. 347 was deeded to Nathalie Winters and Daniel Winters, her husband, as joint tenants with rights of survivorship by general warranty.

13. Thereafter, the Buyers, Nathalie Winters and Daniel Winters, traveled to the real estate that they purchased, realized that they had purchased Lot 347 of Ashton Woods and they intended to purchased Lot 346 of Ashton Woods. Thereafter, Buyers, Nathalie Winters and Daniel

Winters did contact their agent, Alisha Lowery, desiring the deed be changed to Lot 346 of Ashton Woods. Alisha Lowery, Agent for the Buyer did email Respondent Lynn Judy that misleading advertising caused the Buyers to purchase the incorrect lot and further requested that Respondent Lynn Judy resolve this issue.

Respondent Lynn Judy did contact her client who was willing to offer a ten percent (10%) discount on Lot 346 of Ashton Woods but refused to change or alter the contract and deed of conveyance for Lot 347 of Ashton Woods.

14. On January 4, 2024, Nathalie Winters (but not Daniel Winters) filed a Formal Complaint with the Commission alleging that Respondent Lynn Judy falsely advertised Lots 346 and 347 of Ashton Woods.

15. On January 10, 2024, Respondent Lynn Judy submitted a written Response to the Formal Complaint indicating that when the prospective purchaser, Nathalie Winters viewed the property there was two active listings on the multiple listing service hereinbefore identified, for Lots 346 and 347, together for a purchase price of Two Hundred Forty-Five Thousand Five Hundred Dollars (\$245,900.00) and the second listing for Lot 347, being the lot that did not have the small clearing on it, for One Hundred Twenty-Three Thousand Nine Hundred Dollars (\$123,900.00). Further, the owners of the remaining Lot 346 did direct Respondent Lynn Judy to withdraw the listing for both Lots 347 and 346 of Ashton Woods thereafter approved a listing for Lot 346, being the lot with a small clearing, at a purchase price of One Hundred Thirty-Four Thousand Two Hundred Dollars (\$134,200.00).

Further, Respondent Lynn Judy stated there were having problems with signs being removed from the property.

16. Respondent Lynn Judy does not dispute that a few of the photographs used to advertise Lot 347 of Ashton Woods included photographs that overlap Lot 346 and Lot 347 of Ashton Woods.

17. At its regularly scheduled meeting on February 28, 2024, the Commission determined there was probable cause to conclude that both respondents violated the *West Virginia Real Estate Licensd Act*, and authorized the proposal of a consent decree to resolve the matter without a formal hearing.

CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq., the Commission is charged with the regulation of the practice of real estate brokerage in this State, and, thus, has jurisdiction over this Formal Complaint.

2. In relevant part, West Virginia § 30-40-7(1) authorizes the Commission to impose sanctions for violations of the *West Virginia Real Estate License Act*, including, but not limited to, an administrative fine not to exceed \$1,000.00 per day per violation; probation; revocation; suspension; restitution; additional education; denial of future license; downgrade of license; reprimand; and/or the return of compensation collected from a injured consumer reprimand; and/or the return of compensation collected from a injured consumer.

3. West Virginia Code § 30-40-19 (a)(2) authorizes the Commission to sanction a licensee if the licensee "[m]akes any substantial misrepresentation [.]"

4. West Virginia Code § 30-40-19 (a)(4) authorizes the Commission to sanction a licensee if the licensee "[p]ursues a course of misrepresentation or makes false prmises or representations through agents or any medium of advertising or otherwise[.]"

5. West Virginia Code §30-40-19(a)(5) authorizes the Commission to sanction a licensee if the Licensee "[u]ses misleading or false advertising [.]"

6. By using a few photographs to advertise Lot 347 of Ashton Woods that were also used to advertise Lot 346 and Lot 347 of Ashton Woods, Respondent Lynn Judy violated West Virginia code §§ 30-40-17 (a)(2), (4), and (5).

CONSENT

By signing below, each Respondent agrees to the following:

1. Respondents have had the opportunity to consult with 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 promises or given any inducement whatsoever to encourage either Respondent to make this settlement other than as set forth herein. Respondents acknowledge that they may pursue this matter through appropriate administrative proceeding and are aware of their legal rights regarding this matter, but intelligently and voluntarily waiver such rights.

2. Respondents acknowledge the Findings of Fact as set forth above, admits that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consent to the entry of the following Order:

ORDER

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

1. Respondent Lynn Judy shall pay a fine in the amount of \$100.00, payable to the State of West Virginia.

2. Respondent, Lynn Judy shall also reimburse the Commission its administrative costs, including attorney fees, in the amount of \$588.00.

3. Respondent Ken Judy is hereby dismissed from the Complaint.

4. Unless extended in writing by the Commission, the fines and costs shall be paid within thirty (30) days of the entry of this Consent Decree by the Commission. The fine and costs shall be paid by certified check made payable to the State of West Virginia and sent directly to the Commission's 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 result in further disciplinary action, including, but not limited to, suspension of Respondents' licenses. The Commission shall immediately notify Respondents via certified mail of alleged violation of the Consent Decree. In the event Respondents contest the alleged violation. 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 any procedural rules promulgated by the Commission.

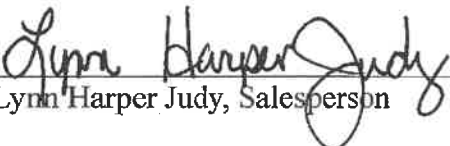
CONSENT DECREE AGREED TO BY:



Kenneth Harry Judy, Salesperson

8-7-2024

Date



Lynn Harper Judy, Salesperson


8-7-2024

Date

Entered into the records of the Real Estate Commission this:

19th day of August, 2024.

West Virginia Real Estate Commission

By: 

Keri L. Ferro, Executive Director

