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WV Real Estate
Commission

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA
REAL ESTATE COMMISSION,

Complainant,

v.

Complaint No. C-17-014

CHARLES PERRY HAWLEY
Licensed Real Estate Broker
License No. WV-0002093

Respondent.

CONSENT DECREE

The Respondent, Charles Perry Hawley (hereinafter “Respondent” or “Broker Hawley”), and the West Virginia Real Estate Commission (hereinafter “Commission”), by Cheryl L. Dawson, its Chairman, enter into the following Consent Decree for the purpose of resolving the above-styled complaint that has 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 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 Charles Perry Hawley (“Broker Hawley”) is a licensed real estate broker in the State of West Virginia, holding license number WV-0002093, and serves as the

broker for Premier Realty, LLC dba Premier Realty (“Respondent’s brokerage”), located at 17301 Valley Mall Road, #386, Hagerstown, MD 21740.

3. Broker Hawley accepted the services of David Franklin Overholser (“Salesperson Overholser”), who is a licensed salespersons, holding license number WV-0028368, but whose license was turned into the Commission by his former broker, became inactive effective August 2, 2016, and remained inactive until December 30, 2016.

4. Broker Hawley agreed to become the responsible broker for Salesperson Overholser prior to the time the former broker was even notified of the impending transfer of starting and started accepting the services of Salesperson Overholser on August 2, 2016 and perhaps earlier.

5. On August 2, 2016, the Commission received Salesperson Overholser’s license from his former broker, changed the status to inactive, and held Salesperson Overholser’s license in the Commission’s office in accordance with West Virginia Code § 30-40-17(c)(4).

6. Salesperson Overholser’s license was activated and transferred to Broker Hawley on December 30, 2016.

7. On February 15, 2017, the Commission initiated the above-styled complaint against both Broker Hawley and Salesperson Overholser, which was served by certified mail on February 21, 2017. (The complaint is incorrectly dated February 21, 2016, and the complaint is hereby amended to reflect the correct year of 2017.)

8. In the “Alleged Violations” portion of the complaint, the reference to West Virginia Code § 30-14-17(b) as to Salesperson Overholser should have referenced § 30-40-17(b) and the reference to West Virginia Code § 30-14-17(a)(5) as to Broker Hawley should have referenced § 30-40-17(a)(5); the complaint is hereby amended to reflect the correct code citations.

9. Broker Hawley submitted a timely response on behalf of both himself and Salesperson Overholser admitting the allegations, stating there was a miscommunication regarding what the previous broker was submitting to the Commission, and asserting “it was and is totally [his] responsibility for this oversight on the transfer of David F. Overholser’s license and his subsequent actions and activities in the real estate field.”

10. Broker Hawley’s comment regarding the previous broker submitting the necessary paperwork to the Commission is not well taken inasmuch as the Change of Employing Broker” form prescribed by the Commission must be signed and notarized by the licensee changing brokers and the new employing broker, and the previous broker cannot effect the transfer.

11. Based on the response received, the Commission, at its meeting on April 18, 2017, found probable cause to proceed solely against Respondent Hawley.

12. The Commission finds that Broker Hawley’s acceptance of the services of Salesperson Overholser without confirming that his license had been duly transferred to Broker Hawley’s brokerage violates West Virginia Code § 30-40-17(a)(5), which requires Broker Hawley to maintain in his custody and control the license of each of his associate brokers and salespeople; West Virginia Code § 30-40-19(a)(23) for accepting the services of an unlicensed salesperson, and West Virginia Code § 30-40-19(a)(30) requiring adequate supervision of all salespeople.

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

14. The Commission has incurred expenses in the prosecution of this complaint in an amount in the amount of Nine Hundred Fifteen Dollars and Fifty Cents (\$915.50), which solely

relate to the Commission's legal and investigative expenses and do not include 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 § 30-14-17(a)(5) requires every person holding a broker's license to maintain in his or her custody and control the license of each association broker and salesperson employed by him or her.

3. Respondent failed to maintain in his or her custody and control the license of Salesperson Overholser, in violation of West Virginia Code § 30-14-17(a)(5).

4. West Virginia Code § 30-40-19(a)(23) provides that the Commission may revoke, suspend or otherwise discipline a licensee if the licensee "[c]ontinues in the capacity of or accepts the services of any broker, associate broker or salesperson who is not properly licensed."

5. Respondent accepted the services of Salesperson Overholser, in violation of W. Va. Code § 30-40-19(a)(23).

6. 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."

7. Respondent's failure to confirm that Salesperson Overholser's license was active and had been transferred to Broker Hawley's brokerage constitutes a failure to supervise his licensees, in violation of W. Va. Code § 30-40-19(a)(30).

8. 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. W. Va. Code § 30-1-8(a).

CONSENT

By signing below, Respondent Charles Perry Hawley agrees to the following:

1. Respondent acknowledges his right 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 waive such rights.

2. Respondent acknowledges the Findings of Fact set forth above, admits to his respective violations set forth above in the Conclusions of Law, and consents to the entry of the following Order:

ORDER

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

1. Respondent is hereby REPRIMANDED.
2. The Respondent shall pay a fine in the amount of One Thousand Dollars (\$1,000.00), payable to the State of West Virginia.
3. Respondent shall also pay the costs associated with this Complaint in the amount of Nine Hundred Fifteen Dollars and Fifty Cents (\$915.50).

4. The total payment of One Thousand Nine Hundred Fifteen Dollars and Fifty Cents (\$1,915.50) shall be paid by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office within thirty (30) days of the entry of the Consent Decree by the Commission.

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 the non-compliant Respondent's license until such time as the non-compliant Respondent achieves full compliance.

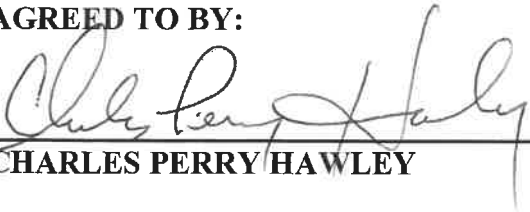
The Commission shall immediately notify the non-compliant Respondent, via certified mail, of the alleged violation of the Consent Decree and the summary suspension of the non-compliant Respondent's license. The non-compliant Respondent may request probationary reinstatement of the license through renewal 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 the non-compliant Respondent's request for probationary reinstatement.

In the event the non-compliant Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of the non-compliant Respondent's license, the non-compliant 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 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 the non-compliant Respondent based upon Respondent's violation of this Order of the Commission.

[signature line appears next page]

AGREED TO BY:


CHARLES PERRY HAWLEY

May 14, 2017
DATE

ENTERED into the records of the Real Estate Commission this 24th day of May, 2017.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
CHERYL E. DAWSON
Its: CHAIRMAN