

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint Nos. L-19-016/P-19-017

**TERRY F. BAKER,
Licensed Real Estate Salesperson
License No. WV0023799.**

Respondent.

CONSENT DECREE

Respondent Terry F. Baker (“Respondent”), and the West Virginia Real Estate Commission (“Commission”) enter into the following Consent Decree for the purpose of resolving the above-styled complaints. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates 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 is a licensed real estate salesperson in the State of West Virginia, holding license number WV0023799.
2. The present Formal Complaints stem from the sale of real estate located at 395 Pinnacle Drive, Lewisburg, West Virginia (“subject property”). The subject property was a newly-constructed home built by Jeff Lushbaugh, Mountain Top Contracting.

3. The listing agent for the subject property was real estate salesperson Alisha Patterson, licensed with Greenbrier Real Estate Service. Gregory Allman is the broker of record for Greenbrier Real Estate Service. Mr. Lushbaugh, as owner and seller of the subject property, was the client of Greenbrier Real Estate Service.

4. Respondent represented the ultimate purchasers of the subject property, Andrew and Karen Isabell.

5. On January 25, 2019, Respondent visited the subject property for the purpose of speaking to Mr. Lushbaugh about the installation of a gas line and to present an offer on behalf of her clients. While at the subject property, Respondent negotiated directly with Mr. Lushbaugh about the cost associated with the installation of the gas line and presented her clients' offer to him. Mr. Lushbaugh signed the offer.

6. Neither Ms. Patterson nor Mr. Allman were present during the January 25, 2019, meeting between Respondent and Mr. Lushbaugh. Neither Ms. Patterson nor Mr. Allman authorized Respondent to meet directly with Mr. Lushbaugh.

7. Ms. Patterson learned of the meeting between Respondent and Mr. Lushbaugh on January 25, 2019, when Respondent texted her that day to inform her that Mr. Lushbaugh had signed Respondent's clients' offer.

8. Both Mr. Allman and Mr. Lushbaugh filed Formal Complaints with the Commission against Respondent. Mr. Allman's complaint (L-19-016) alleged that Respondent negotiated directly with his brokerage's client without his or Ms. Patterson's knowledge or permission. Mr. Lushbaugh's complaint (P-19-017) alleged that he signed Respondent's clients' offer without

representation and disputed Respondent's characterization of the agreement concerning who would pay for the installation of the gas line.

9. Respondent submitted written responses to the complaints. With respect to the allegation that she negotiated directly with a represented party, Respondent contended that her conduct was permissible under the National Association of Realtor's Code of Ethics, Standard of Practice 16-3, which permits direct contact with a represented client when the contact is initiated by the client.

10. However, as more fully detailed below, the regulation of the practice of real estate brokerage in the State of West Virginia is governed by the *West Virginia Real Estate License Act*, not the Association of Realtor's Code of Ethics.

11. At its regular meeting on June 19, 2019, the Commission considered all of the information received regarding the complaints, consolidated the complaints, and determined that there was probable cause to conclude that Respondent's conduct violated the *West Virginia Real Estate License Act*.

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 these Formal Complaints.

2. In relevant part, West Virginia Code § 30-40-7(l) 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 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 an injured consumer.

3. West Virginia Code § 30-40-19(a)(39) authorizes the Commission to sanction a licensee when he or she “[n]egotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker[.]”

4. By negotiating directly with Mr. Lushbaugh and presenting him with her clients’ offer without the specific authorization of Ms. Patterson or Mr. Allman, Respondent violated West Virginia Code § 30-40-19(a)(39), rendering her license subject to discipline by the Commission.

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 acknowledges the Findings of Fact set forth above, admits that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consents to the entry of the following Order:

ORDER

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

1. Respondent shall pay a fine in the amount \$1,000.00, payable to the State of West Virginia.
2. Within 6 months of the entry of this Consent Decree, Respondent shall complete 6 hours of continuing education (no less than 3 hours on the subject of West Virginia real estate license law and no less than 3 hours on the subject of agency, both of which must be taught by an approved pre-license instructor). This requirement shall be in addition to the annual continuing education requirements for all licensees.
3. Respondent shall also reimburse the Commission its costs associated with this Complaint and its attorney fees, in the amount of \$533.00.
4. The total payment of \$1,533.00 shall be paid within thirty (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'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 Respondent's license. The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree. In the event Respondent contests the alleged violation of the Consent Decree, Respondent is entitled to a hearing to challenge the alleged violation. 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 Respondent based upon Respondent's violation of this Order of the Commission.

CONSENT DECREE AGREED TO BY:


Terry F. Baker

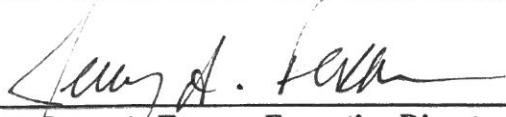
7.22.19
Date

ENTERED into the records of the Real Estate Commission this:

24th day of , 2019.
July (JF)

WEST VIRGINIA REAL ESTATE COMMISSION,

By:


Jerry A. Forren, Executive Director