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KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee

MEETING MINUTES

April 13, 2021
1:30 p.m.

*** This meeting occurred via Zoom Teleconferencing, pursuant to KRS 61.826***

Committee Members Present

Commissioner Larry Disney
Commissioner Anthony Sickles

KREA Staff

John Hardesty, General Counsel
Brian Travis, Investigator
Angie Reynolds, Board Administrator

Call to Order and Guest Welcome

A meeting of the Complaint Committee was called to order by Commissioner Disney at 1:35 p.m. on April 13, 2021.

Committee Meeting Minutes

Commissioner Disney made a motion to approve the March 17, 2021 Complaint Committee Meeting Minutes. Commissioner Sickles seconded the motion. With all in favor, the motion carried.

Executive Session Case Deliberations

Commissioner Disney made a motion for the Complaint Committee to enter executive session, pursuant to KRS 61.815(1) and 61.810(1)(c) and (1)(j) at 1:56 p.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:



- 19-C-060
- 19-C-062
- 19-C-064
- 19-C-071 and 20-C-006
- 19-C-073
- 19-C-085
- 19-C-089
- 19-C-090
- J.W. Unlicensed Brokerage Investigation

Commissioner Sickles seconded the motion and the meeting was ordered into executive session discussion.

Reconvene in Open Session

At 3:05 p.m. Commissioner Sickles motioned for the Complaint Committee to come out of executive session. Commissioner Disney seconded the motion to come out of executive session.

Committee Recommendations

Commissioner Disney made a motion for the Complaint Committee to recommend disposition of the following cases to the full Commission in the following manner. Commissioner Sickles seconded the motion. Having all in favor, the motion carried.

Final Adjudications

1. **19-C-060** – The Complainants claim they listed their cabin to sell and received a contract to sell it but the sale fell through after the buyer backed out. According to the contract, \$500.00 was supposed to be deposited in earnest money, which was to be deposited in Respondents’ (buyer’s agent) escrow account and placed in escrow. After the buyers backed out, Complainants claim Respondent said she did not receive the \$500.00 earnest money deposit from the potential buyers and thus could not pay it to Complainants.

The Respondent claims the contract was not signed by all owners of the property and their spouses, which made it not binding, and the prospective buyers were not required to provide the earnest money deposit until creation of a valid and legal contract. The Respondent also claims her client-buyers began having problems with the sellers concerning certain issues with the house and therefore refused to tender the \$500.00 earnest money deposit despite her requests.

Lastly, she claims she never received a deposit to tender or place in her escrow account. She claims she still submitted the proposed contract for her clients because she felt it was imperative to get the process started. It does not appear Respondent committed any violation. Her clients would not give her the deposit such that her duty to deposit it in her escrow account arose. **The Committee recommends to the full Commission to dismiss the complaint.**

2. **19-C-064** – The Complainants claim they viewed a home. They liked the property and made an offer. An hour later, they claim they received a call from their agent stating the sellers had received another offer and requested their best and final offer. They claim other issues arose during the purchase process and were continually told that another couple wanted to buy the house and that the Complainants could lose the deal if they did not move quickly. They claim they met the “other couple” who allegedly made the other offer on the property, who allegedly told them they never

made a written offer on the property. The Complainants claim that if they had not been misled into believing that there was another offer, they would have stuck with their original offer and possibly saved a significant sum of money.

The Sworn Answers and evidence submitted by the Respondents confirm a second offer was submitted on the property. Therefore, the Respondents did not act inappropriately or commit any violations. **The Committee recommends to the full Commission to dismiss the complaint.**

- 3. 19-C-071 and 20-C-006** – The Complainant claims she hired Respondents to help her find a home to rent. They went and looked at a home, which had damaged walls and dirty carpet. Complainant claims she had two conditions for leasing the property – that the owner patch the walls and clean the carpet. Complainant alleges Respondent confirmed multiple times the carpets had been cleaned prior to signing the lease, but in the weeks before Complainant filed the complaint, Respondent indicated she did not remember telling Complainant the carpets had been cleaned. Respondent also claimed the carpets had not been cleaned while they owned the property. However, they were told by the prior owners that the carpets had been cleaned when they purchased the property, which they communicated to their agent, who communicated it to Respondent.

Complainant claims she signed her three month lease based solely on information she received from the Respondent. She claims by the time she found out about this misrepresentation, she already signed her second lease. Complainant claims the Respondents' conduct boils down to dishonesty and a Code of Ethics violation, and she ultimately did not receive what she bargained for.

The Respondent alleges that Complainant requested the carpets be professionally cleaned. When she communicated this to the owner's agent, she claims the agent informed her the carpets already had been cleaned.

Further, there is evidence Respondent had a dog, which could account for dirty carpet. She also did not report or complain about this issue until after living in the property for a significant period of time.

The principal broker Respondent did not file a sworn answer to the complaint.

There is not sufficient evidence that Respondents committed licensing law violations. **The Committee recommends to the full Commission to dismiss the complaint with a letter of caution to respondent associate regarding ensuring she communicates accurate information, and to respondent principal broker regarding his failure to file a sworn answer.**

4. **19-C-073** – The Complainant claims her company made an offer to purchase a property. She claims the offer included a contingency for the Complainant as buyer to have the opportunity to resolve the serious issue of an addition to the house having been built on the rear property line (resulting in there being NO back yard) and over the 10' electric and telephone easement that runs along the rear of the property. She claims communications between the Complainant's agent and the listing agent put the seller on notice that no building permits had been issued by Metro with regard to the addition that was encroaching on the easement and sitting on the rear property line. She claims all of this was confirmed by looking at the recorded plat at the Jefferson County Clerk's Office, and the online LOGIC maps.

Complainant claims the offer was rejected, that the Respondent contacted the Complainant's agent to see if Complainant would reengage in negotiations. Complainant claims that as of the filing of the complaint, the Seller's Disclosures were not changed and still did not mention any of the above issues.

The Complainant feels, at a minimum, the seller and Respondent should be required to include these issues as "possible" on the disclosures.

The Complainant had knowledge of the alleged issues with the property from the outset. This is so because the exact issues were mentioned in Complainant's offer to purchase the property. Thus, Complainant clearly was not misled in any way.

The evidence suggests once Respondent became aware of the alleged issues, he attempted to investigate them by contacting Louisville Metro Government, submitting an open records request, and corresponding with a LOGIC Online employee. Based on his research, he could not verify that any of the property or home encroached onto an easement.

The Respondent notified the seller of the purported issues, as he should, and it appears the seller declined to include the issues on the Seller's Disclosure form. Respondent is correct he, as the agent, is not required or event permitted to complete the Seller's Disclosure form unless specifically requested to do so by the seller-client. There is no evidence here the seller requested he complete the form, or that he, in fact, completed the form. **The Committee recommends to the full Commission to dismiss the complaint.**

5. **19-C-089** – The Complainants claim Respondent, who is a licensee, submitted an offer to personally purchase property listed by an Indiana agent. Respondent had a member of his team, an Indiana agent, submit the offer on his behalf. Respondents claim the Complainant never disclosed on the offer that he was a real estate licensee. They claim they had another offer on the property, and informed Respondent's agent of that.

KRS 324.160(4)(e)(2) requires that "before a licensee becomes a party to a contract to purchase real property, the licensee shall disclose his or her status as a licensee to all parties to the transaction, in writing, on the sales contract or on the offer to purchase."

Here, there is no evidence Respondent made such a disclosure during the transaction or on the sales contract. It was not until he submitted repair requests that Complainants learned he was an agent, and they learned that through their own investigation.

Critically, however, the subject property was located in Indiana and all actions took place related to that property. Thus, the transaction and related activity occurred outside of Kentucky and beyond the jurisdiction of the Kentucky Real Estate Commission. Thus, KREC has no authority to take action against Respondent related to this transaction. **The Committee recommends to the full Commission to dismiss the complaint for lack of jurisdiction.**

- 6. J.W. Unlicensed Brokerage Investigation** - On Thursday, February 18, 2021, the Kentucky Real Estate Commission requested further investigation into the real estate activities of said licensee. J.W.'s license had been placed on suspension, for three (3) years beginning in October 2020. The Kentucky Real Estate Commission believes there may be evidence that this licensee has been conducting real estate transactions since her suspension.

Upon further investigation it appears that J.W. was given credit for sales that she did not conduct due to her agency's use of an incorrect LBAR Agent number. However, J.W.'s own LinkedIn, Agency and Facebook accounts present herself as a licensed and active agent. **The Committee recommends to the full Commission to send a Cease and Deist letter to both the Licensee and the Principal Broker regarding these issues.**

Pending Actions

- 7. 19-C-062 – Recommend holding this action in abeyance pending outcome of civil litigation.**
- 8. 19-C-085 – The Committee found evidence of violations and recommends a formal reprimand against the Respondent, \$1,000 fine, and CORE CE in addition to existing CORE requirements. It authorized General Counsel to attempt to negotiate a settlement for the recommended discipline.**
- 9. 19-C-090 - The Committee found evidence of violations and recommends a \$1,000 fine, 30-Day Suspension and CORE CE in addition to existing CORE requirements.**

Meeting Adjournment

Commissioner Sickles made a motion to adjourn the meeting of the Complaint Committee. Commissioner Disney seconded the motion. There being no objection, the meeting was adjourned at 3:10 p.m.

Next Scheduled Meeting

The next regular meeting of the Kentucky Real Estate Commission's Complaint Review Committee is to be determined.