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**KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee**

MEETING MINUTES
October 21, 2020

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

Committee Members Present

Commissioner James G. Simpson
Commissioner Steve Cline

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 Simpson at 9:37 a.m. on October 21, 2020.

Committee Meeting Minutes

Commissioner Simpson made a motion to approve the September 16, 2020 CRC Meeting Minutes. Commissioner Cline seconded the motion. With all in favor, the motion carried.

Executive Session Case Deliberations

Commissioner Simpson made a motion for the Committee to enter executive session, pursuant to KRS 61.815(1) and 61.810(1)(c) and (1)(j) at 9:38 a.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:

- 18-C-024
- 19-C-010
- 19-C-042
- 19-C-043
- 19-C-044
- 19-C-045
- 19-C-057

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

Reconvene in Open Session

At 10:19 a.m. Commissioner Cline motioned for the Committee to come out of executive session. Commissioner Simpson seconded the motion to come out of executive session.

Committee Recommendations

Commissioner Simpson made a motion for the Complaint Committee to recommend disposition of the following cases to the full Commission in the following manner:

Final Adjudications

- 18-C-024** - In a complaint filed on December 18, 2017, Complainant claims the Respondent, engaged in negotiating real estate leases in Kentucky without a licensed agent, and charged and collected commissions on the leases.

The Respondent was previously licensed in Kentucky but his license expired. However, because it appeared this was a commercial transaction for a business and the Respondent's company, and not the Respondent individually, was negotiating the deal, and because there was no documentation or allegation suggesting the Respondent did not have a licensed agent working with him, prior counsel requested a supplement from the Complainant. Complainant never provided a Sworn Supplement in response to the request. Therefore, the Committee recommended dismissal of the complaint.

- 19-C-010** - Complainant claimed that Respondent, a dual agent in the transaction, misrepresented the characteristics of property the Complainant purchased. The Complainant purchased two lots for development. Evidence suggests the septic tank, which was visible, was on Complainant's lot, but the leach lines, which were underground, ran onto an adjacent parcel.

The adjacent lot was purchased by another party for development. While in development the contractor determined the leach lines for Complainant's septic system were located on that adjacent lot.

There was evidence Complainant elected not to do a survey prior to purchase. The Respondent established he had no way of knowing where the septic lines were.

KRS 324.160(4)(b) prohibits a licensee from "making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property." The issue presented is whether Respondent violated this section.

There is no evidence Respondent knew that the leach field and leach lines crossed onto the adjacent lot at the time Complainant purchased the other two lots. Further, the Complainants had the opportunity to obtain a survey, or to request to review the existing survey, but choose not to do so.

The CRC Committee recommended to dismiss the complaint.

19-C-042 and 19-C-043 - The Complainant in both of the complaints purchased a home listed by the Respondent, on October 28, 2016. Complainant filed her original complaints on April 29, 2019 making various allegations of fraud against the Respondent and Complainant's agent (Respondent 2), claiming the Respondent knew of defects to the property but failed to disclose them. The Complainant further claims she never received a Seller's Disclosure form. In the companion case, Complainant alleges her own agent, Respondent 2, was negligent for not obtaining a copy of the Seller's Disclosure form for her.

KREC legal staff sent Complainant a request to supplement her complaint. On the face of the original complaints, it appeared the complaints had been untimely filed and should be dismissed. In her supplement, Complainant provided one additional fact that, if true, would fall within the statute of limitations. She stated that on January 25, 2018, she discovered the HVAC system issues. Therefore, the failure to disclose known defects to the HVAC system would be the only actionable violation if it in fact occurred. All other defects to the home were discovered by January of 2017.

Because there was no evidence Respondents knew about the alleged HVAC issues, those claims likewise failed.

As a result, the CRC recommended to dismiss the complaint.

- 19-C-044 -** The Complainants purchased property from the seller on November 13, 2018. The seller's realtor is the Respondent. The Complainants claim the Respondent covered up and misrepresented a number of problems with the property, including, primarily, a water leak in the basement.

They claim they texted Respondent that the basement was leaking, and he asked whether it was at the bottom of the stairs. Complainants claim this is evidence Respondent knew about the leaking beforehand since he asked about a specific location.

There was evidence Complainants visited the subject property approximately three to five times before purchasing it. Further, there was evidence Respondent's response to Complainant's text regarding whether it was leaking at the bottom of the stairs related to the fact that he knew there was a utility room under the stairs which contained the water heater and furnace, thus making it the most likely source of leaking in the basement. Respondent communicated Complainant's concerns to the seller, who informed Respondent the seller had never had a problem with water in the basement and that he had disclosed all known issues on the Seller's Disclosure form.

There is no evidence Respondent had prior knowledge of leaking issues in the basement of the home other than a drain pipe that could back up if not cleaned, which Respondent and the seller disclosed, or that he misrepresented or withheld such information. Text messages between Respondent and his client further support he had no knowledge of the issues. Further, the home inspector did not find evidence of leakage during his first inspection.

The CRC recommended to dismiss the complaint.

- 19-C-045 -** The Complainant filed this complaint against Respondent in June 2019. The complaint alleged the prior owners of the property experienced and failed to disclose septic issues, including drainage issues that affected the neighbor's property. While the complaint is not explicit, it appeared that the Complainant alleges that the Respondent knew about and failed to disclose the problems.

In July 2019, the case KREC placed the case into abeyance because Complainant filed a parallel civil lawsuit related to the same issues. On October 3, 2020, the Legal Department received an email from the Complainant requesting to withdraw his

complaint because he had settled the civil lawsuit and no longer wished to proceed with this case.

The CRC recommended to permit the Complainant to withdraw the complaint and dismiss the case against the Respondent.

- 19-C-057 -** The CRC recommended an informal reprimand. The full Commission agreed with that recommendation but also authorized General Counsel to negotiate a settlement of discipline in the form of both an informal reprimand and six hours of CE – three in ethics and three in law.

Meeting Adjournment

Commissioner Simpson made a motion to adjourn the meeting of the Complaint Committee. Commissioner Cline seconded the motion. There being no objection, the meeting was adjourned at 10:19 a.m.

Next Scheduled Meeting

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