



PUBLIC PROTECTION CABINET

Kentucky Real Estate Commission

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KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee

MEETING MINUTES

January 20, 2021

1:30 p.m.

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

Committee Members Present

Commissioner Raquel Carter
Commissioner Steve Cline

KREA Staff

John Hardesty, General Counsel
Angie Reynolds, Board Administrator

Call to Order and Guest Welcome

A meeting of the Complaint Committee was called to order by Commissioner Carter at 2:49 p.m. on January 20, 2021

Committee Meeting Minutes

Commissioner Carter made a motion to approve the December 9, 2020 CRC Meeting Minutes. Commissioner Cline seconded the motion. With all in favor, the motion carried.

Executive Session Case Deliberations

Commissioner Carter 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 2:49 p.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:

- 19-C-002
- 19-C-004
- 19-C-013
- 19-C-017
- 19-C-027 and 19-C-050
- 19-C-032
- 19-C-034
- 19-C-037
- 19-C-039
- 19-C-047
- 19-C-048
- 19-C-049
- 20-C-034
- 20-C-004
- 20-C-005
- 20-C-010
- 20-C-012
- 20-C-026
- 20-C-030
- 20-C-031
- 20-C-032
- 20-C-037
- 20-C-038
- 20-C-041
- 20-C-045

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 Carter seconded the motion to come out of executive session.

Committee Recommendations

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

Final Adjudications

19-C-004 - Complainant claims that he purchased a home and according to the Seller's Disclosure, there were no problems with the property. He admits he purchased the property "as-is," under the assumption it was in good condition. He also did not obtain a home inspection.

Complainant claims that once he moved into the property, he quickly noticed many problems. The Complainant provided a home inspection report (from an inspection he obtained after purchase), which showed one of the roof trusses had been cut to make room for HVAC system. He further claimed the roof leaked. He also claimed his agent, Respondent, told his fiancé and daughter the property had been inspected and the only problem was missing drainage platforms under the downspouts for the eaves. He claims Respondent, a dual agent, knew about the problems along with the seller and failed to disclose them.

Respondent denied that she assisted in completing or completed the Seller's Disclosure Form. She denied knowledge of any problems with the property, specifically relating to the HVAC and roof systems. She provided proof that she went over, in detail, the offer to purchase with Complainant and asked if he wanted a home inspection. She went so far as to explain at length his right to have an independent home inspection. Ultimately, Complainant never requested one. Respondent further denied she told Complainant's relatives about an alleged inspection and there were no issues with the property. In fact, she provided proof that she informed Complainant of the appraiser's inspection and required repairs.

The evidence suggests Respondent was diligent and open with Complainant about her knowledge of the property and his right to obtain an independent home inspection. There is no evidence that Respondent had any knowledge of problems with the property.

The Committee recommends dismissal of the complaint.

19-C-013 - The Complainant claims Respondent was advertising his company while only taking online real estate pre-license classes and when he was yet licensed as a real estate agent. The Respondent claimed his lawyer advised when setting up his company that it was permissible to use "Realty" in the name of his company as long as he did not perform any of the real estate brokerage activities until he obtained his license. He claimed he has done just that, and never obtained his real estate license. He obtained his apprentice auctioneer license in April 2017 and his principal auctioneer license in September 2018.

Respondent claimed he had one real estate sale since obtaining his principal auctioneer license. All brokerage activities related to sale were handled by a licensed broker. Respondent is not currently a real estate licensee. He did not complete his real estate education and obtain a license. Because of this, KREC does not have jurisdiction to discipline him. Regardless, it does not appear Respondent committed violations of KRS 324.160 or engaged in real estate brokerage without a license. At most, he should have been clear in advertising that his company would serve as the auction company and the other company would serve as the real estate brokerage for any real estate auctions.

The Committee recommends dismissal of the complaint.

19-C-027 and 19-C-050 – The complaints are identical except that Complainant changed the name of the principal broker in the second one. Notably, these two complaints relate to and arise out of the same transaction as Case No. 19-C-006, which Complainant filed against the agents that represented her in the purchase of the subject property. The Commission

dismissed that case at its September 2020 meeting for lack of evidence of violations against the respondents in that case.

The question presented is whether the Respondents violated KRS 324.160. While Complainant's complaint is long and detailed, and she provided numerous exhibits and documents in support, none of them establish a violation against Respondents, or even give rise to a need to further investigate. There is no evidence Respondents, seller's agents, withheld or hid information regarding what the seller intended to take with her upon selling the property. Further, there was no evidence Respondents violated their duties of good faith and fair dealing to Complainant in this transaction.

The Committee recommends dismissal of the complaint.

- 19-C-032 -** The Complainant claims that the Respondent, agent for her estranged husband and his girlfriend, unlawfully used her position as a real estate agent to allow the Complainant's estranged husband and his girlfriend into the her property. The Respondent claims she is acquaintances with the husband's girlfriend. The girlfriend was doing a walkthrough of the home for supposed purchase.

Emails included as exhibits with Respondent's sworn answer appear to exonerate her. The evidence laid out above establishes that the Respondent was not told until they were on the property that it was the husband's marital residence with the Complainant. There is no evidence Respondent was aware of the mediation order or occupancy requirements in favor of the Complainant. The girlfriend had requested an appointment for a showing, and it was granted. The husband did not tell Respondent it was his martial residence, and there is an email after the fact wherein he apologized to her. Further, the husband provided notice to his attorney that he intended to visit the property, but his attorney failed to communicate that to Complainant's attorney in order to obtain the required permission.

To the extent that there was any wrongdoing, it was committed by the husband and/or his attorney, who failed to notify the Complainant subject to their mediation order, and not the Respondent. Thus, it does not appear the Respondent violated KRS 324.160.

The Committee recommends dismissal of the complaint.

- 19-C-039 -** The Complainants claim that they looked at property listed by Respondent, and placed an offer on it the same day. They claim they specifically asked Respondent about flooding issues and she said there were "none" as far as she knew. Complainants claim that upon securing their loan they learned the lender would require them to carry flood insurance.

The Seller's Disclosure form states "UNKNOWN" for whether the area is located in a Special Flood Hazard Area mandating flood insurance. The Respondent did not and is not required to complete the Seller's Disclosure of Property Condition form. Further, she claims that while at the property, she provided Complainants with a copy of the listing which clearly states "Flood: Yes", and discussed with Complainants that the maps were changed in 2015 that now placed the property in the Special Flood Hazard Area. She further advised that while she lived at the property, and as far as she knew from seller, the property had never actually experienced flooding issues.

Based on the available evidence, it appears the Respondent truthfully told Complainant that while the water levels would rise at the property, none of the improvements ever flooded while she lived there and thus, she was not aware of flooding issues. She discussed with Complainants that the property was in a flood zone based on the 2015 flood map revision that required flood insurance. Further, the seller completed the Seller's Disclosure form, which states "Unknown" for whether flood insurance is required. As a result, there is no evidence Respondent violated KRS 324.160.

The Committee recommends dismissal of the complaint.

19-C-048 - The Complainant claims that he inquired about purchasing a closed Chase Bank location. He was contacted by Respondent who advised him the asking price on the property was \$999,000. He then spoke to Respondent on the phone and offered \$800,000 for the property. Respondent advised him there already was a higher offer on the property. Within a few weeks he met with the Respondent to discuss the purchase process. Respondent advised Complainant that he planned to review offers with his client on January 28, 2019. Complainant claims on that very day he sent an offer for \$999,000 along with a letter of intent. He did not immediately hear from the Respondent so he called him and Respondent said he had received the offer but asked what Complainant planned to use the property for and notified the Complainant that he would get back with him on soon. On February 4, 2019, Complainant inquired with Respondent about the status of the contract as they were approaching the deadline. On February 7, 2019, Respondent emailed to state he was waiting on direction from Chase and should hear something the following day. He stated the offer was presented to the Committee and he was waiting on direction. The Respondent did not respond for two weeks. By this time the Complainant's offer had expired. Complainant claims that in May 2019, he discovered the property was sold to another real estate broker. It was sold for the same amount he offered - \$999,000. Complainant claims he has been discriminated against by Respondent and/or Chase bank either because of heritage or occupation, and that undermined his opportunity to purchase the property. In his sworn answer, Respondent

claims his brokerage had received an unsolicited purchase offer on the property from the ultimate buyer on December 17, 2018, more than a month before Complainant's offer, and then tendered it again on January 7, 2019. Respondent's company submitted both offers to Chase, which decided the property should be marketed fully prior to considering offers. After informing the Buyer of its position, the Buyer made an updated full cash offer on January 17, 2019. Respondent claims Chase Bank, the owner of the property, made the decision on which offer to accept. It chose the Buyer's offer because of its attractive terms, which he laid out in full in his sworn answer. The Committee believed it is clear that compared to Complainant's offer, the Buyer's offer would be much more appealing to Chase. There was no evidence of discrimination, nor other violations. The Committee determined a voicemail left by Respondent for Complainant stating Chase had gone with a "cash offer at a higher price" was not sufficiently misrepresentative or misleading, because while the accepted offer was for the same ultimate price as Complainant's offer, it was full cash and all terms were higher and better than Complainant's offer.

The Committee recommends dismissal of the complaint with a letter of caution.

20-C-034 - The Complainant asserts a number of different alleged violations against Respondent, including escrow account violations and misrepresentations. On the first property listing the Complainant claims that on March 5, 2020, her clients, the sellers of the property, entered into a contract to purchase their property with the Respondent's clients. The contract had a contingency that stated all timeframes in the contract would not begin to run until Respondent's clients' property was listed as "Pending". She claims the earnest money deposit was to be \$1,000. On March 18, 2020, she claims the Respondent's agent (Respondent was the managing broker), sent an email stating that the Buyers were not going to proceed on with the agreed contract terms, the Respondent's agent allegedly stated the Buyers had an interested party and if the Buyers were to receive an offer, they will write a new offer to submit. On March 19, 2020, Complainant claims the Respondent's agent informed her that the Buyers did not receive an offer and were walking away from the contract.

On April 2, 2020, Complainant claims the Respondent's agent was informed (likely by Complainant) that the sellers were not willing to sign a release of contract. Complainant claims as of the date of the complaint, the parties have not entered into a written mutual release. Despite that, she claims she is not sure if the earnest money was actually collected and deposited or returned to the buyers without a signed mutual release, thus ignoring KRS 324.111. As a result, Complainant claims Respondent violated KRS 324.111 and 324.160(h). The contract states the earnest money deposit shall be deposited "without unreasonable delay" upon acceptance and applied to the purchase price.

Notably, the contract clearly states the offer by the Buyer is a contingency contingent on the Buyer receiving an offer on their property. The contingency was without notice and stated that the contract was null and void if sellers accepted another offer, and the earnest money would be returned to the Buyer. Likewise, it goes into detail as to how the earnest money must be handled. In her sworn answer, Respondent noted her clients withdrew their home from the market because of COVID-19 and the risk of showings in light of the virus. Respondent claims that due to the contingency, the sellers agreed that all timelines would start once their home was placed in Pending Status. She claims this would include the clock for deposit of the earnest money, which is required without unreasonable delay upon acceptance. As a result, Respondent claims she is not in violation of KRS 324.111 or 324.160 because the earnest money was not to be collected until sellers marked their home pending in the MLS.

For this transaction, the Committee did not find clear evidence of violations and did not believe the earnest money deposit should have been collected until the Respondent's clients' property was listed as "pending" as which time the clock would begin to run so it was not an issue that Respondent did not collect the earnest money deposit since her clients' property was never pending. The only issue was Complainant's release letter suggested an earnest money deposit of \$1,000 had been collected, which was not true. In her reply, Respondent claims this was a mistake on her brokerage's part but argues it does not rise to the level of a violation. Just a simple mistake as the form that was used. The Committee felt a letter of caution to Respondent was appropriate to address this.

On the second property listing the Complainant claims that on April 7, 2020, her clients, the sellers entered into a contract to purchase with Respondent's clients. The earnest money deposit was to be \$1,000. Respondent's clients ultimately withdrew from the contract because of alleged material defects discovered in the inspection report. Which the contract permitted.

She claims as of the date of the complaint, the parties have not entered into a written mutual release. Despite that, she claims she is not sure if the earnest money was actually collected and deposited or returned to the buyers without a signed mutual release, thus ignoring KRS 324.111. As a result, Complainant claims Respondent violated KRS 324.111 and 324.160(h). Notably, the contract states the deposit shall be returned to Buyer if the Buyer cancels the contract based on the inspection, and also states the buyer is out of state and will need seven days to get Respondent the earnest money.

The Respondent claims the amount of \$1,000 was submitted to her brokerage on April 8, 2020 and deposited into the escrow account on April 9, 2020. Notably, Complainant

included a copy of the earnest money check in her complaint yet stated in her complaint “I’m not sure the money was ever collected . . .” which the Committee felt could constitute a misrepresentation in her complaint.

Respondent stated that as of the date of her answer, the earnest money remains in her brokerage’s escrow account and has not been returned to the buyers. She claims they were preparing to send out the 60-day letter per KRS 324.111 but then received this complaint, so that is now on hold pending resolution of the complaint. She claims as a result, she is not in violation of KRS 324.111 or 324.160.

KREC is not authorized to resolve contract disputes or engage in contract interpretation. It only has jurisdiction to determine if licensees complied with licensing law, and discipline them if they did not. The Respondent obtained and deposited the earnest money, and it remains in her brokerage’s account. She stated her brokerage was prepared to issue the 60-day release letter under KRS 324.111, but has held off pending the resolution of this case. It’s also notable that Complainant claimed she did not know if the money ever was collected or deposited by Respondent but submitted the earnest money check in her complaint materials, which may constitute a misrepresentation in her complaint.

The Committee recommends dismissal of the complaint with a letter of caution to the Respondent regarding the collection of earnest money as required and to ensure that release and all other forms contain accurate language, and a letter of caution to the Complainant regarding misrepresentation of facts in a sworn complaint.

Dismissals for Failure to Supplement Pursuant to KRS 324.151(1)

- 20-C-004** – Complainant failed to supplement the complaint upon request. Complaint was not filed against licensee and was filed beyond statute of limitations. Committee recommended dismissal.
- 20-C-005** – Complainant failed to supplement the complaint upon request. Complaint was not filed against licensee and was filed beyond statute of limitations. Committee recommended dismissal.
- 20-C-010** – Complainant failed to supplement the complaint upon request. The complaint did not contain a narrative or statement of the case; it only contained a cover page. Committee recommended dismissal.

- 20-C-012** – Complainant failed to supplement the complaint upon request. Complainant filed the complaint against a community association manager, over whom KREC does not have jurisdiction. Committee recommended dismissal.
- 20-C-026** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie violation of KRS 324.160. Committee recommended dismissal.
- 20-C-030** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a violation against a licensee. Committee recommended dismissal.
- 20-C-031** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a license law violation. Committee recommended dismissal.
- 20-C-032** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a license law violation. Committee recommended dismissal.
- 20-C-037** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a license law violation. Committee recommended dismissal.
- 20-C-038** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a license law violation. Committee recommended dismissal.
- 20-C-041** – Complainant failed to supplement the complaint upon request. Original complaint did not state a prima facie case of a license law violation. Committee recommended dismissal.
- 20-C-045** – Complaint did not state prima facie violation, not submitted on correct form, and not notarized. The Commission cannot request a supplement because the complaint is anonymous. Committee recommended dismissal.

Pending Actions

- 19-C-002** - The CRC Committee recommend to refer the case for further investigation to determine if violations occurred, including if Respondent ever remitted funds to the surveyor and whether Respondent was able to locate records of transaction he was required to retain.

- 19-C-017 -** The Committee determined Respondent committed a violation. Therefore, the Committee recommends discipline in the form of a formal reprimand and three (3) hours of continuing education in advertising for violation of 201 KAR 11:105(2) (in effect at the time of the incident). The Committee recommends the Commission authorize General Counsel to attempt to settle this matter for the required discipline.
- 19-C-034 -** The Committee recommend to refer the case for further investigation regarding whether Respondent committed violations of KRS 324.160, including to investigate and review correspondence between the parties and necessary documents.
- 19-C-037 -** The CRC Committee recommend to refer the case for further investigation to assess if Respondents committed violations.
- 19-C-047 -** The Committee recommend further investigation, including whether Respondent committed fraud as defined in KREC's statutes and regulations, and whether the alleged issue should have been disclosed on the Seller's Disclosure form.
- 19-C-049 -** The Committee recommends to refer the case for further investigation, to be completed promptly, to assess whether unlicensed brokerage activities occurred.

Meeting Adjournment

Commissioner Cline made a motion to adjourn the meeting of the Complaint Committee. Commissioner Carter seconded the motion. There being no objection, the meeting was adjourned at 4:54 p.m.

Next Scheduled Meeting

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