



Andy Beshear
Governor

Kerry B. Harvey, Secretary
Public Protection Cabinet

Robert Laurence Astorino
Executive Director

John L. Hardesty
General Counsel

Commonwealth of Kentucky
Kentucky Real Estate Authority
Kentucky Real Estate Commission
Mayo-Underwood Building
500 Mero Street, 2NE09
Frankfort, Kentucky 40601
@krec.ky.gov

COMMISSIONERS
Lois Ann Disponett, Lawrenceburg
Raquel Elaine Carter, Lexington
Steve K. Cline, Bowling Green
James Oliver King, Louisville
James G. Simpson, Dry Ridge
Larry D. Disney, Winchester
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**KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee**

MEETING MINUTES

December 9, 2020

1:30 p.m.

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

Committee Members Present

Commissioner Larry Disney
Commissioner Raquel Carter

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 December 9, 2020.

Committee Meeting Minutes

Commissioner Disney made a motion to approve the **October 21, 2020 CRC Meeting Minutes** as submitted and review by General Counsel. Commissioner Carter 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 1:36 p.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:



- 18-C-008
- 18-C-009 and 18-C-021
- 18-C-025
- 18-C-033
- 18-C-052
- 18-C-079
- 18-C-096
- 19-C-041
- 19-C-099
- 19-C-101
- 20-C-007
- 20-C-008
- 20-C-021
- 20-C-029
- B.C.

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

Reconvene in Open Session

At 3:59 p.m. Commissioner Disney motioned for the CRC 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 Review Committee to recommend disposition of the following cases to the full KREC in the following manner:

Final Adjudications

18-C-008 - The Complainants filed this complaint against the principal broker, the Respondent. They claim the Respondent engaged in deceptive and fraudulent activities, including representing an unsigned document as an official counter offer and leading them to believe they had entered an agreed upon purchase agreement.

The Complainant claims Respondent violated KRS 324.160(4)(c), (d), or (u) when she stated the relocation company had to approve offers. Documentation was presented to the Committee to substantiate that claim, though it admittedly was unclear if the company explicitly required that it accept or reject offers. The relocation company is stated as the seller on the ‘rider to the contract of sell’ as the original buyer, in addition to sending in an acknowledgment letter. In addition, it is common practice for Relocation Companies to ‘temporarily’ own such properties until the time of transfer to the prospective buyer(s).

It was determined that the Respondent did not violate KREC’s statutes and regulations.

Therefore, the Committee recommended dismissal of the complaint.

18-C-009 and 18-C-021 – The original Complaint was filed on November 27, 2017, the Complainant (the seller) filed an identical case – No. 18-C-21. Because the two complaints are identical, they were reviewed together.

The Complainant's original complaint did not state a prima facie case of a license law violation, so KREC requested a supplement, which the Complainant provided, though it was received beyond the ten-day limit for a supplement. Prior counsel overlooked this tardiness. In his original complaint, Complainant claimed that upon completing the buyer's contract for his property, his Agent, the Respondent, did not reserve the escrow deposit. He claims the buyers reneged on the purchase, which is true. Evidence established that Respondent represented buyer and seller as a dual agent and was overly diligent in constantly following up with the prospective buyer regarding why he had not provided the escrow deposit. The CRC determined the Respondent did not commit a violation related to that conduct.

The other question was whether Respondent committed a violation in failing to withdraw from the dual agency relationship after the prospective buyer delayed in providing the escrow deposit. The CRC determined that because Respondent was diligent in representing seller's interests in constantly communicating with buyer to request the deposit, and because she also upheld her duties to the buyer and did not advocate the position of one party over the other, she did not commit a violation by failing to withdraw. **It recommended dismissal of the complaint with a letter of caution.**

- 18-C-025** - On December 14, 2017, the Complainant filed this complaint against Respondent, his brother, claiming Respondent committed licensing law violations by using their father's name, and the name of Complainant's brokerage/construction company, which had been trademarked, in his advertising. However, Complainant filed the complaint outside of the statute of limitations, which required dismissal. **The CRC recommended dismissal but to include in the letter to Complainant that he is permitted to file an updated complaint if Respondent commits or has committed new alleged violations within one year prior to the complaint. It also recommended a letter of caution be sent to Respondent.**
- 18-C-052** - On July 6, 2018, Complainant filed this complaint against his nephew, the Respondent. The complaint arises from Complainant's sale of several properties through his nephew at a discounted rate. Complainant claimed Respondent lied to him about a statutory minimum commission that agents are required to charge in Kentucky, and that Respondent promised him a rebate from the sale of the properties but never followed through. Respondent denied all allegations. The Complainant missed the statute of limitations and recently requested withdrawal of the complaint. **The CRC Committee would like to recommend to allow the Complainant to withdrawal the complaint.**
- 18-C-096** - The Complainant claims that the Respondent fraudulently sold the Complainant property by concealing deficiencies to the property. Specifically, he alleges a previous buyer,

made an offer on the home but then backed out after the home inspection report revealed problems with the crawl space and foundation. Respondent denies misrepresenting the characteristics of the property and refutes the notion that he deceived anyone.

The evidence and investigation in this case suggest the seller failed to update the Seller's Disclosure form after learning about the issues with the crawl space. However, Respondent is not required to, and did not, update the Seller's Disclosure form once the alleged issues were discovered. Moreover, while Complainant claims Respondent misrepresented why the previous buyer backed out, Complainant received a copy of the home inspection report that identified the deficiencies weeks before he closed on the property, and actually moved into the property well before closing. With the information in the inspection report, he accepted the condition of the property, requested repairs, and closed on the purchase of the property. **The Committee recommends dismissal of the complaint with a letter of caution to Respondent.**

- 19-C-099 -** The Complainants filed this complaint against the Respondent claiming that they were engaged in attempting to purchase a property and had agreed to pay up to \$5,000 in closing costs. The buyer's closing costs only ended up being \$2,500 but when they received the closing documents, it showed they were also paying insurance and an initial escrow deposit. The Respondent claims that the Complainants knew they would be paying for the additional costs. They claim they did not. However, for unknown reasons, the Complainants went through with the sale, did not reject this change in the deal, and ended up paying these costs. They then filed this complaint against the Respondent.

Because the complaint failed to state a violation of KRS 324.160, KREC staff sent the complaint back to Complainants requesting a sworn supplement. **The Complainants received the request but declined to provide a supplement, therefore the complaint is deficient and thus the Committee recommended dismissal of the complaint due to lack of a Supplement response to the complaint.**

- 20-C-007 -** In complaint, the Complainant claims they entered into a property management agreement with the Respondents. The Complainant asserted numerous claims against both licensees and unlicensed individuals. KREC staff sent the complaint to all the Respondents for a response. KREC did not receive sworn answers, but recently received a request from counsel for Complainant to withdraw the complaint, as the Complainant no longer wishes to proceed with it. **The CRC Committee would like to recommend to allow the Complainant to withdrawal the complaint.**

20-C-008 - The Complainant filed this complaint against Respondent, but the Respondent is the former owner of the property and not a real-estate licensee. The Complainant claims after he purchased the property he discovered a number of issues with it. Because the complaint did not state a prima facie case of a license law violation by a licensee, the only type of claims over which KREC has jurisdiction. General Counsel requested Complainant supplement to the complaint from the Respondent to describe how a real estate licensee committed a violation. Complainant declined to do so and stated he submitted all of his information and allegations

As the Respondent is not a real estate licensee, KREC has no jurisdiction to take action against Respondent. Nor does the complaint show a violation of KRS 324.160 against a real estate licensee, and the Complainant failed to provide a supplement as requested. **Therefore, the Committee recommends dismissal of the complaint with a word of caution.**

20-C-021 - The Complainant filed this complaint against Respondent, stating that she and her husband divorced and undertook the process to sell their marital home. The court appointed Respondent to handle the transaction, even though Complainant claimed her ex-husband and Respondent had a family relationship. She claims throughout the process, Respondent pressured her and did not treat her fairly, instead siding with her husband for all decisions. This included rushing a transaction instead of attempting to get the best deal for her clients; and offering to reduce her commission by \$3,000 to making the deal work, only to renege on the promise later.

It appears the Complainant and the Respondent have since worked out their differences amicably. On November 17, 2020, the Complainant emailed KREC to request withdrawal of her complaint.

The CRC Committee would like to recommend to allow the Complainant to withdrawal the complaint.

20-C-029 - On July 7, 2020, an anonymous individual sent a letter to KREC allegedly reporting unlicensed real estate activity taking place in Kentucky. Despite the allegations, none of the company names appear to be Kentucky companies. Moreover, there is no allegation against any Kentucky licensee and, in fact, the letter cites only Virginia and Idaho law. Lastly, the complaint was not filed on KREC's required complaint form or notarized. Even to the extent KREC wanted to request a supplement, it could not because the Complainant is anonymous.

Because the complaint does not state a violation of KRS 324.160 against a Kentucky licensee, or any individual or company, and KREC does not know the identity of the

Complainant in order to request a supplement. **The Committee recommends dismissal of the complaint.**

Pending Actions

- 18-C-033** - The Complainant submitted a complaint against a former sales associate, the Respondent, alleging the Respondent withheld a sales commission transaction from their Agency after the Respondent left the brokerage. **The CRC recommended further investigation of the case.**
- 18-C-079** - The Complainant claims Respondent was a licensee with one brokerage beginning September 20, 2018. Respondent left Complainant's brokerage and joined another brokerage. Around the time she officially left Complainant's brokerage, she allegedly posted on Facebook that she was "now with" the new brokerage. Complainant claims this occurred before Respondent actually moved. Likewise, Complainant claims around the time Respondent moved, she had a client complete an Agency Disclosure form and had the client sign one with the new brokerage information even though the client was with the former brokerage. The CRC recommended that Respondent be given an **informal reprimand and three (3) hours of continuing education, and that General Counsel have authority to negotiate a settlement for that discipline.**
- 19-C-041** - The Complainants filed this complaint against Respondent, the Respondent is both a real estate broker and an auctioneer. There is a parallel complaint proceeding with the Board of Auctioneers. Complainant claims Respondent misrepresented that there were no liens on the property by advertising it as an absolute auction when, in fact, there were. He also claims damages from Respondent for the down payment on the property and repairs made to the home prior to closing, in light of the fact the property has not closed due to later discovered liens that exceeded the value of the property. The CRC recommended that the Recovery Fund is not at. As to Respondent, it recommended to allow General Counsel to attempt settlement of the case for discipline against Respondent of **(1) a fine of \$1,000; (2) 12 hours of continuing education, 6 hours in law and 6 hours in advertising; (3) a formal reprimand.**
- 19-C-101** - The Complainant claims he purchased a house under the impression that the HVAC unit and roof was one (1) year old as stated on the seller's disclosure which claimed they both were relatively new. He claims issues later arose and filed this complaint against seller's agent. Tragically, Complainant recently passed away. **The CRC recommended the complaint be held in abeyance to determine if parents wish to substitute themselves for Complainant, and whether that is permissible under KREC's statutes and regulations.**

Other

B. C. - BACKGROUND

B.C. obtained a sales associate license on June 24, 2020. Because his background revealed past criminal activity, his application was reviewed and approved at the June 2020 Commission meeting. On November 4, 2020, B. Caudill's then-principal broker, notified the Commission that she was releasing Mr. Caudill's license. Mr. Caudill was arrested on September 17, 2020 for assault and driving under the influence. Principal Broker also indicated B.C. was arrested again on October 31, 2020 for driving under the influence. The Commission has not received anything from B.C. regarding his recent arrests. His license was cancelled on December 4, 2020 for failure to affiliate with a principal broker. KRS 324.160(4)(k) requires licensees to report a conviction, plea of guilty, or an "Alford" plea to a felony or a misdemeanor involving sexual misconduct to the commission. At this time, we do not know his recent charges or the status of his arrests.

The CRC recommended to flag the licensee's account for further investigation if he files the necessary paperwork to reactivate his license or place it in inactive status.

Meeting Adjournment

Commissioner Carter 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 4:07 p.m.

Next Scheduled Meeting

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