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**KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee**

MEETING MINUTES
August 19, 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
Angie Reynolds, Board Administrator

Call to Order and Guest Welcome

A meeting of the Complaint Committee was called to order by Commissioner Simpson at 2:04 pm on August 19, 2020.

Committee Meeting Minutes

Commissioner Simpson made a motion to approve the July 15, 2020 CRC Meeting Minutes. Commissioner Simpson seconded the motion. With all in favor, the motion carried.

Executive Session Case Deliberations

Commissioner Cline 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 2:06 p.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:

- 18-C-042
- 18-C-050
- 18-C-084
- 19-C-001
- 19-C-005
- 19-C-006

- 19-C-065

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

Reconvene in Open Session

At 3:13 pm 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 Cline 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-042 – Complainant alleged Respondents left their brokerage sign in a client’s yard for several weeks after the listing expired. Respondents denied the allegations and confirmed the sign was picked up the day after the listing expired. The property owner likewise confirmed he had no knowledge of the sign being in the yard beyond the expiration of the listing. Complainant submitted pictures allegedly showing the sign in the yard beyond the listing expiration, but there was evidence other signs belonging to Respondents had been stolen and may have been placed there by someone other than Respondents for unknown reasons. While Respondents did not file a complaint against Complainant, they alleged Complainant contacted their clients while the clients had active listings with them. Complainant denied this and there was no objective evidence of such contact. The Committee recommended dismissal of the complaint with caution letters to Complainant and Respondents.
- 18-C-050 – Complainant alleged that Respondents, agent and broker, breached their listing contract with him because they failed to properly market his undeveloped lake property, including failing to post it on their website and failing to respond to phone calls and messages from Complainant, Complainant’s friends, and other interested individuals who inquired about the property. Respondents denied the allegations and explained they initially photographed the property, posted it on their website, and placed one of their signs in the yard. They provided evidence of communications with Complainant during the pendency of the listing agreement, as well as evidence Complainant did not sign and return necessary documentation for them to lower the sales price after Complainant requested to reduce it. They admitted they eventually removed the property from their website, but only after Complainant informed them he was giving the property to his son. They kept the listing agreement in place, however, because they questioned whether Complainant would attempt to list or sell the property elsewhere, which was corroborated when another agent contacted them to inquire about the existing listing because Complainant allegedly had contacted that agent to list the property. The Committee recommended dismissal of the complaint with caution.
- 19-C-001 - The question presented in this complaint was whether the Respondent, licensee’s failure to disclose the property was in a floodplain constituted a failure to disclose a known material defect in the property that substantially affected its value, in violation of KRS 324.160(4)(b), and whether Complainant’s client is entitled to the return of the earnest money deposit. Complainant’s client backed out of the purchase after being told by her lender she needed flood

insurance because the property was located in a floodplain. Respondent was both a licensee and part owner of the development. Because the property is not, in fact, in a FEMA floodplain, as evidenced by documentation provided by the Respondent during KREC's investigation, Respondent did not misrepresent anything to Complainant or her client. Therefore, Respondent did not violate KRS 324.160. The contract controls issues regarding the earnest money deposit and in this circumstance, KREC has no authority to rule on the interpretation of or enforce contracts. The Committee recommended dismissal of the complaint.

19-C-005 – Complainant alleged Respondent agent, who represented Complainant in the sale of his home and represented Complainant and the seller as a dual agent in Complainant's attempted purchase of the seller's property, violated the duties Respondent owed to him during the failed purchase transaction. Respondent obtained the necessary consent from and provided all required disclosures to Complainant and the seller related to her representation of both of them as a dual agent. As a dual agent, Respondent was required to remain loyal to both clients and was not permitted to advocate the position of one client over the other. 201 KAR 11:121 establishes the following fiduciary duties owed by a licensee to a client: loyalty, obedience to lawful instructions, disclosure, confidentiality, reasonable care and diligence, and accounting. The purchase transaction proceeded smoothly until the appraisal of the property came back \$12,500 under the agreed-upon sale price, at which time Complainant ran into financing issues. A cash buyer then approached the seller and offered just under the asking price in cash. The seller, through Respondent, requested Complainant sign a release to release the contract so the seller could sell to the cash buyer. Complainant claims Respondent failed to communicate counter offers to the seller after the appraisal issue arose, but there is no evidence Complainant made subsequent written offers. Further, Complainant's contract required closing to occur within 25-75 days after Complainant sold his home. More than 75 days after Complainant sold his home, he still had not secured financing and refused to pay the agreed upon sale price. Because Respondent owed a duty of loyalty to the seller, too, she was required to honor seller's request for a release. The Committee determined there was no evidence Respondent violated any duties owed to Complainant or any provisions of KRS 324.160, and recommended dismissal of the complaint with caution.

19-C-006 – Complainant alleged Respondents (her agents) rushed her through the viewing process of a home on which she made an offer and because of that, she was not aware at the time she made an offer of all of the items the seller intended to take with her from her home. She further alleged Respondents did not properly negotiate in her best interest when dealing with seller's agent, and there were many issues with the home of which she was not made aware prior to purchasing it that she has since discovered. The Committee determined there was no evidence Respondents withheld or intentionally hid information from Complainant regarding any of the above-described issues, or that they withheld information related to what the seller intended to keep. To the contrary, the Committee felt Respondents worked hard for Complainant throughout the transaction, and negotiated at length the terms of the complex, detailed purchase agreement. The question presented is whether Respondents violated KRS 324.160. Respondents acted appropriately and, from all accounts, represented Complainants best interests at all times. Therefore, the Committee found no violations and recommended dismissal of the complaint.

19-C-065 – Complainant alleged Respondent ran an illegal, unregistered Airbnb. He further claims the city voted that because the owner of the property did not technically live in the city, she was required to obtain a conditional use permit before offering the property on Airbnb, which he

claims she did not do and continued to offer the property on Airbnb. Because the complaint did not allege a violation of KREC's statutes or regulations, KREC requested Complainant supplement the complaint to attempt to state a prima facie violation of KRS 324.160. Complainant never provided a supplement. Therefore, the Committee recommended dismissal of the complaint.

Pending Actions

18-C-084 – The Committee referred this action for further investigation as to the claims against the agent. The Committee recommended dismissal of the claims against the broker.

Commissioner Simpson seconded the motion. All being in favor, the motion passed.

Meeting Adjournment

Commissioner Cline made a motion to adjourn the meeting of the Complaint Committee. Commissioner Simpson seconded the motion. There being no objection, the meeting was adjourned at 3:17 pm.

Next Scheduled Meeting

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