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Gus Hauser, London

**KENTUCKY REAL ESTATE COMMISSION
Complaint Review Committee**

MEETING MINUTES
September 16, 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

General Counsel introduced the new KREA investigator, Brian Travis, to the Committee.

A meeting of the Complaint Committee was called to order by Commissioner Simpson at 2:01 pm on September 16, 2020.

Committee Meeting Minutes

Commissioner Cline made a motion to approve the August 19, 2020 CRC Meeting Minutes. Commissioner Simpson 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 2:04 p.m. to discuss proposed or pending litigation and deliberate on individual adjudications in:

- 14-C-007
- 15-C-028
- 16-C-010
- 18-C-035
- 18-C-055
- 18-C-084
- 18-C-085
- 19-C-036
- 19-C-063

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

Reconvene in Open Session

At 3:10 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 Simpson made a motion for the Complaint Committee to recommend disposition of the following cases to the full Commission in the following manner:

Formal Reprimands

16-C-010 - Formal Reprimand of Wes Black, Sales Associate, License No. 215150

The Commission hereby sanctions and formally reprimands Wes Black for violating KRS 324.160(4)(q) and (v). The Commission also hereby sanctions Mr. Black for violating KRS 324.160(4)(t) by violating 201 KAR 11:105, Section 1 and 201 KAR 11:121, Section 2(1)(c) 3 and 5.

Mr. Black admitted that he violated KRS 324.160(4)(q) and (v) by failing to furnish copies of the listing contract, Seller Disclosure of Property Condition form, Agency Disclosure Statement-Seller form, and Consumer Guide form to his client, Complainant. Black acted with gross negligence in failing to furnish those documents, which is required by KRS 324.160(4)(q).

Furthermore, in failing to furnish those documents, Mr. Black also admits that he violated 201 KAR 11:121, Section 2(1)(c) 3 and 5 by failing to satisfy his fiduciary duties of disclosure and reasonable care and diligence to Complainant.

Mr. Black admitted that he violated 201 KAR 11:105, Section 1 by advertising the Complainant’s listed property without a written listing agreement signed by Complainant. Between October 31, 2015 and January 26, 2016, Mr. Black acted as Complainant’s agent without a written listing agreement signed by Complainant. On January 26, 2016, Mr. Black prepared a second listing contract for Complainant’s property, but never obtained Complainant’s signature.

KREC will suspend Mr. Black’s sales associates license for thirty (30) calendar days. During that time, Mr. Black may not engage in real estate brokerage of any kind.

Mr. Black is required to complete a commission-approved core course within ninety (90) calendar days of entry of the Agreed Order.

Formal Reprimand of Bonnie Mays, Broker, License No. 179699

The Commission hereby sanctions and formally reprimands Respondent, Bonnie Mays, for her violation of KRS 324.160(6).

Ms. Mays agreed that she violated KRS 324.160(6) by failing to exercise adequate supervision over the activities of her affiliated licensee, Wes Black. She admitted that her office was at fault for not ensuring they obtained the required signed documents and that this was her oversight.

In addition to a formal reprimand, Ms. Mays accepted discipline in the form of completion of a broker management course within 180 days of entry of her Agreed Order.

18-C-055 - Formal Reprimand of J. Hukill, Sales Associate, License No. 219251

The Commission hereby sanctions and formally reprimands Respondent, J. Hukill, for violating KRS 324.160(4)(p), which prohibits a licensee from “publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action.” The basis for this violation is that in the context of a real estate transaction where the Complainants, prospective buyers, considered backing out of the deal due to alleged deficiencies with the property, Ms. Hukill made an unjustified and unwarranted threat of legal action against Complainants. The specific threat indicated Ms. Hukill had spoken to an attorney who told her the sellers (her clients) had met their legal obligations for the transaction, and she and her clients would sue Complainants if they did not proceed with the sale. However, this statement was false as Ms. Hukill had never spoken to an attorney about this matter. In a deposition, she testified she had spoken with an agent in her office who spoke with her father, an attorney, and her client sellers had indicated to Ms. Hukill they intended to sue for breach of contract.

Respondent Hukill admitted to the above-referenced violation. In addition to this formal reprimand, Ms. Hukill agreed to discipline in the form of a CORE class, which shall not count towards her statutory requirement to attend core every four years.

The Commission dismissed the complaint against Ms. Hukill’s principal broker.

Final Adjudications

- 14-C-007 – Complainants alleged Respondent, seller’s agent, led them to believe they were purchasing approximately 2.25 acres of land and that the existing front yard was theirs to the road when, in reality, the property was landlocked, which they learned through a letter from the owner of the surrounding property two weeks after closing. Respondent provided evidence she relied on the Bullitt County PVA information, which appeared to show frontage, for the acreage and other property information when listing it. Complainants were represented by their own agent, who also did not discover the issue. Respondent never personally spoke to Complainants until closing or showed them the property. Notably, Complainants waived the right to survey the property, and had the right to do so if they desired. Respondent allegedly spoke to the adjoining property owner shortly before closing, but the contents of that conversation were unclear and the adjoining owner could not recall if he told Respondent the subject property was landlocked in the phone call. Respondent no longer holds a real estate license and the recovery fund is not implicated here. Thus, the Committee recommended dismissal.
- 15-C-028 – Complainant, seller, alleges she sold a home where she had conducted significant repairs through a company owned by Respondent’s son. Respondent was her agent. Complainant did not disclose any of the repairs on the Seller’s Disclosure of Property Condition form, but claimed Respondent instructed her to do so. Respondent disputed this and further provided evidence she did not review or sign the form. The form specifically stated, “unless otherwise advised, the seller has not conducted any inspection of generally-inaccessible areas such as the foundation or roof. It is not a warranty of any kind by the seller or the agent representing any seller in the transaction.” It also explicitly stated the Seller’s Disclosures “are not the representations of the agent.” Based on the evidence provided to the Commission, the Committee determined the agent committed no violation and recommended dismissal of the Complaint.
- 18-C-085 - The issue presented is whether Respondent, sellers’ agent, should have, and failed to, ensure the Seller’s Disclosure form was updated to disclose mold issues to Complainant. Mold was discovered in the home and an issue arose regarding the failure of the seller’s and/or their agent to disclose it. The evidence established Respondent disclosed the mold problems and remedial work once he learned of them in November 2018. However, he did not ensure the Seller’s Disclosure form was updated. Respondent placed this oversight on the seller’s, who are responsible for

updating the form. Because Respondent apparently verbally disclosed the issues as soon as he learned of them, the Commission recommended a dismissal with a letter of caution.

19-C-036 - KREC initiated this complaint against Respondents, principal broker and agent. The complaint alleged the agent failed to complete her required post-licensing education (PLE) and thereafter continued to perform real estate brokerage and receive commissions for such brokerage. Further, the complaint alleged, and the evidence established, the principal broker knew about the agent's ongoing unlicensed brokerage and not only failed to stop it, but encouraged the agent to continue the unlicensed brokerage while her license was cancelled. Likewise, the principal broker made misrepresentations and false statements in sworn statements provided to the Commission.

The Committee recommended that KREC accept a proposed Agreed Order, which sanctioned the agent for violating KRS 324.020(1) (unlicensed real estate brokerage) and KRS 324.160(2) (engaging in and receiving compensation for real estate brokerage while the licensee's license is canceled). The basis for the violation was the agent practiced real estate brokerage, advertised her real estate services, and received compensation for real estate brokerage from June 1, 2018 through September 17, 2018, while her license was canceled, and while she knew her license was canceled, for failure to complete PLE. The agent admitted to committing the violations.

As sanctions, the agent agreed to pay a fine in the amount of \$500.00; have her license suspended for thirty (30) days, probated for one year; complete eighteen (18) hours of continuing education – six (6) hours in law, six (6) hours in ethics, and six (6) hours in advertising – before December 31, 2021, in addition to and separate from the continuing education hours already required for that period of time, and submit proof of completion of same; and disgorge to the Commission \$5,000.00 of earned real estate commission that she received while her license was canceled from June 12, 2018 to September 18, 2018. Further, the agent agreed to testify against the principal broker at a disciplinary hearing, if necessary

The Committee recommended KREC accept a proposed Agreed Order, which sanctioned the principal broker for violating KRS 324.160(6) (failing to adequately supervise an affiliated licensee and failing to prevent an unlawful violation by the affiliated licensee about which the principal broker knew); KRS 324.150(4)(t) (violating any administrative regulation issued under the provisions of KRS Chapter 234, namely, 201 KAR 11:190 Section 6 for misrepresenting facts in a sworn statement); and KRS 324.160(4)(u) (engaging in improper and dishonest dealing). The basis for the violation of KRS 324.160(6) is the principal broker failed to

adequately supervise the agent to ensure she timely completed her PLE requirements and, when she did not timely complete those requirements, to ensure she did not practice real estate brokerage without a license. Further, the principal broker failed to prevent the agent from committing the unlawful violation of brokering real estate without a license, and, in fact, facilitated and condoned the agent's violation. The basis for the violation of KRS 324.150(4)(t) is the principal broker violated 201 KAR 11:190 Section 6 by misrepresenting facts in a sworn statement. She stated in her Sworn Answer that, "unbeknownst" to her, the agent continued to transact real estate after her license was canceled. Her Sworn Answer contained similar statements throughout regarding her alleged lack of knowledge. These statements were false and constituted misrepresentations in a sworn statement. The principal broker not only knew the agent was brokering real estate without a license, but encouraged it and expressed relief when the agent "didn't get caught." In response to the agent's question regarding whether she should attend upcoming closings after her license was cancelled, she advised the agent to "[j]ust proceed on. Just be careful." Later, she told the agent, "Yes let me know when you get license reinstated. So glad you didn't get caught."

The basis for the violation of KRS 324.160(4)(u) is the principal broker engaged in dishonest and improper dealing when she knew the agent had a canceled license, encouraged and condoned her brokerage of real estate without a license, and misrepresented to the Commission through sworn statements her knowledge of and involvement in the agent's misconduct.

As sanctions for the above-described violations, the principal broker agreed to pay a fine to the Commission in the amount of \$500.00; have her broker's license suspended for three (3) years beginning October 15, 2020; and complete a forty-eight (48) hour broker management course prior to the expiration of the three (3) year suspension period for her broker's license.

19-C-063 – Complainants, buyers, alleged Respondent, buyer's agent, showed them a property in August 2018 and misrepresented the property line. They claim they believed they were buying nearly twice as much property as they ended up with and didn't realize the sale did not include purchase of the adjoining parcel, which the seller retained. Respondent categorically denied the allegations and evidence established that when visiting the property, Complainants asked about the property lines. Complainants claimed Respondent told them it went to the ditch line. Respondent claimed, and other statements corroborated, that Respondent called the seller's agent, placed him on speaker phone, and he described his understanding of the property line, which was that the current owner mowed it all. Further, there were two ditch lines one the property.

The MLS listing included the plat, which showed the area in question covered two separate parcels. Complainants never requested a survey of the property. Based on the evidence, the Committee recommended dismissal of the complaint.

Pending Actions

18-C-035 - Complainant requested withdrawal of his complaint against the Respondents, buyer's broker and agent. The Committee recommends permitting withdrawal of the complaint against these individuals.

As against seller's broker, the Committee found evidence of violations and recommended KREC authorize general counsel to attempt settlement of the case for a \$1,000 fine and 12 hours of continuing education (6 hours in law and 6 hours in ethics.)

As against seller, a licensee, the Committee recommended KREC authorize general counsel to attempt settlement of the case for: (1) a \$1,000 fine, (2) 12 hours of continuing education, 6 hours in law and 6 hours of ethics, this is in addition to his yearly continuing education requirements. (3) a one-year suspension of his license (continuing required continuing education as if still licensed without exception), and (4) a formal reprimand.

18-C-084 - The Committee recommended KREC dismiss the Complaint against the principal broker. It recommended KREC authorize general counsel to attempt settlement of the case with the Respondent, agent, for six (6) hours of continuing education, three (3) hours in law and three (3) hours of advertising, as discipline.

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 3:12 pm.

Next Scheduled Meeting

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