

**VIRGINIA REAL ESTATE BOARD
INFORMAL FACT-FINDING CONFERENCES
JUNE 10, 2004 (9:00 A.M.)**

The Virginia Real Estate Board convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Frank Quayle, III, Board Member, Presided. No other Board members were present

Douglas W. Schroder and Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD.

Disc=Disciplinary Case
Lic=Licensing Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
I=Investigator
W=Witness

- | | | |
|----|--|---|
| 1. | Richard A. Esposito
File Number 2004-01898 (Disc) | Richard A. Esposito – R |
| 2. | John H. Gunselman, Jr.
File Number 2004-04267 (Lic) | John Gunselman – A
Kim Gunselman - W |
| 3. | Huffman & Boone
File Number 2004-04047 (RF) | Regina Huffman – C
Philip Coulter – C's Attorney |
| 4. | Dave J. MacPherson
File Number 2004-00563 (Disc) | Dave J. MacPherson – R
Hampton Wilkins – C
Ann Ketchum – W
Bob Echols – W
Tammy Moser – W |
| 5. | Minh Hoang
File Number 2002-02947 (Disc) | None |

6. Charles Williams
File Number 2003-01241 (Disc)

Charles Williams – R
Eve Campbell – R's Attorney
John Powell – W
Helen James -- W
William Hartstock -- W

7. Donald Steven Turner
File Number 2003-02851 (Disc)

Donald Turner – R
Teresa Nguyen – C
Dale Amos – I

8. Soraya Scaife
File Number 2004-04395 (Lic)

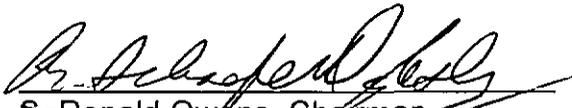
Soraya Scaife – A

9. Allan Clyde Ebell, II (Lic)
File Number 2004-04535

Allan C. Ebell, II – A

The meeting adjourned at 4:35 p.m.

Virginia Real Estate Board


S. Ronald Owens, Chairman
6/12


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

RE: RICHARD ANDREW ESPOSITO
LICENSE NUMBER: 0225 074144

FILE NUMBER: 2004-01898

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 1, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Richard A. Esposito, on April 26, 2004. The following individuals participated at the conference: Richard Esposito; Respondent; Douglas W. Schroder, Staff Member; and Frank J. Quayle, III, Presiding Board Member.

Summation of Facts

1. On October 10, 2003, in the Circuit Court of the Fairfax County Richard Andrew Esposito (Esposito) was convicted of Embezzlement, a felony, in violation of § 18.2-111. On October 10, 2003, the court sentenced Esposito to serve 4 years in prison with 4 years suspended.
2. During the IFF, Esposito testified that he hired a contractor who worked for his employer, Nextel, to do some home improvement projects in his home. The contractor's accounting clerk claimed that Esposito gave them a check issued to them by Nextel in the amount \$80,000, stating that it was a bonus to him from Nextel. The \$80,000 was credited to Esposito's account with the contractor. Esposito stated that this was not true but he could not prove otherwise because he was not allowed to speak to his accusers. The contractor purchased a \$35,000 vehicle for Esposito to "settle out the account", instead of Esposito using his Equity Line to purchase a car. Esposito testified that he accepted an Alford Plea to avoid incarceration due to the fact that he has a wife and children to support.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-260(5) (Effective April 1, 2003)

Esposito having been convicted of Embezzlement, a felony, constitutes unworthy and incompetence, in violation of Board Regulation 18 VAC 135-20-260(5).

I find this to be one of the most difficult decisions that I have been asked to make while serving on the Real Estate Board and thus, I am opting to defer the recommended sanction to the full Board.

I felt that the evidence and testimony I reviewed led me to overwhelmingly believe that Esposito was guilty of the embezzlement for which he was convicted of, a felony, per an Alford Plea. I found it particularly disappointing that Esposito continues to claim his innocence in light of significant evidence to the contrary.

By: _____

Frank J. Quayle, III
Presiding IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 074144 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

RE: JOHN H. GUNSELMAN, JR.

APPLICATION

FILE NUMBER: 2004-04267

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to John H. Gunselman, Jr. on April 26, 2004. The following individuals participated at the conference: John H. Gunselman, Jr., Applicant; Kim Gunselman, Witness; Douglas W. Schroder, Staff Member; and Frank J. Quayle, III, presiding Board Member.

Summation of Facts

1. John H. Gunselman, Jr. (Gunselman) applied for a real estate broker's license by examination on April 13, 2004, and did not meet the experience verification requirements on his application.
2. Gunselman did not provide independent verification of experience showing that he was actively engaged as a real estate salesperson and/or broker for 36 of the 48 months preceding his application for licensure.
3. During the IFF, Gunselman stated that when he took his broker's license exam he was licensed as a referral agent. Even though Gunselman was not "actively engaged" as a real estate agent, he has been actively engaged assisting his wife in her real estate practice since 1991.

Conclusion and Recommendation

Based upon the record and information presented at the conference, I recommend Gunselman's application be approved.

By: _____

Frank J. Quayle, III
Presiding Board Member
Real Estate Board

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

IN RE: In the matter of the Virginia Real Estate Transaction Recovery Act Claim of Ernest D. and Regina J. Huffman (Claimants) and Charles W. Boone (Regulant) and Winn & Co. Realtors, Inc. (Regulant)

LICENSE NUMBER: 0201 004490 (Winn & Co. Realtors, Inc.)

LICENSE NUMBER: 0225 045921 (Charles W. Boone)

FILE NUMBER: 2004-04047

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Ernest D. and Regina J. Huffman and to Charles W. Boone and to Winn & Co. Realtors, Inc., on April 30, 2004. The following individuals participated at the conference: Regina J. Huffman, Claimant; Philip Coulter, attorney for Claimant; Douglas W. Schroder, Staff Member; and Frank Quayle, III, presiding Board Member.

Background

On May 22, 2003, in the Circuit Court for the City of Roanoke, Ernest D. Huffman and Regina J. Huffman (claimants) obtained a Final Decree against Charles W. Boone (Boone), regulant, and Winn & Co. Realtors, Inc. (Winn), regulant, in the amount of \$40,000.00.

The claim in the amount of \$49,047.00, comprised of \$40,000.00 for the judgment, \$220.00 court costs and attorney fees of \$8,827.00, was received by the Department of Professional and Occupational Regulation on January 13, 2004.

§ 54.1-2116(B) states "The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction ... shall be limited to \$20,000.00 ..."

It should be noted that only one (1) judgment has been obtained against two (2) regulants involving a single transaction.

Summation of Facts

1. Code of Virginia § 54.1-2114(A) requires the underlying judgment to be based on improper or dishonest conduct.

The Final Decree recites in part, "That the aforesaid Defendants admit that such judgement is predicated upon the improper or dishonest conduct as those terms are defined in Virginia Code Section 54.1-2112 ... and that the improper or dishonest conduct occurred during a period when the Defendants, Charles W. Boone and Winn & Co. Realtors, Inc. were regulants ... which occurred in connection with a transaction involving the sale of real property by the regulant ..." as the basis of the award.

2. Code of Virginia § 54.1-2114(A) also requires the real estate transaction to involve the regulant acting in the capacity of a salesperson or broker and not in the capacity of a principal or on his own account.

Charles W. Boone was issued a principal broker's license number 0225045921 with an expiration date of September 30, 2002. The initial certification date was September 5, 2000.

Winn & Co Realtors, Inc. was issued a firm license number 0201004490 with an expiration date of December 31, 2003. The initial certification date was January 6, 1992.

Charles W. Boone was principal broker of Winn & Co Realtors, Inc. from September 5, 2000 until March 22, 2002.

3. Code of Virginia § 54.1-2114(A)(1) provides that whenever any action is instituted against a regulant of the Board, a copy of the process is to be served upon the Board.

The Real Estate Board was not served with a copy of the process.

4. Code of Virginia § 54.1-2114(A)(2) states a copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and documents.

5. Code of Virginia § 54.1-2114(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The Final Decree was entered on May 22, 2003. This claim was received on January 13, 2004.

6. Code of Virginia § 54.1-2114(A)(4) prohibits recovery when the claimant is a regulant, personal representative of the regulant, the spouse or child of the regulant, the personal representative of such spouse or child, a lending or financial institution, or anyone in the property development business.

On Questions 7, 8, 9 and 10 of the Claim Form, the claimants were asked: Are you the personal representative of a regulant (real estate salesperson/broker), spouse or child of the regulant, or the personal representative of such spouse or child? Do you hold, or have you ever held a Virginia Real Estate license? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? In response to the above questions, the claimants answered "No"

7. Code of Virginia §§ 54.1-2114(5)(6) and (7) requires the claimants to perform an investigation of the assets of the regulant which shall include the conducting of debtor's interrogatories and an investigation of any listings with commissions thereby due.

Debtor Interrogatories were conducted. The Affidavit of Investigation states "No significant assets of any kind were discovered."

8. Code of Virginia § 54.1-2114(A)(8) requires that if the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523 (a) and obtain an order determining dischargeability of debt.

On Question 5 of the Claim Form, the claimants were asked: To your knowledge, has the regulant (real estate salesperson/broker) filed for bankruptcy?

In response to the above question, the claimants answered "Yes" "(filed but withdrawn)" pertaining to the Boone claim.

In response to the above question, the claimants answered "No" pertaining to the Winn claim.

On Question 6 of the Claim Form, the claimants were asked: Have you filed a complaint in the bankruptcy court to determine the dischargeability of this debt? In response to the above question, the claimant answered "No".

Conclusion and Recommendation

The Final Decree recites in part, "That the aforesaid Defendants admit that such judgement is predicated upon the improper or dishonest conduct as those terms are defined in Virginia Code Section 54.1-2112 ... and that the improper or dishonest conduct occurred during a period when the Defendants, Charles W. Boone and Winn & Co. Realtors, Inc. were regulants ... which occurred in connection with a transaction involving the sale of real property by the regulant ..." as the basis of the award.

It is noted that § 54.1-2114(A) requires a final judgment...for improper or dishonest conduct as defined in the act. Section 54.1-2112 defines improper or dishonest conduct to include only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

In light of the evidence and testimony presented at the IFF, I recommend to the Board that the claim be approved for payment in the amount of \$40,000.00. It is my belief that this case involved two regulants; Charles W. Boone and Winn & Co., Realtors, Inc.

By: _____

Frank Quayle, III
Presiding IFF Board Member
Virginia Real Estate Board

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

RE: DAVE J. MACPHERSON
LICENSE NUMBER: 0225 016020

FILE NUMBER: 2004-00563

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dave J. MacPherson on May 12, 2004. The following individuals participated at the conference: Dave J. MacPherson; Respondent; Hampton Wilkins, Complainant; Ann Ketchum, Bob Echols and Tammy Moser, Witnesses; Douglas W. Schroder, Staff Member; and Frank J. Quayle, III, Presiding Board Member.

Background

On July 30, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Hampton Wilkins (Wilkins), Broker with Wilkins & Company Realtors (WCR), regarding Dave J. MacPherson (MacPherson), a former employee/salesperson of WCR.

Summation of Facts

1. On September 13, 2002, DJM Investments LLC, as purchaser, entered into a residential contract, in the amount of \$96,000.00, to purchase real estate property at 140 Westmoreland Court, Danville, from Thomas Schweitzer (Schweitzer), as seller. DJM Investments LLC was represented in the transaction by WCR, as the selling broker, and by Dave MacPherson, as the purchaser's agent. Schweitzer was represented in the transaction by Simpson Realty, as the listing broker, and by Judy Foster, as the seller's agent.
2. Item 4 of the contract specified "Purchaser has made a deposit with Wilkins & Co. Realtors (the Escrow Agent) of FIVE THOUSAND 00/100 ____ Dollars (\$5,000.00) (the deposit) . . . receipt of which is hereby acknowledged. Upon ratification of this contract by all parties, the Deposit shall be held in escrow by the Escrow Agent."
3. On September 13, 2002, the receipt of the deposit was acknowledged by MacPherson.
4. On September 16, 1992, (sic) Schweitzer ratified the contract of purchase.
5. In a letter dated August 28, 2003, MacPherson stated "We finally reached an agreement, and being close to the closing date, I did not change the paragraphs of the original contract presented and make the escrow deposit, as I was the purchaser and knew I would be making same at the closing, as it is reflected on the closing statement."
6. MacPherson failed to place the \$5,000.00 deposit in escrow.

7. On April 11, 2003, Atlas Partners II Limited Partnership and Atlas II, LLC (Atlas), as the Owner, and WCR, as the Broker, entered into a listing agreement for property located at 12259 Martinsville Highway, Cascade, Virginia. The listing agreement outlined the Broker's fees.
8. On July 2, 2003, Jignesh Patel (Patel), as purchaser, entered into a commercial, industrial, and multi-family purchase agreement, in the amount of \$365,000.00, to purchase the subject property from Atlas, as seller. Patel was represented in the transaction by Century 21 Young Realty, as the selling broker, and by John A. Whitley, as the purchaser's agent. Atlas was represented in the transaction by WCR, as the listing broker, and by David MacPherson, as the seller's agent.
9. In a letter dated July 23, 2003, Richard D. Scott (Scott), attorney representing Atlas, notified WCR that Atlas was terminating its listing agreement with WCR.
10. WCR had no record of a sales contract or escrow deposit regarding this transaction.
11. MacPherson failed to provide WCR with a sales contract or escrow deposit regarding this transaction.
12. In June 2003, MacPherson brought Tim Mantooth, principal owner of Riverside Real Estate, a tenant to lease property at 2943 Riverside Drive, Danville, Virginia.
13. During the week of August 11, 2003, a lease assignment was mailed to WCR. The parties involved were Flex Check and Riverside Real Estate for the lease of property located at 2943 Riverside Drive, Danville, Virginia.
14. WCR had no record of the lease for this transaction.
15. MacPherson failed to provide WCR with the lease for this transaction.
16. On July 18, 2003, MacPherson was terminated from WCR. MacPherson took 35 active listing files and keys to these properties without the permission of Wilkins or WCR.
17. In a fax dated August 27, 2003, WCR notified MacPherson that files involving clients who have leases with WCR were missing and requested MacPherson return the files in his possession.
18. MacPherson failed to return the files to WCR.
19. MacPherson testified at the IFF, that the sales contract for 140 Westmoreland Court, Danville included the statement regarding the deposit of the escrow funds because MacPherson had intended to deposit the funds immediately upon ratification of the contract.

20. During the IFF, MacPherson testified that the sales contract for 12259 Martinsville Highway, Cascade, Virginia was never ratified. He further stated that the escrow deposit was never in his possession.

21. Macpherson testified at the IFF that he was never in possession of a lease for 2943 Riverside Drive, Danville, Virginia because it was a lease assignment between the tenant and the owner of the property.

22. During the IFF, MacPherson testified that master copies of the files in question were left behind in the central file at the WCR office at the time of his termination from WCR. He further stated that some of the master files of the lease listing files were inadvertently removed from his office but later returned. In addition, Macpherson stated that some of the keys in question were inadvertently removed from the office around the time of his termination from WCR but that they were returned. He further stated that not all of the missing files in question were accompanied by a key.

23. During the IFF, Wilkins testified that of the approximately 35 files in question, only 11 are currently located in the WCR office.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-320(6) (Effective January 1, 1999)

MacPherson's failure to place the \$5,000.00 deposit in escrow is a violation of Board Regulation 18 VAC 135-20-320(6). Therefore, I recommend that a monetary penalty of \$250.00 be imposed.

Count 2: 18 VAC 135-20-260(11) (Effective April 1, 2003)(MacPherson's failure provide WCR with a sales contract or escrow deposit regarding the property at 12259 Martinsville Highway, Cascade, Virginia)

Based upon the record and the evidence presented at the IFF, I do not believe that sufficient evidence was presented to support Count 2. Therefore, I recommend that this count of the file be closed with a finding of no violation.

Count 3: 18 VAC 135-20-260(11) (Effective April 1, 2003)

MacPherson's failure to provide WCR with the lease for the property located at 2943 Riverside Drive, Danville, Virginia is engaging in improper conduct, in violation of Board Regulation 18VAC 135-20-260(11). Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

During the IFF, MacPherson acknowledged his practice of not keeping lease agreements on file. According to 18 VAC 135-20-185(C)(1), licensees are required "As a principal or supervising broker, to retain for a period of three years from the date of closing or ratification...a complete and legible copy of each...executed contract, agreement, and closing statement to a real estate transaction...unless prohibited by law."

Count 4: 18 VAC 135-20-260(11) (Effective April 1, 2003)(MacPherson's failure to return the files to WCR)

Based upon the record and the evidence presented at the IFF, I believe that the evidence was conflicting. The file keeping practices at WCR were not sufficient and, thus, it is difficult to determine whether MacPherson was responsible for the disappearance of the files in question. Therefore, I recommend that this count of the file be closed with a finding of no violation.

By: _____

Frank J. Quayle, III
Presiding Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 016020 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

RE: **MINH VU HOANG**
 LICENSE NUMBER: 0203 027210

FILE NUMBER: 2002-02947

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Minh Vu Hoang, on May 7, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Frank Quayle, III, Presiding Board Member. Neither Minh Vu Hoang, nor anyone on her behalf, appeared at the IFF.

Summation of Facts

1. On or about March 20, 2002, Richard G. and Nicolle E. Struss (the Strusses) signed a contract offer for property located at 9450 Cloverdale Court, Burke, Virginia. Minh Vu Hoang (Hoang) listed this property for sale in the Metropolitan Regional Information Systems, Inc. (MRIS). Pamela Struss wrote the subject offer and represented the Strusses. This contract was not ratified.
2. On April 23, 2002, Investigator Carolyn D. Wright, the Board's agent, sent a letter with a copy of the complaint, to Hoang via facsimile, requesting a response and to produce documents concerning the subject complaint, by May 14, 2002. On June 4, 2002, the Board's agent left a voice mail message for Hoang requesting that she respond and produce documents concerning the subject complaint. Hoang has failed to produce documents.
3. Hoang's failure to produce documents concerning the subject real estate transaction in which she was involved, and for which she is required to maintain records for inspection and copying by the board or its agents, is in violation of the Board's 1999 Regulation 18 VAC 135-20-240.
4. The Fairfax County Tax Assessor's Office shows the subject property was purchased by Charles Bennett (Bennett) on October 5, 2001, and sold by Bennett in May 2002.

5. Hoang's actions of misrepresenting who was the owner of the subject property in MRIS are in violation of the Board's 1999 Regulation 18 VAC 135-20-300(9).

Conclusion and Recommendation

Count 1: 18 VAC 135-20-240 (Effective January 1, 1999)

Hoang's failure to produce to the board or any of its agents any document, book or record concerning any real estate transaction in which the licensee was involved or for which the licensee is required to maintain records for inspection and copying by the board or its agents is a violation of Board Regulation 18 VAC 135-20-240. Therefore, we recommend that a monetary penalty of \$1,000.00 be imposed for a violation of the regulation.

Count 2: 18 VAC 135-20-300(9) (Effective January 1, 1999)

Hoang's action of misrepresenting who was the owner of the subject property in MRIS is a violation of Board Regulation 18 VAC 135-20-300(9). Therefore, we recommend that a monetary penalty of \$1,500.00 be imposed for a violation of the regulation.

By: _____

Frank Quayle, III
Presiding IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0203 027210 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

RE: CHARLES ALFRED WILLIAMS
LICENSE NUMBER: 0205 081726

FILE NUMBER: 2003-01241

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Charles Alfred Williams, on May 7, 2004. The following individuals participated at the conference: Charles Alfred Williams; Respondent; Eve Campbell, attorney for Respondent; John Powell and Helen James, Witnesses; Jennifer Kazzie, Staff Member; and Frank Quayle, III, Presiding Board Member.

Background

On October 22, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Charles D. and Marilyn C. Thompson (Thompson) dated October 17, 2002, regarding a contract entered into with Charles A. Williams, Listing Agent with Long and Foster Real Estate Inc.

On November 6, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a supplemental complaint from the Thompsons.

On or about April 6, 2002, Pamela J. Crossley (Crossley), as Purchaser, entered into an offer to purchase dated April 6, 2002, with Marilyn C. and Charles D. Thompson, who signed the offer on April 10, 2002. The agreement was for the sale of the Thompson's property located at 1722 Hickory Hill Road in Petersburg, Virginia, through Long and Foster by Bill Hartsock (Hartsock), as Buyer's Agent, and Charles Williams, as Listing Agent.

Summation of Facts

1. Term #16 written into the offer states the purchaser reserves the right to do inspections of plumbing, electrical systems, chimney, air conditioning, and heating systems.

2. On or about April 22, 2002, Pamela Crossley signed an addendum to the offer which included a listing of 12 items to be repaired and/or replaced. This addendum listing repairs was rejected by the Thompsons.
3. On or about May 26, 2002, Williams contacted the Thompsons stating Crossley still wanted to purchase the house and agreed that the Thompsons would not have to make any repairs. A closing date was scheduled for June 17, 2002.
4. On or about May 31, 2002, Crossley signed a Release Agreement that was dated May 10, 2002, stating she was withdrawing from the agreement and requested return of her earnest money deposit back. The Thompsons refused to sign the release.
5. On or about June 9, 2002, Williams submitted a letter to Crossley on behalf of the Thompsons which stated the sellers will be ready to close on June 17, 2002, per the terms of addendum #2. Addendum #2, dated May 27, 2002, states in part ... "buyer to accept property in "as is" condition including items cited in inspection reports. "
6. On or about June 14, 2002, Brad E. Slaybaugh, as purchaser, entered into an offer to purchase dated June 14, 2002, with Marilyn C. and Charles D. Thompson, as sellers who signed the offer on June 20, 2002. The agreement was for the sale of the Thompson's' property located at 1722 Hickory Hill Road in Petersburg, Virginia, through Long and Foster by Charles Williams, acting as Dual Representative, in the amount of \$72,000.00. Closing was scheduled for July 30, 2002.
7. In drafting the purchase offer from Slaybaugh, Williams failed to exercise ordinary care when he failed to disclose Crossley's contract to Slaybaugh.
8. During the IFF, Williams testified that he did inform Slaybaugh that there was another contract on the Thompson's property, but that the potential buyer (Crossley) had signed a Release Agreement.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-300(4) (Effective January 1, 1999)(Williams' failure to disclose in a timely manner to the licensee's client all material facts related to the property)

Based upon the record and the information presented at the IFF, I recommend that this count of the file be closed with a finding of no violation. Based on Williams' testimony, and no contrary testimony, there was no evidence presented to support Count 1.

By: _____

Frank Quayle, III
Presiding IFF Board Member

Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0205 081726 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: DONALD STEVEN TURNER
LICENSE NUMBER: 0225 020072**

FILE NUMBER: 2003-02851

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Donald Steven Turner, on May 3, 2004. The following individuals participated at the conference: Donald Steven Turner; Respondent; Teresa Nguyen, Complainant; Jennifer Kazzie, Staff Member; and Frank Quayle, III, Presiding Board Member.

Summation of Facts

1. This investigation is based on a complaint received on April 21, 2003, by the Enforcement Division of the Department of Professional and Occupational Regulation from Teresa Nguyen (Nguyen) involving the purchase of a residence, located at 89 Lois Lane, Roanoke, Virginia 24019. The property was listed for sale by Donald Steven Turner, t/a Owens & Company of Virginia, Inc., and was owned by Joseph McNamara, t/a Wildwood Builders, LLC. Nguyen's agent, Teresa Birmingham, t/a Mastin Kirkland Bolling Inc, presented the offer on Nguyen's behalf, which was signed by both parties on March 11, 2002.

2. On or about March 11, 2002, Teresa Nguyen (Nguyen) entered into a contract for the purchase of a residence, located at 89 Lois Lane, Roanoke, Virginia 24019, which was listed for sale by Donald Steven Turner (Turner), t/a Owens & Company of Virginia, Inc.

3. Turner failed to inform Nguyen that the septic system backwashed into the house during heavy rains. This information had been provided to Turner by Calvert Hunley during a conversation sometime prior to Nguyen closing on the property which occurred on March 29, 2002.

4. During the IFF, Turner testified that he was not aware of any problems with the septic system at the subject property. He further stated that he did not witness any evidence of water damage at the property.

5. During the IFF, Nguyen testified that several neighbors, as well as Michael Woods (Woods), the previous owner of the home, informed her that there was a problem with the septic system at the property.

6. During the IFF, Dale Amos (Amos), the Board's Investigator, testified that he had spoken with Woods and Woods informed Amos that there had been a long-standing problem with the septic system of the subject property. Amos further stated that Woods did not indicate that he had informed Turner of the problems with septic system.

Conclusion and Recommendation

Count 1: Code of Virginia § 54.1-2131(B)(Turner's failure to disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property)

It appears that the Complainant's and the Respondent's testimony were in direct conflict of each other and the evidence provided by Amos had an equal number of witnesses supporting the claims of each party involved. Therefore, I can not find sufficient evidence to support Count 1 and recommend that this count of the file be closed with a finding of no violation.

By: _____

Frank Quayle, III
Presiding IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 020072 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

**RE: NAME: SORAYA SCAIFE
 APPLICATION: REAL ESTATE BROKER**

FILE NUMBER: 2004-04395

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Soraya Scaife on May 3, 2004. The following individuals participated at the conference: Soraya Scaife, Applicant; Jennifer Kazzie, Staff Member; and Frank Quayle, III, Presiding Board Member.

Summation of Facts

1. Soraya Scaife applied for a real estate broker's license by examination on November 12, 2003, and did not meet the experience verification requirements on her application as follows:
2. Soraya Scaife did not provide independent verification of experience showing that she was actively engaged as a real estate salesperson and/or broker for 36 of the 48 months preceding her application for licensure.

3. During the IFF, Scaife testified that since March of 2001, she has been employed as a property manager for a non-profit organization and that she has completed the necessary continuing education courses relating to her license as a real estate sales person.

Conclusion and Recommendation

Based upon the record and information presented at the conference, I recommend Scaife's application be approved.

By: _____
Frank Quayle, III
Presiding IFF Board Member
Real Estate Board

Date: _____

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

**RE: NAME: ALLAN CLYVE EBELL, II
APPLICATION: REAL ESTATE BROKER**

FILE NUMBER: 2004-04535

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 10, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Allan Clyde Ebell, II on May 18, 2004. The following individuals participated at the conference: Allan Clyde Ebell, II, Applicant; Jennifer Kazzie, Staff Member; and Frank Quayle, III, Presiding Board Member.

Summation of Facts

1. Allan C. Ebell, II applied for a broker's license by reciprocity on May 10, 2004, and did not meet the experience verification requirements on his application as follows:

2. Allan C. Ebell did not provide independent verification of experience showing that he was actively engaged as a real estate salesperson and/or broker for 36 of the 48 months preceding his application for licensure.

3. During the IFF, Ebell testified that, beginning in 1987, he had been a licensed real estate salesperson in New Jersey. In 1990, he fulfilled the New Jersey requirements to become a real estate broker.

Conclusion and Recommendation

Based upon the record and information presented at the conference, I recommend Ebell's application be approved.

By: _____
Frank Quayle, III
Presiding IFF Board Member
Real Estate Board

Date: _____