



# ARKANSAS REAL ESTATE COMMISSION N E W S L E T T E R

## Executive Director Comments

*By Gary C. Isom, Executive Director*

### Commissioner Doyle Yates Re-appointed to Commission

Commissioner Doyle Yates, industry member of the Arkansas Real Estate Commission from Northwest Arkansas has been re-appointed by Governor Asa Hutchinson to a second three-year term. Commissioner Yates served the Commission as its 2017 Chairman. In this capacity he was instrumental in championing greater control over unlicensed practices by which consumers may be harmed. Another accomplishment during his term as chair was reducing the time for completing post-license educational requirements from twelve to six months following initial licensure. Many brokers have sought this change since post-license education was first implemented in 2001. Commissioner Yates is Executive Vice President of Coldwell Banker Harris McHaney & Faucette.

### Commissioner Tony Moore Elected Chair for 2018

At the January meeting of the Real Estate Commission, Commissioner Tony Moore, industry member from Russellville was elected 2018 Chairman. Chairman Moore was originally appointed to the Commission by Governor Hutchinson in 2016. Chairman Moore plans to bring to fruition an initiative on which the Commission has focused in recent years, the implementation of new advertising regulations. After much discussion and review Chairman Moore and his fellow Commissioners are convinced it's time to move forward with the development, approval and implementation of advertising guidelines that will address issues that have arisen in the real estate market by new business models and social media. Commissioner Moore is owner and Principal Broker of Moore & Company REALTORS in Russellville.

### Commissioner Bob Walker Elected Vice-Chair for 2018

His fellow Commissioners determined at the January meeting of the Real Estate Commission that it was time for Commissioner Robert "Bob" Walker to step up to Vice-Chair for 2018. Commissioner Walker is currently the Managing Broker of the Coldwell Banker RPM Group office in North Little Rock in addition to being a licensed Arkansas Real Estate Instructor. With a passion for quality real estate education, Commissioner Walker is already working with AREC Education and Instruction Specialist, Kortney Hinton to ensure a successful annual educator retreat for October.

### Commission Members Linda Prunty and Jessica "Dee" Holcomb add Consumerism to the Discussion

Our two consumer members of the Commission, Linda Prunty of Jonesboro and Dee Holcomb of Pine Bluff manage quite often to get us all out of the "weeds" of our discus-

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**March 2018**

### Arkansas Real Estate Commission

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### Members of the Commission

Tony Moore, Chair  
Russellville

Bob Walker, Vice Chair  
Jacksonville

Linda Prunty  
Jonesboro

Dee Holcomb  
Pine Bluff

Doyle Yates  
Springdale

### Commission Staff

Gary C. Isom  
Executive Director

Andrea S. Alford  
Deputy Executive Director

Yvonne Halstead  
AREC Supervisor

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sion and put a real practical perspective on issues. Both appointed by Governor Hutchinson, bring significant value to the operation. Commissioner Prunty has a background in subsidized housing having served 30 years as a Regional Supervisor for an investment firm. She also worked with the Jonesboro Urban Renewal & Housing Authority. Commissioner Holcomb brings to the table valuable experience in two regulated professions, banking and insurance. She is currently an Agent with Shelter Insurance Companies, where she has been since 2014 only one year before being named Shelter Insurance's Agent of the Year in 2015.



## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



**Respondent(s):** Jimmy Payne, Principal Broker, All Real Estate LLC, Fayetteville, Arkansas, Formal Hearing #3465

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(4), §17-42-311(a)(6), §17-42-311(a)(7), §17-42-311(a)(11) and Commission Regulations 8.5(a), 9.2, 10.8(b), 10.8(g)(1), and 10.10(a).

**Sanction(s):** Based upon these Findings and Conclusions, the Commission votes unanimously to revoke Respondent Payne's license. Mr. Payne is also ordered to pay a fine of \$56,000 to the Arkansas Real Estate Commission.

### **Complainant Eldora McCarty**

Respondent Payne went to Complainant Eldora McCarty's home to ask if Complainant McCarty was interested in purchasing an investment property. Complainant McCarty did not know if the property was listed with a real estate broker. On or about August 7, 2013, Complainant McCarty provided Respondent Jimmy Payne check number 3994, made out to Jimmy Payne in the amount of \$20,000, to purchase at auction property located at 330 Willow Street, Farmington, Arkansas. Respondent did not reduce to writing Complainant McCarty's payment of \$20,000. On or about November 14, 2013, Respondent Payne signed as received receipt No. 486727 for \$1,500 paid by Complainant McCarty with check number 1303, for anticipated closing costs in the event Complainant McCarty entered into an agreement to purchase the subject property. Respondent Payne did not reduce to writing the agreement or terms by which Complainant McCarty agreed to pay the closing cost.

After November 2013, Respondent Payne contacted Complainant McCarty asking for an additional \$5,000 to cover utilities, dumpster, and insurance which would be needed after the purchase of the property closed. Complainant McCarty stated that she paid \$5,000 to Respondent Payne in response to the request. Complainant McCarty stayed in contact with Respondent Payne until November 2015, and requested information on the property status and copies of the contract documents. Respondent never provided status information or copies of documents to Complainant McCarty. After November 2015, Complainant McCarty was unable to contact Respondent Payne. On January 29, 2016, and May 2, 2016, the Commission sent a copy of Complainant McCarty's complaint to Respondent Payne. Respondent Payne did not respond.

### **Complainant Rodney Elmore**

On February 12, 2012, the Arkansas Democrat Gazette reported Carol Anne Cooper, owner of subject property located at 12906 Jimmy Devault Road, Farmington, Arkansas, had passed away on February 6, 2012.

On or about February 13, 2014, Complainant Elmore and his wife, Jennifer Elmore, in the name of ChrisRod Properties LLC, entered into a Real Estate Contract presented to them by Respondent Payne to purchase property located at 12906 Jimmy Devault Road, Farmington, Arkansas, from Seller Carol Anne Cooper (Deceased) in the amount of \$32,917. Respondent Payne did not inform Complainant Elmore that Seller Cooper was deceased. Re-

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## FORMAL HEARING DECISIONS

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spondent Payne represented himself as a dual agent representing both Seller Cooper and Complainant Elmore. The contract was scheduled to close March 11, 2014, and the offer was to expire on March 10, 2014. There was no date on the Real Estate Contract showing when it was executed.

On February 13, 2014, at Respondent Payne's request, Complainant Elmore had his bank transfer \$1,500 to All Real Estate LLC's account at Metropolitan National Bank for earnest money. Respondent Payne's Trust Account on file with AREC is at Liberty Bank of Arkansas.

On or about March 6, 2014, Complainant Rodney Elmore and his wife entered into a second Real Estate Contract to purchase property at 12906 Jimmy Devault Road, Farmington, Arkansas, from Seller Carol Anne Cooper in the amount of \$30,416. Respondent Payne did not prepare a document terminating the first contract. Respondent Payne represented himself as a dual agent representing both Seller Cooper and Complainant Elmore. The contract was scheduled to close on September 5, 2014, and the offer was to expire on July 14, 2014. No one signed the Real Estate Contract on behalf of Seller Cooper. There was no date on the Real Estate Contract showing when it was executed.

On March 6, 2014, at Respondent's request Complainant Elmore had his bank transfer an additional \$2,500 earnest money to All Real Estate LLC's account at Metropolitan National Bank for the second Real Estate Contract. Respondent Payne's Trust Account on file with AREC is at Liberty Bank of Arkansas.

On July 14, 2014, Respondent Payne contacted Complainant Elmore and requested an additional \$11,000 in earnest money for the purchase of 12906 Jimmy Devault Road, Farmington, Arkansas. Respondent executed an Earnest Money Addendum referencing the contract between ChrisRod Properties LLC, and Seller Cooper in the amount of \$15,000 which included signatures of all parties.

On July 15, 2014, at Respondent's request Complainant Elmore had his bank transfer \$11,000 in earnest money to All Real Estate LLC's account at Simmons First National Bank for the purchase of 12906 Jimmy Devault Road, Farmington, Arkansas. Respondent Payne's Trust Account on file with AREC is at Liberty Bank of Arkansas.

On November 3, 2014, Complainant Elmore in the name of ChrisRod Properties LLC, entered into a Real Estate Contract to purchase property at 128202 Jimmy Devault Road, Farmington, Arkansas, in the amount of \$59,900. Respondent represented Buyer Complainant Elmore. The Seller's name was left blank on the Real Estate Contract. The contract was scheduled to close on January 5, 2015, and the offer was set to expire November 4, 2014. Paragraph 7 of the Real Estate Contract Earnest Money was checked "No", but Respondent verbally requested \$12,000 in earnest money. Respondent Payne did not reduce the terms of the earnest money to writing. Complainant Elmore and Respondent signed the contract. The Real Estate Contract was not signed by the Seller as either accepted or rejected.

On November 3, 2014, at Respondent's request Complainant Elmore had his bank transfer \$12,000 in earnest money to All Real Estate LLC's account at Simmons First National Bank for the second Real Estate Contract, dated November 3, 2014. Respondent Payne issued a receipt to Complainant Elmore dated November 4, 2014, in the amount of \$12,000. Respondent Payne's Trust Account on file with AREC is at Liberty Bank of Arkansas.

On April 26, 2016, and May 2, 2016, the Commission sent a copy of Complainant Elmore's complaint to Respondent Payne. Respondent did not respond.

### **Complainants Timothy and Sonya Sluik**

On or about April 23, 2015, prior to a contract being written, Complainants Sluik provided cashier check number 3865417 in the amount of \$4,000, payable to All Real Estate LLC, as a "down payment" for the property located at 926 E. New Hope Road, Rogers, Arkansas. Complainants Sluik stated in their complaint that Respondent Payne asked them to provide funds to "show that we had down payment money and was serious about the house. He said

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## FORMAL HEARING DECISIONS

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he would hold this money for us to bring to closing.” Respondent Payne did not reduce to writing Complainants Sluik’s agreement to pay the \$4,000 down payment.

Complainants Sluik signed a Buyer Agency Agreement with Respondent Payne. Complainants Sluik did not receive a copy of the signed Buyer Agency Agreement from Respondent Payne.

On April 25, 2015, Complainants Sluik signed a HUD-9548 Sales Contract to purchase the property located at 926 E. New Hope Road, Rogers, Arkansas, in the amount of \$134,000. The contract was scheduled to close within forty-five (45) days of the contract. The subject property was a foreclosed property offered for sale by the Secretary of Housing and Urban Development. Complainants Sluik also signed a Property Disclosure Program form, Owner Occupant/Investor Sales Contract, and other required HUD forms provided to them by Pemco Limited. Pemco Limited was an asset management and preservation company which was contracted with the U. S. Department of Housing and Urban Development, to facilitate the sale of the subject property. Respondent Payne signed all forms as the Selling Broker for Complainants Sluik. The terms of the contract required Complainants Sluik to provide a cashier check for Earnest Money in the amount of \$1,000 payable to, and to be held by, First National Title Company, Bentonville, Arkansas, as the closing company. Respondent Payne did not provide Complainants Sluik a signed copy of the HUD-9548 form, or the other documents signed by Complainants. There was no written reference to the \$4,000 down payment Complainants Sluik previously paid to Respondent Payne.

On or about May 5, 2015, Respondent Payne told Complainants Sluik they needed to provide \$300 for a HUD processing fee. Respondent Payne did not reduce to writing Complainants Sluik’s agreement to pay the \$300. Complainants Sluik provided \$300 cash to Respondent Payne. Respondent Payne signed a hand written receipt dated May 5, 2015, for \$300 received from Complainant Tim Sluik.

On or about June 1, 2015, Respondent Payne told Complainants Sluik he needed a check for utilities in the amount of \$1,500, which was to be held by him as a deposit in case there was damage to the subject property which could occur during the inspection and appraisal. Respondent Payne did not reduce to writing Complainants’ agreement to pay the \$1,500. Complainants Sluik issued check number 1800, dated June 1, 2015, in the amount of \$1,500 payable to “Jimmy Payne.” Complainants Sluik did not receive a receipt for the payment of \$1,500. The check posted to Complainants Sluik’s bank account on June 2, 2015. The check was endorsed by “Jimmy Payne.” Complainants’ bank, Arvest Bank, stamped the check as an “On Us CK”, which indicated the check was either cashed or deposited to another Arvest Bank Account. Respondent Payne’s Trust Account on file with AREC is at Liberty Bank of Arkansas. Complainants Sluik had the utilities turned on at the subject property for the inspection and appraisal. No damages were incurred to the property during the inspection and appraisal.

Complainants Sluik agreed to extend closing to July 15, 2015.

Complainants Sluik were unable to close on or about July 15, 2015, due to the inability of all parties to contact Respondent Payne who was supposed to be holding the \$4,000 down payment funds. Pemco Limited’s contract, Forfeiture and Extension policy, stated a second extension of fifteen (15) days would be granted upon the payment of \$25 per day for a total of \$375. Complainants Sluik paid the extension fee to Pemco Limited with cashier check number 3889890 in the amount of \$375 to extend the closing date.

Sometime between July 15, 2015, and July 24, 2015, Complainants Sluik met Respondent Payne’s wife, Michelle Payne at a parking lot where she gave them, in cash, the \$4,000 down payment Complainants Sluik had given to Respondent Payne on or about April 23, 2015.

On July 24, 2015, Complainants Sluik closed on the purchase of the subject property at First National Title Company, Bentonville, Arkansas. The HUD-1 reflected a credit to Complainants Sluik for \$1,000 earnest money, a credit for \$125 for a refund of five (5) days of the extension fee paid to Pemco Limited, and a Commission paid to

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## FORMAL HEARING DECISIONS

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Respondent Payne in the amount of \$4,020.

On October 27, 2015, November 13, 2015, and May 2, 2016, the Commission sent a copy of Complainants Sluiks' complaint to Respondent Payne. Respondent Payne did not respond.

### RECOVERY FUND ORDERS

#### **Complainant Eldora McCarty**

As a direct result of these proven violations, the Commission ordered Respondent Payne to pay Complainant Eldora McCarty, \$21,500.00, within thirty (30) days of the date of the Order.

#### **Complainant Rodney Elmore**

As a direct result of these proven violations, the Commission ordered Respondent Payne to pay Complainant Rodney Elmore, \$27,000.00, within thirty (30) days of the date of the Order.

#### **Complainant Timothy and Sonya Sluik**

As a direct result of these proven violations, the Commission ordered Respondent Payne to pay Complainants Timothy and Sonya Sluik, \$2,100.00, within thirty (30) days of the date of the Order.

After respondent Payne did not pay within thirty (30) days, all amounts awarded were paid from the Real Estate Commission's Recovery Fund.

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**Respondent(s):** Christopher Ray, Principal Broker, Edwenna Rowland, Executive Broker, Action Realty, Mt Ida, Arkansas, Formal Hearing #3495

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(11) and Commission Regulations 8.5(a), 10.4(b), and 10.11

**Sanction(s):** The Commission votes unanimously that Respondent Christopher Ray be assessed a penalty of \$5,000.00, and that Respondent Ray take an additional 30 hour post-broker course, to be completed by December 31, 2017. The Commission votes unanimously that Respondent Edwenna Rowland be assessed a penalty of \$1,000.00, and that Respondent Rowland take an additional 30 hour post-broker course, to be completed by December 31, 2017.

On or about February 11, 2003, Respondent Ray purchased subject property in Section 32, Township 2 South, Range 24 West of the Fifth Principal Meridian, in Montgomery County, Arkansas.

Sometime in 2004, Respondent Ray added restrictions to the warranty deed of subject property.

On December 4, 2009, Respondent Ray acting in the capacity as President of Christopher Ray, Inc. listed property owned by Respondent Ray and his wife with his firm, Action Realty, in Mt. Ida, Arkansas. The property was situated in Section 32, Township 2 South, Range 24 West of the Fifth Principal Meridian, in Montgomery County, Arkansas. The expiration date of the Exclusive Right-to-Sell contract was December 30, 2020.

On February 26, 2014, Complainant Buyer David Engelkes entered into a Real Estate Contract to purchase the

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## FORMAL HEARING DECISIONS

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subject property from Respondent Principal Broker Christopher Ray acting as President of Christopher Ray, Inc. and Principal Broker of Action Realty. By selecting and marking choice "C. LISTING FIRM AND SELLING FIRM ARE THE SAME AND REPRESENT BOTH BUYER AND SELLER" under Paragraph 19 Agency, Respondent Rowland, as Executive Broker and Respondent Ray as Principal Broker of Action Realty represented that Complainant Engelkes was a client of Action Realty. Respondent Ray and Respondent Executive Broker Rowland marked 1-A Item 31 LICENSEE DISCLOSURE on the Real Estate Contract as "Not Applicable."

Sometime prior to preparing the February 26, 2014 offer, Respondent Rowland was showing the subject property to her firm's client, Complainant Engelkes. Complainant Buyer Engelkes learned and informed Respondent Executive Broker Rowland his mobile home was older than that allowed by established restrictions for the property which stated "manufactured homes shall not be older than ten years of age...". Complainant Engelkes had informed Respondent Executive Broker Rowland that he wanted to purchase property on which he could place his mobile home. Respondent Executive Broker Rowland, acting as agent of her firm's client, Complainant Engelkes, did not advise Complainant Engelkes that he should consider making his offers on properties contingent on his ability to place his mobile home on the property. Based partly upon his conversation with his agent Respondent Executive Broker Rowland about the restriction, Complainant Engelkes decided to make an offer for the property in anticipation that he would be able to place his mobile home on the property. Respondent Christopher Ray accepted Complainant Engelkes' offer.

On April 24, 2014, Complainant Buyer Engelkes and Respondent Ray as Seller Christopher Ray Inc. closed the transaction at Mount Ida Abstract & Title Co. Inc.

On May 26, 2015, a Default Judgment Declaring Rights and Granting Mandatory Injunction was issued by the Circuit Court of Montgomery County, Arkansas. Complainant Buyer Engelkes was the defendant and MQ Investments Inc., owner of a neighboring property, was the plaintiff. The judgment ordered Complainant Buyer Engelkes to remove the mobile home located on subject property within 30 days. The judgment ordered Complainant Buyer Engelkes to pay attorney fees and court costs in the amount of \$1,250.80.

### RECOVERY FUND ORDER

The Commission finds that as a direct result of the proven violations, Respondent Christopher Ray is to pay Complainant David Engelkes \$5,723.25, within thirty (30) days of the date of this Order.

### ADDITIONAL ORDER

If Mr. Ray pays the \$5,723.25 to Complainant Engelkes, then the \$5,000.00 penalty against Mr. Ray will be waived. However, if Mr. Ray does not pay the \$5,723.25 to Complainant Engelkes within that thirty (30) day time frame, then the Recovery Fund will pay it. The Real Estate Commission will then proceed against Mr. Ray for the \$5,723.25, plus the \$5,000.00 penalty.

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**Respondent(s):** Carolin Arleta Perez, Principal Broker, Ronald Lee Swanton, Salesperson, Tri-State Real Estate, Wister, Oklahoma, Formal Hearing #3507

**Violation(s):** Arkansas Code Annotated § 17-42-311(a)(2), § 17-42-309(a), § 17-42-311(a)(13) and Commission Regulations 7.3(a), 8.5(a), 10.4(b), 10.4(d)(2), 10.10(a), 10.10(a)(1) 10.12(b)

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## FORMAL HEARING DECISIONS

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**Sanction(s):** The Commission votes unanimously that Respondent Perez pay a \$1,000.00 fine to the Commission, and that Respondent Perez' real estate license is revoked.

The Commission votes unanimously that Respondent Swanton must take thirty (30) hours post licensure education thirty (30) days prior to reactivating his real estate license.

On June 25, 2013, property owners Lamar and Eileen Pearce entered into an Exclusive Right-to-Sell Agreement with Tri-State Real Estate to list their property located at 21727 Chinquapin, lot 16, block 2 Ponderosa Lake Addition, Springdale, Arkansas. Sellers Pearce paid Tri-State Real Estate a non-refundable listing fee of \$250 by check dated June 25, 2013. On June 22, 2014, an Addendum to the Exclusive Right-to-Sell Agreement was signed by Sellers Pearce extending expiration date to December 24, 2014.

On November 2, 2014, Sellers Pearce entered into a new Exclusive Right-To-Sell Agreement with Tri-State Real Estate to list the property located at 21727 Chinquapin, lot 16, block 2 Ponderosa Lake Addition, Springdale, Arkansas. The listing price of the property was \$194,500.00. The listing agreement began on November 2, 2014, and included an expiration date of May 2, 2015.

On April 30, 2015, Principal Broker Respondent Perez's Oklahoma Real Estate License expired. Respondent Perez did not notify the Arkansas Real Estate Commission that her Oklahoma Real Estate License had expired. Respondent Perez removed her real estate sign from her office location that she had filed with the Arkansas Real Estate Commission.

On October 2, 2015 Buyers Greg and Mona Neaville, through Crye-Leike Realtors, Springdale made an offer on the subject property for \$194,000.00. Complainants Sellers Pearce accepted and signed the contract on October 29, 2015. The Closing date was scheduled for December 2, 2015. Paragraph 5 of the Real Estate Contract stated "Seller to pay up 3% of sale price in buyers prepaid and closing costs." Sellers Pearce had actually agreed to pay "up to" 3%. Respondent Swanton did not provide Sellers Pearce a copy of the contract signed by all parties.

On December 5, 2015, a General Addendum was executed by buyers and sellers extending the closing date to on or before December 22, 2015. Respondent Swanton did not provide Sellers Pierce a copy of the General Addendum signed by all parties.

Sellers Pierce did not receive copies of the executed Real Estate Contract or General Addendum prior to closing. Respondent Swanton had planned to present the documents to the Sellers at closing. Prior to the scheduled closing Sellers' Closing Agent Sheila Colvin of Realty Title & Closing Services emailed Respondents Perez and Swanton the HUD document on December 16, 2015. Both Respondents Perez and Swanton claim they did not receive the email or HUD document from Closing Agent Colvin. Respondent Perez did not make a satisfactory effort to obtain or review a copy of their Seller Client's closing statement prior to closing. The written closing instructions Respondent Perez provided to Realty Title & Closing Services, Closing Agent for their Seller Client only addressed the sales commission disbursement. In her instructions to Realty & Title Closing Services, Respondent Perez directed Closing Agent Sheila Colvin to issue a check directly to Salesperson Respondent Swanton for his portion of the sales commission.

Respondent Perez had not signed the copies of the Real Estate Contract provided to the Buyers' closing company, Prime Title and Escrow Company, or, to the Sellers' closing company, Realty Title & Closing Services to indicate that she had reviewed the Real Estate Contract prior to closing. The copy of the Real Estate Contract Respondent Perez provided to the Commission with her answer to the complaint did include her signature as Principal Broker. The Buyers closed on December 21, 2015 with Prime Title and Escrow Company. The Buyers' Total Settlement Charges were \$2,145.10. Three percent of the purchase price, \$5,820 was deducted from the Gross Amount Due from Borrower and identified as Sellers Credit.

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## FORMAL HEARING DECISIONS

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Sellers arrived at Realty Title & Closing Services ahead of the scheduled time for closing. Sellers became upset when they learned they would have to pay to close.

The Sellers closed on December 21, 2015, with Realty Title & Closing Services. Sellers Pearce's proceeds at settlement were reduced by \$5,820.00, identified as "Seller paid closing costs". Complainant Sellers Pearce were required to pay \$2,547.91 at closing.

Sellers Pearce filed a formal complaint against Respondents Perez and Swanton with the Real Estate Commission regarding the lack of proceeds from the sale of their property. Respondents Perez and Swanton filed an answer to the complaint. After receiving her Client Sellers' complaint, Respondent Perez did not make a satisfactory effort to obtain or to review or have reviewed her Seller Client's closing statement to determine whether her client had been overcharged at closing. Real Estate Commission investigators discovered the \$3,675 error when reviewing the Sellers' closing statement and notified the Respondents and Closing Agent Colvin. Sellers Pearce withdrew their complaint after receiving compensation to settle the dispute.

Respondent Swanton's real estate activities were concentrated in the area immediately surrounding Springdale, Arkansas, located a substantial distance from Respondent Perez's place of business in Wister, Oklahoma. Respondent Perez knew or should have known these circumstances significantly impaired her ability as a Principal Broker to provide adequate contact and communication; educational and instructional activities; and, monitoring of the real estate activities for her Salesperson Respondent Swanton.

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**Respondent(s):** Justin Colt Rogers, Salesperson, Re/Max Executives Real Estate, Fort Smith, Arkansas, Formal Hearing # 3504

**Violation(s):** Arkansas Code Annotated § 17-42-311(a)(2), § 17-42-311(6), § 17-42-311(a)(7), § 17-42-311(a)(11) and Commission Regulations 8.5(a), 10.1(b), and 10.7(a)(1).

**Sanction(s):** The Commission votes unanimously that Respondent Justin Colt Rogers' real estate license be revoked.

On or about March 25, 2015, Respondent Rogers entered into an Exclusive Right-To-Sell/Lease Agreement (Commercial) with Owner Stephen Lewis of Professional Assurances, Inc. for the listing for lease of property located at 1007 W Center St, Greenwood, Arkansas. The agreement began March 24, 2015, and expired July 24, 2015. There was no written property management contract with Owner Lewis.

On or about November 22, 2016, Respondent Rogers accepted check # 2325 made out to Colt Rogers from Tenant Luck E Strike in the amount of \$17,000.00 for "Rent for August thru December 2016."

On or about November 28, 2016, Respondent Rogers deposited check #2325 in the amount of \$17,000.00, into his personal bank accounts with Farmers Bank in Greenwood, Arkansas. Respondent deposited \$14,000 into one account and \$3,000 into a second account.

On or about January 12, 2017, Respondent Rogers had his bank transfer \$17,000.00 to Professional Assurances, Inc., owned by Stephen Lewis.

On or about January 13, 2017, Respondent Rogers received a wire transfer in the amount of \$8,690.00 from Professional Assurances, Inc. for work he performed at the subject property for future marketing purposes while licensed with Re/Max Executive Real Estate in Fort Smith, Arkansas. Respondent Rogers' Principal Broker was not

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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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aware he was receiving compensation from the owner of the property.

Respondent Rogers did not maintain account balances totaling or exceeding \$17,000 from the time he received and

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**Respondent(s):** Bill McElwee, Principal Broker, Betty Krenz and Associates, Little Rock, Arkansas, Bill McElwee, Principal Broker, Guardian Realty, LLC, Little Rock, Arkansas, Formal Hearing #3561

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(6), §17-42-311(a)(11) and Commission Regulations 8.5(a), 10.4(d)(1), 10.7(b)(3), 10.8(c), 10.9(a), 10.9(b), 10.10(a), 10.19(a), 10.21(a), and 10.22(g).

**Sanction(s):** The Commission voted that Respondent McElwee pay a \$2,500.00 fine within thirty (30) days of notice of this matter or his license will be suspended immediately until that fine is paid. Additionally, Respondent McElwee will have 120 days to enroll in a property management course, or as soon as a property management course is offered. Additionally, following a recovery fund hearing determined in the future, Respondent McElwee will be required to make complete restitution as an outcome of that hearing. Respondent McElwee will then have thirty (30) days to pay the restitution or his license will be suspended if he does not comply with that restitution.

### **Complainant Bill Lusk**

Respondent McElwee, as Principal Broker of Betty Krenz and Associates, managed multiple commercial properties for Complainant Property Owner Lusk. During November 2013, Complainant Lusk received two checks written on the Betty Krenz & Associates Rent Escrow Account for rental monies that were returned for “non-sufficient funds”. After receiving the non-sufficient funds checks issued from Betty Krenz & Associates Rent Escrow Account, Complainant Lusk verbally notified Respondent McElwee that he was terminating all property management contracts with Betty Krenz & Associates. Complainant Property Owner Lusk instructed Respondent McElwee not to deposit any future rental funds received on Complainant Lusk’s properties.

Respondent McElwee paid to Complainant Lusk the delinquency in rental funds caused by the checks returned for non-sufficient funds. Contrary to Complainant Lusk’s instructions, Respondent McElwee continued to deposit rental funds he received for Complainant Lusk’s properties. Respondent McElwee applied some of the collected rental funds to the cancellation fees Respondent McElwee claimed Complainant Lusk owed Betty Krenz & Associates. On or about November 16, 2013, Complainant Lusk transferred to Mike Berg Co. Management, the management of multiple commercial properties that were at that time under Property Management Agreements with Respondent McElwee as Principal Broker of Betty Krenz & Associates.

On January 29, 2014, check # 1999 in the amount of \$3,248, payable to Complainant Lusk, written on the Betty Krenz & Associates Rent Escrow account cleared the escrow account located at Metropolitan Bank. Documentation was not located in Respondent McElwee’s records to demonstrate what the payment was for.

On or about March 19, 2014, Complainant Lusk sent a letter to Respondent McElwee which stated it had been four months since the termination of his property management agreement and he had not received his final accounting or copies of his lease agreements. Complainant Lusk requested he be paid the balance of security deposits held by Betty Krenz & Associates, December 2013 rent which was deposited in conflict with his instructions, and the prepaid rent balance that was being held by Betty Krenz & Associates for one of his Tenants. No further disbursements were made from Betty Krenz & Associates to Complainant Lusk after receipt of the March 19, 2014 letter.

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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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### **Lusk Properties**

#### **Barton Square and Riverwest Properties**

On March 3, 2009, Complainant Property Owner Lusk entered into a Property Management Agreement with Betty Krenz & Associates for the properties known as Barton Square and Riverwest. The agreement was for the period from March 3, 2009 until March 3, 2010, with automatic successive period renewals. The management fee was six percent (6%). The Agreement listed a cancellation fee equal to two (2) months management fee.

#### **Barton Square Properties – Rental Funds**

On or about November 12, 2013, Check # 21921 in the amount of \$8,329.14 issued to Complainant Lusk from Betty Krenz & Associates for Barton Square property's October 2013 rents was returned "non-sufficient funds."

Respondent McElwee issued Check # 21966 dated November 19, 2013, in the amount of \$8,329.14 to pay the delinquency caused by the previously returned check for that same amount.

On or about December 3, 2013, Tenant The Catch (Harold Grave) paid rent with cash in the amount of \$2,333 for a Barton Square property. Receipt # 8058 was issued to Tenant The Catch. The cash was deposited to Betty Krenz & Associates Rent Escrow Account on or about December 3, 2013. Respondent McElwee did not disburse to Complainant Property Owner Lusk the rental funds Respondent collected from Tenant The Catch.

On or about December 13, 2013, Tenant Creations Unlimited – Another Level (Fred Martin) paid rent in the amount of \$1,250 for a Barton Square property with Money Order # 211346548 in the amount of \$600 and Money Order # 214091755 in the amount of \$650. The money orders were deposited to Betty Krenz & Associates Rent Escrow Account on or about December 13, 2013. Respondent McElwee did not disburse to Complainant Property Owner Lusk the rent collected from Tenant Creations Unlimited – Another Level (Fred Martin).

Betty Krenz & Associates' tenant ledger for Tenant Creations Unlimited – Another Level (Fred Martin) reflected that Tenant Creations Unlimited had made double rent payments each month beginning January 1, 2013, which resulted in a prepaid rent balance at the end of November 2013 in the amount of \$2,795. Respondent McElwee did not disburse to Complainant Property Owner Lusk the prepaid rent balance paid by Tenant Creations Unlimited nor did he reimburse Tenant Creations Unlimited for the double payments.

#### **Barton Square Properties - Security Deposits**

Tenant Lockhart Service Company entered into a Lease Agreement for the Barton Square property located at 8707 Kanis Road, Suite 4, Little Rock, Arkansas, for the period from April 1, 2012 through March 31, 2017. A Security Deposit of \$725 was noted as held in agents "Escrow Account." Tenant Lockhart paid the first month's rent of \$725 and Security Deposit of \$725 by check #13431 dated March 26, 2012. The check was deposited to the Betty Krenz & Associates Rent Escrow Account. Subsequently, \$725 of those funds was transferred to the Security Deposit Trust Account of Betty Krenz & Associates. Respondent McElwee did not provide any trust account record to indicate that the \$725 Security Deposit was disbursed to Complainant Lusk, Tenant Lockhart, Mike Berg Co. Management or otherwise.

Tenant Smokey's Tobacco, Proprietor # 1 Essa Mustafa, entered into a Lease Agreement for the Barton Square property located at 1403 John Barrow Road, Little Rock, Arkansas, to expire on March 31, 2014. On March 6, 2013, Proprietor Essa Mustafa provided cash in the amount of \$1,600 for the Security Deposit and receipt # 006339 was issued to Tenant Mustafa. On or about March 6, 2013, the Security Deposit was deposited to the Betty Krenz & Associates Security Deposit Account.

On or about May 14, 2013, Proprietor # 2 Khattoum replaced Proprietor # 1 Essa Mustafa for Tenant Smokey's Tobacco and signed a new Lease Agreement with Betty Krenz & Associates for 1403 John Barrow Road to expire on May 31, 2014. A Security Deposit in the amount of \$1,600 was listed on the lease agreement. A handwritten note

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at the top of the lease agreement stated “Transferred \$1,600 Security Deposit from Essa.”, Proprietor #1. On or about October 23, 2013, Proprietor # 3, Abdelgani, replaced Proprietor # 2, Khattoum, for Tenant Smokey’s Tobacco and signed a Lease Agreement for the 1403 John Barrow Road to expire on October 31, 2018. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit held by Betty Krenz & Associates in the amount of \$1,600 was disbursed to Complainant Property Owner Lusk, Tenant Smokey’s Tobacco, Mike Berg Co. Management or otherwise.

On or about November 1, 2013, Tenant The Catch (Harold Grave), entered into a Lease Agreement for the Barton Square property located at 1407 John Barrow Road, Little Rock, Arkansas, to expire on October 31, 2014. A Security Deposit in the amount of \$2,333 was listed on the lease agreement. On or about November 1, 2013, Tenant The Catch paid \$2,333 cash for the Security Deposit. The Security Deposit paid by Tenant The Catch in the amount of \$2,333 was deposited to Betty Krenz & Associates Security Deposit account on or about November 4, 2013. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit held by Betty Krenz & Associates in the amount of \$2,333 was disbursed to Complainant Lusk, Tenant The Catch, Mike Berg Co. Management or otherwise.

### **Riverwest Properties - Rental Funds**

On or about November 12, 2013, Check # 21922 in the amount of \$6,376.38 issued to Complainant Property Owner Lusk from Betty Krenz & Associates for Riverwest October 2013 rents was returned “non-sufficient funds.” Respondent McElwee issued Check # 21967 dated November 19, 2013, in the amount of \$6,376.38, to pay the delinquency caused by the previously returned check for that same amount.

### **Rushing Circle Properties – Rental Funds**

On or about January 1, 2013, Complainant Lusk, entered into a verbal agreement with Betty Krenz & Associates to manage the property known as Rushing Circle.

On or about December 6, 2013, Tenant Kim-Lor provided Check # 5266 in the amount of \$845 for a Rushing Circle property for December rent and water charges. The check was deposited to the Betty Krenz & Associates Security Deposit Account in error and later transferred to the Rent Escrow account. Respondent McElwee did not disburse to Complainant Lusk the rent collected from Tenant Kim-Lor.

### **Complainant Hannah Owenga**

On or about January 10, 2014, Tenant Spencer Lofton paid an \$850 security deposit to Property Manager Betty Krenz & Associates to rent property at 2318 Cherry Creek Circle, Bryant, Arkansas. On or about January 28, 2014, Complainant Tenant Owenga provided Money Order # 2100970004 in the amount of \$935 for January 2014 pro-rated rent plus February rent for the subject property.

Respondent McElwee did not provide AREC Investigators a copy of Complainant Tenant Owenga and Tenant Spencer Lofton’s lease agreement with Betty Krenz & Associates. Respondent McElwee did not provide accounting records for Tenant Complainant Owenga. A move-in check list was found in the file which reflected a move in date of January 28, 2014.

As a result of an employment transfer Respondent Principal Broker McElwee agreed to refund Complainant Tenant Owenga and Tenant Spencer Lofton’s Security Deposit on or about September 13, 2014, prior to the expiration of the lease agreement.

On or about October 10, 2014, Complainant Tenant Owenga received check # 1124 on the account of Betty Krenz & Associates Security Deposit Trust Account in the amount of \$700 for the Security Deposit Refund. The check

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had Respondent McElwee's signature. Deductions were made for \$50 Administration Fee, \$50 Blind Repair and \$50 Truck/Hauling.

On October 30, 2014, Complainant Tenant Owenga deposited the \$700 security deposit refund check issued from Betty Krenz & Associates to her bank account. On November 4, 2014, the check issued to Complainant Tenant Owenga for the Security Deposit refund was returned as "non-sufficient funds." Tenant Owenga was charged an overdraft fee of \$36 and a return item fee of \$15 by her bank.

### **Complainant Shawn Shannon**

On May 26, 2010, Complainant Property Owner Shannon entered into a Property Management Agreement with Betty Krenz & Associates for the property located at 7116 Shamrock, Little Rock, Arkansas.

On September 7, 2010, Tenants Townsend signed a Residential Lease Agreement for the property located at 7116 Shamrock, Little Rock, Arkansas, for the period from September 7, 2010 through August 31, 2011. Tenants Townsend paid a Security Deposit in the amount of \$1,500 and the monthly rent amount was \$1,500. Complainant Shannon emailed her approval for the lease with Tenants Townsend.

On or about August 22, 2014, Respondent McElwee signed check # 5068 in the amount of \$508 for August 2014, rent distribution to Complainant Property Owner Shannon. The bank reconciliation for Betty Krenz & Associates Rent Escrow Account dated August 31, 2014, listed check # 5068 as outstanding. Subsequent bank statements for the Betty Krenz & Associates Rent Escrow Account did not reflect check # 5068 as clearing the bank account. On February 1, 2016, AREC received a copy of check # 5068 which Complainant Property Owner Shannon stated she had misplaced and never deposited to her bank account. Betty Krenz & Associates Rent Escrow Account did not reflect check # 5068 cleared the bank through October 31, 2014, and was not re-issued by Respondent McElwee. Upon receiving a letter from Executive Broker Krenz in September 2014, pertaining to the closure of her business, Betty Krenz & Associates on October 31, 2014, Complainant Property Owner Shannon responded with a written request to terminate her Property Management Agreement effective October 31, 2014, and requested all documents and security deposit funds be forwarded to her new property manager.

On or about October 29, 2014, Respondent McElwee provided Complainant Shannon with a final accounting of funds and issued check # 5159 in the amount of \$2,296.02. On November 25, 2014, Complainant Shannon received email notification from her bank that the check issued from Betty Krenz & Associates rent escrow account in the amount of \$2,296.02 was returned due to insufficient funds. Respondent McElwee never reissued payment to Complainant Shannon for the insufficient funds. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit held by Betty Krenz & Associates in the amount of \$1,500 was disbursed to Complainant Shannon, Tenants Townsend Complainant Shannon's new property manager, or otherwise.

### **Complainant Eugene Aist**

Complainant Property Owner Aist entered into a Property Management Agreement dated April 26, 2007, with Betty Krenz & Associates for the property located at 8 West Windsor, Little Rock, Arkansas.

On or about September 4, 2007, Tenants Shabazz identified as "Resident" entered into a Residential Lease/Rental Agreement for the property located at 8 Windsor, Little Rock, Arkansas, for the period from September 1, 2007 through September 1, 2008. The Agreement included a \$350 Security Deposit and monthly rent of \$650. The lease agreement stated "Management acknowledges receipt from Resident in the amount of \$350 as Security Deposit..."

On or about May 21, 2013, Property Manager Debbie Hagan of Betty Krenz & Associates provided written notice to Tenants Shabazz for a rent increase to \$850 per month effective July 1, 2013. The notice stated if Tenants Sha-

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bazz did not execute a new lease agreement they should vacate the property by July 1, 2013.

Tenants Shabazz paid June 2013 rent in the amount of \$650. On or about June 12, 2013, Betty Krenz & Associates sent an invoice to Tenants Shabazz in the amount of \$115 for the cost invoiced by Krenz Maintenance to repair a broken window caused by Tenants children. Tenants Shabazz did not pay the invoice. The amount was deducted from Complainant Aist's rent proceeds for June 2013. Tenants Shabazz vacated the property on or about July 1, 2013. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit held by Betty Krenz & Associates in the amount of \$350 was disbursed to Complainant Aist, Tenant Shabazz, or otherwise. On October 10, 2013, Complainant Aist received invoice # 517 for an advance payment of \$1,200 from "Krenz Maintenance" for "partial draw for materials and parole." Complainant Aist issued check # 1385 in the amount of \$1,200 to Betty Krenz Maintenance. The check was deposited to the Betty Krenz & Associates Rent Escrow Account on October 16, 2013. Respondent McElwee did not provide monthly accounting for October through December 2013, to Complainant Aist and failed to provide Complainant Aist an accounting for the \$1,200 payment. From March 17 2014 until April 22, 2014, Respondent McElwee billed Complainant Aist \$1,380.36 for repairs and maintenance performed by Krenz Maintenance. Complainant Aist discovered that the repairs he had been billed for and paid were not completed as Respondent McElwee had indicated.

Respondent McElwee did not provide monthly accounting statements to Complainant Aist for the months of February and March 2014.

On or about April 12, 2014, Tenants Price and Howard signed a Residential Lease/Rental Agreement for the property 8 W. Windsor for the period from April 8, 2014 through April 7, 2015, for a monthly rent of \$850. The lease agreement included a security deposit of \$850 and monthly rent of \$850. The lease agreement stated "Management, on behalf of Owner, acknowledges receipt from Tenant the amount of \$850 as Security Deposit." Prior to the date of the lease agreement, on April 2, 2014, Respondent McElwee had deposited to Betty Krenz & Associates Security Deposit Trust Account \$850 CASH from Tenant Virginia Howard for the Security Deposit. Respondent McElwee did not maintain a copy of a numbered receipt for the cash funds received from Tenants Price and Howard. Tenants Price and Howard paid for pro-rated rent in the amount of \$495 which was deposited to Betty Krenz & Associates Rent Escrow Account. Respondent McElwee did not provide a monthly accounting to Complainant Aist for April 2014.

May 1, 2014, Tenants Price and Howard failed to pay May 2014 rent.

Respondent McElwee did not provide a monthly accounting to Complainant Aist for the month of May 2014.

On or about June 9, 2014, Complainant Aist sent an email to Respondent McElwee requesting a monthly accounting of 8 W. Windsor claiming he had not received an accounting since Respondent McElwee became Principal Broker. On or about June 17, 2014, Respondent McElwee sent an accounting of monthly activity to Complainant Property Owner Aist for the period from March 2014 through June 17, 2014. Respondent McElwee applied the \$850 security deposit paid by Tenants Price and Howard to June 2014 rent. The statement reflected a balance due from Complainant Property Owner Aist in the amount of \$35.36.

July 22, 2014, Attorney Rick Sellars provided an unlawful detainer letter to Tenants Price and Howard for failure to vacate the property at 8 W. Windsor. Complainant Aist expended \$780 to take back possession of his property.

### **Complainant Vicki Smith**

On April 17, 2008, Complainant Property Owner Smith entered into a Property Management Agreement with Respondent McElwee, Principal Broker, Progressive Realty and Management, for the property located at 5107 Natalie,

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Alexander, Arkansas. A cancellation fee of \$200 was noted in the Agreement. Other provisions stated “all late fees belong to the agent.” The management fee was ten percent (10%) of gross rent collected.

On October 7, 2008, Complainant Property Owner Smith entered into a Property Management Agreement with Respondent McElwee, Principal Broker, Progressive Realty and Management for the property located at 5 White Cloud, Greenbrier, Arkansas. A cancellation fee of \$250 was noted in the Agreement. Other provisions stated “a Leasing/set-up Fee of \$100 applies (sic).” Late fees were not referenced in the agreement. The Management fee was seven percent (7%) of gross rent collected.

On March 29, 2012, Respondent McElwee sold his business Progressive Realty and Management and transferred all contracts and agreements to Betty Krenz & Associates. Respondent McElwee allowed his Broker license to expire on January 1, 2013.

Prior to Respondent McElwee becoming Principal Broker for Betty Krenz & Associates, prior Tenants Traxler leased the property located at 5107 Natalie, Alexander, Arkansas for the period from April 1, 2012 through June 1, 2013. A Security Deposit of \$950 was recorded as received on April 3, 2012, from Tenants Traxler.

On November 22, 2013, after Respondent McElwee became Principal Broker for Betty Krenz & Associates, check # 1048 was issued from Betty Krenz & Associates security deposit trust account and deposited to the Betty Krenz & Associates rent escrow account in the amount of \$950. The deposit description noted “5107 Natalie/Traxler – Transfer Security Deposit.” On or about November 22, 2013, check # 1929 in the amount of \$413.40 was issued to Tenants Traxler. The memo on the check stated “Security Deposit Refund.” Respondent McElwee did not provide any trust account record to indicate that the balance of the Security Deposit held by Betty Krenz & Associates in the amount of \$536.30 was disbursed to Complainant Smith, Tenants Traxler, or otherwise.

After Tenants Traxler vacated the property located at 5107 Natalie, Tenant Linam entered into a lease agreement. Tenant Linam ceased to pay rent after October 2013. The property at 5107 Natalie was vacant November 2013 and December 2013.

Prior to Respondent McElwee becoming Principal Broker for Betty Krenz & Associates, on May 18, 2012, Tenants Adcock entered into a Lease Agreement for 5 White Cloud, Greenbrier, Arkansas. During the term of their lease agreement, Tenants Adcock paid \$145 in late fees which were not paid to Complainant Smith. The property management agreement did not state late fees were to be retained by the managing agent. Respondent McElwee did not provide any trust account record to indicate that the balance of the late fees was disbursed to Complainant Smith or otherwise.

Prior to Respondent McElwee becoming Principal Broker for Betty Krenz & Associates, on or about July 26, 2013, Tenants Keith signed a lease agreement for the property located at 5 White Cloud, Greenbrier, Arkansas. A Security Deposit of \$1,200 was listed on the lease agreement. Tenants Keith paid the monthly rent as stated of \$1,200 from August 1, 2013 through December 31, 2013. A separate Security Deposit Agreement was signed by Tenants Keith and a note was written on the bottom which stated, \$500 to be paid and \$100 per month until paid. Between August 1, 2013 and December 30, 2013, Tenants Keith made additional payments toward the security deposit in the amount of \$400. The total Security Deposit held on December 2013 was \$900.

On November 7, 2013, Complainant Smith sent an email to Betty Krenz & Associates to terminate the property management agreement for 5107 Natalie, Alexander, Arkansas.

On November 10, 2013, Complainant Smith signed a Property Management Agreement with Mike Berg Co. Management for 5107 Natalie, Alexander, Arkansas.

On or about January 31, 2014, Respondent McElwee issued check # 3414 in the amount of \$1,712 payable to Complainant Smith. The check was for the final distribution of rents due to Complainant Smith for both properties managed by Betty Krenz & Associates. The property located at 5107 Natalie was vacant for November and De-

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cember 2013. Tenants Keith remitted \$2,400 for rent for November and December 2013. Respondent McElwee deducted a seven percent (7%) management fee of \$168, a \$10 eviction protection plan charge and a \$250 cancellation fee which left the net amount to distribute of \$1,972. Respondent McElwee deducted a \$250 cancellation fee for the property located at 5107 Natalie which resulted in the net check paid to Complaint Smith of \$1,712. The management agreement for 5107 Natalie specified a \$200 cancellation fee.

On or about January 31, 2014, Respondent McElwee issued check # 1174 in the amount of \$850 from Betty Krenz & Associates Security Deposit Trust Account for the security deposit received from Tenants Keith. The tenant ledger for Tenants Keith reflected a security deposit collected of \$900. Respondent McElwee did not provide any trust account record to indicate that the balance of the Security Deposit held by Betty Krenz & Associates in the amount of \$50 was disbursed to Complainant Smith, Tenants Keith, or otherwise.

On or about September 19, 2014, Executive Broker Betty Krenz mailed a letter to customers that stated she would be closing Betty Krenz & Associates and all cancellation fees would be waived. On or about September 23, 2014, Complainant Smith sent a letter to Respondent McElwee to request reimbursement of the cancellation fees he had charged her upon termination of her management agreement November 2013.

### **Complainant Steven W. Caver**

Sometime in 2011, prior to Respondent McElwee becoming Principal Broker, Complainant Property Owner Caver entered into a Property Management Agreement with Betty Krenz & Associates for the property located at 115 W. 7th Street, North Little Rock, Arkansas.

On or about March 20, 2013, Tenant Brittany Keifer wrote Check # 352, dated March 29, 2013, payable to Betty Krenz & Associates in the amount of \$750 for the security deposit on the property located at 115 W. 7th Street North Little Rock, Arkansas. Tenant Keifer signed a Security Deposit Agreement with Betty Krenz & Associates. On March 21, 2013, Tenant Keifer's \$750 Security Deposit check was deposited into Betty Krenz & Associates Rent Escrow Account.

On or about April 1, 2013, Tenant Keifer entered into a Residential Lease/Rental Agreement with Betty Krenz & Associates for the subject property. The Lease Agreement began on April 1, 2013, and ended on March 31, 2014. The Lease Agreement identified Betty Krenz & Associates as "Management" and stated that Management shall hold the Tenant's \$750 Security Deposit.

On or about September 8, 2014, Complainant Caver sent Respondent McElwee a letter terminating the Property Management Agreement with Betty Krenz & Associates for the subject property and informed Respondent McElwee he was moving the property management to Marshall Peters & Associates.

Respondent McElwee did not provide any trust account record to indicate that the Security Deposit held by Betty Krenz & Associates in the amount of \$750 was disbursed to Complainant Caver, Tenant Keifer, Marshall Peters & Associates or otherwise.

Marshall Peters, Principal Broker for Marshall Peters & Associates, signed a statement dated July 8, 2016, which stated he had never received any security deposits for any of the properties moved to his firm for property management from Respondent McElwee or Betty Krenz & Associates.

### **Complainant Ben Zikri**

Complainant Property Owner Zikri registered Mayroz Management LLC with the Arkansas Secretary of State. During the year 2012, Complainant Zikri purchased, in the name of Mayroz Management LLC, two properties, 2900 W. 27th Street, Little Rock, Arkansas, and 3112 Cobb Street, Little Rock, Arkansas.

#### **3112 Cobb Street, Little Rock, Arkansas – Betty Krenz & Associates**

On or about June 20, 2013, prior to Respondent McElwee becoming Principal Broker, Complainant Zikri, for

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Mayroz Management LLC, signed a Property Management Agreement for the property located at 3112 Cobb Street, Little Rock, Arkansas, with Betty Krenz & Associates. The Agreement was signed by Salesperson Debbie Hagan.

On October 2, 2013, check # 21839 in the amount of \$585 payable to Mayroz Management cleared the Betty Krenz & Associates Rent Escrow Account. The memo line on the check noted "July Rent." On October 4, 2013, check # 21847 in the amount of \$1,170 payable to Mayroz Management cleared the Betty Krenz & Associates Rent Escrow Account. The memo line on the check noted "August & September." The total amount distributed to Mayroz Management for July through September 2013 rent was \$1,755. The records of Betty Krenz & Associates did not reflect that the property located at 3112 Cobb Street was leased, nor was there a record of rent deposits reflected in the bank accounts of Betty Krenz & Associates.

On or about November 1, 2013, after Respondent McElwee became Principal Broker, Tenants Castor and West entered into a Residential Lease Agreement with Betty Krenz & Associates for the property located at 3112 Cobb Street, for the period from November 1, 2013 through October 31, 2014. The Lease Agreement noted monthly rent of \$650 and receipt of a Security Deposit in the amount of \$650 to be held by Betty Krenz & Associates. No signatures were on the Lease Agreement. Other Addenda were signed by Tenants Castor and West and Salesperson Debbie Hagan.

On or about November 4, 2013, receipt # 8005 was issued to Tenant West for November 2013 rent in the amount of \$650 paid with cash. A receipt was not located for the Security Deposit of \$650 and a deposit in that amount from Tenants Castor and West was not found.

On November 5, 2013, Salesperson Debbie Hagan transferred her license to Mike Berg Co.

On or about December 4, 2013, receipt # 8066 was issued to Tenant Castor for \$650 cash paid for December 2013 rent.

On or about December 4, 2013, check # 22003 was issued to Mayroz Management in the amount of \$585 for November 2013 rent. On or about December 5, 2013, check # 22005 was issued to Mayroz Management in the amount of \$585 for December 2013 rent. The owner statement for Mayroz Management for the period from January 2013 through December 2013, reflected an overpayment of rent from Betty Krenz & Associates to Complainant Zikri (Mayroz Management) in the amount of \$1,755. A written note on the owner statement read "Paying as if negative was covered by rent (Debbie pd w/no record of rents rec'd)." A second note read "paid owner per Bill."

On or before August 27, 2014, Complainant Zikri provided a copy of a Quitclaim Deed, recorded in the Pulaski County Circuit Court, for the subject property at 3112 Cobb Street. The Grantee was Daniel Solomon Sade. Subsequent owner distribution checks for September and October 2014 were issued to New Owner Sade. Respondent McElwee as Principal Broker for Betty Krenz & Associates did not obtain a written Property Management Agreement with New Owner Sade.

On October 31, 2014, Tenants Castor and West vacated the subject property. Respondent McElwee provided a monthly owner statement to Complainant Zikri which reflected payment of \$580 to New Owner Sade for October 2014 rent disbursement. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit in the amount of \$650, indicated as held by Betty Krenz & Associates per the signed lease agreement, was disbursed to Complainant Zikri, Tenants Castor and West, New Owner Sade or otherwise.

### **3112 Cobb Street, Little Rock, Arkansas – Guardian Realty**

On or about October 30, 2014, while Respondent McElwee was still licensed as Principal Broker for Betty Krenz & Associates, Complainant Zikri signed a Property Management Agreement on behalf New Owner Sade, for the property located at 3112 Cobb, Little Rock, Arkansas, with Guardian Realty, Bill McElwee. Paragraph 6(e) stated, "... Managing agent agrees to secure the prior approval of Owner on all expenditures in excess of \$350 for any one item

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except monthly or recurring operating charges and emergency repairs in excess of the maximum, if in the opinion of Managing Agent such repairs are necessary service to the Property and/or Tenant.” Prior to this date on October 21, 2014, Complainant Zikri on behalf of New Owner Sade signed an Addendum to the contract for disclosure of a pecuniary interest in McElwee Maintenance and an eviction protection plan. Respondent McElwee was licensed as Principal Broker with Betty Krenz & Associates when the Guardian Realty Property Management Agreement was executed.

On or about February 23, 2015, Respondent McElwee, as Principal Broker for Guardian Realty, prepared an owner’s report for Complainant Zikri on behalf of New Owner Sade, for 3112 Cobb Street. A hand written note stated, “Renter moved out & trashed the house. We are in the process of cleaning it and restoring it. Hopefully, we will have a renter by the 1st of March.”

On April 1, 2015, Tenants King and Moore signed a Residential Lease/Rental Agreement for the property located at 3112 Cobb Street, for the period from April 1, 2015 through March 31, 2016. The monthly rent was \$650 and the Agreement noted a Security Deposit in the amount of \$650 as receipted and held by Guardian Realty.

On or about April 1, 2015, Respondent Principal Broker McElwee prepared an owners report for the month of March 2015, for 2113 Cobb Street. The report reflected \$650 rent was collected and expenses of \$650 were incurred for a net distribution of zero dollars to New Owner Sade. A hand written note stated, “I will send you a complete breakdown of all charges less tenant’s deposit in a couple of days....Also this rent is for April.” Respondent Principal Broker McElwee did not provide Complainant Zikri on behalf of New Owner Sade an accounting of Tenants Castor and West’s security deposit.

The March 2015, owner’s report reflected a charge in the amount of \$628 for “contract labor.” Attached to the owner report was invoice # 1031 issued from McElwee Maintenance in the amount of \$1,500 for “Repaint entire house wall and trim. Includes materials. (sic)” Respondent McElwee reflected the \$628 deducted from March 2015 rent for contract labor as payment applied to the invoice. A balance due of \$872 remained as unpaid. Respondent Principal Broker McElwee did not provide proof that Complainant Zikri or New Owner Sade had approved the painting expense which was in excess of \$350 as required in the Property Management Agreement.

On or about May 22, 2015, Respondent McElwee prepared the monthly owner report for May 2015. The report reflected a deduction for \$950 paid to McElwee Maintenance to replace the heating unit blower. The invoice noted “Ok’d by Ben.” Complainant Zikri stated he did not approve this expense. Complainant Zikri requested the documents for the heating unit blower be provided to him so he would have them for warranty work if necessary. Respondent McElwee did not provide the documents.

On or about June 9, 2015, Respondent McElwee served a notice to vacate to Tenants Moore and King for failure to pay June 2015 rent. On the June 2015 monthly owner report, Respondent McElwee applied \$650 security deposit for Tenants Moore and King to June 2015 rent.

On June 9, 2015, Complainant Zikri on behalf of New Owner Sade provided written notice to cancel the Property Management Agreement for 3112 Cobb Street, Little Rock, Arkansas.

### **2900 W. 27th, Little Rock, Arkansas – Betty Krenz & Associates**

On or about September 6, 2013, Betty Krenz & Associates entered into a Property Management Agreement with Complainant Zikri (Mayroz Management LLC) for 2900 W. 27th, Little Rock, Arkansas, for the period from September 6, 2013 through September 30, 2016. The agreement was signed by Salesperson Debbie Hagan.

On or about November 1, 2013, Tenants Henderson signed a Residential Lease/Rental Agreement for 2900 W. 27th Street, Little Rock, Arkansas. A Security Deposit of \$650 was noted as received and held by management. A hand written note at the top of the lease reflected receipt of \$50 collected toward the security deposit and tenant would pay \$50 on the 10th and 26th of each month until paid in full.

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The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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On or about December 3, 2013, Respondent Principal Broker McElwee prepared a monthly owner statement for 2900 W. 27th which reflected expenditures exceeded income on the subject property in the amount of \$348.91. Complainant Property Owner Zikri did not remit the negative balance for the property.

On or about December 5, 2013, Respondent Principal Broker McElwee prepared a monthly owner statement for 2900 W. 27th which reflected zero rent was collected and had a balance due from Complainant Zikri in the amount of \$348.91. A handwritten note stated, "Dec 2013 rent forgiven as no heat for 3 weeks – per Bill." No further rent was collected from Tenants Henderson. No further owner statements were provided to Complainant Zikri. Respondent McElwee did not provide any trust account record to indicate that the Security Deposit in the amount of \$50, indicated as held by Betty Krenz & Associate per the signed lease agreement, was disbursed to Complainant Zikri, Tenants Henderson, New Owner Sade or otherwise.

### **2900 W. 27th, Little Rock, Arkansas – Guardian Realty**

On October 31, 2014, Respondent McElwee became Principal Broker for Guardian Realty. Respondent McElwee did not have a signed Property Management Agreement for the property located at 2900 W. 27th, Little Rock, Arkansas.

On or about May 1, 2015, Tenant Baird entered into a Residential Lease/Rental Agreement with Guardian Realty for the subject property. Rent was \$700 per month. The Agreement noted Tenant Baird paid \$650 and would pay the \$50 balance by May 8, 2015. The Agreement noted a security deposit collected in the amount of \$200. On or about May 8, 2015, Tenant Baird remitted \$50 to Respondent Principal Broker McElwee which was recorded as security deposit. On or about June 1, 2015, Tenant Baird paid \$650 toward June rent. On June 8, 2015, Tenant Baird remitted \$20 to Respondent Principal Broker McElwee which was recorded as security deposit.

June 9, 2015, Complainant Property Owner Zikri provided written notice to Respondent McElwee to terminate the property management agreement.

On or about July 31, 2015, Respondent McElwee issued check # 20004 to "Daniel Solomon Sade" in the amount of \$270 for the balance of Security Deposit held for Tenant Baird. Daniel Solomon Sade did not own the subject property located at 2900 W. 27th Street, Little Rock, Arkansas. Mayroz Management LLC was the property owner of Record.

### **AREC**

On or about June 17, 2014, Respondent McElwee Issued check # 1173 from the Simmons Bank Security Deposit Trust Account for the balance of funds in the account in the amount of \$18,125.03. The check was deposited to the Simmons Bank Rent Escrow Account.

Betty Krenz & Associates records reflected the last bank reconciliation completed by Respondent McElwee for the Simmons Bank Rent Escrow Account was for the period ending August 29, 2014. The bank reconciliation reflected several outstanding checks dated August 2014 and prior, which had not cleared the bank which resulted in a negative check register balance of (\$4,096.79). Subsequent bank statements for the Simmons Bank Rent Escrow Account through December 31, 2014 reflected the final transactions that cleared the account resulted in an overdraft balance of (\$438.49).

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**Respondent(s):** Christie Stone, Salesperson, Diamond Country Realty Inc, Nashville, Arkansas, Consent Order Number 3458

**Violation(s):** Commission Regulation 10.1(b), 10.10(a), and 10.11.

*(continued on page 19)*



## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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**Sanction(s):** Respondent Stone pay a \$250.00 penalty to the Arkansas Real Estate Commission within 30 days of the date of this order. In addition, it is FURTHER ORDERED Respondent Stone make arrangements to attend and observe a Formal Hearing at the Arkansas Real Estate Commission approved in advance by the Executive Director.

Prior to becoming a licensed Real Estate Salesperson, Respondent Stone contacted a property owner about purchasing his Real Property located in Nashville, Arkansas.

During the term of her attempt to purchase the subject Real Property, Respondent Stone became a licensed Real Estate Salesperson. After obtaining her Salesperson License, Respondent began negotiations to purchase the subject property. Respondent did not disclose to her Principal Broker her involvement in negotiating to purchase the subject property.

While in the process of negotiating, Respondent Stone agreed with the Seller of the subject property to assist in the collection of rent paid by the tenants on the subject property. Respondent Stone was not paid a fee for her assistance. Respondent Stone did not disclose to her Principal Broker her involvement in the collection of rent on the subject property.

Respondent Stone's ex-husband entered into a Buyer Representation Agreement with Respondent Stone for the purchase of the subject property. Respondent Stone, as a Real Estate Licensee, did not disclose in writing to the Seller of the subject property, her potential interest in the subject property by the Purchaser.

The closing date of the Real Estate transaction was extended beyond the agreed upon date in the Real Estate Contract. Respondent Stone did not prepare an addendum to extend the closing date of the transaction.

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**Respondent(s):** Angela Goodman, Salesperson, Weichert Realtors - The Griffin Company-Bentonville, Bentonville, Arkansas, Consent Order # 3461

**Violation(s):** Arkansas Code Annotated, § 17-42-311(a)(2), and Commission Regulation 8.5(a), 10.1(b), and 10.7(a)(1)

**Sanction(s):** Respondent Goodman pay a \$500.00 penalty to the Arkansas Real Estate Commission, within ninety (90) days of the date of this Order. Between January 1, 2017 and June 30, 2017, Respondent shall complete the eighteen (18) hour Arkansas Real Estate Commission Salesperson Post-license Course approved in advance by the Executive Director. Completion of this course shall not satisfy any other educational requirements for the Respondent.

On or about December 1, 2014, Respondent Salesperson Goodman for Weichert Realtors, The Griffin Company obtained an Exclusive Right to Sell Agreement with George and Karen Riley for the sale of their property at 8 Spurlock, Bella Vista, Arkansas.

On or about February 14, 2015, Respondent obtained a Non-Exclusive Buyer Representation Agreement with Jim and Phyllis McKown. Buyers McKown and Sellers Riley entered into a Real Estate Contract with an Early Occupancy Addendum.

Respondent received a cash payment in the amount of \$640.00 from Jim McKown for Early Occupancy fees due to George and Karen Riley for 8 Spurlock Bella Vista, Arkansas. Respondent Goodman wrote a receipt #127155

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*(continued on page 20)*



## FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.

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dated May 30, 2015 to Jim McKown for a cash payment in the amount of \$640.00. Respondent Goodman did not deliver the funds to her Principal Broker or inform her Principal Broker that she had received and was holding the trust funds independently of her Principal Broker.

Respondent Goodman wrote a check # 2551 dated May 27, 2015, from her personal business account to George Riley in the amount of \$640.00.

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**Respondent(s):** Robert Malt, Principal Broker, Malt Realty, Little Rock, Arkansas, Consent Order 3428

**Violation(s):** Arkansas Code Annotated § 17-42-310(a), § 17-42-310(b), § 17-42-311(a) and Commission Regulation 6.3(b), 7.6(a), 10.7(b)(1), 10.7(b)(3), and 10.16(b)

**Sanction(s):** Respondent Malt pay a \$1500.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of the date of this Order and Respondent Malt agrees to surrender and revocation of his Arkansas Real Estate License.

Respondent Malt's Broker License expired January 1, 2016. On January 28, 2016, a website, [www.maltrealty.info](http://www.maltrealty.info) included advertisements for properties listed with Malt Realty. The website listed Executive Broker Kris Tortorice and Salesperson Kathy Bonner as licensed with Malt Realty. Executive Broker Tortorice's license had previously be transferred to Lake Hamilton Realty on April 6, 2015. Salesperson Bonner's license had previously been transferred to Sprerry Van-Ness Ark Best Realty on April 28, 2015. Upon an internet search July 26, 2016, the website, [www.maltrealty.info](http://www.maltrealty.info) had been removed from the internet.

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**Respondent(s):** Jack Poff, Principal Broker, and Terre Jane Rodgers, Salesperson, First Delta Realty LLC, Marion, Arkansas, Consent Order # 3494

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(2) and Commission Regulation 8.5(a).

**Sanction(s):** Respondent Rodgers shall receive a Letter of Reprimand to be placed in her license file for one (1) year and pay a \$500.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of the date of this Order.

Respondent Rodgers pay compensation in the amount of \$500.00 directly to Sellers Kalb within thirty (30) days of the date of this Order.

Respondent Rodgers take the AREC 18 hour salesperson post license class, approved in advance by the Executive Director.

On April 9, 2014, Complainant Seller Kalb and her husband Vance Kalb signed an Exclusive Right to Sell Agreement for property located at 24 Holiday Hills, Helena, Arkansas, with First Delta Realty LLC, for the period from April 9, 2014 through November 9, 2014. The offering price was \$150,000. Listing Agent Erin Gray was the Assigned Associate.

On November 9, 2014, Complainant Seller Kalb and her husband Van Kalb signed an Addendum to the Exclusive Right to sell Agreement to reduce the listing price to \$145,000 and extend the current expiration date until No-

*(continued on page 21)*





## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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vember 9, 2015.

On or before October 20, 2015, Respondent Salesperson Rodgers met Buyer Kathy Otey and Friend Lavelle Taylor to show them the subject property. Friend Taylor wanted to purchase the subject property with an all cash offer. Additionally, Friend Taylor wanted the Real Estate Contract to be written in only the name of Buyer Otey. Respondent Salesperson Rodgers did not obtain a written Buyer Agency Agreement with Buyer Otey or Friend Taylor. On October 20, 2015, Buyer Otey signed a Real Estate Contract (Residential) (serial # ending in 5356415) for the subject property, for a purchase price of \$130,000 pursuant to Cash at Closing. Paragraph 7, Earnest Money was marked "Yes, see Earnest Money Addendum."

Buyer Otey signed an Earnest Money Addendum (serial # ending 5356366) on October 20, 2015, which referenced Real Estate Contract (serial # ending in 5035129) and dated October 16, 2015. This was not the same as the serial number or date of the contract Buyer Otey signed on October 20, 2015. The amount of earnest money was \$1,000. Option B was checked which indicated Earnest Money would be deposited within three (3) business days following the date the Real Estate Contract was signed by Buyer and Seller. The Earnest Money Addendum was signed by Complainant Seller Kalb and her husband on October 27, 2015.

A Seller's Counter to the Real Estate Contract was prepared by Listing Agent Gray increasing the Sale Price to \$140,000. The Seller's Counter included only the month and year, October, 2015, that Complainant Seller Kalb and her husband executed the contract.

October 26, 2015, Buyer Otey signed a Real Estate Contract for the subject property (serial # ending 5910761) for a purchase price of \$135,000 pursuant to Cash at Closing. Respondents Rodgers and Poff did not include a request for a Proof of Funds letter from Buyer Otey and did not include a contingency for Friend Taylor to provide funding for Buyer Otey to purchase the property. Paragraph 7, Earnest Money was marked, "Yes – see Earnest Money Addendum." Paragraph 14, Other Contingency had Option B marked and stated Buyer was to do a walk through on Thursday October 29, 2015. The closing date was listed as November 20, 2015. Paragraph 23 – Possession was marked Option C. – "Delayed Possession (see Delayed Occupancy Addendum attached)."

A Delayed Occupancy Addendum referenced Real Estate Contract ending in Serial # 5910437 which did not match the serial number of the Contract signed by the parties. Option 2 (B) indicated possession would be no later than five (5) days after closing. Buyer Otey executed the Delayed Occupancy Addendum on October 26, 2015. On October 27, 2015, Complainant Seller Kalb and her husband executed the Real Estate Contract, Delayed Occupancy Addendum and Earnest Money Addendum.

Buyer Otey did not tender \$1,000 Earnest Money within the three (3) business days following the date all parties executed the Real Estate Contract.

October 30, 2015, Buyer Otey executed a Contingency Removal Addendum which referenced Paragraph 14-B of the Real Estate Contract. Complainant Seller Kalb and her husband executed the Contingency Removal Addendum on November 2, 2015.

On Monday, November 16, 2015, Respondent Salesperson Rodgers informed Listing Agent Gray she did not have the required Earnest Money.

On November 17, 2015, Complainant Seller Kalb texted Listing Agent Gray that she and her husband agreed to extend the closing date until December 4, 2015. Listing Agent Gray texted Respondent Salesperson Rodgers and informed her that Complainant Seller Kalb had agreed to extend the closing until December 4, 2015, and requested a contract extension.

On November 18, 2015, Buyer Otey signed a Closing Date Modification Addendum to extend the closing date until December 4, 2015. On November 20, 2015, Complainant Seller Kalb was informed that the buyer had not paid the earnest money.

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## FORMAL HEARING DECISIONS

The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. Formal Hearing Decisions that have been appealed are not listed.



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On December 2, 2015, Boyer Otey's Friend, Lavelle Taylor sent a text message to Respondent Salesperson Rodgers that he would not make the closing on Friday, December 4, 2015. Respondent Salesperson Rodgers informed Friend Taylor the Complainant Sellers were going to terminate the contract.

On or about December 4, 2015, Respondent Salesperson Rodgers prepared a Termination of Real Estate Contract Addendum which referenced Real Estate Contract serial # ending 6232704 which did not match the serial # on the Real Estate Contract. Letter E – NO EARNEST MONEY was checked on the Agreement. Buyer Otey signed the Agreement on or about December 9, 2015. The Termination Agreement was executed by Complainant Seller Kalb and her husband on December 21, 2015.

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**Respondent(s):** Neal A. Carter, Principal Broker, NAC Real Estate, Fayetteville, Arkansas, Consent Order 3567

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(2) and Commission Regulation 8.5(b), 10.8(g)(1), 10.8(h)(1) and 10.19(a)

**Sanction(s):** Respondent Carter pay a \$500.00 penalty to the Arkansas Real Estate Commission, within thirty (30) days of the date of this Order, discontinue all property management activities now and in the future, and agree to two (2) office visits conducted by Arkansas Real Estate Commission staff within the next twelve (12) months.

On July 21, 2014, Respondent Principal Broker Carter entered into an Exclusive Right to Sell Agreement (Residential) with Sellers Spicer for the property located at 4057 N. Zion Valley Dr., Fayetteville, Arkansas.

On or about July 17, 2015, Complainant Randall signed a Real Estate Contract (Residential) for the subject property. The offer was submitted by Complainant Randall's Buyer Agent, John Hagberg, Salesperson, Crye-Leike Realtors. Sellers Spicer accepted the offer on July 17, 2015.

On or about the second week of August 2015, Buyer Agent Salesperson Hagberg referred Respondent Carter to Complainant Randall to interview as a potential property manager for the subject property. Complainant Randall and Respondent Carter exchanged emails regarding the rental of the subject property. Respondent Carter informed Complainant Randall that Tenant Priest would like to lease the subject property for \$1,150 per month and sign a lease for two years. Complainant Randall did not respond to Respondent Carter's email.

On September 30, 2015, Tenant Priest signed a Residential Lease/Rental Agreement with NAC Real Estate for the subject property. The expiration date was September 2016 and the monthly rent was \$1,150. Tenant Priest was to pay a Security Deposit of \$700 to be split in two equal payments.

On or about October 1, 2015, Respondent Carter prepared a Property Management Agreement for the subject property with a management fee of 10% per month. The agreement was not presented to or signed by Complainant Randall.

On or about October 10, 2015, Tenant Priest's ledger reflected payment of \$350 for one half of the Security Deposit and \$1,150 for October 2015 rent. The funds were not deposited to Respondent Carter's Trust Account of record with AREC.

On October 26, 2015, Complainant Randall sent an email to Respondent Carter to request that he forward a copy of the Property Management and Lease Agreements he customarily used for his company so she could review them. Respondent Carter replied, "I am sorry I thought when we last spoke that I was going to send all the information

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## FORMAL HEARING DECISIONS



The following information is extracted from Findings of Fact, Conclusions of Law and Order, and Consent Orders issued by the Commission from December 2016 through December 2017. . Formal Hearing Decisions that have been appealed are not listed.

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to you on November 1, 2015.” Respondent Carter stated he felt Tenant Priest had been approved by Complainant Randall from her previous email.

On November 4, 2015, Respondent Carter forwarded an email to Complainant Randall with a copy of the Lease Agreement and Agency Disclosure signed by Tenant Priest. Respondent Carter requested Complainant Randall’s mailing address so he could complete the Property Management Agreement and mail it to her for signature.

On November 10, 2015, Tenant Priest’s tenant ledger reflected a rent payment in the amount of \$1,150. The amount was not deposited to Respondent Carter’s Trust Account of record.

On November 10, 2015, Respondent Principal Broker Carter sent an email to Complainant Randall which stated since Complainant Randall had not provided her mailing address for him to forward the rent and security deposit he had collected from Tenant Priest as he was no longer willing to handle the property management of the subject property and requested she provide him information as to where to send the rent and security deposit money he had collected.

On December 4, 2015, Complainant Randall sent an email to Respondent Carter with information on the Property Management Company she had retained to manage the subject property. Complainant Randall requested Respondent Carter forward the house key and rent collected along with the security deposit to Real Property Management, Fort Smith, Arkansas, attention Luke Benson.

On December 15, 2015, Luke Benson, Real Property Management stated he received a check from Respondent Carter in the amount of \$2,650 for two months rent and \$350 security deposit. Respondent Carter did not withhold a management fee from the rent collected. Tenant Priest paid the balance of \$350 for the security deposit that same week to Real Property Management.

Respondent Carter informed the Commission that he no longer handled property management contracts and that his Trust Account had been closed on December 31, 2015. As of January 21, 2016, the bank statement for Respondent Carter’s Trust account reflected a zero balance and stated, “Final Statement.”

## AREC OFFICE EXAMINATION PROCEDURES BY GARY C. ISOM, EXECUTIVE DIRECTOR

AREC Office Examination procedures now on-line

In an effort to give Principal and Executive Brokers an idea of what an office examination/review involves AREC has posted a booklet on-line that offers a narrative along with applicable forms.

We hope brokers will find this information educational and helpful in setting up systems and processes for maintaining transaction files and trust account records.

We invite you to review and offer us feedback on the information. If you see something for which you would like more clarification or if you’d like to see information added, please let us know.

Email Yvonne Halstead at [Yvonne.halstead@arkansas.gov](mailto:Yvonne.halstead@arkansas.gov) your thoughts.

AREC values your thoughts and suggestions.

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## PROPOSED CHANGE TO REGULATION 10.5

### BY GARY C. ISOM, EXECUTIVE DIRECTOR

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#### Advertising Regulations – 10.5

With advancements in social media and new business models the commissioners have determined that revisions to the Commission Regulations on advertising will be a priority in 2018.

In preparation for a public hearing on the changes later this year, we are posting the proposed changes on the AREC website for your comments and suggestions. We encourage all licensees to review the proposed changes. It will be helpful if you put your comments in writing, including emails if you prefer so that we can review those with the commissioners.

A primary focus for the revisions will include brokerage identification in both print and on-line advertising. Consumer confusion about who represents them in a real estate transaction first became a concern in the late seventies when the Department of Justice conducted a survey that showed that consumers and even real estate agents did not have a clear understanding of who represented them. The result was a nationwide movement for clarification and education on the subjects of agency representation and agency representation disclosure. Recent trends are leading to another round of confusion for consumers as real estate agents operate within models that distance themselves from their Principal Broker and brokerage firm with which they are licensed. The proposed regulation revisions will hopefully reverse those trends.

We invite your comments and suggestions on problems with advertising that you think should be addressed.

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## *IT'S NEVER TOO EARLY TO THINK ABOUT EDUCATION*

*by Kortney Hinton and Andrea Alford*

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You've probably heard by now that there are a few changes with post-license and continuing education requirements, but do you know what they are? Since post-license and continuing education are two different types of education, we'll break them down by category:

#### Post-License: What Changed?

Any salesperson or broker initially licensed in that capacity on or after January 1, 2018, will have until the end of the sixth (6th) month following their date of licensure to complete post-license education. The previous deadline allowed 12 months for completion of post-license. You can read more about this change at [www.arec.arkansas.gov/news](http://www.arec.arkansas.gov/news).

#### Continuing Education: 3-Hour Required Contracts Course For All Licensees in 2018

All active licensees must complete a 3-hour required course on contracts as part of their 7-hour CE requirement.

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Each licensee must complete the contracts course specific to their license type (salesperson or broker). The 2018 Real Estate Forms and Contracts for Brokers course is for brokers only. Salespersons may not attend this course, either for credit or not for credit, per the Commission's mandate in accordance with Regulation 16.8(h). All active licensees must also complete the mandatory 1 hour safety CE. For more info, visit [www.arec.arkansas.gov/education](http://www.arec.arkansas.gov/education).

**So what's my CE requirement again?**

Salespersons: 7 hours = 3 hr Forms & Contracts for Salespersons + 1 hour of safety + 3 hr elective CE

Associate Brokers: 7 hours = 3 hr Forms & Contracts for Brokers + 1 hr Safety + 3 hr elective CE

Executive Brokers: 7 hours = 3 hr Forms & Contracts for Brokers + 1 hr Safety + 3 hr elective CE

Principal Brokers: 7 hours = 3 hr Forms & Contracts for Brokers + 1 hr Safety + 3 hr elective CE

Don't let your education deadlines sneak up on you - take care of them early to keep your license compliant with the AREC!

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WE RECENTLY PUBLISHED A SERIES OF  
ARTICLES REGARDING LAND  
CONTRACTS WITH TARGETED ADVICE  
FOR BUYERS, SELLERS AND LICENSEES.  
YOU CAN VIEW THE ARTICLES IN THIS  
SERIES AT  
[WWW.AREC.ARKANSAS.GOV/LANDCONTRACTS](http://WWW.AREC.ARKANSAS.GOV/LANDCONTRACTS).