



**Asa Hutchinson**  
Governor

**Daryl Bassett**  
Secretary

**October 2019**

**Arkansas Real Estate  
Commission**

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**Commissioners**

Bob Walker, Chair  
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Doyle Yates, Vice Chair  
Springdale

Tony Moore  
Russellville

Linda Prunty  
Jonesboro

Dee Holcomb  
Pine Bluff

**Staff**

Gary C. Isom  
Executive Director

Andrea S. Alford  
Deputy Executive Director

Heather Garrett  
AREC Supervisor

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

## Deputy Executive Director Comments

*By Andrea S. Alford, Deputy Executive Director*

### **AREC Embraces Change as Transformation Takes Effect**

With the passage of the Transformation and Efficiencies Act of 2019, the Real Estate Commission joined the Arkansas Department of Labor and Licensing, led by Secretary Daryl Bassett. Secretary Bassett previously served as the Director of Arkansas Department of Workforce Services, is the former Director of Business and Commercial Services for the Arkansas Secretary of State and served nine years as a Commissioner with the Arkansas Public Service Commission. Secretary Bassett also has an established record of leadership and service with various national Boards of Directors and Arkansas-based civic organizations.

In terms of licensing structure and processes, the Commission as you know it will remain mostly the same. However, in the weeks and months ahead, licensees can expect to see positive changes in their interactions with AREC as we join Secretary Bassett and our colleagues at the Department in improving the services we provide to the citizens of Arkansas. You can learn more about the Governor's overall transformation efforts at: <https://governor.arkansas.gov/transform.ar.gov/>.

### **Commissioners Moore and Prunty Reappointed in 2019**

At the beginning of 2019, Governor Asa Hutchinson announced his reappointment of Commissioners Tony Moore (Russellville) and Linda Prunty (Jonesboro) to the Arkansas Real Estate Commission. Commissioners Moore and Prunty were originally appointed to the Commission in 2016. They have been reappointed to serve until December 31, 2021.

I asked Commissioners Moore and Prunty to share a bit about their experiences as Commissioners thus far, noting what they have found surprising in serving on the Commission, what they are most proud of as Commissioners, and what they hope the Commission is able to accomplish in the future.

Commissioner Moore is most proud of the Commission's "...hearings on location (northwest Arkansas and Fort Smith), allowing more licensees to come to hearings." He is also proud of the Commission's work in advancing continuing education and developing detailed advertising guidelines for compliance with Commission Rule 10.5. Looking down the road, Commissioner Moore would like to see the Commission work with industry members to advance the quality of education, and he is a steadfast advocate for the expeditious resolution of pending complaints, which serves to benefit consumers and licensees alike.

Commissioner Prunty, a consumer member, says she has been surprised by the measures AREC must take "...to protect the public from those who were out to deceive or

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intentionally take money.” Commissioner Prunty continues, “I’m most proud of how the Commission works together to solve all issues in a fair manner. I’m proud to be a part of the rules that are being implemented. And I’m extremely proud to recognize and enforce education when needed. I would like to see more strength in education and more training for the educators.”

Did you notice a common thread in the Commissioners’ comments? I’ll give you a hint: it’s education. The Commissioners and staff alike are proud of the strides we have made in improving real estate education, and we are deeply committed to the continual strengthening of our education programs. Look for more on how we’re pursuing this goal later in the newsletter.

### **Commission Chair and Vice Chair Elected**

During the February 2019 Commission meeting, the Commission held 2019 officer elections. Commissioner Bob Walker (Jacksonville) is serving as Chair for 2019. Chairman Walker was appointed by Governor Hutchinson in 2017, to serve until December 31, 2019. Commissioner Doyle Yates (Springdale) was elected Vice Chair. Vice Chair Yates was appointed by Governor Hutchinson in 2015, and reappointed in 2018 to serve until December 31, 2020.

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## **Distance Education Rule Changes Approved**

*by Andrea S. Alford*

The Commission recently received legislative approval to amend Commission Rules 4.1, 11.5, 16.1 and 16.3 to expand the allowable delivery methods to include distance or online education for broker pre-license, salesperson post-license and broker post-license courses.

The Commission’s intent is to make real estate education more accessible and convenient by ensuring all required real estate courses can be taken online, and with the approval of these changes we have been able to do just that. Effective January 1, 2020, broker pre-license and both post-license courses can be offered online.

This is a critical step forward in eliminating barriers to entry into the real estate profession, most specifically in relation to active duty military members, veterans or their spouses who may be transferring to Arkansas but are unable to attend classroom instruction in these courses; low-income workers who may be unable to afford time away from work to attend classroom courses; and unemployed or dislocated workers who may be able to afford the course tuition itself but cannot also afford associated travel costs if no classroom courses are offered in close proximity to their homes. The geographical consideration is especially pertinent in certain rural parts of the state such as southern Arkansas and the Arkansas Delta, where real estate classroom courses can be difficult to find.

Broadening the accessibility of these courses also stands to benefit individuals with criminal records whose circumstances prohibit classroom attendance or whose educational histories call for the self-paced study and mastery-based learning approaches found in online education

An added benefit of this rule change is the removal of impediments to consumer choice in how you as licensees receive your education. We consider this a crucial component of bringing our rules into alignment with Arkansas’ desire to take a leading role in the nationwide pursuit of reforms to occupational licensing.

The Real Estate Commission held a public hearing on September 9 and did not receive any public comment. We

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received a letter of support from the Arkansas REALTORS® Association, along with support from Don Berry, who represents the Arkansas Veterans' Coalition. You can read more about the rule changes at [www.arec.arkansas.gov/news](http://www.arec.arkansas.gov/news).

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## 2019 Legislation for Occupational Licensing Reform: Acts 820 and 990

*by Andrea S. Alford*

Occupational licensing reform was a key focus of the 2019 legislative session, with several bills moving forward that help fulfill the objectives of the Governor's Red Tape Reduction Working Group as well as the Occupational Licensing Advisory Group, chaired by AREC Executive Director Gary Isom.

Two such pieces of legislation are Acts 820 and 990. Act 820 provides for automatic licensure of active duty military members stationed in Arkansas, returning military veterans and their spouses when those individuals hold a substantially equivalent occupational license issued by another jurisdiction in the United States. The Act defines "returning military veteran" as "a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable."

The Real Estate Commission currently provides expedited application processing for all current and former military service members and their spouses and is in the process of promulgating rules to comply with Act 820.

Act 990 deals with criminal records in occupational licensure. The Act establishes a list of offenses which disqualify an individual from holding an occupational license without first seeking a waiver, sets forth the criteria for obtaining that waiver and stresses the importance of considering occupational relevance in reviewing criminal background issues. The Act also provides for a five-year disqualification period, after which certain disqualifying offenses will no longer require a waiver for licensure if particular conditions are met.

Act 990 also lists permanently disqualifying offenses. Individuals convicted of these offenses are not eligible to hold an occupational license. Finally, the Act establishes an informal waiver review process by which individuals with criminal records may request a pre-licensure determination of whether their criminal record would disqualify them from licensure and whether they could obtain a waiver. Such requests must contain details of the individual's criminal record, and the agency may require the requestor to submit to and pay fees for state and federal criminal background checks. The agency's review of these requests is an informal, administrative function at the staff level and is considered non-binding.

As with Act 820, AREC is in the process of promulgating rules to comply with Act 990, in addition to structuring the agency's informal waiver review process. Updates on these changes will be posted at [www.arec.arkansas.gov/news](http://www.arec.arkansas.gov/news) as they are available. Copies of both Act 820 and 990 can be found at [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).



## 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 August 2018 through August 2019. Formal Hearing Decisions that have been appealed are not listed.



**Respondent(s):** Steven John Fisher, Executive Broker, Marlin Holm, Principal Broker, Crye-Leike Realtors - Bella Vista, Bella Vista, Arkansas, Formal Hearing #3601

**Violation(s) for Respondent Fisher:** Arkansas Code Annotated §17-42-311(a)(2) and Commission Regulations 8.5(a) and 10.10(a).

**Sanction(s):** The Commission voted unanimously that Respondent Steven Fisher will be issued a fine in the amount of \$3,000. Additionally Respondent Fisher will be required to attend a 30-hour broker post-license education course within six months from the date of the order. A letter of reprimand will be placed in Respondent Fisher's real estate license file for two years. Respondent Fisher is ordered to provide a copy of the letter of reprimand and the content of the hearing to his principal broker. Respondent Fisher's principal broker will need to notify the Executive Director of the Arkansas Real Estate Commission that the principal broker is aware of the hearing. This requirement shall remain in place for two years. In the event that Respondent Fisher changes principal brokers within the two year period, Respondent Fisher will be required to notify the new principal broker of the proceedings. The Commission recommended that Respondent Holm attend a 30-hour broker post-license education course within six months from the date of the order.

On or about September 20, 2012, Sellers Magee entered into an Exclusive Right to Sell Agreement with Crye-Leike Realtors, Bella Vista Branch, for the sale of the property located at 32 Basildon Circle, Bella Vista, Arkansas, for a price of \$108,000. The agreement began September 21, 2012, and expired March 22, 2013. Sellers Magee signed a Seller Property Disclosure dated September 21, 2012. Sellers Magee answered "No." to Question #18 which stated "To your knowledge are there any defects in the appliances or the mechanical, electrical, plumbing, heating and air conditioning, water, sewer or septic systems of the Property"

On or about December 11, 2012, Seller James Magee was listed as the Complainant on a Bella Vista Police Department Report involving Theft, Criminal Mischief, Criminal Trespass, and Breaking or Entering at 32 Basildon Circle, Bella Vista, Arkansas. The report described damages involving piping and copper wiring at the residence.

On or about June 9, 2013, Respondent Listing Agent Fisher was listed as the Complainant on a Bella Vista Police Department Report involving Theft and Breaking and Entering at 32 Basildon Circle, Bella Vista, Arkansas. The report described "70-80 feet of copper pipe that has been cut" and "several wires had been cut out."

On or about June 16, 2013, Contractor Donald Pinc is listed as the Complainant on a Bella Vista Police Department Report involving Theft, Criminal Mischief, Criminal Trespass, and Breaking or Entering at 32 Basildon Circle, Bella Vista, Arkansas. The report described damages involving the basement door, cut copper pipe, and missing wire.

On or about July 8, 2013, Complainant Buyers Elam signed a Real Estate Contract (Residential) to purchase the property at 32 Basildon Circle, Bella Vista, Arkansas, for the purchase price of \$92,000. Complainant Buyers Elam were represented by Lindsey and Associates through Selling Agent Angie Dean. Closing was to occur on August 29, 2013. In paragraph 17 of the contract, titled "Seller Disclosure" it stated, "The written disclosure prepared by Seller is dated July, 8, 2013, and is warranted by Seller to be the latest disclosure and the answers contained in the disclo-

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sure are warranted to be true, correct, and complete to Seller's knowledge." Respondents Fisher and Holm knew or should have known Sellers Magee had not updated the Seller Disclosure form.

On or about July 8, 2013, Complainant Buyers Elam signed the Seller Disclosure form dated by Sellers Magee as September 21, 2012.

The sale of the home closed on September 16, 2013, at Prime Title and Escrow in Rogers, Arkansas.

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**Respondent(s):** Sarah Lynn Barton, Salesperson, J. Pat Newland, Principal Broker, Keller Williams Market Pro Realty, Fayetteville, Arkansas and Eve McCain, Salesperson, Glenda Edwards, Principal Broker, Crye-Leike Realtors - Springdale, Springdale, Arkansas, Formal Hearing #3602

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

**Violation(s) for Respondent Newland:** Arkansas Code Annotated §17-42-311(a)(2) and Commission Regulations 8.5(a) and 10.4(b).

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

**Violation(s) for Respondent Edwards:** Arkansas Code Annotated §17-42-311(a)(2) and Commission Regulations 8.5(a) and 10.4(b).

**Sanction(s):** The Commission voted unanimously that Respondents Sarah Barton and Eve McCain will be required to attend the 18-hour salesperson post license education course within six months from the date of the order, and Respondent Glenda Edwards will be required to attend a 30-hour broker post-license education course within six months of the date of the order.

The Commission voted that Respondent J. Pat Newland will be issued a fine in the amount of \$2,000, to be paid within six months of the date of the order and will be required to attend a 30-hour broker post-license education course within six months of the date of the order.

On or about March 18, 2016, Complainant Seller Hutchison, Seller Donna Clark and Respondent Barton of Keller Williams Market Pro Realty in Fayetteville, Arkansas, entered into an Exclusive Right to Sell Agreement to list subject property located at 2811 Carley Place, Springdale, Arkansas, (Lot 19 Carley Meadows) in the amount of \$153,500. The listing period was to begin on March 18, 2016, and expire on September 30, 2016. The Exclusive Right-To-Sell Agreement was not signed by a Principal or Executive Broker.

On or about July 9, 2016, Buyer Trahan, through Selling Firm Crye-Leike Realtors, submitted a Real Estate Contract for the purchase of 2811 Carley Place, Springdale, Arkansas. The Contract was not accepted by Seller Hutchison.

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## FORMAL HEARING DECISIONS

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On or about July 14, 2016, Respondent Barton, on behalf of Seller Hutchison, submitted a Real Estate Contract to Buyer Trahan for the purchase of 2811 Carley Place, Springdale, Arkansas, in the amount of \$ 136,000 by conventional loan, Seller to pay \$2,000 of buyer's closing cost and/or pre-pays. Paragraph 30 stated, "Seller will complete tiling and grouting in laundry room and kitchen. Seller will move the hot water heater so the door will not hit it. Seller will have support beams reinforced in attic to take care of sagging area, other needed areas (2) will be reinforced." Closing was to occur August 10, 2016. The contract form was prepared by Respondent Barton. Respondent McCain signed the contract as Selling Agent. Respondent Edwards signed as Selling Firm Principal Broker. Respondent Barton signed as Listing Agent. Executive Broker David Hodges signed as Listing Firm Executive Broker. The contract was not signed by Respondent Newland. Buyer Trahan also signed an Earnest Money Addendum indicating \$500 in Earnest Money to be paid by check to the Listing Firm within three days. Buyer Trahan wrote a check for \$500 to Prime Title for the Earnest Money on or about July 15, 2016.

On or about July 15, 2016, Buyer Trahan entered into a Buyer Representation Agreement with Respondent Eve McCain of Crye-Leike Realtors, Springdale in Springdale, Arkansas.

On or about August 5, 2016, a Closing Date Modification was agreed to by Complainant Seller Hutchison and Buyer Trahan to change the closing date from August 10, 2016 to August 19, 2016. Closing did not occur on August 19, 2016. Respondents McCain and Edwards electronically signed the addendum for the Selling Firm. Respondent Barton signed the Closing Date Modification as Listing Agent. Executive Broker David Hodges signed as Listing Firm Executive Broker. The Closing Date Modification was not signed by Respondent Newland.

On or about September 2, 2016, Buyer Trahan signed a General Addendum stipulating Buyer would pay \$50 a month for rent for up to 12 months or at closing of probate. The General Addendum indicated that rents collected from Buyer Trahan were to be credited toward the purchase price at time of closing. Respondents McCain and Edwards signed as Selling Agent and Selling Firm Principal Broker respectively. Respondents Barton and Newland did not sign the General Addendum. Complainant Seller Hutchison did not sign the General Addendum.

On or about September 6, 2016, Buyer Trahan moved into the subject property and wrote a check in the amount of \$100.00 to "Debbie Hutchison" with a memo line which read, "60 days rent". According to Respondent McCain the check was delivered to Seller Hutchison's title company.

Buyer Trahan signed page 4 of the Inspection, Repair and Survey Addendum on September 8, 2016. Respondents McCain and Edwards signed as Selling Agent and Selling Firm Principal Broker respectively.

On or about October 10, 2016, Complainant Seller Hutchison found Buyer Trahan occupying the subject property without her permission or knowledge.

According to billing information, Attorney Larry McCredy and RMP Attorneys at Law worked on a lease agreement for Complainant Hutchison on or about November 10, 2016. A lease agreement between Buyer Trahan and Complainant Seller Hutchison was mailed to Buyer Trahan by Attorney Larry McCredy. The lease agreement was not signed by either party.

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## FORMAL HEARING DECISIONS

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On or about November 14, 2016, Buyer Trahan wrote a check to “Debbie Hutchison” in the amount of \$1400.00 with a memo of “Nov & Dec Lease/Rent.” According to Respondent McCain the check was held by the selling firm, Crye-Leike Realtors - Springdale.

On or about November 16, 2016, Buyer Trahan signed a Closing Date Modification Addendum to change the closing date to November 15, 2017. Complainant Seller Hutchison did not sign the Addendum. Respondents McCain and Edwards signed as Selling Agent and Selling Firm Principal Broker respectively.

On or about January 5, 2017, Prime Title and Escrow Company disbursed \$500 by check number 707838 to Buyer Lindsey Trahan as an Earnest Money Refund.

On or about January 30, 2017, Buyer Trahan vacated the property.

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**Respondent(s):** Mary L. Story, Principal Broker, Mary Story Group, Mena, Arkansas, Formal Hearing #3613

**Violation(s):** Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(6), §17-42-311(a)(7), and §17-42-311(a)(11) and Commission Regulations 7.6, 10.8(g)(2), 10.9(a), and 10.9(b).

**Sanction(s):** Based upon these findings and conclusions, The Real Estate Commission determined and voted unanimously that the license of Mary Story shall be revoked. It has also determined that the respondent be fined in the amount of \$1,000 for the allegations in charges of Paragraph C-1; \$1,000 for the charges in Paragraph C-2; \$1,000 for the charges in Paragraph C-3; and \$1,000 for the charges in Paragraph C-4 in the Order and Notice of Hearing, for a total of \$4000 due within 30 days of date or receipt of this order.

On or about January 20, 2005, Respondent Story submitted a Trust Account Information form to the AREC indicating the Mary Story Group Escrow Account would be held at First National Bank, Mena, Arkansas, in account number ending 24154.

On or about May 8, 2009, Respondent Story submitted a Real Estate License – Firm Change form to the AREC. The form indicated the address for Mary Story Group changed to 1504 – A Suite #1, Mena, Arkansas, 71953.

On or about January 11, 2017, Complainant Hoang and Kim Anh Tran submitted a 2016 Real Estate Contract (Residential) for the purchase of 80 acres on County Road 72 Redbud, Scott County, Arkansas, in the amount of \$3,375,000. The Complainant’s offer to purchase was pursuant to Complainant’s ability to obtain a new loan to be secured by the property at terms acceptable to the buyer. The contract indicated Mary Story Group represented Complainant Hoang and Kim Anh Tran as buyers and Mavrick Trozzi as seller. Earnest money was indicated in the amount of 1% of the purchase price. The contract was accepted by Mavrick Trozzi on January 12, 2017.

On or about January 11, 2017, Complainant Hoang wrote check # 1007 to Mary Story Group in the amount of \$33,750.00 for Earnest Money. The check was deposited January 13, 2017, into the escrow account ending in 24154.

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## FORMAL HEARING DECISIONS

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On or about January 18, 2017, Farm Credit of Western Arkansas denied the loan application of Complainant Hoang and Buyer Tran.

On or about April 17, 2017, Complainant Hoang sent a text message to Respondent Story, "Can I stop by your office on Thursday to get money?" Respondent Story's answered, "I am out of town for the next few days will get it in the mail when I get back." On or about April 24, 2017, Complainant Hoang sent a text message to Respondent Story, "Hello Mary I am Steven Hoang. I am waiting your return money." Respondent Story answered May 1, 2017, "I will bring it no later than Friday. Sorry, traveling."

On or about May 16, 2017, Complainant Hoang texted Respondent Story and asked if the check had been sent. Respondent Story answered May 17, 2017, that it would be done that day.

On May 18, 2017, Respondent Story indicated the money had been sent. Respondent Mary Story wrote check #2744 from the Mary Story Group Real Estate General Account in the amount of \$33,000, to Steven Hoang or Kim Hoang. The check was dated May 30, 2017. Complainant Hoang received the check along with a letter stating the check was written from the General Account and funds would have to be transferred from the escrow account before the funds would be available.

On or about May 30, 2017, Respondent Story texted Complainant Hoang, "Steven, I am coming back June 2nd. Hold on to the check and I wire the money to you from my escrow account. That check was from my general account and not enough money in it. Thanks, Mary"

On July 17, 2017, Complainant Hoang filed complaint 17-060 with the AREC. A copy of the complaint was mailed to Respondent Story on July 25, 2017. The AREC received an Answer to the Complaint from Respondent Story on August 15, 2017.

On August 17, 2017, an AREC Investigator sent a letter to Respondent Story which requested a copy of the transaction file be submitted to the AREC no later than September 6, 2017. No response was received.

On or about August 23, 2017, Respondent Story purchased cashier's check number 68309 from Bear State Bank in the amount of \$33,750. The cashier's check was received and deposited by Complainant Hoang.

On or about April 18, 2018, an AREC Investigator sent a letter by certified mail to Respondent Story which requested a copy of the transaction file and financial records be submitted to the AREC by May 2, 2018.

On or about May 7, 2018, the AREC received additional documents from Respondent Story. The documents included the real estate contract, a commission addendum, the deposit record for Complainant Hoang's earnest money, a withdrawal receipt, a cashier's check for the return of the earnest money, and a document from the Scott County Title Corporation.

On May 16, 2018, an AREC Investigator emailed Respondent Story to schedule an office visit. In an email dated

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May 21, 2018, Respondent Story instructed the AREC Investigator to come to her home at 5776 Hwy 8 West, Mena, Arkansas, for the office visit.

On May 25, 2018, two AREC Investigators conducted an office visit at the home of Respondent Story. Upon approaching the residence, a sign for Mary Story Group was visible at the end of the drive-way. Licenses for Respondent Story, Salesperson Lisa England, Salesperson Cyndee Heath, and Salesperson Kristin Nichols were displayed inside the residence. Respondent Story did not provide a listing agreement for the 80 acre property on County Road 72 in Redbud, Arkansas, during the office visit. Respondent Story also did not provide bank statements or reconciliations for the firm's trust account during the office visit.

On or about August 30, 2018, Respondent Story submitted a Real Estate License – Firm Change form to the AREC. The form indicated the address for Mary Story Group changed to 5776 Hwy 8 West, Mena, Arkansas, 71953.

During the time prior to the return of Complainant Hoang's earnest money Respondent Story did not maintain a balance of at least equal to the amount of Complainant Hoang's earnest money.

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**Respondent(s):** James Clayton Eason, Sales Associate, Keller Williams Market Pro Realty, Fayetteville, Arkansas and Wyatt S. Hively, Sales Associate, Keller Williams Market Pro Realty - Branch, Bentonville, Arkansas, Formal Hearing #3619

**Violation(s) for Respondent Eason:** Arkansas Code Annotated §17-42-311(a)(2), §17-42-311(a)(9), §17-42-311(a)(10), and §17-42-311(a)(13) and Commission Regulations 8.5(b), 10.1(b), and 10.5(b).

**Violation(s) for Respondent Hively:** Arkansas Code Annotated §17-42-311(a)(2) and §17-42-311(a)(13) and Commission Regulations 8.5(b) and 10.1(b).

**Sanction(s):** Based upon these findings and conclusions, The Commission voted unanimously that Respondent Hively complete eighteen (18) hours of post-license education within six months of the date of this order. Respondent Hively will also be on probation for a period of two years. The respondent must notify the principal broker of this proceeding. During the two year probation, if the respondent changes principal brokers or real estate companies, the respondent must notify the Arkansas Real Estate Commission, or if the principal broker within the company changes, that any subsequent principal broker must be made aware of this proceeding and the principal broker must notify the Director of the Arkansas Real Estate Commission that they are aware of this proceeding.

The Real Estate Commission voted that Respondent Eason be fined in the amount of \$5,000 payable within ninety (90) days of the date of this order. It has also determined that the respondent complete eighteen (18) hours of post-license education and sixty (60) hours of pre-license education by December 31, 2019. Respondent Eason will be on probation for a period of two years. The respondent must notify the principal broker of this proceeding. During the two year probation, if the respondent changes principal brokers or real estate companies, the respondent must notify the Arkansas Real Estate Commission, or if the principal broker within the company changes, that any subsequent

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principal broker must be made aware of this proceeding and the principal broker must notify the Director of the Arkansas Real Estate Commission that they are aware of this proceeding.

On or about December 2014, August 2015, and November 2016, Arkansas Real Estate Commission newsletters highlighted the importance for licensees to comply with Commission Regulation 10.5 in order to avoid advertising in a manner that distances themselves from their Principal Broker, thereby diminishing the consumers ability to determine the identity of their Principal Broker and the brokerage firm with which they are licensed.

On or about May 19, 2016, the AREC Supervisor sent a letter to Respondent Eason, then actively licensed with Keller Williams Market Pro Realty, Fayetteville, Arkansas, informing him that Commission Regulation 10.5 requirements apply to all real estate advertising and promotional activities, and failure to comply with those regulations could result in disciplinary actions. Respondent Eason was asked to respond by June 3, 2016, explaining the measures he would take to operate in compliance with Commission Regulation 10.5. A copy of the letter was sent to Principal Broker J. Pat Newland, Keller Williams Market Pro Realty, Fayetteville, Arkansas, asking Mr. Newland to respond with an explanation of his efforts to supervise Respondent Eason's real estate activities and to instruct Respondent Eason with regard to the fundamentals of real estate as required by Commission Regulation 10.4(b).

On or about June 1, 2016, Respondent Eason sent a letter to AREC stating he had received the AREC Supervisor's letter of May 19, 2016, and had addressed two situations that could have led to possible violations of Commission Regulation 10.5 through social media. Respondent Eason indicated he would work to correct any advertising not in compliance with Commission Regulation 10.5.

On or about June 7, 2016, the AREC Supervisor sent a letter to Respondent Eason, in response to Respondent Eason's letter dated June 1, 2016, which indicated Respondent Eason continued to have internet advertisements that were in possible violation of the requirements of Commission Regulation 10.5. Included in the letter was an attachment on which the AREC Supervisor wrote notes to Respondent Eason regarding the websites that were of concern. The AREC Supervisor requested Respondent Eason remove any advertising that did not meet the requirements of Commission Regulation 10.5 and send a written response to AREC by June 21, 2016, explaining the measures being taken to operate in compliance with Regulation 10.5. A copy of the letter was also sent to Principal Broker J. Pat Newland at Keller Williams Market Pro, Fayetteville, Arkansas, requesting a response from Newland explaining his efforts to supervise Respondent Eason's real estate activities and instruct Respondent Eason with regard to the fundamentals of real estate practice as required by Commission Regulation 10.4(b).

On or about July 22, 2016, Kyle Dempsey, licensed salesperson with Keller Williams Market Pro, Fayetteville, Arkansas, sent an email to the AREC Supervisor and Respondent Eason in which Dempsey instructed Respondent Eason to "take down" any internet pages which included Dempsey's name which were non-compliant.

On or about July 22, 2016, AREC Executive Director Gary Isom sent a letter to Respondent Eason notifying him that since Respondent Eason had been notified by the Commission in 2016 regarding his compliance with Commission Regulation 10.5, and to date it remained unclear as to whether or not the matter was satisfactorily resolved,

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the Commission staff was not authorized to renew his license beyond December 31, 2016. Respondent Eason was advised to send to Mr. Isom's attention, a written request to appear before the Commission to seek renewal of his real estate license beyond December 31, 2016.

In a follow up to Mr. Isom's letter of July 22, 2016, and a subsequent conference call held August 29, 2016, with Principal Broker J. Pat Newland and Respondent Eason, Newland submitted a letter to AREC on or about August 30, 2016, confirming steps he had taken to clarify the Commission's interpretation of Regulation 10.5, and to insure licensees under his supervision received the guidance they needed to be in compliance with that regulation.

On or about September 7, 2016, Respondent Eason submitted a letter to AREC regarding his understanding of Commission Regulation 10.5 and actions he was taking to achieve compliance. In his letter Respondent Eason stated, "Since our meeting earlier this week I've reached out to Zillow to change the way my name appears on listings, as we recently saw..." Clayton Eason Realty, Inc., looks to be the firm I work for rather than Keller Williams Market Pro Realty."

On or about March 29, 2017, Respondent Eason, while still licensed with Keller Williams Market Pro, advertised on the website <https://nwaluxury.platformcrm.com/big-sky>, the gated community Big Sky – Bentonville West, as having "1/2 acre lots – design, build and buy your dream home for as low as \$349,900." Details in the advertisement included contacting Respondent Eason with Clayton Eason Realty, as he was "introducing a new home buying process." Respondent Eason stated on his website that Clayton Eason Realty, "proudly presents a unique opportunity for home buyers in Northwest Arkansas," and, "Will be working with Zachary Construction." Respondent Eason was not licensed as Clayton Eason Realty, Inc., or Zachary Construction. Complainant Gavin Edwards, owner of the Big Sky development and Principal Broker of the listing firm, Synergy Realty Group, LLC, was not displayed in the website advertisement, and had not given Respondent Eason permission to advertise the Big Sky properties.

On or about March 29, 2017, Respondent Hively, while still licensed with Keller Williams Market Pro, advertised on the website, [www.nwamoveprogram.com](http://www.nwamoveprogram.com), "The Big Sky and Clayton Eason Realty now introduce a new home buying process with these stylish, unique, and custom Country Homes and Farmhouses built at not only comparable, but a more competitive price for this prime location....Click 'View Details' to see how to start the process. Questions? Call Wyatt Hively @479-925-4168. To view more pictures of style to be built, floorplan options, available lots, pricing, builder info, loan qualification process, or any other details please press the 'View Details' button above." Respondent Hively was not licensed as Clayton Eason Realty. Complainant Gavin Edwards, owner of the Big Sky development and Principal Broker of the listing firm, Synergy Realty Group, LLC, was not displayed in the website advertisement, and had not given Respondent Hively permission to advertise the Big Sky properties.

On or about October 17, 2017, Complainant Edwards received two marketing emails from Respondents Eason and Hively. The first email promoted property at 334 W. Horn Street, Fayetteville, Arkansas, advertising the property as "just listed today," and that it could be seen by contacting Respondents Eason or Hively, now licensed with NWA Residential Real Estate, Principal Broker, Ken Lazenby. The listing agent for 334 W. Horn Street, Lenore Cottrell of The Brandon Group, Bentonville, Arkansas, was not mentioned. The second email promoted property at 520 SE Tourmaline Mews, Bentonville, Arkansas, advertising the property as, "we have 9 modern townhomes that have

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## FORMAL HEARING DECISIONS

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been left white box...” and included description of style and location, and that it could be seen by contacting Respondents Eason or Hively. The brokerage firm with whom Eason and Hively were licensed, NWA Residential Real Estate, was inconspicuously listed at the bottom. The listing agent, John Mayer of Coldwell Banker Harris, McHaney & Faucette – Rogers, was not mentioned in the email.

On or about December 19, 2017, Complainant Edwards received a marketing email from Respondents Eason and Hively promoting property located at 4715 N. 2nd Street, Rogers, Arkansas, advertising the property as, “just hit the market and available for immediate showings.” The brokerage firm with whom Eason and Hively were licensed, NWA Residential Real Estate, was inconspicuously listed at the bottom. The listing agent, Suzanne Allen, Crye-Leike Realtors – Rogers, Arkansas, was not mentioned in the email.

On or about December 19, 2018, Principal Broker Ken Lazenby of NWA Residential Real Estate confirmed he was not aware that Respondents Eason or Hively had sent marketing emails regarding the properties located at 334 W. Horn Street, Fayetteville, Arkansas; 520 SE Tourmaline Mews, Bentonville, Arkansas; or 4715 N. 2nd Street, Rogers, Arkansas.

On or about May 17, 2018, Respondent Eason’s Zillow advertisement landing page made multiple references to Clayton Eason Realty, Inc., or Clayton Eason Realty with an address of 1111 N. Walton Blvd., Bentonville, Arkansas. The office of NWA Residential Real Estate is located at 1111 N. Walton Blvd. in Bentonville, Arkansas.

On or about August 9, 2018, the 21 listings presented on Respondent Eason’s webpage, [www.nwahomes.com/agent/clayton-eason-realty](http://www.nwahomes.com/agent/clayton-eason-realty), showed as active listings. On or about August 9, 2018, the 21 listings, according to NABOR MLS, were all cancelled, sold or withdrawn and none were currently active listings.

On or about August 10, 2018, the 32 listings presented on Respondent Eason’s webpage, <https://claytoneasonrealty.com>, showed 30 were active and 2 were pending. On or about August 10, 2018, Clayton Eason Realty had 4 active listings per NABOR MLS, and 2 of those were pending.

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**Respondent(s):** Jason Lance Whitley, Principal Broker, The Real Estate Firm of Whitley & Associates, Jonesboro, Arkansas, Formal Hearing #3585 (February 26, 2016)

**Violation(s):** Multiple violations of Arkansas Code Annotated §17-42-311(a)(2) and §17-42-311(a)(6), and Commission Regulations 7.6(b), 8.5(a), 10.7(c), 10.10(a), 10.21(a), and 10.22(g).

**Sanction(s):** It is therefore ordered that Respondent Jason Lance Whitley’s Arkansas real estate broker license is surrendered for no less than two (2) years from the date of this Order, after which he must appear before the Commission if he wishes to be considered for and determined to be eligible to apply for an Arkansas real estate license. During such appearance before the Commission, the Commissioners may require Respondent to complete appropriate educational programs or courses; successfully complete an appropriate licensing examination, and place conditions

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## FORMAL HEARING DECISIONS

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or restrictions upon the Respondent's practice or license. Restrictions may include, but not be limited to temporarily restricting Respondent to a salespersons license only.

It is further ordered that the Commission shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order and that the Commission may conduct further proceedings herein to hear claims by Complainants pursuant to Arkansas Code Annotated § 17-42-401 et seq. seeking to recover damages suffered as a result of Respondent's violations of law as set out above.

**Recovery Fund Order:** As a direct result of the proven violations by Respondent Jason Lance Whitley in the February 26, 2016 Consent Order, Formal Hearing #3585, in the subsequent Recovery Fund Hearing held August 12, 2019, the Commission finds that Respondent Jason Lance Whitley is liable and ordered to pay the complainants within thirty (30) days of the date of this Order.

As a result of the above proven violations, the Commission voted for Respondent Whitley to pay as follows:

Complainant Willie Mae Cornelius for \$10,631.81.

### **Complainant Darren J. Smith, Landlord**

On or about February 24, 2015, Complainant Smith entered into a Residential Management Agreement with Respondent's real estate firm identified as Agent for the property located at 1511 Country Manor, Jonesboro, Arkansas. Paragraph 4 stated "The Owner shall pay the Agent as a management fee a sum equal to (10%) of the gross rentals collected..." Paragraph 11 stated "This Agreement shall continue for a period of one (1) year from the date of execution and shall be automatically renewed from year to year unless terminated by either party upon written notice to the other party not less than sixty (60) days before any expiration date." Paragraph 20 stated "Agent shall manage the cash flow and records of the Property in a comprehensive manner. The distribution of funds less reserve for each month shall be forwarded to Owner no later than the twentieth (20th) day of the following month", and "No later than the twentieth (20th) day of each month, with respect to the preceding month, Agent shall render, to Owner or to whomever Owner shall designate, detailed statements of receipts and disbursements. Agent, if requested, forward, to Owner or to whomever Owner shall designate, copies of all paid invoices, vouchers or bills pertaining to the Property, supporting all charges against the Property's disbursement statement for that month. Agent shall preserve originals of such invoices, vouchers and bills until such time as this Agreement is terminated, whereupon, at the request of Owner, all such original invoices, vouchers, bills or statements shall be transferred to Owner." Paragraph 23 specified the commencement date of the agreement as February 24, 2015.

On or about April 1, 2015, Complainant Smith and Tenants Davis entered into a Lease Agreement on the subject property. Respondent's real estate firm was named as the authorized agent of Landlord Complainant Smith. The agreement stated rent was \$975 per month. The ending date for the lease was March 31, 2016. The agreement showed a Security Deposit sum of \$0.00.

From April 1, 2015 through July 30, 2015, Tenants Davis' ledger reflected rent payments made each month which

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## FORMAL HEARING DECISIONS

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totaled \$3,750. Respondent's rental statement for Tenant Davis indicated monthly rental payments were paid on April 1, May 5, June 1 and July 8, 2015. Expenses for the second quarter of 2015 plus the month of July 2015 as reflected in Respondent's records totaled \$2,194.80. Respondent did not provide Complainant Smith monthly cash flow statements and distribution of rents pursuant to paragraph 20 of the Residential Management Agreement for the months of April, May, June or July of 2015. Respondent's Rental owner ledger reflects two Owner Draws for 1511 Country Manor for June 30, 2015 and July 31, 2015 totaling \$1,555.20. Respondent's Ledger Reconciliation for Complainant Smith reflects that on or about September 5, 2015, Respondent Whitley distributed \$1,555.20 to Complainant for the months of April 2015 through July 2015 rents.

From August 1, 2015 through November 30, 2015, Tenants Davis' rental statement reflected rent payments made each month totaling \$3,900. Respondent's rental statement for Tenants Davis indicated monthly rental payments were paid on August 5, September 9, October 6 and November 6, 2015. Expenses for the August through November of 2015 as reflected in Respondents records totaled \$234.50. Respondent did not provide Complainant Smith monthly cash flow statements and distribution of rents pursuant to paragraph 20 of the Residential Management Agreement for the months of August, September, October or November of 2015. Respondent's Rental owner ledger reflects an Owner Draw for 1511 Country Manor for November 30, 2015 for \$3,665.50. Respondent's Ledger Reconciliation for Complainant Smith reflects that on or about December 31, 2015, Respondent Whitley distributed \$3,665.50 to Complainant Smiths for the months of August 2015 through November 2015 rents.

For December 2015, Tenants Davis' rental statement reflected rent of \$975 was paid on December 5, 2015. Expenses for December 2015 as reflected in Respondents records totaled \$48.75. Respondent did not provide Complainant Smith a monthly cash flow statement and distribution of rent pursuant to paragraph 20 of the Residential Management Agreement for the month of December 2015. Respondent's Rental owner ledger reflects an Owner Draw for 1500 Country Manor for December 31, 2015 of \$926.25. Respondent's Ledger Reconciliation for Complainant Smith reflects that on or about February 10, 2016, Respondent Whitley distributed \$926.25 to Complainant Smith for December 2015 rent.

For January 2016, Tenants Davis' rental statement reflected rent of \$975 was paid on January 7, 2016. Expenses in the form of management fees for January 2016 as reflected in Respondents records totaled \$48.75. Respondent did not provide Complainant Smith a monthly cash flow statement and distribution of rent pursuant to paragraph 20 of the Residential Management Agreement for the month of January 2016. Respondent's Ledger Reconciliation dated May-16 reflects a payment of \$926.25 by check # 6098 was made on March 7, 2016 for January 2016 rent distribution.

On April 8, 2016, Respondent Whitley sent an email to Complainant Smith to inform him that Tenants Davis were behind in rent and were in the process of moving out. Respondent Whitley stated Tenants Davis had paid part of February 2016 rent and no rent in March. For February, 2016, Tenants Davis' rental Statement reflected rent of \$300 was received on February 16, 2016. Expenses for February 2016 as reflected in Respondents records totaled \$15.00. Respondent did not provide Complainant Smith a monthly cash flow statement and distribution of rent pursuant to paragraph 20 of the Residential Management Agreement for the month of February 2016. No further rental distribution was made to Complainant Smith until May 2016.

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## FORMAL HEARING DECISIONS

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By email to Complainant Smith dated April 21, 2016, Respondent stated in part “I think it is best at this time for us to terminate our agreement. Obviously your expectations are different than what we feel is realistic at this time. If you would like for me to continue to show the property tomorrow and this weekend I will be more than happy to, however the leasing fee will be 10% of the value of the lease and will be due upon the tenants’ execution”. By email to Respondent dated April 21, 2016, Complainant stated “Do continue to show the property”. Respondent did not obtain a written and signed agreement with Complainant Smith for the 10% leasing fee.

On April 28, 2016, Tenants Frogge and House signed a Lease Agreement with Complainant Smith. Respondent’s firm was named as the authorized agent for Landlord Complainant Smith. The agreement stated monthly rent was to be \$1,025 with a lease term of May 1, 2016 to April 30, 2017. Tenants Frogge and House signed a Security Deposit Agreement in the amount of \$500. Tenants Frogge and House paid a Security Deposit in the amount of \$500 and rent in the amount of \$1,025.

On May 11, 2016, Respondent Whitley sent an email to Complainant Smith which stated, “The tenants have moved in and have paid rent through 5/31/16. I issued a check in the amount of \$44.75 which was the remaining balance in your account with us after expenses. This check in addition to the check for \$926.25 that hit your account in early March totals \$971, which is everything from 1/1/2016-5/21/2016. These are the close out documents from us on your account. As you will recall my email dated 4/21/2016 specified that we would continue to show and lease your property, however there would be a 10% leasing fee for the value of the lease, that would be due payable at the lease execution, and you replied to continue showing. The value of the lease was \$12,300 @10% totals a leasing fee of \$1,230, which you will see expensed under management fees in the Income Statement Detailed report attached.”

In an email dated May 16, 2016, Complainant Smith asked Respondent Whitley “Does closing out documents related to said property mean you have officially terminated out (sic) contractual agree (sic)?” In an emailed response Respondent stated “Yes I have closed out your documents to end the agreement per my email several weeks back...” .

Respondent prepared an Income Statement Detailed for 2016 to close out Complainant’s account for 1511 Country Manor. The statement included February rent and expenses plus May 2016 rent and security deposit paid by Tenants Frogge and House. In addition to other expenses the statement included an expense of \$1,230 identified as “12 mo 10% 12,300 lease value”.

By letter dated May 25, 2016 AREC mailed Complainant Smith’s Complaint and an answer form to Respondent Whitley at his address of record. The letter was returned to AREC with a hand written note, “No Longer @ this address – F.C.L.J.” By letter dated July 29, 2016, AREC mailed the complaint and answer form via certified mail and requested Respondent Whitley respond within five (5) days. A certified copy was also mailed to Attorney for Respondent Whitley, Martin E. Lilly. Attorney Lilly’s mail was delivered August 3, 2016. Respondent did not file an answer to the complaint pursuant to the requests. Respondent had not informed the Commission that his address had changed. On June 19, 2017, Respondent’s Attorney Dennis Zolper provided to AREC Respondent Whitley’s answer to multiple complaints for which Respondent had not filed a written answer with AREC. Respondent Whitley’s answer stated, “As for Mr. Smith, we plan on reaching out so we can find out exactly what his claim may

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be and if we can be of assistance in resolving his claim.”

### **Complainants Walter and Willie Mae Cornelious, Landlord**

Complainants Cornelious owned property located at 1000 Sandino Drive in Jonesboro, Arkansas. On April 24, 2013, Complainant Willie Cornelious entered into a Residential Management Agreement with Whitley & Associates, Inc. for the property referred to in the management agreement as “Willie Starks Property”. The Residential Management Agreement listed the property as located at Exhibit B. Exhibit B stated 1000 Sandino. Paragraph 2(d) of the Residential Management Agreement stated “Agent will deposit all rents from the tenants to the Owners Operating Trust Account. Owner will pay all expenses relating to the Property, including but not limited to: the mortgage, real estate taxes and assessments, insurance...” Paragraph 4 of the Residential Management Agreement stated “The Owner shall pay the Agent as a management fee a sum equal to (7%) of the gross rentals collected...” Paragraph 11 stated “This Agreement shall continue for a period of one (1) year from the date of execution and shall be automatically renewed from year to year unless terminated by either party upon written notice to the other party not less than sixty (60) days before any expiration date.” Paragraph 18 stated “This Contract may not be modified, altered, or mended (sic) in any manner except by an Agreement in writing executed by all parties”. Paragraph 20 stated “Agent shall manage the cash flow and records of the Property in a comprehensive manner. The distribution of funds less reserve for each month shall be forwarded to Owner no later than the twentieth (10th) day of the following month...”, and “No later than the twentieth (20th) day of each month, with respect to the preceding month, Agent shall render, to Owner or to whomever Owner shall designate, detailed statements of receipts and disbursements. Agent, if requested, forward, to Owner or to whomever Owner shall designate, copies of all paid invoices, vouchers or bills pertaining to the Property, supporting all charges against the Property’s disbursement statement for that month. Agent shall preserve originals of such invoices, vouchers and bills until such time as this Agreement is terminated, whereupon, at the request of Owner, all such original invoices, vouchers, bills or statements shall be transferred to Owner.” Paragraph 23 specified the commencement date of the agreement as April 23, 2013.

Sometime between April 30, 2013 and December 31, 2013, Complainants Cornelious verbally agreed for Respondent Principal Broker Whitley to make Complainants’ mortgage payments to Nationstar Mortgage from the rents collected on the subject property. Complainant Cornelious identified five late payments that resulted in additional fees for February 29, 2016; March 31, 2016; April 29, 2016; June 30, 2016 and July 29, 2016.

On the Complainants’ Rental Owner Statement, Respondent Whitley listed four Owner Draws which Complainants Cornelious stated they never received. Those draws occurred on January 31, 2014 in the amount of \$223.34; April 30, 2016 in the amount of \$2,828.76; May 31, 2016 in the amount of \$225.12; and June 30, 2016 in the amount of \$401.12.

Sometime in May of 2016 Complainant Cornelious went to Respondent Whitley’s office and found the building unoccupied.

On August 19, 2016, Complainant Cornelious terminated the Property Management Agreement with Whitley & Associates, Inc. and requested the deposit and balance of account. Complainant Willie Cornelious stated she never received anything from Respondent Whitley after this date.

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On September 7, 2016, Complainant Cornelious filed a complaint with the Real Estate Commission. In the complaint, Complainant stated “Money owed to homeowner \$4,910.64.” By letter dated July 17, 2017 Respondent’s Attorney, Dennis M. Zolper filed Respondent’s answer to the complaint in which Respondent stated “I do not wish to contest Mr. & Mrs. Cornelious’ statement as to the amount owed as I was ultimately responsible for seeing that they received the appropriate funds. I plan thru my Attorney to contact Mr. & Mrs. Cornelious next week to make arrangements to re-pay the sum of \$4,910.64 which is claimed”. Respondent also stated in his answer “When I closed my office a significant amount of electronic (records) was lost and can’t be recovered”.

By letter to Complainant Willie Mae Cornelious dated July 17, 2017 Attorney Zolper extended Respondent’s offer to pay Complainant the sum of \$4,910.64. By a letter of response dated July 21, 2017 to Attorney Zolper, Complainant requested \$8,180.69 from Respondent. In a letter to the Real Estate Commission Investigator dated July 21, 2017, Complainant stated that she had declined the Respondent’s offer and was asking for \$8,180.69. On or about July 24, 2017, Attorney Zolper wrote AREC a letter advising AREC that Complainant Cornelious declined Respondent Whitley’s offer to pay \$4,910.64, the amount stated in the complaint. Attorney Zolper stated the additional amount which Complainant Cornelious claims are due was a result of events and occurrences that Whitley & Associates, Inc. would not have been responsible for under the management agreement. On or about January 31, 2018, Attorney Zolper wrote AREC a letter advising AREC that Responded would still agree to pay the amount due Complainant Cornelious as set out in her complaint.

By letter dated September 13, 2016, AREC mailed a copy of Complainant Cornelious’ complaint and answer form to Respondent Whitley at his address of record. The letter was returned to AREC marked Return to Sender with a handwritten note “Not @ this address”. By letter October 14, 2016, AREC mailed the complaint and answer form via certified mail and requested Respondent Whitley respond within five (5) days. A certified copy was also mailed to Attorney for Respondent Whitley, Martin E. Lilly. Attorney Lilly’s mail was delivered and signed for by Martin E. Lilly. Respondent did not file an answer to the complaint pursuant to the requests. Respondent had not informed the Commission that his address had changed.

### **Arkansas Real Estate Commission**

Respondent’s CHECKING DEPOSIT slips for J A WHITLEY INVESTMENTS LLC TRUST ACCOUNT included dollar amounts which were not identified to a specific property, tenant or owner to which they were applicable.

Respondent Whitley stated in his response to this complaint that he was not able to provide copies of Property Management contracts and ledgers because he had lost the electronic records when he closed his office. Respondent Whitley did not notify AREC of the closure of his office and/or provide information regarding the location of where books and records would be stored.