

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 THE STATE REAL ESTATE)
 COMMISSION OF THE STATE OF)
 NEBRASKA,)
 Complainant,)
)
 v.)
 STEVEN RANDOLPH WILEY,)
)
 Respondent.)

Case No. 2015-039

STIPULATION AND CONSENT ORDER

Respondent Steven Randolph Wiley ("Wiley") and The State of Nebraska, by and through the State Real Estate Commission of the State of Nebraska (the "Commission"), hereby stipulate and agree as follows:

1. A Complaint was served upon Wiley for alleged violations of the Nebraska Real Estate License Act. The Complaint was issued in the above-captioned case and is incorporated as a part of this Stipulation and Consent Order.
2. Wiley recognizes his right to a hearing on this matter pursuant to law, acknowledges that he knowingly and voluntarily waives his right to said hearing, acknowledges that he waives his right to any appeal from this Order of the Commission, and he agrees to accept the terms and conditions of this Stipulation and Consent Order.
3. At all times material to this case, Wiley was and is the holder of a real estate broker's license issued by the Commission. Wiley was and is the designated broker for MarketPro, Inc., d/b/a Smarter Choice Real Estate, 6615 Potomac Pl., Lincoln, Nebraska 68516.

4. Wiley warrants that the stipulated facts set forth in this Stipulation and Consent Order are accurate and complete and acknowledges that he has provided all material information in his knowledge, possession, custody or control to the Commission as an affirmative assertion, knowing and intending that the Commission would rely upon same. Wiley further acknowledges that: (A) he has no knowledge of any information which is material to the pending complaint proceeding which has not already been fully disclosed to the Commission; (B) in deciding to accept this Stipulation and Consent Order, the Commission has reasonably relied upon the accuracy and the completeness of Wiley's disclosures and warranties thereof; and (C) the representations contained in this Paragraph 4 are material to and substantially contributed to the Commission's decision to accept this Stipulation and Consent Order. Wiley further acknowledges that, if he has made any material misrepresentations to the Commission regarding the subject matter of this complaint proceeding, either by omission or commission, the Commission may vacate this Stipulation and Consent Order and re-institute the prosecution of this case against Wiley.

BACKGROUND FACTS

5. On or about July 10, 2014, Patrick J. Kenney, Kim C. Kenney, both personally and as representatives of the Patrick J. & Kim C. Kenney Revocable Trust (hereinafter "Owners"), entered into an Exclusive Listing Agreement with Wiley regarding the subject property located at 3841 Cape Charles Court, Lincoln, NE 68516 (hereinafter the "Subject Property").

6. The Listing Agreement identified the list price to be \$340,000.00 and the listing period as July 8, 2014 through May 9, 2015.

7. On or about August 11, 2014, Robert and Waraporn Mahlman (hereinafter the

"Mahlmans"), through their agent Jeanine Curtis (hereinafter "Curtis"), submitted a Purchase Agreement for the Subject Property with the following terms:

Purchase Price \$315,000.00, earnest money deposit of \$2,500.00, conditional upon conventional financing, the Mahlman's request home inspection, closing to be September 19, 2014.

8. On or about August 18, 2014, Owners countered the offer made by the Mahlman's. The new purchase price to be \$325,000.00, with closing to be sixty (60) days after acceptance of counter offer, and the subject property will remain on the market for back-up offers during the home inspection period only (hereinafter the "Mahlman Purchase Agreement").

9. On or about August 18, 2014, the Mahlman's accepted the counter offer made by Owners.

10. On or about August 19, 2014, Owners received for a copy of a fully executed purchase agreement.

11. On or about August 19, 2014, Curtis e-mailed Wiley indicating the Mahlman's purchase agreement was not notarized, and that Wiley needs to have the document notarized.

12. On or about August 19, 2014, Wiley e-mailed Curtis indicating Wiley was out of town and would not be back until September 3, 2014, and can have the purchase agreement notarized then. Wiley further indicated the Nebraska Real Estate Commission and the Nebraska Board of Realtors were phasing out the notary requirement for homestead properties, and the Nebraska Real Estate Commission Trust Account Auditors do not look for notarization when conducting transaction file audits.

13. On or about August 20, 2014, Curtis's managing broker e-mailed Curtis

informing Curtis the notarization requirement was still in effect.

14. On or about August 20, 2014, Marle and Marilyn Smith (hereinafter the "Smiths") signed a Consent to Dual Agency in which they agreed Wiley could represent them and Owners in a potential transaction for the subject property.

15. On or about August 20, 2014, Wiley prepared an offer to purchase the subject property, on behalf of the Smiths, on the following terms (hereinafter the "Smith Purchase Agreement):

The purchase price to be \$339,500.00, earnest money deposit of \$5,000.00, the remaining balance of \$334,500.00 to be paid in cash, closing to be November 14, 2014, or within two (2) days after loan approval whichever occurs last, and that acceptance of this offer constitutes a "first position" back up offer.

16. On or about August 21, 2014, Owners accepted the Smiths' offer, signed Wiley's Consent to Dual Agency Agreement, and receipted for a copy of a fully executed purchase agreement.

17. On or about August 21, 2014, Owners contacted Wiley and indicated they wanted out of the Mahlman Purchase Agreement. Wiley advised Owners to contact an attorney.

18. On or about August 22, 2014, Curtis e-mailed Wiley expressing concern over the transaction falling through. Curtis indicated a willingness by the Mahlman's to continue with the transaction.

19. On or about August 22, 2014, Wiley e-mailed Curtis informing Curtis Owners had retained legal counsel (hereinafter "Legal Counsel") regarding the Mahlman Purchase Agreement.

20. On or about August 22, 2014, the Mahlmans received a letter from Legal Counsel informing the Mahlmans Owners would not be lowering the price of the subject property anymore. Legal Counsel indicated should the Mahlmans not wish to purchase the subject property "as is," Owners would be willing to release the Mahlmans from the Mahlman Purchase Agreement.

21. On or about August 25, 2014, Owners and the Mahlmans signed an Addendum to Purchase Agreement Mutual Release/Contingency Removal voiding the Mahlman Purchase Agreement, and releasing the earnest money deposit of \$2,500.00 to the Mahlmans.

22. On or about September 5, 2014, the Smiths receipted for a copy of a fully executed purchase agreement.

23. On or about October 23, 2014, the Owners and the Smiths closed on the subject property.

FINDINGS

Count I

24. The Commission re-alleges and incorporates herein by reference each and every allegation set forth above in Paragraphs 1 through 24 inclusive of this Complaint.

25. The Commission finds Wiley has violated unfair trade statute NEB. REV. STAT. § 81-885.24(20) ("[f]ailin[g] to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller") by allowing the Kenneys', and Smiths, to receipt for a fully executed purchase agreement when the Kenneys' signatures were not notarized and Wiley knew or should have known, pursuant to Neb. Rev. Stat. § 40-104, in pertinent part, "The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and

acknowledged by both husband and wife...," the Smith Purchase Agreement was not complete due to the signatures of Owners not being notarized.

26. The Commission finds Wiley has violated unfair trade statute NEB. REV. STAT. § 81-885.24(29) ("[d]emonstrat[e] negligence, incompetency, or unworthiness to act as a broker..., whether of the same or of a different character as otherwise specified in this section") by (1) failing to have any of the purchase agreements in this transaction notarized as required by Neb. Rev. Stat. § 40-104; (2) making false assertions that notarization was no longer required and the Nebraska Real Estate Commission Trust Account Examiners do not check for proper notarization, and (3) representing that Wiley was no longer involved in the transaction when in fact Wiley was working with both the Smiths and Owners on the Smith Purchase Agreement.

27. Wiley admits the allegations as stated in Paragraphs 1 through 26 above are true. Wiley agrees with the actions of the Commission and accepts the discipline which shall be made a part of his permanent record maintained by the Commission and which shall be received into evidence in any subsequent proceeding against him, should one arise..

28. Wiley has prior disciplinary actions against his real estate broker's license. To wit, Complaint 2009-023 Hobert Eugene Brake vs Steven Randolph Wiley, Broker and Mary Kathryn Waring-Wiley, Salesperson. Wiley violated NEB. REV. STAT§ 81-885.24 (2) ("Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted.") by failing to remove expired listings from his website and violated NEB. REV. STAT. § 81-885.24 (12) ("[o]fferin[g] real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent.") by continuing to identify real property for sale on his website without the

consent or knowledge of the owner because he failed to remove the expired, withdrawn or terminated listings from his website. Wiley entered into a Stipulation and Consent Order in which he agreed to a license censure and an additional nine (9) hours of continuing education to include three (3) hours in the area of risk management, three (3) hours in the area of ethics, and three (3) hours in the area of license law.

29. The following disciplinary action is imposed upon Wiley in the public interest and for the protection of public health, safety, and welfare.

ACCORDINGLY, IT IS ORDERED, AS FOLLOWS:

A. The Nebraska real estate broker's license of Respondent Steven Randolph Wiley is hereby suspended for a period of one (1) year, with the first thirty (30) days served on suspension, and the remainder stayed and served on probation. Should Wiley violate any law administered by the State Real Estate Commission of the State of Nebraska during the entirety of his probationary suspension period, it may result in a Show Cause proceeding being brought against him by the Commission, in which case, his Nebraska real estate broker's license may be suspended for the remainder of the probationary suspension period and, in addition to or as an alternative to such suspension, the Commission may, as the result of the findings of such hearing, impose any other sanctions as provided in the Nebraska Real Estate License Act.

B. Within 30 days of the signing of this Order by the Chairperson of the Commission, Respondent Steven Randolph Wiley shall pay a civil fine in the amount of \$1,500.00. Said civil fine payment shall be submitted to the Commission under separate cover letter, addressed to Commission Director Greg Lemon, with reference to Case No. 2015-039.

C. Within six (6) months of the signing of this Order by the Chairperson of the Commission, Respondent Steven Randolph Wiley shall complete one (1) three (3) hour continuing

Complaint No. 2015-039

Accepted and approved this ____ day of April, 2016.

STATE OF NEBRASKA, ex rel.,
THE STATE REAL ESTATE
COMMISSION OF THE STATE OF
NEBRASKA,

By: _____
John A Gale, Chairperson

Attest By:

Greg Lemon, Director