

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph K. Anderson, III
Chief Administrative Law Judge

19862

Trial Court Case No. 2011-AL-11-00168

Vanessa Patrick,

Appellant,

v.

Respondent.

South Carolina Department of
Labor, Licensing and
Regulation, State Real Estate
Commission,

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SC Court of Appeals

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Vanessa Patrick,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, State Real
Estate Commission,

Respondent.

Docket No. 11-ALJ-11-0168-AP

ORDER

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Vanessa Patrick (Appellant) from a decision of the South Carolina Department of Labor, Licensing and Regulation (Department), State Real Estate Commission (Commission) dated February 17, 2011, which permanently revoked Appellant's real estate license and fined her twenty-five hundred dollars (\$2,500.00) for violations under S.C. Code Ann. §§ 40-57-135(B)(8) and (D), 40-57-137(K), 40-1-110(1)(c),(f),(g), and (k), and 40-57-145(A)(1),(4), (10), and (20) (2011). For the following reasons, the decision is affirmed.

STATEMENT OF THE CASE

Appellant was licensed by the Commission at all times relevant to the issues in this matter; however, she placed her license in inactive status in late November 2008. On March 8, 2008, Riverpath Investors, LLC (Riverpath)—an entity formed by Appellant and Sally Grooms, a fellow co-worker from Asset Realty, Inc. (Asset Realty)—entered into a contract with the Pinner family to purchase property located in Little Mountain, South Carolina for a price of \$5,396,000. Appellant signed the contract—an Asset Realty form agreement—as the “selling agent”¹ and listed her office as Asset Realty. Grooms signed the contract for Riverpath.

The addendum to the contract contained a paragraph entitled “Earnest Money,” which provided:

FILED

October 5, 2011

SC ADMIN. LAW COURT

¹ S.C. Code Ann. § 27-50-10(9) (2007) defines “selling agent” to include “a real estate licensee who represents a purchaser of real property through the use of a written agency agreement as required by law.”

Purchaser shall deposit \$30,000.00 earnest money with Asset Realty, Inc. This earnest money will become non-refundable after 120 days. At the end of 120 days, purchaser will deposit an additional \$50,000 earnest money, also non-refundable, and proceed to closing. Closing to take place on or before August 29, 2008.

In connection with that provision, Appellant presented to Andy Bowers, the Pinner family's representative, copies of two checks from Grooms' account. One check was for \$25,000 and the other was for \$5,000. Although the contract specifically required that the \$30,000 in earnest money be held in trust by Asset Realty, neither of the two checks was deposited into Asset Realty's escrow account. When questioned about this at the administrative hearing, Appellant testified that she did not deposit the checks because, after she showed the checks to Bowers, she learned that Grooms only had enough money in her account to cover the \$5,000 check.² She further testified that she borrowed \$25,000 from a friend to cover the remaining \$25,000 in earnest money due under the contract. However, by Appellant's own admission, she did not deposit that \$25,000 into Asset Realty's escrow account. Rather, she told her friend to "just leave it there [in her friend's account] until it's needed."³

Although the contract called for the \$30,000 in earnest money to be held in trust by Asset Realty and provided for a 3% commission to be paid to Asset Realty, Appellant did not inform Asset Realty's management of the contract. Moreover, she did not inform the Pinner family in writing that she was a licensed real estate agent and one of the purchasers.

Ultimately, the transaction did not close by the August 29, 2008 deadline set forth in the contract, and the parties entered into a contract addendum extending the deadline to September 30, 2008. Under the terms of the original March 8th contract, one thirty-day extension was permitted as long as Riverpath demonstrated good-faith in its due diligence activities and deposited an additional \$30,000 in non-refundable earnest money.

At the end of September 2008, the closing still had not taken place. After some negotiations, the parties entered into a contract extension in October 2008. Under the terms of the extension, the parties agreed to extend the contract to not later than December 31, 2008 in exchange for the deposit of \$75,000 in "non-refundable penalty funds." In its recitals, the

² Although Grooms apparently had enough money in her account to cover the \$5,000 check, Appellant never deposited it. Rather, she testified at the hearing that the checks were "still sitting in either mine or Sally's file."

³ According to Appellant, she later obtained the \$25,000 from her friend and used it to pay an engineer who performed due diligence in connection with the proposed sale.

extension stated that a total of \$110,000 (\$30,000 plus \$50,000 plus \$30,000) in non-refundable earnest money had previously been deposited in the trust account of Asset Realty. The extension also stated that, going forward, "the earnest and penalty money is to be held in escrow in the trust account of Henry P. Bufkin, Attorney for the Sellers." Grooms signed the extension for Riverpath and Appellant signed as a witness.

On November 24, 2008, Bufkin wrote a letter to, *inter alia*, Appellant, Grooms, Asset Realty, and Acquire Real Estate, Inc., the real estate firm Appellant had transferred to in October 2008. In that letter, Bufkin demanded that a total of \$185,000 in non-refundable earnest and penalty funds be transferred to his trust account by December 4, 2008. Additionally, he stated that it appeared "several real estate agents have breached their fiduciary responsibility with regards to gathering the funds and depositing them in trust." A copy of the letter was sent to the Commission.

As a result of receiving the letter, the Commission began investigating the transaction. On October 13, 2008, the Commission served Patrick with a Notice of Charges, which alleged that Patrick had violated S.C. Code Ann. §§ 40-57-135(B)(8), (C)(2), and (D), 40-57-137(K), 40-1-110(1)(c),(f),(g), and (k), and 40-57-145(A)(1),(4), (10), and (20) (2011).

An administrative hearing regarding the matter was held on February 16, 2011, and the Commission ultimately found that Appellant violated all of the statutory sections charged, except for Section 40-57-135(C)(2). Based upon those findings, the Commission revoked Appellant's license and fined her twenty-five hundred dollars (\$2,500.00). Thereafter, Appellant timely filed an appeal with this Court.

ISSUES⁴

1. Were Appellant's due process rights violated by the admission of Bufkin's November 24, 2008 letter, which Appellant claims contains hearsay?

⁴ Although Appellant raised additional issues in her brief beyond those listed below, the Court has reviewed those issues and found them to be either unpreserved for appellate review, manifestly without merit, or, in some cases, both. Accordingly, they are not discussed herein. See Home Med. Sys., Inc. v. S.C. Dep't of Revenue, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009) ("As in other appellate matters, we require issue preservation in administrative appeals."); Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) ("A contemporaneous objection is required to properly preserve an error for appellate review."); Zaman v. S.C. State Bd. of Med. Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("Facts set forth in an exception will not be considered on appeal unless supported in the transcript of record."); ALC Rule 40 ("The administrative law judge . . . need not address a point which is manifestly without merit.").

2. Are the Commission's findings that Appellant violated Sections 40-57-135(B)(8) and (D), 40-57-137(K), 40-1-110(1)(c), (f), and (g), and 40-57-145(A)(4) and (10) supported by substantial evidence?⁵
3. Should the revocation of Appellant's license be reversed on the ground that it was unduly harsh?

STANDARD OF REVIEW

This case is before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010). In cases arising from the Commission, the Administrative Law Judge sits in an appellate capacity under the Administrative Procedures Act (APA) rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically S.C. Code Ann. § 1-23-600(E) (Supp. 2010), which incorporates the provisions of S.C. Code Ann. § 1-23-380(5) (Supp. 2010)—govern the circumstances in which an appellate body may reverse or modify an agency decision. The latter section sets forth:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

Under the APA, "[t]he findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence." Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001). "Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." Friends of the Earth v. Pub Serv. Comm'n of S.C.,

⁵ Appellant does not challenge the Commission's findings that she violated Sections 40-1-110(1)(k), 40-57-145(A)(1), and 40-57-145(A)(20).

387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

Procedural Due Process

Appellant argues her procedural due process rights were violated by the Commission's admission of Bufkin's November 24, 2008 letter because the letter contained hearsay. I find no reversible error.

"When the State seeks to revoke a professional license, procedural due process rights must be met." Zaman, 305 S.C. at 284, 408 S.E.2d at 215. The requirements of procedural due process generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 484-85, 636 S.E.2d 598, 615 (2006). Procedural due process requirements are not technical, and no particular form of procedure is necessary. Id. at 485; 636 S.E.2d at 615. Rather, "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." Id. (quoting S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002)). To establish a denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

Here, there does not appear to be any dispute that the letter contained hearsay. Nevertheless, I find that Appellant was not prejudiced by the letter's admission. At the hearing, the Commission's advising attorney, James Saxon, stated with regard to the letter that "to the extent it contains hearsay, and I think it's uncontested that it does, no hearsay from this

document or anything else will be used in the making of any decision by the board.” Accordingly, because the Commission did not consider the hearsay contained in the letter, Appellant was not prejudiced by the letter’s admission and there was therefore no reversible error. See State v. Townsend, 321 S.C. 55, 59, 467 S.E.2d 138, 141 (Ct. App. 1996) (“[T]he improper admission of hearsay is reversible error only when the admission causes prejudice.”).

Substantial Evidence of Violations

Next, Appellant argues that the Commission’s findings that she violated Sections 40-57-135(B)(8) and (D), 40-57-137(K), 40-1-110(1)(c),(f), and (g), and 40-57-145(A)(4) and (10) are not supported by substantial evidence. As discussed below, I disagree.

Section 40-57-135

Subsection(B)(8)

Section 40-57-135(B)(8) provides:

All cash monies or certified funds received by a licensee in connection with a real estate transaction **in which the licensee is engaged for his broker-in-charge or property manager-in-charge** immediately must be delivered to the broker-in-charge or property manager-in-charge, except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge or property manager-in-charge as soon as the sales or lease agreement is ratified by both parties.

§ 40-57-135(B)(8) (emphasis added).

Here, Appellant admits she failed to deposit the \$30,000 in earnest money she received from Grooms into Asset Realty’s escrow account. Nevertheless, she contends she did not violate Section 40-57-135(B)(8) because she did not enter into the transaction on behalf of her broker-in-charge.⁶

Upon reviewing the record, I conclude Appellant’s argument must fail. First, the Court notes that in his opening statement, Appellant’s attorney stated, “We have no defense as to the way the initial \$30,000 escrow deposit was handled. It was mishandled and it was not handled the way it should have been.” Additionally, in his closing statement, Appellant’s attorney stated, “We acknowledge that \$30,000 should have been put in the Asset Realty escrow account.”⁷

⁶ “Broker-in-charge” is defined as “the broker who is designated as having responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for any real estate trust accounts.” S.C. Code Ann. § 40-57-30(4) (2011) (emphasis added).

⁷ Importantly, the South Carolina Supreme Court has held that “clients are generally bound by their attorneys’ acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys’ authority.” Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005). Here, Appellant’s attorney

Moreover, in the first sentence of her brief, Appellant writes, "Appellant, Vanessa Patrick, acknowledged at the hearing and admits again in this brief that she negligently violated the South [Carolina] Code of Laws governing the conduct of real estate licensees by not placing earnest money totaling thirty thousand dollars (\$30,000.00) in her Broker-in-Charge's escrow account" Thus, while Appellant has not specifically admitted that she violated Section 40-57-135(B)(8), she has clearly conceded that she violated State law by failing to place the original \$30,000 in earnest money into Asset Realty's escrow account.

Second, even putting the foregoing statements aside, Appellant signed a sales contract that clearly indicated that Asset Realty was acting as the broker-in-charge for the transaction and that Appellant was acting on Asset Realty's behalf. The contract was prepared using an Asset Realty form, and it specifically provided for the original \$30,000 in earnest money to be held in trust by Asset Realty. Additionally, the contract called for a 3% commission to be paid to Asset Realty at closing. Furthermore, Appellant, who signed the contract as the "selling agent," listed her office as Asset Realty, which was where she was employed at the time.

Based on the foregoing evidence, a reasonable person could conclude that Appellant was acting on behalf of her broker-in-charge, Asset Realty, in entering into the sales contract. Indeed, at the hearing, Appellant admitted that the contract "gave the appearance" that she was representing Asset Realty. While Appellant contends that she was not, in actuality, representing Asset Realty, the operative legal document here—the sales contract—supports an opposite conclusion. By negotiating a contract that required Asset Realty to hold the earnest money in trust and that called for a 3% commission to be paid to Asset Realty, Appellant was acting on Asset Realty's behalf. Cf. Georgia Real Estate Comm'n v. Hooks, 227 S.E.2d 864, 865 (Ga. Ct. App. 1976) ("Although appellee was both a real estate salesman for Hooks Realty Company and president of the Sewanee Construction Company, Mr. Lynn was certain, clear and unequivocal that appellee directed him to make the check out to the Hooks Realty Company, which is sufficient to show appellee was acting in his capacity as real estate agent for that company."). Although it is true that Appellant was also acting on her own behalf in that she was one of the purchasers, that mere fact did not extinguish her duty as a real estate licensee to deposit the

was acting within his apparent scope of authority when he made the statements in question. See 7A C.J.S. Attorney & Client § 206 (updated September 2011) ("There is a prima facie presumption that an attorney has authority to bind his or her client by the attorney's actions relating to the conduct of litigation, and this is particularly true of stipulations or admissions made in the course of trial.") (emphasis added). Accordingly, I find that Appellant was bound by them.

earnest money in Asset Realty's escrow account as required by the sales contract. Cf. White v. Dep't of Bus. & Prof'l Regulation, 715 So. 2d 1130, 1131 (Fla. Dist. Ct. App. 1998) (holding that although a real estate broker wore several "hats" in a transaction, one of the hats worn was that of a licensed real estate broker and the broker therefore violated state law by failing to place the buyers' deposits under the sales contract in escrow).

Finally, the Court notes that even if Appellant (as opposed to Asset Realty) acted as the broker-in-charge for the transaction, Appellant would have still been obligated to deposit the earnest money in an escrow account. See S.C. Code § 40-57-135(B)(4) (2011) (providing that a broker-in-charge must deposit, in a separate real estate trust account, monies received by him as an agent for a principal in a real estate sales transaction). Thus, there is simply no justification for Appellant's failure to do so.

Subsection (D)

Section 40-57-135(D) provides in pertinent part:

No licensee either directly or indirectly may buy for his own account or for a corporation or any other business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to **all parties involved**.

§ 40-57-135(D) (emphasis added).

Here, there is substantial evidence in the record showing that Appellant acted as both the selling agent and a prospective buyer for the transaction at issue. Substantial evidence also demonstrates that Appellant failed to make her "true position" clearly known in writing to "all parties involved." Reggie Murphy, the vice president and general manager of Asset Realty, testified that Appellant did not inform him about the transaction, despite the fact the sales contract called for Asset Realty to hold the earnest money in an escrow account and to receive a 3% commission. Indeed, at the hearing, Appellant admitted that she did not inform Asset Realty's management of the contract.⁸

Furthermore, Appellant acknowledged at the hearing, and admits again in her brief, that she failed to disclose her licensee status in writing to the sellers. Appellant also admitted at the hearing that she never informed the sellers in writing that she was one of the purchasers of the

⁸ In her brief, Appellant claims that she was not required to inform Asset Realty of the contract. However, under the terms of the contract, the earnest money was to be held in trust by Asset Realty and a 3% commission was to be paid to Asset Realty at closing. In light of those provisions, I find that Asset Realty was a "part[y] involved" in the transaction and thus should have been informed of it pursuant to Section 40-57-135(D).

property. Moreover, Carroll Pinner and Laura Pinner West, two of the sellers, and Bowers, the Pinner family's representative, each testified that they had no knowledge that Appellant was one of the purchasers in the transaction. As Appellant's attorney conceded in his closing statement, Appellant should have disclosed that she was a licensed real estate agent and a purchaser. Accordingly, I find there is substantial evidence supporting the Commission's determination that Appellant violated Section 40-57-135(D).⁹

Section 40-57-137(K)

Section 40-57-137(K) provides in relevant part: "A licensee who represents a buyer shall treat all prospective sellers honestly and may not knowingly give them false or misleading information about the buyer's ability to perform the terms of a transaction."

Here, I find there is substantial evidence in the record demonstrating that Appellant violated Section 40-57-137(K). Bowers testified that Appellant assured him that all of the earnest money required under the contract was "sitting in an escrow account" at Asset Realty. That assurance was false, as Appellant admittedly did not place the original \$30,000 in earnest money in an Asset Realty escrow account as mandated by the contract. Moreover, Appellant admitted that she never informed the sellers that Grooms did not have enough money in her account to cover the \$25,000 earnest money check. Instead, Appellant allowed the sellers to incorrectly believe that the \$25,000 check (which Appellant had previously shown to the sellers) was valid and that it had been deposited in Asset Realty's escrow account. While Appellant contends that the Department failed to prove that Riverpath was unable to perform the terms of the contract, the record clearly shows that Riverpath never complied with the contract's earnest money provision and that Appellant led the sellers to believe that it had. For these reasons, I

⁹ The Court recognizes that, while the Notice of Charges alleged a violation of Section 40-57-135(D), it did not specifically assert that Appellant failed to inform the sellers in writing of her status as a licensee and a prospective purchaser. Nevertheless, because Appellant freely admitted at the hearing that she failed to make those disclosures, it does not violate procedural due process for a tribunal to base its decision on that failure. See Duane v. U.S. Dep't of Def., 275 F.3d 988, 993-96 (10th Cir. 2002) (finding that, despite deficiencies in the administrative complaint, appellant received a full and fair opportunity to litigate the issue that resulted in the revocation of his security clearance where his own admissions formed the basis of the trial court's decision); Yellow Freight Sys., Inc. v. Martin, 954 F.2d 353, 358 (6th Cir. 1992) ("Notwithstanding the possible lack of notice prior to the administrative hearing, due process is not offended if an agency decides an issue the parties fairly and fully litigated at a hearing."); see also Woods v. Rabon, 295 S.C. 343, 347, 368 S.E.2d 471, 474 (Ct. App. 1988) ("If neither party timely objects to evidence raising issues not pleaded, each is deemed impliedly to consent to the trial of such issues."); 73A C.J.S. Public Administrative Law and Procedure § 232 (updated September 2011) ("The rule that the pleading and proof must conform is relaxed in administrative adjudicatory proceedings. The doctrine of trial by consent, whereby unpled issues are tried by consent, is generally applicable to administrative hearings.").

conclude that the Commission's finding that Appellant violated Section 40-57-137(K) is supported by substantial evidence.

Section 40-1-110(1)(c),(f) and (g)

Section 40-1-110(1) provides in pertinent part:

A board may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who: . . .

(c) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article; . . .

(f) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

(g) lacks the professional or ethical competence to practice the profession or occupation

§ 40-1-110(1).

With regard to subsections (f) and (g) of Section 40-1-110(1), as noted above, Bowers testified that he was falsely assured by Appellant that all of the earnest money was in an escrow account at Asset Realty. Moreover, while there is dispute among the parties as to the total amount of earnest money due under the contract, Appellant has admitted that she was required to place \$30,000 in earnest money into an Asset Realty escrow account and that she failed to do so. She has also acknowledged that her reasons for not doing so were "very poor" and that she exercised "very bad judgment." Appellant has further admitted that she failed to disclose to the sellers in writing that she was a licensee and one of the purchasers.

Furthermore, Appellant has not contested the Commission's finding that she violated Section 40-57-145(A)(1), which prohibits a licensee from making a "substantial misrepresentation involving a real estate transaction." Nor has Appellant contested the Commission's finding that she violated Section 40-1-110(1)(k), which bars violations of "a provision of this article or of a regulation promulgated under this article." Because Appellant has not contested those findings, they are the law of the case. See Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544, 544 (1970) (holding that an unchallenged ruling, right or wrong, is the law of the case and requires affirmance).

Based upon the foregoing, I find substantial evidence supports the Commission's determination that Appellant violated subsections (f) and (g) of Section 40-1-110(1).

As to subsection (c) of Section 40-1-110(1), the evidence in the record clearly demonstrates that Appellant knew that she was required to deposit the earnest money in an escrow account and that she intentionally failed to do so as a result of "poor judgment." Accordingly, because substantial evidence shows that Appellant violated Section 40-1-110(1) intentionally and knowingly, the Commission's finding that she violated Section 40-1-110(1)(c) must be affirmed.

Section 40-57-145(A)(4) and (10)

Section 40-57-145(A) provides in pertinent part:

In addition to Section 40-1-110, the commission may deny issuance of a license to an applicant or may take disciplinary action against a licensee who: . . .

(4) in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public; . . .

(10) fails, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others

§ 40-57-145(A).

Here, with respect to subsection (4) of Section 40-57-145(A), there is substantial evidence in the record demonstrating that Appellant acted with bad faith, dishonesty, untrustworthiness, or incompetency in handling the real estate transaction. Indeed, it does not appear that Appellant contests that fact. Rather, Appellant claims that her actions in this case did not "endanger the interest of the public." The Court disagrees. By failing to timely deposit the earnest money in an escrow account, Appellant endangered the sellers' ability to collect the earnest money under the terms of the sales contract. Moreover, by failing to disclose to the sellers that she was a prospective purchaser, Appellant put the sellers at a distinct disadvantage in the transaction.¹⁰ Accordingly, I find the Commission did not err in concluding that Appellant violated subsection (4) of Section 40-57-145(A).

As to subsection (10) of Section 40-57-145(A), Appellant admits she did not remit the earnest money to Asset Realty, but claims the Commission nonetheless erred in finding that she violated this subsection because the earnest money did not "belong to others." Specifically, Appellant contends the earnest money "was refundable to Appellant once the contingencies in

¹⁰ For instance, had they known that Appellant was one of the purchasers, the sellers may have demanded that the earnest money be deposited with another real estate agency.

the contract were not met.” For several reasons, I disagree with Appellant’s analysis of this subsection.

First, notwithstanding the fact that the original \$30,000 in earnest money was (at least initially) refundable under certain circumstances,¹¹ once the sales contract was executed, the sellers possessed a contingent contractual right to the earnest money. Thus, the earnest money did not belong completely to the purchasers at that point. Indeed, as the following exchange demonstrates, Appellant conceded at the hearing that, regardless of whether the original \$30,000 in earnest money was refundable, she should have deposited it in an escrow account:

Appellant’s Attorney: But even though it [the original \$30,000 in earnest money] was refundable, should it have still been put into an escrow account?

Appellant: Yes, sir, it should have.

Appellant’s Attorney: And is there any excuse or justification or reason that you have for not putting that money in an earnest money account?

Appellant: No, it was very bad judgment on my part. At that time I thought everything was going to go through and it wouldn’t be a problem and really did not think too much beyond that. I was more focused on hiring engineers and proceeding with the deal.

Second, even if the Court were to conclude the sellers had no rights with respect to the earnest money, it must be emphasized that Appellant was not the only purchaser here. Rather, the record demonstrates that \$5,000 of the original earnest money came from Grooms. Thus, by failing to deposit Grooms’ \$5,000 check into an escrow account as required by the March 8th contract, Appellant violated Section 40-57-145(A)(10).

Severity of Sanction

Finally, Appellant argues the revocation of her license was an unduly harsh sanction and should therefore be reversed. I disagree.

As noted above, this Court may reverse a decision of the Commission if it determines that the Commission’s decision was “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” § 1-23-380(5). An abuse of discretion occurs when an administrative agency’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary

¹¹ Although the “Earnest Money” paragraph of the March 8th contract addendum expressly provided that the original \$30,000 in earnest money was to become non-refundable after 120 days, Appellant appears to contend that all of the earnest money under the contract was refundable at all relevant times if certain contingencies were not met. While the Court is skeptical of Appellant’s claim, resolution of this issue is not necessary for the purposes of this appeal.

support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. See State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006) (applying “abuse of discretion” standard to a circuit court decision). A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one’s will and not upon any course of reasoning and exercise of judgment. Converse Power Corp. v. S.C. Dep’t of Health and Env’tl. Control, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002). A decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Id.

Here, the revocation of Appellant’s real estate license was expressly authorized under the aforementioned Section 40-1-110(1), as well as by S.C. Code Ann. § 40-1-120(A)(4) (2011), which provides: “Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take pursuant to its respective licensing act, the board may: . . . **permanently revoke the license.**”¹² (emphasis added). Therefore, the Appellant’s sanction clearly fell “within the range of permissible decisions applicable in a particular case,” and thus was not arbitrary or capricious. See Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 185, 332 S.E.2d 539, 541 (Ct. App. 1985) (“Since the sanctions were within those established by law, Deese’s contention that they were arbitrary and capricious is without merit.”).

Additionally, considering the record as a whole, I find the Commission did not abuse its discretion by revoking Appellant’s license. In disciplining a licensee, the Commission must ensure that the sanction imposed is consonant with the purpose of the proceeding. See Wilson v. State Bd. of Med. Exam’rs, 305 S.C. 194, 196, 406 S.E.2d 345, 346 (1991). With regard to decisions that suspend or revoke a real estate license, “the basic reason for disciplinary action” in such matters is “the protection of the public against unethical and dishonest conduct on the part of those engaged in the real estate business.” Brown v. Gordon, 49 Cal. Rptr. 901, 907 (Cal. Ct. App. 1966). In the present case, Appellant admits she mishandled earnest money and failed to make requisite disclosures regarding her status as a licensee and purchaser. Moreover, Appellant does not contest the Commission’s determination that she violated Section 40-57-145(A)(1),

¹² As noted herein, Appellant has not contested the Commission’s findings that she violated Sections 40-1-110(1)(k), 40-57-145(A)(1), and 40-57-145(A)(20). Importantly, a violation of any of these three statutory sections constitutes grounds for disciplinary action. See § 40-57-145(A).

which prohibits a licensee from making a "substantial misrepresentation involving a real estate transaction." Because the foregoing demonstrates that Appellant engaged in serious unethical and dishonest conduct, I find the Commission did not abuse its discretion in revoking Appellant's license. Cf. Land v Georgia Real Estate Comm'n, 237 S.E.2d 243, 243 (Ga. Ct. App. 1977) (holding that the revocation of a real estate broker's license was within the commission's discretion, notwithstanding evidence of mitigation, where the broker admitted that he had advertised to buy real estate without indicating he was a licensed broker and that he had failed to maintain several earnest money deposits in an escrow account); see also Dreyer v. Florida Real Estate Comm'n, 370 So.2d 95, 100 (Fla. Dist. Ct. App. 1979) (holding that real estate broker's license was properly revoke for mismanagement of trust funds).

Appellant nonetheless contends that her sanction should be reversed because it is more severe than the sanctions imposed by the Commission on others who engaged in like conduct. However, a similar argument was expressly rejected by the Court of Appeals in Deese, where the court held:

An agency need not exercise its discretion identically in every case. "A penalty that is within the authority of the agency is not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases" and "mere unevenness in the application of the sanction does not render its application in a particular case unwarranted in law."

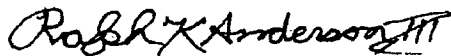
Deese, 286 S.C. at 185, 332 S.E.2d at 541 (quoting Villela v. Dep't of the Air Force, 727 F.2d 1574, 1577 (Fed. Cir. 1984)). Thus, the mere fact that Appellant's sanction may be more severe than those imposed on others does not warrant reversal or modification of that sanction.

ORDER

For the reasons set forth above,

IT IS HEREBY ORDERED that the Commission's decision in this matter is
AFFIRMED.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

October 5, 2011
Columbia, South Carolina

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE REAL ESTATE COMMISSION**

In the Matter of:

Vanessa Patrick
License No. 22479,
Respondent.

Case No. 2009-27

**FINAL ORDER
(Public)**

This matter came before the South Carolina Real Estate Commission (Commission) on February 16, 2011, as a result of the Notice of Charges and Notice of Hearing dated January 5, 2011 and October 13, 2010, respectively, which were served upon the Respondent and filed with the Commission. A quorum of Commission members was present. The hearing was held pursuant to S.C. Code Ann. §§ 40-1-90 and 40-57-60 (1976, as amended), and the provisions of the Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Paul S. Magargle, Assistant General Counsel, represented the State. The Respondent appeared and was represented by Thomas E. Lydon, Esquire.

The Respondent was charged with violating S.C. Code Ann. §§ 40-1-110(c), (f), (g), and (h); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (A)(4), (A)(10), and (A)(2).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Commission finds as follows:

1. The Respondent was duly licensed by the Commission at all times relevant to this matter, but her license has lapsed.
2. On or about March 8, 2008, the Respondent and another co-worker from Asset Realty, S.S.G. (Asset Realty), entered into a contract to purchase property located in Little Mountain, South Carolina. The contract was for the purchase of approximately two hundred eighty-eight and 62/100 (288.62) acres for Five Million, Three Hundred Ninety-six Thousand Dollars (\$5,396,000.00). The sellers of this property were the Lydon family, individuals known to the Respondent.
3. Although this contract was completed on a contract form traditionally used by Asset Realty, the Respondent never informed her broker-in-charge (BIC) or the manager of the office that she was negotiating this contract or that she had entered into

contract. Further, neither the Respondent's broker-in-charge nor the office manager consented to this transaction being handled by the Respondent.

4. The contract called for an initial earnest money deposit of Thirty Thousand Dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset Realty's escrow account. However, the Respondent presented copies of two (2) checks, totaling Thirty Thousand Dollars (\$30,000.00), made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
5. The Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times, which led to more money being placed into the trust account based on the contract. All total, by December of 2008, there was supposed to be approximately One Hundred, Eighty-five Thousand Dollars (\$185,000.00) in the trust account. However, there were no funds located in that account, and when asked to produce the trust money, the Respondent was unable to do so.
6. The contract was terminated and the Respondent was unable to produce any money regarding this transaction despite constant reassurance on her part that the money was in the account. Throughout the entire process, the Respondent led the sellers to believe that the money was in the trust account, including indicating that the money had been transferred to Acquire Real Estate (Acquire), when the Respondent transferred her license to that agency. The Respondent never informed her new broker-in-charge that she this contract was pending, nor did she place any money into Acquire's trust account.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter and, upon finding that a licensee has violated the provisions of S.C. Code Ann. §§ 40-57-130, 40-57-145(A)(20), and 40-1-110(1)(a) (Supp. 2003), has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine or impose a reprimand.
2. The Respondent violated S.C. Code Ann. § 40-1-110(c) in that she intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her

failure to maintain monies in an appropriate trust account, and other facts as described above.

3. The Respondent violated S.C. Code Ann. § 40-1-110(f) in that she committed a dishonorable, unethical or unprofessional act that is likely to deceive, defraud, or harm the public, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
4. The Respondent violated S.C. Code Ann. § 40-1-110(g) in that she lacks the professional or ethical competence to practice the profession or occupation, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
5. The Respondent violated S.C. Code Ann. § 40-1-110(k) in that she violated a provision of this article or of a regulation promulgated under this article, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
6. The Respondent violated S.C. Code Ann. § 40-57-135(B)(8) in that she engaged in a real estate transaction for her broker-in-charge or property manager-in-charge and failed to immediately deliver the monies or certified funds received as a result thereof to her broker-in-charge or property manager-in-charge, as evidenced by the facts described above.
7. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. § 40-57-135(C)(2).
8. The Respondent violated S.C. Code Ann. § 40-57-135(D) in that she engaged either directly or indirectly in the purchase of real estate for her own account, a corporation or other business in which she holds an interest, or for a close relative, listed with her or for which she was approached by the seller or prospective buyer to act as agent, without first making her true position clearly known in writing to all parties involved, as evidenced by the facts described above.
9. The Respondent violated S.C. Code Ann. § 40-57-137(K) in that she failed to treat all prospective sellers honestly and knowingly gave them false or misleading information about the buyer's ability to perform the terms of a transaction, as evidenced by her failure to disclose the nature of her relationship with potential

sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.

10. The Respondent violated S.C. Code Ann. § 40-57-145(A)(1) in that she made a substantial misrepresentation involving a real estate transaction, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
11. The Respondent violated S.C. Code Ann. § 40-57-145(A)(4) in that she demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
12. The Respondent violated S.C. Code Ann. § 40-57-145(A)(10) in that she failed, within a reasonable time, to account for or to remit any monies coming into her possession which belong to others, as evidenced by her failure to maintain monies in an appropriate trust account or return such monies.
13. The Respondent violated S.C. Code Ann. § 40-57-145(A)(20) in that she violated a provision of this chapter or a regulation promulgated under this chapter, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
14. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continued services of qualified real estate brokers against the countervailing concern that society be protected from professional ineptitude and misconduct.
15. The sanction imposed is not intended to punish the Respondent, but to protect her clients and other members of the public from harm.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

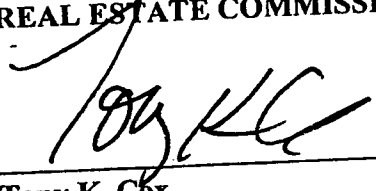
1. The Respondent's license is hereby revoked.
2. The Respondent is hereby assessed a fine of Two Thousand, Five Hundred Dollars (\$2,500.00) to be paid to the Commission within six (6) months of the service of this Final Order upon the Respondent or her counsel; this fine is not deemed to be paid

until the Commission receives it.

3. This Final Order shall take effect immediately upon its service on the Respondent or her counsel.

AND IT IS SO ORDERED.

REAL ESTATE COMMISSION



Tony K. Cox
Chairman

2/17, 2011

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THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION,
STATE REAL ESTATE COMMISSION

Docket No. 11-ALJ-11-0168-AP

Vanessa Patrick Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation, State Real
Estate Commission Respondent.

RECORD ON APPEAL

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FILED

APR 26 2011

SC ADMIN. LAW COURT

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**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE REAL ESTATE COMMISSION**

In the Matter of:

Vanessa Patrick
License No. 22479,
Respondent.

Case No. 2009-27

**FINAL ORDER
(Public)**

This matter came before the South Carolina Real Estate Commission (Commission) on February 16, 2011, as a result of the Notice of Charges and Notice of Hearing dated January 5, 2011, and October 13, 2010, respectively, which were served upon the Respondent and filed with the Commission. A quorum of Commission members was present. The hearing was held pursuant to S.C. Code Ann. §§ 40-1-90 and 40-57-60 (1976, as amended), and the provisions of the Administrative Procedures Act (APA), S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Paula S. Magargle, Assistant General Counsel, represented the State. The Respondent appeared and was represented by Thomas E. Lydon, Esquire.

The Respondent was charged with violating S.C. Code Ann. §§ 40-1-110(c), (f), (g), and (k); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (A)(4), (A)(10), and (A)(20).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Commission finds as follows:

1. The Respondent was duly licensed by the Commission at all times relevant to this matter, but her license has lapsed.
2. On or about March 8, 2008, the Respondent and another co-worker from Asset Realty, S.S.G. (Asset Realty), entered into a contract to purchase property located in Little Mountain, South Carolina. The contract was for the purchase of approximately two hundred eighty-eight and 62/100 (288.62) acres for Five Million, Three Hundred, Ninety-six Thousand Dollars (\$5,396,000.00). The sellers of this property were the P family, individuals known to the Respondent.
3. Although this contract was completed on a contract form traditionally used by Asset Realty, the Respondent never informed her broker-in-charge (BIC) or the manager of the office that she was negotiating this contract or that she had entered into this

contract. Further, neither the Respondent's broker-in-charge nor the office manager consented to this transaction being handled by the Respondent.

4. The contract called for an initial earnest money deposit of Thirty Thousand Dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset Realty's escrow account. However, the Respondent presented copies of two (2) checks, totaling Thirty Thousand Dollars (\$30,000.00), made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
5. The Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times, which led to more money being placed into the trust account based on the contract. All total, by December of 2008, there was supposed to be approximately One Hundred, Eighty-five Thousand Dollars (\$185,000.00) in the trust account. However, there were no funds located in that account, and when asked to produce the trust money, the Respondent was unable to do so.
6. The contract was terminated and the Respondent was unable to produce any money regarding this transaction despite constant reassurance on her part that the money was in the account. Throughout the entire process, the Respondent led the sellers to believe that the money was in the trust account, including indicating that the money had been transferred to Acquire Real Estate (Acquire), when the Respondent transferred her license to that agency. The Respondent never informed her new broker-in-charge that she this contract was pending, nor did she place any money into Acquire's trust account.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter and, upon finding that a licensee has violated the provisions of S.C. Code Ann. §§ 40-57-130, 40-57-145(A)(20), and 40-1-110(1)(a) (Supp. 2003), has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine or impose a reprimand.
2. The Respondent violated S.C. Code Ann. § 40-1-110(c) in that she intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her

failure to maintain monies in an appropriate trust account, and other facts as described above.

3. The Respondent violated S.C. Code Ann. § 40-1-110(f) in that she committed a dishonorable, unethical or unprofessional act that is likely to deceive, defraud, or harm the public, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
4. The Respondent violated S.C. Code Ann. § 40-1-110(g) in that she lacks the professional or ethical competence to practice the profession or occupation, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
5. The Respondent violated S.C. Code Ann. § 40-1-110(k) in that she violated a provision of this article or of a regulation promulgated under this article, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
6. The Respondent violated S.C. Code Ann. § 40-57-135(B)(8) in that she engaged in a real estate transaction for her broker-in-charge or property manager-in-charge and failed to immediately deliver the monies or certified funds received as a result thereof to her broker-in-charge or property manager-in-charge, as evidenced by the facts described above.
7. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. § 40-57-135(C)(2).
8. The Respondent violated S.C. Code Ann. § 40-57-135(D) in that she engaged either directly or indirectly in the purchase of real estate for her own account, a corporation or other business in which she holds an interest, or for a close relative, listed with her or for which she was approached by the seller or prospective buyer to act as agent, without first making her true position clearly known in writing to all parties involved, as evidenced by the facts described above.
9. The Respondent violated S.C. Code Ann. § 40-57-137(K) in that she failed to treat all prospective sellers honestly and knowingly gave them false or misleading information about the buyer's ability to perform the terms of a transaction, as evidenced by her failure to disclose the nature of her relationship with potential

sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.

10. The Respondent violated S.C. Code Ann. § 40-57-145(A)(1) in that she made a substantial misrepresentation involving a real estate transaction, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
11. The Respondent violated S.C. Code Ann. § 40-57-145(A)(4) in that she demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
12. The Respondent violated S.C. Code Ann. § 40-57-145(A)(10) in that she failed, within a reasonable time, to account for or to remit any monies coming into her possession which belong to others, as evidenced by her failure to maintain monies in an appropriate trust account or return such monies.
13. The Respondent violated S.C. Code Ann. § 40-57-145(A)(20) in that she violated a provision of this chapter or a regulation promulgated under this chapter, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described above.
14. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continued services of qualified real estate brokers against the countervailing concern that society be protected from professional ineptitude and misconduct.
15. The sanction imposed is not intended to punish the Respondent, but to protect her clients and other members of the public from harm.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

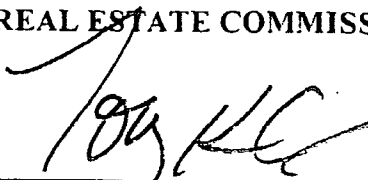
1. The Respondent's license is hereby revoked.
2. The Respondent is hereby assessed a fine of Two Thousand, Five Hundred Dollars (\$2,500.00) to be paid to the Commission within six (6) months of the service of this Final Order upon the Respondent or her counsel; this fine is not deemed to be paid

until the Commission receives it.

3. This Final Order shall take effect immediately upon its service on the Respondent or her counsel.

AND IT IS SO ORDERED.

REAL ESTATE COMMISSION



Tony K. Cox
Chairman

2/17

, 2011

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE REAL ESTATE COMMISSION**

IN THE MATTER OF:

**VANESSA PATRICK
License Number 22479**

OIE # 2009-27

Respondent.

**NOTICE OF CHARGES AND NOTICE
OF HEARING**

I.

That Respondent license is presently lapsed by the South Carolina Real Estate Commission, hereinafter referred to as the Commission, but at all times relevant to this matter Respondent was duly licensed by the Commission.

II.

That the Commission has jurisdiction over Respondent and the subject matter of this action.

III.

That Respondent has violated S.C. Code Ann. §§ 40-1-110(c), (f), (g) and (k); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10) and (20) (1976, as amended) in that:

1. On or about March 8, 2008, Respondent and another co-worker from Asset Realty, S. S. G., entered in a contract to purchase property located in Little Mountain, S.C. The contract was to purchase approximately two hundred and eighty-eight point sixty-two (288.62) acres for five million, three hundred and ninety six thousand dollars (\$5,396,000.00). The sellers of this property were the P family, individuals known to Respondent.
2. Although this contract was completed on a contract form traditionally used by Asset Realty, Respondent never informed her broker in charge or the manager of the office that she was negotiating this contract or that she had entered into this contract. Further, Respondent's broker-in-charge nor the office manager consented to this transaction being handled by Respondent, especially the way it was being handled by Respondent.

3. The contract called for an initial earnest money deposit of thirty thousand dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset's escrow account. However, Respondent presented copies of two checks totaling the thirty thousand dollars (\$30,000.00) made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
4. Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times which lead to more money being placed into the trust account based on the contract. All total, by approximately December of 2008, there was suppose to be approximately one hundred eighty-five thousand dollars (\$185,000.00) being held in the trust account. However, there were no funds located in the trust account. When asked to produce the trust money, Respondent was unable to do so due to the fact that Respondent had not been placing any money into the escrow account.
5. The contract was terminated and Respondent was unable to produce any money in regards to this transaction despite constant reassurance on her part that the money was in the trust account. Throughout the entire process, Respondent led the sellers to believe that the money was located in a trust account, including indicating that the money had been transferred to Acquire Real Estate, when Respondent transferred her license to this agency. Again, Respondent never informed her new broker in charge that she had this contract pending nor did she place any money into their trust account.

IV.

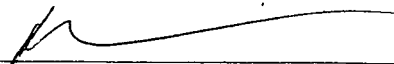
YOU ARE HEREBY NOTIFIED that the Real Estate Commission will conduct a hearing on **November 16, 2010, at 10:00a.m.**, in the Kingstree Building, 110 Centerview Drive, **Room 105**, Columbia, South Carolina, to hear the charges against you as stated above. The hearing is held pursuant to the authority of S.C. Code Ann. §§ 40-57-170; 40-57-180; and 40-57-200.

FURTHER, you are notified that you may appear, present evidence on your behalf, and confront and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*

FURTHER, you are advised that if the Commission finds that you are in violation of the statutes or regulations of the Commission, your license to practice Real Estate in South Carolina may be suspended or revoked in accordance with Commission Statute § 40-57-150 or the Commission may take such other disciplinary action as is warranted.

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
STATE REAL ESTATE COMMISSION**

Columbia, South Carolina
10/13, 2010.



PAULA S. MAGARGLE
Assistant General Counsel
Department of Labor, Licensing & Regulation
PO Box 11329
Columbia, SC 29211-1329
(803) 896-4849

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE STATE REAL ESTATE COMMISSION**

IN THE MATTER OF:

VANESSA K. PATRICK
License Number REL.22479

OIE # 2009-27

Respondent

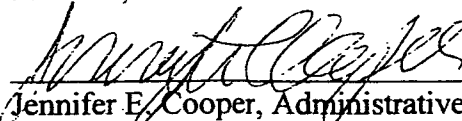
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within **Notice of Charges and Notice of Hearing** upon the persons hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested and by regular first class mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

Thomas E. Lydon, Esq.
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

Vanessa K. Patrick
108 Wateree Creek Road
Irmo, SC 29063

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION


Jennifer E. Cooper, Administrative Assistant
LLR-Office of General Counsel
Post Office Box 11329
Columbia, SC 29211-1329

Columbia, SC
10/13, 2010.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

In the Matter of:

VANESSA PATRICK
License No. REL.22479

OIE # 2009-27

Respondent

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the Real Estate Commission will conduct a hearing on **February 16, 2011, at 10:00 a.m.**, in the Kingstree Building, 110 Centerview Drive, **Room 105**, Columbia, South Carolina, to hear the charges against you as stated above. The hearing is held pursuant to S.C. Code Ann. §§ 40-57-170; 40-57-180; and 40-57-200 (1976, as amended).

FURTHER, you are notified that you may appear and present evidence on your behalf and confront, and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, § 1-23-310, *et seq.*, S.C. Code of Laws (1976, as amended).

FURTHER, you are advised that if the Commission finds that you are in violation of the statutes or regulations of the Commission, your license to practice Real Estate in South Carolina may be suspended or revoked in accordance with S.C. Code Ann. § 40-57-170 (1976, as amended) or the Commission may take such other disciplinary action as is warranted.

SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION
STATE REAL ESTATE COMMISSION

BY: _____

PAULA S. MAGARGLE
Assistant General Counsel

1/6, 2011.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE STATE REAL ESTATE COMMISSION**

IN THE MATTER OF:

VANESSA K. PATRICK
License Number REL.22479

OIE # 2009-27

Respondent

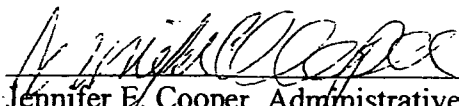
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within **Notice of Hearing** upon the persons hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested and by regular first class mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

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SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION


Jennifer E. Cooper, Administrative Assistant

LLR-Office of General Counsel

Post Office Box 11329
Columbia, SC 29211-1329

Columbia, SC

1/16, 2011.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING &
REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION

In the Matter of:)
)
VANESSA PATRICK,)
License No. 22479)
)
OIE # 2009-27)
-----)

COPY

ADMINISTRATIVE HEARING

Wednesday, February 16, 2011
10:47 a.m. - 3:15 p.m.

The Administrative Hearing before the South Carolina Real Estate Commission was taken at the Synergy Office Park, Kingstree Building, Room 105, 110 Centerview Drive, Columbia, South Carolina, on the 16th day of February 2011, before Christine A. Cortright, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

BOARD MEMBERS:

Tony Cox, Chairman
 Carl T. Edwards
 Buccie Harley
 Evelyn Young
 Manning Biggers
 Sarah Takacs

Jay Pitts, Board Administrator

ADVISING THE BOARD:

James C. Saxon, Esquire
 South Carolina Department of
 Labor, Licensing and Regulation
 110 Centerview Drive
 P.O. Box 11329
 Columbia, South Carolina 29211

ATTORNEY FOR THE PETITIONER - SC LLR:

Paula S. Magargle, Esquire
 South Carolina Department of Labor,
 Licensing and Regulation
 110 Centerview Drive
 Post Office Box 11329
 Columbia, South Carolina 29211-1329

ATTORNEY FOR THE RESPONDENT - VANESSA PATRICK:

Thomas E. Lydon, Esquire
 McANGUS GOUDELOCK & COURIE
 1320 Main Street, 10th Floor
 Columbia, South Carolina 29201

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EXHIBITS

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 (Certificate of Service by Mail, Notice of
 Charges and Notice of Hearing)
 Petitioner's Exhibit Number One-A . . . 6
 (Notice of Hearing)
 Petitioner's Exhibit Number Two . . . 39
 (Ltr. to Patrick, et al. from Bufkin 11/24/08)
 Petitioner's Exhibit Number Three . . . 42
 (Ltr. to Sowell from Murphy 1/5/09)
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 (Fax Transmittal Report; Contract of Sale;
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STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Administrative Procedures Act.

1 **MR. CHAIRMAN:** This hearing is a matter of the
2 Department of South Carolina Labor, Licensing
3 and Regulation versus Vanessa Patrick being
4 held in Columbia, South Carolina the 16th day
5 of February, 2011. My name is Tony Cox and I
6 am Chairman of the South Carolina Real Estate
7 Commission. The attorney advised to advise us
8 during this hearing is Jamie Saxon, our staff
9 counsel, sitting over to our right. Paula
10 Magargle, Office of the General Counsel with
11 LLR, Ms. Magargle represents the State. The
12 Respondent is represented by --

13 **MR. LYDON:** Mr. Chairman, my name is Tommy Lydon. I
14 represent Vanessa Patrick.

15 **MR. CHAIRMAN:** Welcome, Mr. Lydon. The hearing will
16 be conducted in accordance with the provisions
17 of South Carolina Code 40-1-9, the South
18 Carolina Administrative Procedures Act and the
19 rules and regulations of the South Carolina
20 Real Estate Commission. The State and the
21 Respondent may, if they so desire, make brief
22 opening statements with the State going first,
23 followed by the Respondent. Thereafter, the
24 State shall present its case and the Respondent
25 will present his case. After all the evidence

1 is presented, both parties may make closing
2 statements if they wish. The State will have
3 the option of being the first or last to make
4 its closing statement. If there are no pre-
5 hearing motions, we will hear an opening
6 statement from the State followed by the
7 Respondent. Ms. Magargle?

8 OPENING STATEMENT BY MS. MAGARGLE:

9 MS. MAGARGLE: Thank you. Before we get started, I
10 just wanted to put in, which I think you
11 already have a copy of, the Notice of Charges,
12 the Notice of Hearing, along with the second
13 Notice of Hearing. Since the case was
14 continued previously, we sent out a new notice
15 and I just wanted to put those in as State's
16 Exhibits One and One-A.

17 MR. CHAIRMAN: Is it essentially the same document
18 that we have?

19 MS. MAGARGLE: Yes, sir, it is. Thank you.

20 (Petitioner's Exhibit Numbers One and One-A were
21 admitted into evidence.)

22 MS. MAGARGLE: Thank you. We are here today on the
23 case of Ms. Patrick. We intend to prove to you
24 the following facts in regards to this case.
25 We intend to prove to you today and show you

1 today that on or about March the 8th of 2008,
2 Ms. Patrick and another coworker from Asset
3 Realty entered into a contract to purchase
4 property located in Little Mountain, South
5 Carolina. The contract was to purchase
6 approximately 288.62 acres for \$5,396,000. The
7 sellers of the property were the Pinner family.
8 Although this contract was completed on a
9 contract form that was traditionally used by
10 Asset Realty, Ms. Patrick never informed the
11 broker in charge or the manager of the office
12 that she was negotiating a contract or that she
13 had entered into this contract and they did not
14 consent to this contract being handled. We
15 further intend to show that the contract called
16 for an initial earnest money deposit of \$30,000
17 to be placed in the escrow account at Asset
18 Realty. This money was never placed in Asset's
19 escrow account. However, Ms. Patrick presented
20 copies of two checks totaling the \$30,000 made
21 out to Asset to give the appearance that the
22 money was in the trust account. Ms. Patrick
23 and the agent for the Pinner family continued
24 negotiations regarding the contract for several
25 months following the initial signing of the

1 contract. The contract was extended numerous
2 times which led to more money being placed in
3 the trust account based on the contract. By
4 approximately December of '08, all total there
5 was supposed to be about \$185,000 that was
6 supposed to be held by the trust account at
7 Asset Realty. However, there were no funds
8 located in the trust account because she had
9 not placed any of those funds in the trust
10 account. The contract was terminated and Ms.
11 Patrick was unable to produce the money in
12 regards to the transaction despite the contract
13 -- or excuse me, the constant reassurance on
14 her part that the money was in the trust
15 account. We intend to show throughout the
16 entire process Ms. Patrick led the sellers to
17 believe that the money was located in the trust
18 account, including indicating that the money
19 had been transferred to Acquire Real Estate
20 Company which she moved her license to this
21 agency. Again, Ms. Patrick in that situation
22 never informed the broker of this contract or
23 the money that was supposed to be in the trust
24 account. We intend to show that these facts
25 that we will prove to you today show violations

1 of the following statutes. South Carolina Code
2 Section 40-1-110(c), which states in pertinent
3 part that one has intentionally or knowingly,
4 whether directly or indirectly, violated this
5 article or regulation. 40-1-110(f) and 40-57-
6 145(a)(4), which states in pertinent part that
7 one is guilty of engaging in dishonorable,
8 unprofessional or unethical conduct that is
9 likely to deceive or harm the public. 40-1-
10 110(g), that one lacks the professional or
11 ethical competence to practice a professional
12 vocation. 40-1-110(k) and 40-57-145(a)(20),
13 that one has violated the provision of this
14 article. 40-57-135(b)(8); that all cash monies
15 or certified funds received by a licensee in
16 connection with a real estate transaction must
17 be delivered to the broker in charge. 40-57-
18 135(c)(2), that a licensee may not conduct real
19 estate business under any other name or at any
20 address other than one for which the license is
21 issued. 40-57-135(b), which states in
22 pertinent part that no licensee, either
23 directly or indirectly, may buy for his own
24 account, as a corporation or any other business
25 in which they own an interest, real estate for

1 which they have been approached by the seller
2 or buyer to act as an agent without first
3 making their true position clearly known in
4 writing to all parties involved. 40-57-137(k),
5 a licensee who represents a buyer shall treat
6 all perspective sellers honestly and may not
7 knowingly give them false or misleading
8 information about a buyer's ability to perform
9 the terms of the transaction. 40-57-145(a)(1),
10 that one makes a substantial misrepresentation
11 involving a real estate transaction. And 40-
12 57-145(a)(10), states in pertinent part that
13 one failed within a reasonable time to account
14 for or remit any monies coming into their
15 possession which belongs to others. Again, as
16 I stated at the beginning, we intend to prove
17 to you all these facts. Most of these facts we
18 believe you'll be able to see in black and
19 white. And we believe that at the conclusion
20 of this hearing, you will find not only that we
21 have shown these facts but that these facts do
22 lead to the violations as stated in the
23 statute. Thank you.

24 **MR. LYDON:** Mr. Chairman?

25 **MR. CHAIRMAN:** Yes, sir? And give me your name

1 again, please.

2 MR. LYDON: Sure. It's Tommy Lydon, L-Y-D-O-N.

3 MR. CHAIRMAN: Thank you, Mr. Lydon.

4 OPENING STATEMENT BY MR. LYDON:

5 MR. LYDON: Thank you for your time this morning.

6 Let me just briefly make a statement with
7 respect to the charges because I think that's
8 kind of what Ms. Magargle went through and may
9 focus us on what the issue -- what we believe
10 the issue is here today. The first charge
11 regarding the entering into the contract with
12 the purchase price, we admit that's in fact
13 truly -- a true and factual statement and we
14 don't dispute that allegation. That the
15 contract was completed on the form
16 traditionally used by Asset Realty, we agree
17 with that statement in paragraph two. There's
18 no dispute that that in fact did happen.
19 Paragraph three, the contract called for an
20 initial earnest money deposit of \$30,000 to be
21 placed in the escrow account at Asset Realty.
22 That is exactly what the contract says and we
23 do not dispute that. The money was not placed
24 in Asset's escrow account. Again, we do not
25 dispute that. In fact, I'll tell you right

1 now, we have no defense as to the way the
2 initial \$30,000 escrow deposit was handled. It
3 was mishandled and it was not handled the way
4 it should it have been. Ms. Patrick will
5 acknowledge that she exercised very poor
6 judgment, made some very bad decisions in the
7 handling of that \$30,000. There's no dispute
8 about that. That checks were presented in
9 order to give the appearance the money had been
10 placed in the appropriate trust account, we
11 don't entirely agree with that. The checks
12 were presented at the time the initial offer
13 was made, as is often done, but the
14 negotiations dragged on for several weeks
15 beyond that and it wasn't until the contract
16 was ratified and finally signed that the money
17 should have been put into the escrow account.
18 So checks were presented at the time the
19 initial offer was made to show that the
20 purchasers were ready, willing and able, as Ms.
21 Patrick will explain. Unfortunately by the
22 time the contract was finally finalized and
23 ratified and all the initials and changes were
24 made, the money was not there. As far as the
25 continuing negotiations -- and what we're here

1 about today is paragraphs four and five, that's
2 Ms. Patrick's contention in this case -- the
3 negotiations did not continue for several
4 months following the initial contract. Ms.
5 Patrick and her investors worked very
6 diligently to try to get this done, this
7 transaction closed. There's lots of due
8 diligence going on, there's lots of engineering
9 that you'll hear about. There were no
10 continuing negotiations. We were trying to do
11 the deal. Unfortunately, they couldn't get it
12 done within the time required under the
13 contract and the contract expired. That
14 happened in July of 2008. Subsequent to the
15 expiration of the contract, Ms. Patrick and her
16 investors tried diligently to get the contract
17 extended and there were negotiations and there
18 were discussions and there were contracts going
19 back and forth. And there was some
20 misunderstandings and you'll see the
21 documentation showing that some people thought
22 the contract had been extended, other people
23 thought it hadn't been extended. It was not
24 clear at all whether the contract even existed.
25 The sellers were talking to other purchasers

1 during this time period. So there was a lot
2 of, I won't say miscommunication, I'm just
3 going to say misunderstanding about whether in
4 fact there was still a contract in place,
5 whether an extension had been granted. And
6 there was never to have been \$185,000 in any
7 sort of escrow account or trust account or
8 earnest money deposit. The contract was in
9 fact terminated, as stated in paragraph five.
10 The suggestion that Ms. Patrick led the sellers
11 to believe that there was \$185,000 in a trust
12 account, I don't think there's any evidence of
13 that. In fact, I think the evidence will be
14 just the opposite of that. There was never any
15 representation or evidence or documentation,
16 anything made, other than the initially
17 \$30,000, which we acknowledge was not handled
18 properly, but everything beyond that was
19 continuing to try to get the contract extended,
20 asking for more time, being told they couldn't
21 have more time, they could have more time, they
22 had to pay \$75,000. But the contract was never
23 formally extended until we learned when the
24 money wasn't available that in fact a prior
25 extension had been signed but it had never been

1 sent to Ms. Patrick. This is property that was
2 not on Multiple Listing Service. It was not a
3 traditional seller/seller's agent,
4 buyer/buyer's agent transaction at all. This
5 was property that Ms. Pinner was aware of --
6 excuse me, Ms. Patrick was aware of and she was
7 approached by the family to see if she knew
8 anybody who might be interested in purchasing
9 it. She talked to several people and
10 ultimately put together a group that involved
11 herself to in fact purchase the property. She
12 was the agent on the transaction. She was also
13 a member of Riverpath Investors, and you'll see
14 the contract, and that's who the purchaser was.
15 On the other side was Mr. Andy Bowers, he was
16 representing the sellers. He is the former
17 brother-in-law of one of the sellers and he
18 didn't have a contract with them as their
19 agent. He wasn't charging them a commission.
20 He was basically acting as a family friend in
21 handling this. So this was not by any stretch
22 of the imagination your traditional Multiple
23 Listing Service property with a seller's agent
24 and a buyer's agent. It was an entirely
25 different situation, it was property that had

1 never been listed for sale, between people who
2 had prior acquaintances who were all trying to
3 put together a \$5,000,000 deal, a \$5.3 million
4 dollar deal, that unfortunately, as we all
5 know, in September of 2008 the lending world
6 dried up, there was no money to be lent to do
7 a project of this size by any bank and the deal
8 could not be done. Again, just to reiterate,
9 we acknowledge, and you'll hear testimony, that
10 the \$30,000 was not handled the way it should
11 have been, no doubt about it. Beyond that,
12 there was no additional earnest money that Ms.
13 Patrick represented had been deposited. There
14 are no other checks, there are no other deposit
15 slips, there's nothing else to indicate that
16 other money had been put into the trust account
17 and the escrow account. Thank you.

18 **MR. CHAIRMAN:** Thank you, sir. Ms. Magargle?

19 **MS. MAGARGLE:** Thank you. I call John Sowell to the
20 stand, please.

21 **MR. CHAIRMAN:** Mr. Sowell, would you state your full
22 name for us?

23 **MR. SOWELL:** John Sowell.

24 **MR. CHAIRMAN:** And please be sworn in by the Court
25 Reporter.

1 MR. SAXON: Will you spell your name for the record,
2 please?

3 MR. SOWELL: S-O-W-E-L-L.

4 JOHN SOWELL, having been duly sworn, testifies as
5 follows:

6 MR. SOWELL - DIRECT EXAMINATION BY MS. MAGARGLE:

7 Q: Mr. Sowell, would you state your name for the
8 record, please?

9 A: John Sowell.

10 Q: Mr. Sowell, where are you currently employed?

11 A: LLR as an investigator for the Real Estate
12 Commission.

13 Q: How long have you been with LLR?

14 A: This May will be three years.

15 Q: You investigate for the Real Estate Commission?

16 A: Yes.

17 Q: Okay. During the course of your investigation,
18 were you asked to investigate a case in regards
19 to Ms. Patrick?

20 A: Yes, I was.

21 Q: I am going to hand you several documents --

22 MS. MAGARGLE: Do you care if I do them all at one
23 time?

24 MR. LYDON: That's fine.

25 MS. MAGARGLE: Are you okay with that? Just because

1 it will be easier for him.

2 Q: -- and ask that you look at these. Do you
3 recognize these documents?

4 A: Yes, I do.

5 Q: Are these documents all that were collected
6 during the course of your investigation of the
7 case with Ms. Patrick?

8 A: Yes, it is.

9 MS. MAGARGLE: Okay. At this time, just to try and
10 speed things up, at this time I've spoken with
11 opposing counsel, I don't believe that there's
12 any objections to any of these. I think
13 obviously he is going to object to Exhibit
14 Number Two which was based on hearsay but it
15 was a document that was sent to us in the mail
16 that was the start the investigation so it was
17 collected during the course of the
18 investigation and I think we've discussed that.
19 He is not going to, he the investigator, is not
20 going to talk about it as far as having any
21 firsthand knowledge of the information but that
22 document was received during the course of the
23 investigation.

24 MR. SAXON: Mr. Lydon, is that a correct
25 characterization?

1 MR. LYDON: That is correct. I do not dispute or
2 object to the fact that these are documents
3 that Mr. Sowell compiled during his
4 investigation. My only objection is that he
5 has no firsthand knowledge of any of this
6 because it was all provided to him by third
7 parties.

8 MR. SAXON: Are those third parties here to provide
9 testimony?

10 MS. MAGARGLE: Yes. Yes, sir, I've got everybody
11 here. The only person that I had not intended
12 on putting up but I can put up is the attorney
13 that actually sent the letter which initiated
14 the investigation. But he's here, I can put
15 him up if necessary but I don't know that it's
16 going to be necessary.

17 MR. SAXON: Let me have a look at that letter, if
18 you don't mind, please.

19 MS. MAGARGLE: May I approach?

20 MR. CHAIRMAN: Please.

21 MS. MAGARGLE: You'll notice on the back where we
22 were cc'd.

23 MR. SAXON: I think, with obviously the Chair's
24 consultation, we think it would probably be
25 better if we could present this lawyer to

1 authenticate the document. And, otherwise,
2 there are no objections, Mr. Lydon?

3 **MR. LYDON:** That's correct.

4 **MS. MAGARGLE:** Okay. So can I go ahead and put it
5 in or do you want me to wait to put it in with
6 him because I have it already marked as Exhibit
7 Two?

8 **MR. SAXON:** However you'd like to do it. However
9 you'd like to do it is fine with us.

10 **MS. MAGARGLE:** So it's not going in through him is
11 all I'm asking?

12 **MR. SAXON:** I'm sorry.

13 **MS. MAGARGLE:** We're not --

14 **MR. SAXON:** It's not going in through this witness,
15 that's correct.

16 **MS. MAGARGLE:** All right. Well, that makes life
17 interesting. Okay. Can I take him down just
18 for a second --

19 **MR. SAXON:** Sure.

20 **MS. MAGARGLE:** -- and then call the witness --

21 **MR. SAXON:** Yeah.

22 **MS. MAGARGLE:** -- just to authenticate this letter -

23 -

24 **MR. SAXON:** Sure.

25 **MS. MAGARGLE:** -- so that we can move forward? I'd

1 call Mr. Bufkin to the stand.

2 MR. SAXON: Ms. Magargle, you're offering this as
3 State's Two, is that the number?

4 MS. MAGARGLE: Yes. Yes, sir.

5 MR. CHAIRMAN: Mr. Bufkin, if you would, raise your
6 right hand, state your full name and address
7 and be sworn by the Court Reporter.

8 MR. BUFKIN: I'm Henry Bufkin. I am attorney in
9 Prosperity, South Carolina. My address is 208
10 North Main Street, Prosperity, South Carolina.

11 HENRY BUFKIN, having been duly sworn, testifies as
12 follows:

13 MR. BUFKIN - DIRECT EXAMINATION BY MS. MAGARGLE:

14 Q: Thank you, Mr. Bufkin. I'm going to make your
15 testimony, hopefully, extremely short. Didn't
16 know this was --

17 A: That's fine.

18 Q: -- we were going to go about it this way. I
19 would ask that you look at State's Exhibit
20 Number Two. Do you recognize that document?

21 A: I do. It's a xeroxed copy of a letter that I
22 wrote to various parties when we were trying to
23 find out what was going on.

24 Q: And you represent the Pinner family in regards
25 to this situation, is that correct?

1 A: That's correct, I do.

2 Q: Okay. And did you in that letter, did you
3 also, on the last page, did you carbon copy the
4 South Carolina Real Estate Commission?

5 A: That's correct, I did.

6 Q: Okay. And so that letter was actually sent to
7 us, is that correct?

8 A: Yes.

9 Q: And that is again the letter that you wrote?

10 A: It is.

11 MS. MAGARGLE: The State would move that in as the
12 State's Exhibit Number Two.

13 MR. LYDON: I would object. I believe that most of
14 that letter is hearsay. The letter is based on
15 Mr. Bufkin's interpretation of the contract.
16 It's based on Mr. Bufkin's conversations with
17 Mr. Bowers and the Pinner family and I don't
18 think he has firsthand knowledge of much of
19 anything in this entire letter.

20 MS. MAGARGLE: Obviously, he wrote the letter. He's
21 the authenticator of the letter and so
22 therefore I would say that it is not hearsay in
23 the sense that he's actually the one who wrote
24 the letter.

25 MR. LYDON: If he writes a letter that says this is

1 what these people told me, that's hearsay.

2 **MS. MAGARGLE:** And again, those people are here to
3 verify the information. However, that letter
4 still was written by Mr. Bufkin and received by
5 us in the course of our investigation.

6 **MR. BUFKIN:** Your Honor, if you'd like, I can
7 testify about those things that I do have
8 firsthand knowledge about that's not hearsay
9 that led up to this letter.

10 **MR. CHAIRMAN:** We'll note that and at this time
11 we'll overrule the objection and --

12 **MS. MAGARGLE:** Thank you.

13 **MR. CHAIRMAN:** -- hopefully some of these facts will
14 come out during further testimony.

15 **MS. MAGARGLE:** Thank you. That's all I have for
16 this witness.

17 **MR. CHAIRMAN:** Thank you.

18 **MR. LYDON:** Can I cross examine?

19 **MR. CHAIRMAN:** Yes, sir.

20 **MR. LYDON:** Thank you.

21 **MR. CHAIRMAN:** Please answer any questions Mr. Lydon
22 may have.

23 **MS. MAGARGLE:** Obviously, I need to get this letter
24 up to you guys.

25 **MR. CHAIRMAN:** That would be helpful.

1 MS. MAGARGLE: I apologize. My thought of trying to
2 make everything easy has now gone awry so I
3 apologize to all of you.

4 MR. EDWARDS: Have these got numbers?

5 MS. MAGARGLE: No, sir, they don't --

6 MR. SAXON: This is going to be Number Two.

7 MS. MAGARGLE: -- they don't have numbers on them.
8 Yes, sir.

9 MR. SAXON: If you want to, this will be -- you had
10 marked it as State's Exhibit Two.

11 MR. EDWARDS: Two?

12 MR. SAXON: Yes, sir.

13 MR. BUFKIN - CROSS EXAMINATION BY MR. LYDON:

14 Q: Mr. Bufkin, Exhibit Two is a letter that you
15 wrote to the various participants in this
16 transaction, copied to LLR?

17 A: That is correct.

18 Q: All right. Paragraph one -- I take that back,
19 it's the second paragraph that starts March of
20 2008?

21 A: Yes.

22 Q: Where did that information come from?

23 A: I was reiterating the facts as they were
24 portrayed to me by the various parties the
25 members of the Pinner family and Andy Bowers,

1 their advisor.

2 Q: So paragraph one came from the Pinners and Mr.
3 Bowers?

4 A: That's correct.

5 Q: And I've called it paragraph one, I'm sorry.
6 The March 2008 paragraph.

7 A: Where I outlined what the facts were as best I
8 knew them.

9 Q: Yes.

10 A: Right.

11 Q: Did you have any firsthand knowledge of
12 anything in that paragraph?

13 A: Prior to the time that the letter was written,
14 I had seen the contract.

15 Q: Okay.

16 A: I knew that there was a contract pending on the
17 property. I had had intermittent requests from
18 the members of the family wondering about what
19 was the status of the money and finally it came
20 about that we could not pin down where the
21 money was and so I was sent on a quest to try
22 and find out what was going on. And after
23 making several phone calls trying to find the
24 location of the money, this letter resulted as
25 my search and that's kind of a lead-in

1 paragraph so it would tell all of these parties
2 what I was doing.

3 Q: Okay. So the answer to my question was this
4 March 2008 paragraph, did you participate in
5 the negotiation of the contract?

6 A: No.

7 Q: Okay. So everything --

8 A: That's not absolutely true. I helped draft one
9 of the final amendments to the contract.

10 Q: All right.

11 A: But I never had any contact with Ms. Patrick.
12 Yeah..

13 Q: Okay. All right. So this paragraph that
14 starts in March of 2008 is based on information
15 from the contract and from other third parties?

16 A: My clients, that's correct.

17 Q: From your clients, okay. Now, the first
18 paragraph on the second page is your summary of
19 what the contract said?

20 A: That's correct.

21 Q: All right. Then it says the seller's agent,
22 Andy Bowers, was assured by Vanessa Patrick
23 that additional money had been deposited in the
24 Asset Realty trust account. Were you a
25 participant in that conversation?

1 A: I was not.

2 Q: So that's just what Mr. Bowers told you?

3 A: That is correct.

4 Q: Okay. Same thing with the next paragraph.
5 It's a summary of the contract terms and it
6 says Vanessa Patrick assured the seller's agent
7 that the additional \$30,000 had been put in the
8 Asset Realty trust account?

9 A: I have no personal of that knowledge other than
10 what Andy Bowers told me and I probably had
11 other conversations with members of the Pinner
12 family as well.

13 Q: Okay. Do you have Exhibit Four there in front
14 of you?

15 A: I do.

16 Q: All right. Look over the top, right corner,
17 page five, it's a fax.

18 MS. MAGARGLE: And I don't mean to interrupt. They
19 don't have --

20 MR. SAXON: We don't have any of that yet, Mr.
21 Lydon.

22 MS. MAGARGLE: The paperwork has not been put in.
23 We obviously pulled him down --

24 MR. LYDON: Okay.

25 MS. MAGARGLE: -- because I couldn't get Exhibit Two

1 in.

2 MR. LYDON: Okay.

3 MS. MAGARGLE: So they don't have Exhibit Four at
4 this time.

5 MR. LYDON: All right.

6 Q: Well, let me just ask you --

7 MS. MAGARGLE: If you would like to put it in, I --

8 MR. LYDON: That's okay.

9 Q: Let me just ask you this, Mr. Bufkin. Were
10 there certain contingencies to closing in the
11 contract?

12 A: Yes.

13 Q: Okay. Do you know whether those contingencies
14 were ever met?

15 A: I don't have personal knowledge of that, no.

16 Q: Okay. But there was contingencies in the
17 contract and you don't know whether those
18 contingencies were ever met?

19 A: That's right. My clients brought to me a fact
20 pattern and based upon that, I followed up on
21 it.

22 Q: Exactly. This is all the fact pattern that
23 came from your clients. All right.

24 A: That's not absolutely correct. Okay. I mean
25 I understand what you're getting at. I'm not

1 trying to mealy mouth here but I have personal
2 knowledge that the \$30,000 was never deposited
3 with Asset Realty. I called down there trying
4 to find that money in anticipation of doing
5 this letter. We were just trying to find out
6 what was going on and when I called to try and
7 find out what was going on, the people at Asset
8 had no knowledge of any \$30,000, there wasn't
9 anything on deposit, they had no knowledge of
10 this contract and they had no knowledge that
11 Vanessa Patrick was acting as a principal in
12 buying that property. And so some of this
13 information came from Andy Bowers and some from
14 the family members but some of it came from my
15 own investigation in anticipation of this.

16 Q: But your own investigation, the information,
17 came from the folks at Asset Realty?

18 A: That's correct.

19 Q: Okay.

20 A: Right. I don't have access to their trust
21 account.

22 Q: Okay. All right. This paragraph that says
23 Vanessa Patrick was the primary contact on all
24 these negotiations and she gave assurances to
25 the sellers that the \$185,000 was on deposit in

1 the trust account of her real estate agency?

2 A: That's solely based upon the information that
3 Andy Bowers told me.

4 Q: Okay. You have no firsthand knowledge of any
5 -- Ms. Patrick never gave you any assurances
6 that there was \$185,000 on deposit in the trust
7 account?

8 A: I -- no. I went searching for that money and
9 was told that it was in several different
10 places. I was first told that it was in the
11 trust account of Asset Realty, then I was told
12 that it had been moved to Acquire Realty, then
13 I was told that it was in Hugh Cooper's trust
14 account. And when we finally started talking
15 to people and finding out, we found that not
16 only was the \$30,000 not there, but there was
17 no money there that had ever been put up and
18 everybody was walking away.

19 Q: Did Ms. Patrick tell you where the money was?

20 A: No, I had no individual contact with her until
21 after this letter. This letter kind of ignited
22 the fire of all of the parties realizing that
23 there was some major fraud that was being
24 perpetrated and they wanted to walk away.

25 Q: Okay. So somebody told you it was in Hugh

1 Cooper's trust account?

2 A: Yes, that's correct.

3 Q: Somebody told you it was in Asset Realty's
4 trust account?

5 A: Right.

6 Q: Somebody told you it was in Acquire's trust
7 account?

8 A: When I called the parties, I called Asset to
9 see whether they had the money because that's
10 who we thought had the money. Then I called
11 Acquire because that's who we were told it had
12 been moved to. Then I was told, hearsay
13 knowledge, that it had been put in Hugh
14 Cooper's trust account because he was not
15 sponsoring but acting as the attorney
16 apparently for Acquire Real Estate. Okay. And
17 then I contacted Hugh Cooper personally and
18 directly. I know Hugh, he's a real estate
19 attorney, he's an honorable fellow. I said,
20 "Hugh, do you have this money?" He said, "I
21 don't know anything about it."

22 Q: Okay.

23 A: And he had Katie Dunn with him there at the
24 time. Katie Dunn, I believe, is the broker in
25 charge and primary owner of Acquire.

1 Q: Acquire.

2 A: Right.

3 Q: But all this, your investigation and people
4 telling you various and sundry places that this
5 earnest money was, none of that came from Ms.
6 Patrick?

7 A: That's correct. I did not have access to her
8 directly, although I wrote this letter to her
9 thinking that if -- if in fact those
10 allegations were not true, that she would come
11 up on the net and say, oh, no, here it is in
12 this bank account, everything's okay, and she
13 never did that.

14 Q: Okay. But just to be clear, because there's a
15 lot of talk in here about assurances and
16 representations that Ms. Patrick made, and I
17 want to make it clear --

18 A: Those were not made to me.

19 Q: Nothing was made to you. Okay.

20 A: Yes, I acted as the attorney for my client,
21 tried to find out where the money was.

22 Q: Sure.

23 A: And when we turned it over, we didn't find any.

24 Q: Okay. All right. And subsequent to writing
25 this letter, you filed a lawsuit against Ms.

1 Patrick and others, isn't that correct?

2 A: I was the attorney for the Pinner family and in
3 attempting to make them whole for the fraud
4 that had been perpetrated against them.

5 Q: And did you sue her for \$185,000?

6 A: No. I think we sued her for two and a half
7 million dollars.

8 Q: Or was it \$5.3 million dollars?

9 A: Whatever it was, it was a lot of money. More
10 than just the money that was allegedly missing.
11 It was for the damages because the sale didn't
12 go through and by the time everybody found out
13 that it was a fraudulent contract, the market
14 had changed. There wasn't anybody who wanted
15 to buy that property on the Broad River, a mile
16 of property for \$19,000 per acre.

17 Q: Did Ms. Patrick offer to the Pinner the
18 initial \$30,000 earnest money deposit in order
19 to resolve this matter?

20 MS. MAGARGLE: And I guess at this point I'm going
21 to object to the relevancy because we're
22 getting into the civil case that's separate and
23 apart from this case. We are here solely on
24 her licensing issues and I was trying to be a
25 little bit liberal, but at the same time this

1 is getting way out of hand as far as we're not
2 here on the civil matter and it doesn't matter
3 what happened in the civil case.

4 MR. CHAIRMAN: At this point, we'll allow you to
5 proceed because we need to differentiate
6 between the \$30,000 and the \$185,000 and then
7 we'll get back to the issues --

8 MR. LYDON: I just have one or two more questions on
9 that, Mr. Chairman.

10 Q: Did Ms. Patrick ever communicate to you that
11 she could reimburse the Pinner for the \$30,000
12 initial earnest money deposit?

13 A: I don't have any recollection of that. There
14 was an email that came to us somewhere along
15 the line that showed that the basis of the
16 Pinner contract was not correct and that if we
17 would just give her some more time she'd be
18 able to find some more investors and maybe make
19 the deal right. But I don't remember any offer
20 -- you know, I'm getting old, I don't remember.

21 Q: That's fair enough.

22 A: But I don't remember any offer where she
23 offered \$30,000 to put it to bed, so to speak.
24 It only occurred to me that she didn't
25 understand what had happened and that it really

1 wasn't about the fact she couldn't get
2 investors, it was about the fraud and putting
3 the whole deal together and not disclosing what
4 was going on.

5 Q: But you don't remember whether she offered to
6 reimburse the Pinnars the \$30,000?

7 A: No. I have no -- I have no recollection of he:
8 making an offer to do that at any time other
9 than the time once the lawsuit started and all
10 bets were off.

11 Q: I understand.

12 A: Right.

13 Q: That's all the questions I've got. Thank you
14 very much, Mr. Bufkin.

15 A: Thank you.

16 MR. BUFKIN - RE-DIRECT EXAMINATION BY MS. MAGARGLE:

17 Q: Just briefly in follow-up. Mr. Bufkin, Mr.
18 Lydon asked you several times and I know a lot
19 of this stuff you said was information that you
20 had received from other people; however, you
21 also were very familiar with the contract --

22 A: Correct.

23 Q: -- is that correct?

24 A: That's correct.

25 Q: And you were also very -- which we're going to

1 get into and they'll get copies of in a little
2 bit -- but you were also very familiar with the
3 extension contract that was signed?

4 A: Yes, I am.

5 Q: And so, again, that is where a lot of this
6 information came from?

7 A: The final extension of the contract, I drafted.

8 Q: Okay.

9 A: Okay. There was a question, Andy Bowers came
10 to me and the Pinner family came to me and said
11 we're not sure all of what's going on here,
12 this money, \$30,000, was supposed to have been
13 put up, there are several extensions that's
14 supposed to have money that's to be held by
15 Asset Realty, but we're starting to get nervous
16 because the final extension said that the
17 earnest money was to be transferred to my
18 office and nobody was calling me offering
19 \$185,000. So in the final extension of the
20 contract, we put down kind of a summary of the
21 facts, what had happened, all right, and
22 submitted that and they signed it. They agreed
23 that that was the facts and that was what was
24 supposed to have been done, so why wouldn't my
25 clients believe that that money was put forth

1 when they signed the final extension that gave
2 an outline of those monies that were to be
3 posted at the time..

4 Q: So again, as far as your knowledge, albeit some
5 of this stuff is admittedly, and we don't deny,
6 is stuff --

7 A: It's hearsay.

8 Q: -- is hearsay that was told by Mr. Bowers who's
9 here to testify?

10 A: That's what investigators do.

11 Q: Exactly. But the difference is that you also
12 had knowledge of the contracts and you,
13 yourself, prepared the final extension that was
14 signed, is that correct?

15 A: That's correct. The purpose --

16 Q: So it was not -- I'm sorry.

17 A: -- of which was to make sure everybody
18 understood the same set of facts.

19 Q: Okay. And so, again, it's not just hearsay
20 knowledge; you have personal knowledge from the
21 contracts as well as your own drafting of the
22 final extension that was signed?

23 A: When I wrote the letter addressed to all those
24 people, I was still trying to find out what was
25 going on. That's the reason we did that. It

1 was almost as an afterthought that we sent a
2 copy of it to the LLR, thinking that they had
3 some investigative abilities and could find out
4 what was going on, not just where the \$30,000
5 was, but where was all the rest of it.

6 **MS. MAGARGLE:** That's all I have. Thank you.

7 **MR. BUFKIN - RE-CROSS EXAMINATION BY MR. LYDON:**

8 Q: One quick question.

9 A: Yes, sir.

10 Q: And it might be two questions. Mr. Bufkin, Ms.
11 Magargle asked you about the final contract
12 extension that you drafted.

13 A: Uh-huh (affirmative response).

14 Q: And it's got a summary of factual history? I
15 think you need to say yes or no.

16 A: Yes.

17 Q: That summary of that factual history --

18 **MR. CHAIRMAN:** Are you referencing the actual
19 document or are you referencing the letter?

20 **MR. LYDON:** I'm representing the actual document.

21 **MR. CHAIRMAN:** Well, we don't have a copy of that.

22 **MR. LYDON:** I just want to ask him a question about
23 it generally, not specifically.

24 Q: The information in that extension came from
25 whom?

1 A: Came partially from my own knowledge and
2 partially from Andy Bowers and the Pinner
3 family.

4 Q: That's all I've got. Thank you.

5 A: All right.

6 MR. SAXON: In consultation with the Chair, the
7 Chair has decided this will remain Exhibit
8 Number Two. To the extent it contains hearsay,
9 and I think it's uncontested that it does, no
10 hearsay from this document or anything else
11 will be used in the making of any decision by
12 the board.

13 (Petitioner's Exhibit Number Two was admitted into
14 evidence.)

15 MS. MAGARGLE: Thank you. Is he finally excused
16 from --

17 MR. LYDON: I don't object to him being excused.

18 MR. CHAIRMAN: You can be excused.

19 MR. BUFKIN: I don't get to be a witness very often

20 MS. MAGARGLE: He might be enjoying this. He might
21 want y'all to ask him questions.

22 MR. SAXON: He may not want to leave.

23 MS. MAGARGLE: I would at this time recall the
24 investigator and we'll try and resume where we
25 were.

1 MR. SOWELL - DIRECT EXAMINATION (CONT.) BY MS.

2 MAGARGLE:

3 Q: Mr. Sowell, obviously we were in the course of
4 discussing the exhibits. We've obviously
5 addressed and already been entered into
6 evidence State's Exhibit Number Two. And I
7 believe that you had already said that you
8 recognized the rest of the exhibits which are
9 Three through Six. Is that correct?

10 A: That is correct.

11 MS. MAGARGLE: And I believe, for the record, as I
12 think I stated previously, I don't believe that
13 there's any objections to these. I think the
14 only issue was with Two. Is that a fair
15 representation, Mr. Lydon?

16 MR. LYDON: Exhibit Three is also the same. It's a
17 letter from a third party.

18 MS. MAGARGLE: And I think what I had said to you
19 was Mr. Murphy is here and is willing to
20 testify. I mean he's going to testify. It was
21 sent to Mr. Sowell in regards to --

22 MR. SAXON: Right. But if you're going to submit
23 it, then that person needs to authenticate it.
24 We do follow the rules of evidence.

25 MS. MAGARGLE: And I don't disagree but Mr. Sowell

1 is the one that received it. I thought that I
2 had discussed this with Mr. Lydon and that's
3 the reason that I was doing it this way. I
4 have Mr. Murphy here. He's going to testify
5 that he sent Mr. Sowell that letter.

6 **MR. SAXON:** Mr. Lydon, is there any objection or at
7 this point is there any objection?

8 **MR. LYDON:** Hearsay objection. I don't --

9 **MR. SAXON:** Right.

10 **MR. LYDON:** -- and let me make it clear, I didn't
11 want to mislead Ms. Magargle, I don't dispute
12 that any of these documents are part of the LLR
13 file and Mr. Sowell's investigation --

14 **MR. SAXON:** Right.

15 **MR. LYDON:** -- and that he can authenticate them.
16 But as far as what the board does in term of
17 credibility, voracity and all that, you know,
18 I definitely do not want the board to be
19 considering hearsay.

20 **MR. SAXON:** Are you fine with continuing with Mr.
21 Sowell's testimony and the letter being
22 authenticated by the subsequent witness?

23 **MR. LYDON:** No objection.

24 **MR. SAXON:** Thank you.

25 **MS. MAGARGLE:** So I would ask then that State's

1 Exhibit Number Three, with the understanding
2 that Mr. Murphy will be testifying in a little
3 bit, be admitted as State's Exhibit Number
4 Three. I would ask that State's Exhibit Number
5 Four, which is the contracts, be entered into
6 evidence. I would ask that State's Exhibit
7 Number Five, which are the checks, be entered
8 into evidence. As well as the paperwork log
9 which is State's Exhibit Number Six. All of
10 which will be testified to by various
11 individuals, but I'd ask at this time that
12 those go ahead and be admitted into evidence.

13 MR. CHAIRMAN: Please proceed.

14 MR. LYDON: No objection.

15 MR. CHAIRMAN: Please proceed.

16 (Petitioner's Exhibit Numbers Three through Six were
17 admitted into evidence.)

18 Q: Mr. Sowell, the main course of your
19 investigation consisted of collecting all these
20 documents, is that correct?

21 A: Yes.

22 Q: Did you actually speak with Ms. Patrick?

23 A: No, I've never -- I spoke to her on the
24 telephone after the investigation had been
25 concluded and gone to the IRC.

1 Q: But other than that, is there anything else
2 that you did in the course of your
3 investigation?

4 A: At the time when I got the complaint, which was
5 initiated by Mr. Bufkin's letter, Ms. Patrick
6 and the other agent had already turned in their
7 license, so basically their license was
8 flagged. If they ever attempted to get their
9 license back, they would have to answer to
10 these charges.

11 Q: Okay. And obviously at this point in time, she
12 has asked to get her license back?

13 A: Correct.

14 Q: And that's how we got to where we are today?

15 A: Yes.

16 MS. MAGARGLE: Okay. I believe that that's all I
17 have for this witness.

18 MR. LYDON: Nothing for this witness.

19 MR. CHAIRMAN: You may be excused. Does the
20 Commission have any questions or concerns? You
21 may be excused, Mr. Sowell.

22 MS. MAGARGLE: We call Andy Bowers to the stand,
23 please.

24 MR. CHAIRMAN: Mr. Bowers, would you raise your
25 right hand, state your full name and address

1 and be sworn in by the Court Reporter, please?

2 MR. BOWERS: Jacob Andrew Bowers, III. I live at
3 1377 Circle H Woods Road in Prosperity, South
4 Carolina.

5 COURT REPORTER: Your name is spelled B-O-W-E-R-S?

6 MR. BOWERS: Yes, ma'am.

7 COURT REPORTER: Okay.

8 J. ANDREW BOWERS, III, having been duly sworn,
9 testifies as follows:

10 MR. BOWERS - DIRECT EXAMINATION BY MS. MAGARGLE:

11 Q: Good morning, Mr. Bowers. How are you doing?

12 A: Fine, thank you.

13 Q: What do you do for a living?

14 A: I'm a real estate broker.

15 Q: Okay. Somewhere locally?

16 A: In Newberry, South Carolina.

17 Q: How long have you been in the real estate
18 business?

19 A: Twenty-six years.

20 Q: Okay. Actually, you were subpoenaed here --

21 A: Yes.

22 Q: -- and asked to come by us? Were you involved
23 in this situation in regards to Ms. Patrick
24 that we're here about today?

25 A: Yes.

1 Q: Could you just explain to the Commission how
2 you got involved in this situation?

3 A: I got involved with the Pinner family who have
4 been lifelong friends, I guess, and family.
5 They were trying to sell some land in Richland
6 County and they asked me if I would help them
7 negotiate it because one lived in Atlanta, one
8 of the siblings lived in Savannah, one runs a
9 medical practice, another one is a -- travels
10 a good bit, and then there's another elderly
11 aunt that lives in Sumter, so they needed
12 somebody locally that could or would work with
13 them on this transaction.

14 Q: So you were involved from the beginning, is
15 that correct? For the most --

16 A: Yes, ma'am.

17 Q: For the most part?

18 A: Yes, ma'am.

19 Q: Now, were you aware of the contract, which I
20 believe is part of State's Exhibit Number Four
21 right here, were you aware of the contract that
22 was initially signed in regards to this case?

23 A: Yes, ma'am.

24 Q: Okay. And to that contract there were actually
25 some addendums made, is that correct?

1 A: Yes, ma'am.

2 Q: Okay. I want to ask you a few questions about
3 the contract. First -- well, let me backtrack.
4 Ms. Patrick, what was at the time, I know
5 obviously there's knowledge that you have now,
6 but at the time that all this was going on,
7 what was your understanding in regards to what
8 Ms. Patrick's role was in this contract?

9 A: She was a real estate agent for putting
10 together investors to buy the property.

11 Q: Okay. And who did she work for?

12 A: Asset Realty.

13 Q: Did she ever tell you or were you ever informed
14 or do you have any knowledge of whether or not
15 she was involved as an investor in this
16 project?

17 A: In this contract, no.

18 Q: So she comes to you or comes to the Pinner
19 family requesting what, to buy this property?

20 A: She brings us some -- an offer on the property.

21 Q: Okay. And again, I believe as was testified
22 to, this wasn't something that was out there in
23 MLS, this was obviously out there knowledge-
24 wise for her to know, but this wasn't something
25 that was necessarily --

1 A: The property was not listed in the Multiple
2 Listing Service, no.

3 Q: Okay. But it however was out there for other
4 agents to know that it was --

5 A: Vanessa, or Ms. Patrick, had an opportunity
6 prior to this contract. The Pinner family
7 invited I think five different people, either
8 investors' agents or commercial brokers, to let
9 them be aware that the property was for sale
10 and then to see if they had any people that
11 might be interested and if they did, to bring
12 them an offer on the property. Ms. Patrick and
13 another agent submitted offers prior to this to
14 the Pinner family. The Pinner family went with
15 -- not with Ms. Patrick's offer but with the --
16 with another offer from another broker. That
17 offer subsequently fell through and when it
18 fell through, they contacted or asked me who
19 would I contact and I told them that since Ms.
20 Patrick had the second offer that -- on the
21 property prior, that I would call her first and
22 let her know that the property was back on the
23 market, you might say, or still available, that
24 the contract had fallen through and that's what
25 they did. And in the meantime, they I think

1 notified Ms. Patrick, after they had told her
2 that, that if she had an offer that they wanted
3 her to work it through me and through Mr.
4 Bufkin.

5 Q: So again, she comes to y'all with this offer?

6 A: Yes.

7 Q: Okay. And this offer is actually accepted by
8 the Pinner family, is that correct?

9 A: Not in original form. There was an offer, a
10 counteroffer, I think another counter and then
11 final acceptance.

12 Q: Okay. And, of course, again, the contract had
13 addendums to it, correct?

14 A: Yes.

15 Q: Okay. Now, in the contract on first page, the
16 sales price was for \$5,396,000, is that
17 correct?

18 A: Yes, ma'am.

19 Q: Okay. What does it say in regards to the
20 earnest money?

21 A: It says \$30,000 paid by check, held in trust by
22 Asset Realty.

23 Q: Okay. And again, if you'll turn to page two,
24 under brokerage fee, what does it state in
25 there about where the commission is supposed to

1 go?

2 A: The three -- it was a three percent commission
3 to be paid to Asset Realty at closing.

4 Q: And then on page three, does Ms. Patrick
5 actually sign this contract?

6 A: I think she -- she is the selling agent.

7 Q: So she signed as a selling agent and what does
8 she list as her office?

9 A: Asset Realty.

10 Q: Okay. So the whole time, again, where did you
11 believe Ms. Patrick worked and where did you
12 believe this contract was going through?

13 A: It was going through Asset Realty and that's
14 where she worked.

15 Q: Okay. Obviously, there's the addendum to the
16 contract and not on the first page of that
17 addendum but on the second page, is there
18 information in regards to the earnest money?

19 A: It says purchaser will deposit \$30,000 earnest
20 money with Asset Realty. It will become non-
21 refundable after 120 days. And then they were
22 to put up an additional \$50,000, also non-
23 refundable, and proceed to closing to take
24 place by August 29th.

25 Q: Okay. And that's all part of the addendum to

1 the contract that was signed, is that correct?

2 A: Yes, ma'am.

3 Q: So your understanding and what you were told by
4 Ms. Patrick was that the \$30,000 was sitting in
5 Asset Realty, is that correct?

6 A: Yes, ma'am.

7 Q: And as a matter of fact, did she also give
8 y'all copies, what we have marked as State's
9 Exhibit Number Five, of some checks?

10 A: Yes, ma'am.

11 Q: And those total what? There's two of them, one
12 for \$25,000 and one for \$5,000, is that
13 correct?

14 A: That's correct, there's \$30,000.

15 Q: So it was your understanding, from talking with
16 her, that everything was a go and that
17 everything was done the way it was supposed to
18 be done which was going through her company and
19 that the money was with the company, is that
20 right?

21 A: Yes.

22 Q: Now, obviously, I know that as part of the
23 addendum that there were various things that
24 were supposed to take place but ultimately
25 towards the end -- not towards the end, but in

1 October did y'all ultimately have conversations
2 with Ms. Patrick about doing a contract
3 extension?

4 A: Yes.

5 Q: Okay. I would ask that you turn to the second
6 to the last page of State's Exhibit Four. Is
7 this the extension you discussed with Ms.
8 Patrick?

9 A: Yes.

10 Q: What was your understanding and what were your
11 conversations in regards to Ms. Patrick as far
12 as what this extension called for?

13 A: It calls for the contract to be extended from
14 a September 30th closing to a December 31st
15 closing for an additional \$75,000 penalty
16 because it did not close during the terms of
17 the contract.

18 Q: Now, the \$75,000 was again another non-
19 refundable fee?

20 A: Yes, ma'am.

21 Q: Okay. Now, is this beyond the 120 days at this
22 point?

23 A: Yes, ma'am.

24 Q: Okay. So then does that make that, based on
25 what the addendum says that since it was beyond

1 the 120 days, the \$30,000 earnest money is now
2 non-refundable; would that be correct?

3 A: Yes, ma'am.

4 Q: Okay. Does it also say in that addendum
5 another \$50,000?

6 A: Right. Yes, ma'am, it does.

7 Q: So did you have conversations with her about
8 not just the \$30,000 but all total, the
9 \$185,000 in regards to this contract?

10 A: The \$30,000 initially put up by the contract
11 was these two checks here.

12 Q: Yes, sir.

13 A: Then there was a deadline. What I did was do
14 a time line with what the contract called for
15 is she had so many days to do DHEC, she had so
16 many days to get an engineering firm involved,
17 she had so many days to get Richland County
18 approval for the subdivision and each -- I have
19 a date at each one of those stops that when
20 additional money was due and what their plans
21 were to go forward. And in July I called and
22 asked her that on July 29th there was an
23 additional \$50,000 due in earnest money, non-
24 refundable, and was it being put up and had it
25 been put up. She stated at that particular

1 time -- usually my conversations took place
2 with her on a cell phone, either from me by my
3 cell or to her on her cell -- she stated at one
4 point in July in that conversation that she was
5 on her way to pick up a \$350,000 check for the
6 earnest money and to pay B.P. Barber for work
7 that they had done on the project. So it was
8 my understanding that money was being paid as
9 earnest money, that \$50,000 would be put in
10 Asset Realty. Then there was an additional, in
11 the contract, if they saw they could not get
12 closed by August 29th, they were to put up an
13 additional \$30,000, non-refundable earnest
14 money, that would move the closing date to
15 September 30th. At that point she came back
16 and said that she was going to need more time,
17 that they couldn't make the August 29th
18 closing, they couldn't make the September 30th.
19 She had a letter or a statement from B.P.
20 Barber that they were going to need until
21 December 31st to get everything done so that
22 they could get the Richland County approval.
23 I told her I thought that we could work an
24 extension. Everybody in the family actually
25 wanted to close earlier, but I thought we could

1 work an extension but it would cost her money
2 for the time. And if her investors were
3 willing to put up the money, then I thought we
4 could get a December 31st closing. The family,
5 when we -- when I presented all this to them,
6 the family originally wanted \$100,000 to extend
7 it to December 31st and then finally agreed on
8 \$75,000. There was an extension written, sent
9 to -- I think -- it might not have been Asset
10 but it was sent to Vanessa. She and the lady
11 that had signed the original contract signed
12 the extension and faxed it back to us. I got
13 everybody in the family's signatures on it and
14 we thought we had a deal to go to December 31st
15 with \$185,000 in escrow.

16 Q: So again, you went through that, for all
17 intents and purposes, you went through that
18 extension that is signed by Ms. Grooms and Ms.
19 Patrick, you went through that with her before
20 you even sent it to her and explained to her
21 what you were sending her?

22 A: Yes.

23 Q: Okay. And she said -- she again assured you
24 that all this money is going to be sitting in
25 an escrow account?

1 A: Yes, ma'am.

2 Q: And you thought it was going to be at Asset, is
3 that correct?

4 A: At that -- at some point in October I noticed
5 on a listing through the Multiple Listing
6 Service that came up one morning, what we call
7 our hot sheet, that a certain property that I
8 knew Vanessa was the listing agent for showed
9 up under another company's name. And when I
10 pulled it up, it was Acquire Realty and I'd
11 never heard of Acquire, so I didn't -- I wasn't
12 familiar with them. I called Vanessa and asked
13 her if I was dealing with, still dealing with
14 Asset Realty or was I now dealing with Acquire
15 Realty. She assured me that she was working
16 with Acquire Realty and they would be doing the
17 contract and I asked if Asset had released the
18 contract. She said, yeah. And I asked where
19 is the earnest money and she said I'm going to
20 have to check and see where Sally put it, I
21 think were her words, I'm not sure whether
22 Acquire's got it or whether Attorney Hugh
23 Cooper has got it because he's helping us to
24 set up the LLC for the real estate company.

25 Q: And I don't mean to correct you, but did you

1 mean to say Acquire had it or Hugh Cooper had
2 it or did she tell you that Asset had it or
3 Hugh Cooper?

4 A: I asked her where the earnest money was and she
5 wasn't sure --

6 Q: Okay.

7 A: -- whether it had been transferred to Acquire
8 or if Hugh Cooper.

9 Q: Got you. Okay. I just wanted to make sure
10 that I was clear on that. Again, though, all
11 the time believing that whether it was with
12 Asset or Acquire or Hugh Cooper, that it was
13 somewhere and that they had the money?

14 A: Yes.

15 Q: That was your belief?

16 A: (Nods head affirmatively.)

17 **MS. MAGARGLE:** Beg the Commission's indulgence.
18 That's all I have for this witness. Thank you.

19 **MR. CHAIRMAN:** Please answer any questions that Mr.
20 Lydon may have of you.

21 **MR. BOWERS - CROSS EXAMINATION BY MR. LYDON:**

22 Q: Mr. Bowers, what is your relationship with the
23 Pinner family?

24 A: I was -- I'm an ex-brother-in-law.

25 Q: Okay. And so who is your ex-wife?

- 1 A: Mimi. Mimi Pinner Bowers.
- 2 Q: Okay. And was she a party to this contract?
- 3 A: Yes.
- 4 Q: All right. What kind of commission were you
5 going to be paid on this transaction?
- 6 A: I was not due anything.
- 7 Q: Did you have a contract with the Pinner family
8 as selling agent for this transaction?
- 9 A: No.
- 10 Q: All right. Look with me at Exhibit Four, if
11 you will, which is the contract.
- 12 A: Okay.
- 13 Q: All right. Starting on page one. Before we
14 even get to paragraph number one, there's a
15 provision that says agency confirmation. It
16 says purchaser and seller acknowledge that a
17 South Carolina Real Estate Commission Agency
18 Disclosure has been executed by the purchaser
19 prior to making this offer and by the seller
20 prior to its presentation and serves as written
21 confirmation of the agreed upon agency status.
22 Had the Pinner family executed that disclosure?
- 23 A: No, sir.
- 24 Q: Okay. And the property was not listed with
25 MLS?

1 A: No, sir.

2 Q: Was there a for sale sign on the property?

3 A: No, sir.

4 Q: Okay. So this wasn't your typical MLS
5 transaction with buyer's agents and seller's
6 agents and Real Estate Agency Disclosures and
7 all that, was it?

8 A: No, sir.

9 Q: In fact, you weren't even going to be paid a
10 commission?

11 A: Right.

12 Q: Okay. Why weren't they paying you a
13 commission?

14 A: I didn't ask for one.

15 Q: Okay. I assume it's because they were family?

16 A: Right.

17 Q: Okay. Now, looking back at the contract,
18 paragraph four is the financing, is that
19 correct?

20 A: Yes, sir.

21 Q: And it states that the purchaser was going to
22 get conventional financing?

23 A: Commercial loan, yes, sir.

24 Q: Okay. Do you know whether that financing was
25 ever obtained?

1 A: To my knowledge, no.

2 Q: Okay. And, in fact, during the pendency of
3 this contract is when the banks began suffering
4 their economic woes and nobody could borrow any
5 money, isn't that --

6 A: Yes, sir.

7 Q: -- accurate?

8 A: Yes, sir.

9 Q: Okay. And then under number seven, it says
10 additional contingencies, correct?

11 A: Yes, sir.

12 Q: All right. Let's go over to that page, it's
13 got a number five up in the top corner, it's
14 got a fax number five up there. Are these the
15 contingencies that had to be met? Starting
16 with number two?

17 A: Right. Yes, sir.

18 Q: So they had to get subdivision approval?

19 A: Right.

20 Q: Do you know whether they ever got subdivision
21 approval?

22 A: To my knowledge, they did not. They were
23 waiting on B.P. Barber to finish their
24 engineering and studies before they could
25 present it to Richland County.

1 Q: Okay. And do you know whether Richland County
2 ever approved this as a subdivision?

3 A: To my knowledge, no.

4 Q: Okay. Were there any other contingencies in
5 this contract that weren't met?

6 A: I think the biggest -- the biggest one was
7 getting B.P. Barber to finish the subdivision
8 so that they could get approval from Richland
9 County.

10 Q: Okay. So they didn't get their financing, to
11 your knowledge?

12 A: No.

13 Q: And they didn't get Richland County approval?

14 A: No.

15 Q: And those are both contingencies in this
16 contract?

17 A: Yes.

18 Q: Okay. Now, let's talk a little bit about the
19 earnest money. I believe you've got Exhibit
20 Five there in front of you, your right hand is
21 on top of it.

22 A: Yes.

23 Q: Okay. Those checks were to be the original
24 earnest money deposit that was required under
25 the contract, is that correct?

1 A: Yes.

2 Q: And they've got two different dates. One's
3 dated March 9, 2008 and one's dated March 21,
4 2008. Do you know why that is?

5 A: Yes, sir. The original contract, when it came
6 in, said \$25,000 in earnest money. That was
7 changed in our negotiations to \$30,000. And
8 they submitted another check on the 21st as
9 proof that the additional earnest money was
10 being put up.

11 Q: Okay. When was the contract finally approved
12 and ratified and signed by everybody?

13 A: To my knowledge, the way I remember is that I
14 faxed the accepted contract -- this is after
15 offer, counter, counter, acceptance -- to Asset
16 Realty on the 27th of March.

17 Q: Okay.

18 A: And --

19 Q: So sometime at the very end of March?

20 A: Right. Yes, sir.

21 Q: And this had started, presumably, back at the
22 beginning of March?

23 A: Yes, sir.

24 Q: Okay. Now, Ms. Magargle asked you about
25 additional earnest money deposits.

1 A: Right.

2 Q: All right. Did you ever get any more checks
3 showing that there were any more earnest money
4 deposits being made?

5 A: No.

6 Q: Okay. And I believe you testified that in
7 July, late July, you spoke to Ms. Patrick and
8 she told you that she was going to pick up the
9 check for \$350,000?

10 A: Yes.

11 Q: Do you know whether she ever got that check?

12 A: No, sir, I do not.

13 Q: Did you ever call to follow up and find out if
14 she had gotten that check?

15 A: No, sir, not to my recollection.

16 Q: Did you ever ask her to send you proof of the
17 additional \$50,000 escrow deposit?

18 A: No.

19 Q: Okay. Did you tell the Pinner family that you
20 had concerns and you didn't think that the
21 additional \$50,000 escrow money had been put
22 up?

23 A: Not at that time, no.

24 Q: In August did you tell the --

25 A: Yes.

- 1 Q: -- Pinner family?
- 2 A: Yes.
- 3 Q: Okay. So July 29th she tells you she's going
4 to pick up a \$350,000 check, but then you don't
5 know what happened after that?
- 6 A: No.
- 7 Q: And then sometime in August of 2008 -- and I
8 believe this contract would have expired July
9 29, 2008, that was the initial --
- 10 A: Right.
- 11 Q: -- deadline on the contract? July 29, '08.
- 12 A: 8/29/08 on the contract. The \$50,000 due July
13 was just to -- was additional earnest money.
- 14 Q: Okay. Okay. I'm with you.
- 15 A: And then they would proceed to closing by
16 August 29th.
- 17 Q: August 29th. What happened if they didn't come
18 up with the additional \$50,000? The contract
19 was terminated?
- 20 A: Yes.
- 21 Q: Okay. And so on or about July 29, your
22 testimony is that Ms. Patrick told you she was
23 going to pick up a \$350,000 check.
- 24 A: July 29th, right.
- 25 Q: On July 29th.

1 A: Yes.

2 Q: But you don't know whether she ever got the
3 check?

4 A: I don't.

5 Q: And you never asked her for any proof that the
6 \$50,000 additional earnest money had been
7 deposited?

8 A: No.

9 Q: And sometime in August you told the Pinners
10 that you didn't know whether the \$50,000 had
11 ever been put in escrow.

12 A: I didn't.

13 Q: Did you tell them that?

14 A: Yes.

15 Q: Okay. So all you knew about at that time was
16 \$30,000?

17 A: Right.

18 Q: Which was Exhibit Five. And if, in fact, the
19 \$50,000 was not put in escrow, then the
20 contract just was terminated, right?

21 A: Right.

22 Q: Okay. How about the additional money? Somehow
23 or another this thing got up to \$125,000. You
24 testified you didn't ask for or get proof of
25 \$50,000, right?

1 A: I didn't get proof, no.

2 Q: You didn't get proof. Which meant the contract
3 would have expired on July 29th?

4 A: Okay.

5 Q: All right. Did you get any other proof of an
6 other escrow money, any other checks like this?

7 A: No. When Vanessa, Ms. Patrick, said she needed
8 additional time past the August 29th, the
9 contract had a 30-day extension built into it,
10 if they would request it in writing, for an
11 additional \$30,000. That would make the 30
12 plus the 50 plus the additional 30 to get to
13 that September 30th up to 110.

14 Q: Okay.

15 A: To get past that September 30th to December
16 31st is where the other 75 came in.

17 Q: All right.. Where is the document in writing
18 where Ms. Patrick asked for the additional 30
19 days for \$30,000?

20 A: It was in one of the -- it's not on -- it's no
21 on this.

22 Q: I've never seen it, but is there a document in
23 writing where Ms. Patrick asked for an
24 additional 30 days and agreed to pay \$30,000?

25 A: There were two additional extensions, yes,

1 there were.

2 Q: Okay. You don't know where they are?

3 A: I don't -- they're not here.

4 Q: Okay. Was there ever any indication of any
5 additional earnest money being put up?

6 A: Not in the form of checks, no. Other than
7 assurances by phone, that was it.

8 Q: Okay. All right. And assurance by phone was
9 she was going to pick up a \$350,000 check?

10 A: Right.

11 Q: Okay.

12 A: \$350,000 to be used to pay B.P. Barber and the
13 additional earnest money.

14 Q: Why was Ms. Patrick going to pay B.P. Barber?

15 A: I thought she was getting a check from her
16 investors. I didn't think she was paying them.

17 Q: Okay. Did you --

18 A: My -- my -- my assumption, I guess you'd say,
19 was that she -- her investors were putting up
20 the money, she had to just take it to B.P.
21 Barber.

22 Q: When did you learn that she was an investor in
23 this transaction?

24 A: Not until probably August or September, maybe
25 even October. It was -- I wasn't -- I was only

1 working with her as an agent. I wasn't working
2 with her as one of the investors.

3 Q: Okay. So just to be clear, and I don't mean to
4 beat a dead horse, this Exhibit Five is the
5 only documentation that was ever presented to
6 you during the course of this entire deal with
7 respect to an earnest money deposit?

8 A: Right.

9 Q: Okay. And you told your clients, the sellers,
10 in August of 2008 that you didn't think the
11 \$50,000 had been put up which was necessary to
12 extend the contract beyond July 29th?

13 A: I guess, yes.

14 MR. LYDON: Okay. That's all the questions I've
15 got. Thank you.

16 MS. MAGARGLE: Just briefly on re-direct.

17 MR. BOWERS - RE-DIRECT EXAMINATION BY MS. MAGARGLE:

18 Q: Mr. Bowers, first of all, I just want to be
19 sure that we're clear because I think there's
20 been some confusion. The contract did not
21 expire until August, correct, not July?

22 A: August, right.

23 Q: Okay. And I think everybody's getting confused
24 about the different dates and I just want to
25 make sure that the contract was supposed to end

1 in August, not July. Now, he wanted to harp on
2 the fact that you didn't get any assurances or
3 any checks regarding the \$50,000. In your
4 normal course of business, if you have an
5 extension, and I know you weren't necessarily
6 representing them as an agent, but would you
7 take the other agent's word or would you ask
8 them to submit checks to you to show that that
9 \$50,000 was there?

10 A: I would take most -- most agents at their word.
11 Especially --

12 Q: And that backfired in this case but normally --

13 A: It backfired. In most cases, you know who
14 you're dealing with. If I didn't know who I
15 was dealing with, then probably I would have
16 asked for proof.

17 Q: You know, he harped on the fact that you didn't
18 ask for proof, but you had her assurance that
19 that money was there?

20 A: Yes.

21 Q: Okay. Now, going beyond the actual initial
22 contract, okay, you got the contract and no
23 matter what, you ultimately go back, and
24 correct me if I'm wrong, but I believe that
25 your earlier testimony was you went back and

1 you discussed this full contract, which is an
2 extension of the contract, with Ms. Patrick; is
3 that correct?

4 A: Yes.

5 Q: Okay. And again, that's in October of '08?

6 A: Yes.

7 Q: Okay. And she agreed to all that and she
8 understood what was going on?

9 A: Yes.

10 Q: Okay. And again, assured you through her word
11 that that money was going to be in escrow
12 somewhere?

13 A: Yes. This was drawn by Mr. Bufkin, but I
14 actually, after discussing with Ms. Patrick,
15 since it was only one person for her to have
16 sign, the lady from Riverpath, this was faxed
17 to her office first because it was going to
18 take longer to get the signatures of eight
19 people instead of just the one.

20 Q: Okay.

21 A: So she -- they signed it first.

22 Q: Okay. But she was very much aware of that --

23 A: Yes.

24 Q: -- when she signed it in October? Thank you.

25 MR. BOWERS - RE-CROSS EXAMINATION BY MR. LYDON:

1 Q: Mr. Bowers, just a couple of questions about
2 this contract extension. It's Exhibit Four and
3 I think it's the page that's got a fax number
4 ten up in the top, right-hand corner.

5 A: Okay.

6 Q: All right. Now, let me be clear. If the
7 \$50,000 wasn't paid on July 29, did the
8 contract continue through August 29 or was it
9 over?

10 A: My understanding with Ms. Patrick, I didn't ask
11 for proof, I didn't ask for additional checks,
12 but I was under the impression that the money,
13 \$50,000, had been put in escrow.

14 Q: Right. But what if it wasn't put in escrow,
15 what was the effect of the contract?

16 A: That's why we have people like you and Mr.
17 Bufkin.

18 Q: So you're not sure if the money wasn't put up
19 whether the contract expired July 29th or
20 August 29th?

21 A: I always felt like the contract would run till
22 August 29th for the closing date.

23 Q: Okay. Now, looking at this extension document.

24 A: Uh-huh (affirmative response).

25 Q: The second whereas paragraph, do you see that?

1 A: Yes, sir.

2 Q: It says that the closing date was supposed to
3 be no later than June 29, 2008.

4 A: That's a misprint or a typo.

5 Q: That's wrong?

6 A: Yeah, that's wrong.

7 Q: Okay. So could there be other things in this
8 document that are factually incorrect, too?

9 A: Not that I've seen.

10 Q: Okay. But that's wrong?

11 A: That's --

12 Q: It's not June 29th?

13 A: No, sir.

14 Q: Might have been July 29th or it might have been
15 August 29th? I mean --

16 A: I don't know. It was supposed to have been
17 August 29th.

18 Q: Okay. If they paid the \$50,000?

19 A: If they paid -- yes.

20 Q: What happened if they didn't pay the \$50,000?

21 **MS. MAGARGLE:** And at this point in time, I'm going
22 to object to, A, it's already been asked and
23 answered; B, he's not a contract attorney, he
24 doesn't know what's going to happen. So I
25 would ask that --

1 MR. CHAIRMAN: Sustained.

2 MS. MAGARGLE: Thank you.

3 Q: All right. So the June 29 date is clearly
4 wrong?

5 A: Yes, sir.

6 Q: All right. Then the next paragraph says
7 subsequently the parties agreed that in return
8 for an additional \$50,000, an additional 30-day
9 extension of time would be granted. Was there
10 a subsequent agreement or was that part of the
11 original contract?

12 A: That was part of the original contract.

13 Q: So there was no subsequent agreement?

14 A: But there was to get it to September.

15 Q: Well, we're getting to that one in a minute.

16 A: Okay.

17 Q: But this statement that there was a subsequent
18 agreement for an additional \$50,000 that would
19 be extended to August 29th is also incorrect?

20 A: In the addendum to the contract, it says,
21 "Seller to extend due diligence period
22 accordingly, not to exceed one 30-day
23 extension." For one 30-day extension, the
24 purchaser would have put up \$30,000. That
25 would put it to -- the one 30-day extension

1 would make it to September 30th.

2 Q: All right. I'm getting to that one in a
3 minute. My question is this third whereas
4 paragraph says, "Subsequently, the parties
5 agreed that in return for an additional
6 \$50,000, an additional 30-day extension of time
7 would be given." Was there a subsequent
8 agreement or was that part of the original
9 contract?

10 A: It was part of the original contract. That was
11 the part -- that's what I just read. It said
12 -- if you'll notice, when he wrote this, they
13 have already agreed to this extension for
14 \$50,000 to move it to August 29th.

15 Q: I'm just trying to make sure everybody
16 understands the factual setting. This August
17 29 extension was part of the original contract?

18 A: Yes, sir.

19 Q: Okay. Okay. There was no subsequent agreement
20 as stated right here?

21 MS. MAGARGLE: And again --

22 A: They've already agreed.

23 Q: All right.

24 MS. MAGARGLE: -- I'm going to object to going
25 through a contract with someone who --

1 obviously he can testify to what he knows about
2 it, but he didn't write the contract. So to
3 sit here and badger him about what was stated,
4 he's not an attorney. All he can do is testify
5 as to what his knowledge is.

6 MR. CHAIRMAN: I'm going to overrule that just
7 simply because he was an agent of the contract
8 and he is --

9 MS. MAGARGLE: Basically --

10 MR. CHAIRMAN: -- his signature appears on the
11 contract. Are we about to kind of bring this
12 to some conclusion?

13 MR. LYDON: I've got about two more questions.

14 MR. CHAIRMAN: Okay.

15 MS. MAGARGLE: And again, I just want to correct the
16 record. He actually was not an agent and he
17 didn't sign this, but I just wanted to make
18 sure that was clear, too.

19 MR. CHAIRMAN: Okay. He did testify, as I
20 understood it, that he was an agent. He
21 testified that he did not receive any
22 compensation or was not to receive any
23 compensation but you were an agent representing
24 the sellers is what I understood.

25 A: Yes, sir.

1 Q: And did you sign this agreement?

2 A: I witnessed it.

3 Q: Okay. Did you read it before you signed it?

4 A: Yeah.

5 Q: And the next paragraph, and this is the last
6 one I'm going to ask you about, is the parties
7 further agreed that in return for an additional
8 \$30,000 there would be an additional extension
9 of time for the closing to take place on or
10 before September 30th, right?

11 A: Right.

12 Q: Okay. But you don't have that document with
13 that extension agreement?

14 A: There was a document submitted from Ms.
15 Patrick, signed by her and Ms. Grooms,
16 requesting a 30-day extension to move it to
17 September 30th.

18 Q: There's no doubt about that?

19 A: Well, you asked if -- it's not here.

20 Q: Okay.

21 A: But there was one made.

22 Q: There was one? Okay.

23 A: And it was submitted to us and we signed it.

24 Q: Okay.

25 A: Or the Pinner family signed it.

1 MR. LYDON: That's all the questions I've got.
2 Thank you.

3 MR. CHAIRMAN: Please answer any questions that the
4 Real Estate Commission may have of you, sir.

5 MR. BOWERS - QUESTIONS BY THE COMMISSION:

6 MS. YOUNG: At what point did any of the supposed
7 deposits ever become non-refundable? Had the
8 contract reached any point that the deposits
9 were non-refundable?

10 A: I think after the first 120 days, anything
11 after that was non-refundable.

12 MR. CHAIRMAN: After the first 120?

13 A: Yes, sir.

14 MR. CHAIRMAN: All right. So the State's Exhibit
15 Four and Five, the addendum, paragraph one,
16 \$25,000 is struck out and \$30,000 has been
17 initialed, purchaser to obtain preliminary
18 evaluation by SC DHEC to determine if the tract
19 is generally suitable for conventional septic
20 systems for purchaser's desired lot density.
21 The purchaser shall also submit a request for
22 subdivision approval with DHEC. Purchaser
23 requests 30 days to obtain a field evaluation
24 and receive submission approval. Does that
25 mean that that \$30,000 is hard after 30 days or

1 does it go into the next 90 days in paragraph
2 two?

3 A: My understanding, it would go into the next 30
4 -- next 90 days of paragraph two. A hundred
5 and twenty days is what I always calculated as
6 when everything became non-refundable,
7 everything that moved forward from that.

8 MR. CHAIRMAN: So if they didn't accomplish what was
9 spelled out in paragraph one, what would have
10 occurred?

11 A: They would move on to -- well, they did obtain
12 the DHEC approval, so then they moved into the
13 second phase of --

14 MR. CHAIRMAN: So paragraph one, those stipulations
15 were accomplished?

16 A: I was told, yes, sir.

17 MS. YOUNG: So you're saying after 120 days that
18 deposit was non-refundable?

19 A: Yes, ma'am.

20 MR. CHAIRMAN: And making sure we understand, did
21 you testify earlier that they did not get
22 subdivision approval?

23 A: To my knowledge, they've never gotten
24 subdivision approval.

25 MR. CHAIRMAN: But they got approval from DHEC based

1 on some preliminary plan then?

2 A: They had the soil tested. Ms. Patrick said she
3 was out with the DHEC to do the soil test, they
4 approved the soil samples but they had to have
5 -- for Richland County, they had to go through,
6 have a subdivision plan.

7 MR. CHAIRMAN: Okay.

8 A: And that was not completed by B.P. Barber.

9 MR. CHAIRMAN: So that would have been with the
10 planning commission --

11 A: Yes, sir.

12 MR. CHAIRMAN: -- and county council, etcetera, in
13 order to subdivide the property?

14 A: Yes, sir.

15 MR. CHAIRMAN: But the DHEC approvals were obtained
16 within the 30-day period?

17 A: That's what she told me, yes, sir.

18 MR. CHAIRMAN: Please answer any other questions the
19 Commission members may have.

20 MR. HARLEY: Were these some of the conditions in
21 this contract that had to be taken care of in
22 order to move forward?

23 A: I'm sorry, sir?

24 MR. HARLEY: Were these conditions on the planning
25 and development, both for Richland County, the

1 planning board, to approve the subdivision, was
2 that a condition?

3 A: Yes, sir.

4 MR. HARLEY: But it was not taken care of?

5 A: No, sir.

6 MR. HARLEY: Thank you.

7 MR. CHAIRMAN: Any other questions? Thank you, sir,
8 you may be excused. Ms. Magargle?

9 MS. MAGARGLE: I would call Dr. West to the stand,
10 please.

11 MR. CHAIRMAN: Pardon me?

12 MS. MAGARGLE: Dr. West to the stand, please.

13 MR. CHAIRMAN: Hello, Dr. West. If you would, state
14 your full name and address for the Court
15 Reporter and be sworn in by her.

16 DR. WEST: And do you want mailing address or
17 physical address?

18 MR. CHAIRMAN: Physical address where you live,
19 where we can find you.

20 DR. WEST: Okay. I'm Dr. Laura Pinner West. My
21 address is 214 Stillhouse Lane, Lakemont, L-A-
22 K-E-M-O-N-T, Georgia, 30552.

23 LAURA P. WEST, having been duly sworn, testifies as
24 follows:

25 DR. WEST - DIRECT EXAMINATION BY MS. MAGARGLE:

1 Q: Good afternoon.

2 A: Good afternoon.

3 Q: Unfortunately, it's afternoon. Dr. West, what
4 do you do for a living?

5 A: I'm a physician.

6 Q: And again, were you subpoenaed by us to come
7 here today?

8 A: Yes.

9 Q: And had a quite a little drive?

10 A: Yes.

11 Q: We appreciate you coming here today. Actually,
12 we're here, and we're just going to cut to the
13 chase, we're here on the case of Ms. Patrick
14 and you and I've discussed this a couple of
15 times, but could you just inform the Commission
16 what your involvement was. Obviously, you're
17 -- I'm sure picked up, your last name was Laura
18 Pinner West. So, obviously, I'm sure they can
19 pick up that you are a part of the contract.
20 But if you will just inform the Commission as
21 to what your involvement was with this contract
22 and how you got involved with Ms. Patrick.

23 A: Okay. Obviously there are seven owners to this
24 property and I was the point person so that
25 Andy didn't have to deal with seven people

1 every time anything was talked about,
2 negotiated. So he and I did most of the
3 conversations and I in turn would talk to my
4 93-year-old aunt and then my siblings. And
5 prior to this contract, I had also had some
6 direct involvements with Vanessa trying to do
7 some contract negotiations so I had met with
8 her. And so, again, rather than dealing with
9 her to me, we asked Andy to be the person that
10 could be there on a daily basis to deal with
11 Vanessa and that he would then deal with me and
12 then I would deal with the family.

13 Q: Okay.

14 A: Hierarchy.

15 Q: Got you. I just want to make sure that
16 understand, too. When y'all signed this
17 contract, what was your understanding as far as
18 the money that was going to be put down?

19 A: That initially there was going to be some
20 earnest money that was not -- that was
21 refundable, that by a certain time period --
22 and again, I don't think we thought of it as
23 tasks, we thought of it as time periods and
24 that they had that time to get that task done
25 If that task wasn't done, then they had the

1 ability to drop the contract if they wanted but
2 it was a time line. And so by 120 days, we
3 expected the \$80,000 to be non-refundable and
4 then as extensions played out, that money was
5 to have been non-refundable.

6 Q: Okay. Now, you had had some previous dealings
7 with Ms. Patrick, is that correct?

8 A: Yes.

9 Q: So you put your trust and faith in that; would
10 that be accurate? I mean obviously with your
11 dealings with her previously.

12 A: Yes.

13 Q: So what was your understanding and your belief
14 as to where this money was?

15 A: That she was an active agent for Asset Realty.

16 Q: And where was this money?

17 A: With the brokerage firm, as it should be.

18 Q: Okay. And so you believed the whole time that
19 this money was sitting in a trust account
20 somewhere?

21 A: Yes.

22 Q: Okay. Now, let me ask you, too, what was your
23 understanding as far as Ms. Patrick's
24 involvement in this case?

25 A: That she was --

1 Q: Initially, when this contract was going on,
2 what was your understanding of what her role
3 was?

4 A: I thought she was representing the purchaser.

5 Q: Okay. Did you have any knowledge that she was
6 also involved in purchasing the property?

7 A: No.

8 Q: Did she ever provide you with anything in
9 writing to that effect?

10 A: No. And nor did we know that the person
11 signing that contract was an agent.

12 Q: Okay. Were you involved, and I believe that
13 your name is on there, but I'd ask that you
14 flip to the back of State's Exhibit Number
15 Four.

16 A: Uh-huh (affirmative response).

17 Q: It's the last two pages. Were you involved in
18 regards to this extension?

19 A: Yes.

20 Q: Okay. And what was your belief in regards to
21 this extension and what Ms. Patrick ultimately
22 agreed to?

23 A: My understanding was that she felt that she
24 could -- if she could extend it, she would have
25 time to get all of these things done. We

1 wanted a closing date and particularly my older
2 aunt wanted to be able to use some of this
3 money that she had received from her father and
4 so she wanted to have cash to move on with what
5 she wanted to do. She had some dreams and
6 aspirations that she had hoped to be able to do
7 so we wanted a closing, a final closing date.
8 And my understanding is that Vanessa felt that
9 she could not get done what she needed to do by
10 that time, so we were willing to extend this
11 one final time and that's what this document
12 was.

13 Q: But again, the whole time expecting that the
14 money, the non-refundable money was going to be
15 placed in?

16 A: We thought the money had been paid up to this
17 point; was already there, secure, and that this
18 was an additional money that would be non-
19 refundable at the time this was executed.

20 Q: I know you had obviously a lot of dealings
21 mainly through Andy. I think you said
22 initially you had some dealings with Ms.
23 Patrick. Did you have any conversations with
24 her other than initially in regards to those
25 contracts or strictly through Andy?

1 A: Strictly him.

2 Q: Thank you. I beg the Commission for a moment.
3 I think that's all I have for this witness.
4 Thank you.

5 MR. CHAIRMAN: Please answer any questions Mr. Lydon
6 may have.

7 DR. WEST - CROSS EXAMINATION BY MR. LYDON:

8 Q: Dr. West, did you ever have any direct
9 communications orally with Ms. Patrick about
10 earnest money?

11 A: No.

12 Q: Did you ever have any communications directly
13 with Ms. Patrick in writing about earnest
14 money?

15 A: No.

16 Q: So she never made any representations to you
17 about what earnest money had been deposited or
18 where it had been deposited?

19 A: No. But I will say that having bought and sold
20 before, I don't know that I ever with any other
21 agent had that kind of, nor would I have
22 expected the fact that --

23 Q: Sure.

24 A: -- they were agent -- I have expectations for
25 that agent.

1 Q: Fair enough. But there are allegations here
2 that Mrs. Patrick made all these
3 representations to all these people about
4 earnest money, and I'm just trying to figure
5 out who they --

6 A: Directly, no.

7 Q: Not to you?

8 A: No.

9 Q: Okay. The initial contract, Exhibit Four, when
10 did it expire initially? (

11 A: My thought that this went through August, and
12 the reason is is that I felt that we had the
13 120 days, then there were the extensions that
14 were built in here. And so the, according to
15 page 11, August 29th is when this contract was
16 supposed to have closed, and then this would
17 have been completed.

18 Q: Okay. What if the \$50,000 wasn't paid on July
19 29th, what happened to the contract?

20 A: I don't know. I mean, I -- I -- our feeling at
21 the time was that it was, so I don't know.

22 Q: Okay. Over on page ten of the document that
23 you're looking at, and ten is the fax number on
24 the top, right-hand corner.

25 A: Yes.

1 Q: Did you sign this document?

2 A: Yes.

3 Q: And this document says the closing date was
4 June 29, 2008.

5 A: Okay.

6 Q: Was that ever -- did you ever think it was June
7 29, 2008?

8 A: Yes, but weren't there two built-in extensions
9 in this contract?

10 Q: I'm just asking you what your own opinion is.

11 A: That's what this says here, yes.

12 Q: So you thought that the initially closing date
13 was June 29, 2008?

14 A: That's what this says here, yes.

15 Q: And I know that's what it says. I'm asking you
16 if that's what your belief was.

17 A: I'm going back and looking at this. An
18 initially -- I haven't thought about exactly
19 this time line in a while.

20 Q: Okay.

21 A: So I honestly don't know what -- I do not
22 recollect how I thought about it at that time
23 I do know that we were expecting the closing
24 date ultimately by August and we had seen
25 several extensions along the way to get us to

1 that point.

2 Q: Do you have those extensions that get us to
3 August 29th with you?

4 A: They were written here in this original
5 contract.

6 Q: Okay. That's what I thought.

7 A: Yes.

8 Q: The extensions you're talking about were built
9 into the original contract?

10 A: Right.

11 Q: There weren't any other extensions.

12 A: They were built into the original contract, and
13 that was -- our understanding is we -- we had
14 promised her we would give her these extensions
15 based upon this original contract. That was
16 our understanding as a family is that this was
17 our promise by this contract.

18 Q: And at some point you learned that there was --
19 the earnest money wasn't there, is that
20 correct?

21 A: Yes.

22 Q: And you and your family filed a lawsuit against
23 Ms. Patrick and others?

24 A: Yes.

25 Q: And is it correct that you sued Ms. Patrick for

1 \$5,471,000?

2 **MS. MAGARGLE:** I'm going to object to the relevancy
3 of a civil suit when we're here based on what's
4 taken place in the licensing arena, not on a
5 civil matter.

6 **MR. CHAIRMAN:** Sustained.

7 **MS. MAGARGLE:** Thank you.

8 **Q:** Has that lawsuit been settled?

9 **A:** Yes.

10 **MS. MAGARGLE:** Again, that's the same thing. It's a
11 civil case. It doesn't -- it has no relevance
12 to this whatsoever.

13 **MR. CHAIRMAN:** Do you have a response to that?

14 **MR. LYDON:** Well, my response to the first point was
15 on the dollar amount, as I stated in my opening
16 statement, we acknowledge there was \$30,00
17 mishandled. Subsequently we're now here today
18 defending claims that there was \$185,000
19 mishandled and then we got sued for five --
20 over five million dollars.

21 **MR. CHAIRMAN:** I don't think the five thousand
22 dollar -- or five million dollar lawsuit is
23 outside the purview --

24 **MR. LYDON:** That's fine. I'll withdraw that
25 question then. Nothing further. Thank you.

1 MR. CHAIRMAN: Please answer any questions that the
2 Commission has. Any questions? You may be
3 excused.

4 MS. MAGARGLE: At this time I would call Dr. Pinner
5 to the stand, please.

6 MR. CHAIRMAN: Dr. Pinner, if you would raise, sir,
7 your right hand, state your full name and your
8 residence to the Court Reporter and be sworn
9 in.

10 DR. PINNER: My name is Dr. Carroll Pinner. My
11 address is somewhere off of Alston Road,
12 Fairfield County. I'm not sure what the
13 address is. Live out in the country, but I
14 practice in the City of Peake, South Carolina.

15 COURT REPORTER: And it's Carroll, C-A-R-R --

16 DR. PINNER: Carroll, C-A-R-R-O-L-L.

17 CARROLL PINNER, being duly sworn, testifies as
18 follows:

19 DR. PINNER - DIRECT EXAMINATION BY MS. MAGARGLE:

20 Q: Dr. Pinner, you too, are a physician, just like
21 your sister?

22 A: Yes.

23 Q: And again, you too, unfortunately, received a
24 subpoena from me?

25 A: Unfortunately.

1 Q: And you, just like your sister, had to cancel
2 numerous appointments which we appreciate and I
3 apologize for that. We appreciate you being
4 here today. I'm going to try and be as brief
5 as possible, just like with your sister.
6 Again, you were involved in this case with Ms.
7 Patrick, is that correct?

8 A: Correct.

9 Q: And could you just tell the Commission what
10 your involvement was with this case.

11 A: Well, I'm probably principal owner and my share
12 of the property is a little bit more than
13 anybody else. But I've pretty much relied on
14 Andy Bowers as help wade through the process of
15 selling the property, as well as my sister
16 Laura to be head point guide as far as
17 negotiating the contract.

18 Q: Okay. So, again, you're aware and signed the
19 contract, is that correct?

20 A: yes.

21 Q: And what was your understanding when you signed
22 the contract in regards to earnest money?

23 A: The original I think was \$30,000 earnest money
24 that was to be applied, and then through
25 several subsequent amendments and deadlines

1 that weren't met, subsequent earnest money was
2 to be applied. And it was my opinion that that
3 money had been deposited.

4 Q: So it was your belief and understanding that
5 Ms. Patrick was doing what she was supposed to
6 do as an agent and placing the money into an
7 escrow account?

8 A: I had full faith that that was being done.

9 Q: Did you -- at the time that this contract was
10 ratified and through the majority of this
11 contract, what did you believe Ms. Patrick's
12 involvement was in regards to this?

13 A: I felt that she was the realtor. I had --
14 that's all I knew, that she was the realtor
15 dealing with a group of investors that was
16 planning to purchase the property with no
17 indication that she had a principal interest in
18 it.

19 Q: So you had no idea actually until later when
20 all this came out that she was --

21 A: Involved as an investor, I had no idea, no.

22 **MS. MAGARGLE:** Beg the Commission's indulgence.

23 Q: And again, I just want to make sure, and I
24 think you already answered this, but I just
25 want to make sure that you did. The whole time

1 you believed and were negotiating in good faith
2 that this money was being placed?

3 A: I certainly felt that that was true.

4 Q: I think that's all I have. Thank you.

5 MR. CHAIRMAN: Please answer any questions that Mr.
6 Lydon has.

7 DR. PINNER - CROSS EXAMINATION BY MR. LYDON:

8 Q: Dr. Pinner, did you ever have any conversations
9 with Vanessa Patrick about earnest money?

10 A: No.

11 Q: Did you ever have any written communications
12 with Vanessa Patrick --

13 A: No.

14 Q: -- about earnest money? So your belief about
15 what was being done with the earnest money was
16 based on what?

17 A: Information received through my sister, Dr.
18 Laura West, as well as information implied by
19 Mr. Bowers.

20 Q: Did you talk to Mr. Bowers or was Dr. West
21 talking to Mr. Bowers?

22 A: I don't remember any conversation, except when
23 the family got together, about extending the
24 contract that I talked with Mr. Bowers about
25 it. Primarily with my sister, Laura.

1 Q: The information you got about the earnest money
2 went from Andy Bowers to your sister Dr. West
3 and then to you?

4 A: Yes, I would say that.

5 Q: Triple hearsay or whatever you want to call it.

6 A: Well, whatever you want to call it.

7 Q: Okay. Now, when did the contract under its
8 initial terms, when did it expire?

9 A: Again, being not one who looked at these things
10 and pretty much relied on others, I was
11 assuming that it was ending somewhere the end
12 of September, but then again, I can't say
13 unless I look at the documents now.

14 Q: So you think it was the end of September that
15 it expired?

16 A: August or September, I'm not sure. As far as
17 the original one, yeah.

18 Q: Okay. At some point in August, did you have
19 conversations with somebody from the Myrtle
20 Beach area about purchasing this property?

21 A: In August? Not that I recall.

22 Q: When did you talk to somebody at Myrtle Beach
23 who wanted to buy this property in order to
24 mitigate wetlands issues that they had?

25 A: Oh, I talked to Mr. Gerald Steele briefly about

1 doing a land swap for property that you develop
2 that -- property that you develop as far as
3 swapping off land properties type thing, but
4 only briefly and that was I don't remember
5 exactly when that was, but that -- nothing came
6 of that.

7 Q: Was it in sometime in 2008?

8 A: Yes.

9 Q: And it was when this property was under
10 contract with Riverpath Investors?

11 A: The exact time I don't remember, but I assume
12 it was.

13 Q: Okay. So you obviously had some concerns about
14 at that point in time that Riverpath Investors
15 wasn't going to be able to perform if you were
16 talking to other potential purchasers.

17 A: I think the real time that I became concerned
18 I think was sometime after late August, first
19 of September when we were having difficulty
20 chasing down the earnest money.

21 Q: Did you ever meet with anybody at Richland
22 County about putting a conservation easement on
23 the property?

24 A: Yes. Did I -- yes, I did.

25 Q: And was that in August, July August two

1 thousand --

2 A: That was -- that was in about that period of
3 time.

4 Q: In July or August 2008 you met --

5 A: It was in probably August, yes.

6 Q: August of '08.

7 A: Uh-huh (affirmative response).

8 Q: You met with somebody at Richland County about
9 putting a conservation easement on this
10 property?

11 A: Yeah.

12 Q: And is that because you thought the contract
13 with Riverpath was no longer out there?

14 A: No, because I wanted to know what other
15 alternatives we had if it should fall through,
16 but you know, at that point I wasn't going to
17 pursue that unless -- unless it should happen
18 to fall through.

19 Q: But for whatever reason in August of 2008 you
20 were --

21 A: Sure.

22 Q: -- concerned --

23 A: Uh-huh (affirmative response).

24 Q: -- and you started looking at other options?

25 A: Yeah.

1 Q: That's all the questions I've got. Thank you,
2 Dr. Pinner.

3 MR. CHAIRMAN: Ms. Magargle, do you have any other
4 questions? Please answer any questions that
5 the Commission may have. You may be excused,
6 sir.

7 MR. MAGARGLE: The State would call Reggie Murphy to
8 the stand, please.

9 MR. CHAIRMAN: Mr. Murphy, please state your full
10 name and address for the record and be sworn in
11 by the Court Reporter.

12 MR. MURPHY: Reginald T. Murphy. I live at 701
13 Cornhill Road, Columbia, South Carolina.

14 REGINALD T. MURPHY, being duly sworn, testifies as
15 follow:

16 MR. MURPHY - DIRECT EXAMINATION BY MS. MAGARGLE:

17 Q: Mr. Murphy, where are you currently employed?

18 A: I am vice president and general manager of
19 Asset Realty in Columbia.

20 Q: And you were in that same position at the time
21 that we're talking about now in regards to Ms.
22 Patrick?

23 A: That's correct.

24 Q: Now, I'm just going to again kind of cut to the
chase on this case. You were contacted by our

1 investigator, is that correct?

2 A: Umm --

3 Q: Well, I know, okay, let me -- I'll back up.
4 How were you initially contacted about the --

5 A: Yes --

6 Q: -- this issue?

7 A: We, in December, the first week of December or
8 so of 2008 we received a letter, certified
9 letter from Attorney Henry Bufkin and we saw
10 that the letter had been cc'd to LLR and so we
11 took the initial step to call and check and to
12 find out what LLR, and at that time I think I
13 spoke on the phone with Investigator Sowell,
14 and subsequent to that I submitted an answer to
15 what we took to be a complaint.

16 Q: And in that -- that statement, would that be
17 State's Exhibit Number Three? Is that the
18 letter that you wrote to Mr. Sowell?

19 A: Yes, it is.

20 Q: Now, in regards to -- obviously I think you
21 just testified you received a letter that's
22 dated, I believe, November 24, 2008, is that
23 correct?

24 A: That's correct.

25 Q: Until you received that letter -- at that time

1 -- let me back track. At what point in time
2 was Ms. Patrick working for Asset Realty?

3 A: I believe, if I remember correctly, I think she
4 left in the early part of October of 2008.

5 Q: But from the beginning of 2008 until October
6 2008, she was with Asset Realty?

7 A: That's, to the best of my knowledge, yes.

8 Q: Now, what is y'all's policies and how are
9 things supposed to operate when someone is
10 representing your agency as a real estate agent
11 in regards to a contract?

12 MR. LYDON: I'm going to object. If they've got a
13 company policy, then I think the best evidence
14 of the company policy is the policy itself and
15 not Mr. Murphy's summary or explanation of what
16 he understands the policy to be. So I would
17 ask that they put the company policy in
18 evidence and not just Mr. Murphy's description
19 or explanation of it.

20 MS. MAGARGLE: Actually, I can just rephrase the
21 question.

22 MR. LYDON: Okay.

23 MS. MAGARGLE: We don't even need to get into the
24 policy.

25 Q: What -- by statute, what is an agent required

1 to do if they are going to be using that agency
2 in ratifying a contract?

3 A: Okay. The first thing that we require as a
4 company, per law, is we require that they
5 submit to us a, we call it a pre-sales package.
6 It consists of the sex offender registry -- the
7 notice of sex offender registry. If they are
8 able to obtain a client relationship at that
9 time, we want the -- we want the buyer agency
10 agreement submitted at that time. And that's
11 in the first meeting with a buyer. When they
12 get to the contract point, whether it's two
13 weeks, two months, we require all paperwork to
14 be turned in at that time. We require earnest
15 money to be submitted within 48 hours of
16 acceptance of any contract, and it has to be
17 logged in to an accountability log.

18 Q: And speaking of the accountability log, State's
19 Exhibit Number Six, it's right there in front
20 of you. Is that the accountability log for the
21 time frame that we're talking about from your
22 agency?

23 A: Yes. This -- this covers only the time period
24 from March 3rd through looks like April 22nd.

25 Q: So at no point in that log from that point to

1 that point does it indicate at all that she has
2 this contract pending?

3 A: No.

4 Q: Okay. Did y'all ever receive any earnest money
5 from --

6 A: No, not to my knowledge.

7 Q: And so when you were contacted by an
8 investigator and asked these specific
9 questions, your response back to them is
10 documented in State's Exhibit Number Three, is
11 that correct?

12 A: Correct.

13 Q: And again, in there it talks about what you
14 already talked about, that y'all just found
15 out, when y'all found out, you talked about
16 what by statute y'all require people to do, and
17 again it talks about that none of this stuff
18 was ever turned in.

19 A: Correct.

20 Q: So y'all had absolutely no knowledge that that
21 contract had been ratified or that those checks
22 had been written to your agency -- to your
23 company, your real estate company, until
24 December?

25 A: Right.

1 MS. MAGARGLE: Beg the Commission's indulgence. I
2 think that's all I have for this witness.

3 MR. CHAIRMAN: Thank you. Please answer any
4 questions Mr. Lydon may have.

5 MR. MURPHY - CROSS EXAMINATION BY MR. LYDON:

6 Q: Mr. Murphy, in your letter, Exhibit Three,
7 second paragraph, the last sentence says, "We
8 can only surmise it was to avoid paying the
9 company a monetary commission." Is that right?

10 A: Correct.

11 Q: Do you have any proof or evidence or
12 documentation that Ms. Patrick was trying to
13 avoid paying?

14 A: I think that what surmise means that it was my
15 opinion.

16 Q: Okay. Because the contract itself clearly
17 provided for a three percent commission to
18 Asset Realty, didn't it?

19 A: It did, but we had no knowledge of the contract
20 until early December, so how could we have
21 known.

22 Q: Okay. But now that you've seen this contract,
23 would you agree with me that there was no
24 attempt or intent to beat Asset Realty out of
25 commission?

1 A: No, I would not agree with that statement.

2 Q: Well, wouldn't the --

3 A: The contract -- if I may, the contract also
4 called for \$30,000 of earnest money which we
5 never saw either, nor did we see the contract
6 in total.

7 Q: Well, who's responsible for issuing commission
8 checks at a closing?

9 A: The closing attorney.

10 Q: And so the closing attorney saw three percent
11 commission in there to Asset Realty, don't you
12 think he would have written the three percent
13 check to Asset Realty?

14 A: I'm not sure. That -- that's -- that's even
15 more of a hypothetical than what you just
16 stated.

17 Q: That's speculation.

18 A: Sure.

19 Q: That's fine. But you answered my question I
20 guess initially when you said when you wrote
21 this letter you had not seen this contract
22 before?

23 A: When I wrote this letter, I had seen the
24 contract, yes.

25 Q: You had or had not?

1 A: I had.

2 Q: So you were aware that it provided for a three
3 percent commission?

4 A: Correct, but I have no knowledge of whether a
5 closing attorney would have written a check to
6 or for.

7 Q: That's all the questions I have. Thank you.

8 A: Yes, sir.

9 MR. CHAIRMAN: Please answer any questions the
10 Commission has.

11 A: Sure.

12 MR. CHAIRMAN: You may be excused, thank you. How
13 many more witnesses do we have?

14 MS. MAGARGLE: That's the State's case. We're not
15 going to call anybody else. We're done.

16 MR. CHAIRMAN: You want to go ahead and sum up
17 before lunch or -- are you going to call
18 witnesses?

19 MR. LYDON: Yes.

20 MR. CHAIRMAN: How many witnesses do you have?

21 MR. LYDON: Just Ms. Patrick, but she'll probably
22 take a while.

23 MR. CHAIRMAN: We'll take a 20 minute break for
24 lunch.

25 (Break from 12:40 p.m until 1:25 p.m.)

1 MR. CHAIRMAN: Call this meeting back to order. You
2 may proceed, sir.

3 MR. LYDON: Thank you, Mr. Chairman. The Respondent
4 would call Vanessa Patrick to the stand.

5 MR. CHAIRMAN: Hi, Ms. Patrick.

6 MS. PATRICK: Hello.

7 MR. CHAIRMAN: If you would raise your right hand
8 and give your full name and address and be
9 sworn in by the Court Reporter.

10 MS. PATRICK: Vanessa K. Patrick. 1187 Kibler's
11 Bridge Road, Prosperity, South Carolina, 29127.

12 VANESSA K. PATRICK, being duly sworn, testifies as
13 follows:

14 MS. PATRICK - DIRECT EXAMINATION BY MR. LYDON:

15 Q: Ms. Patrick, tell us briefly about your work
16 history.

17 A: With real estate?

18 Q: No, before real estate.

19 A: Before real estate? In '77 I went to work for
20 a bank and I stayed in the banking industry for
21 17 years, funds management, project management,
22 that type of thing, compliance, some of those.
23 After that my sister and I purchased and ran a
24 restaurant which I managed full time for
25 several years and then I decided to get my real

1 estate license, which I did in fall of 1996,
2 and I obtained my first year sales license.
3 And after a year of doing real estate part time
4 and my restaurant full time, I pretty much went
5 into real estate full time and I obtained my
6 permanent sales license. During that time I
7 actually became part owner of a real estate
8 firm with some other partners. And sometime in
9 early 2000's my partner had a family tragedy
10 that prevented her from continuing on, so we
11 sold our company and I went to work with
12 another company. Eventually I got my broker's
13 license and went to work with Asset Realty
14 maybe 2003 or 2004 as the broker in charge of
15 the Irmo office. After a couple years of that
16 I went back in sales full time as the broker
17 associate with Asset Realty. And in October of
18 2008 I changed my license over to Acquire Real
19 Estate Incorporated as a broker associate.

20 Q: What kind of real estate practice do you have?

21 A: I started out primarily just doing residential
22 homes, I guess like most people do. But my
23 family had a background in land development so
24 I kind of gravitated toward doing a lot of land
25 sales and ultimately land development,

1 primarily rural type residential developments.

2 Q: How did you get involved with what I'm going to
3 refer to as the Pinner property, the property
4 that we're here about today?

5 A: I lived next door to it for 20 something years,
6 so I knew about it and knew it was very
7 beautiful. And I had, once I had got into real
8 estate, I had always kind of hoped I could be
9 the one to develop it since it was across the
10 creek from me. And when I found out through
11 Mimi Bowers, one of the Pinner family, that
12 they were thinking about selling the property,
13 I became involved trying to find a purchaser
14 for it.

15 Q: Tell us what transpired with respect to your
16 trying to find a purchaser for the property.

17 A: I tried to on several occasions actually. The
18 first time Mimi called me, I contacted some
19 investors that I had done business with before
20 and we -- they made an offer on the property
21 and it was my understanding some other people
22 brought offers at the same time, so we did not
23 have the winning offer. So the offer was --
24 the tract was put under contract by other
25 parties. Sometime toward the end of that Mimi

1 called me and said it didn't look like perhaps
2 that contract was going to be performed upon.

3 **MS. MAGARGLE:** I'm going to object. I'm sorry. I'm
4 going to object to hearsay.

5 Q: Don't say what Mimi told you.

6 A: Okay. It came to my attention. I was notified
7 that it might be coming back on the market. Is
8 that a better way to put it?

9 Q: About what time frame was that?

10 A: It was right around Thanksgiving of '07.

11 Q: Okay. All right, so around Thanksgiving of '07

12 --

13 A: Yes.

14 Q: -- you became aware that the property may be
15 back up for sale?

16 A: May perhaps become available again. So I
17 contacted the original --

18 Q: Did it have a sign, for sale sign?

19 A: No, no.

20 Q: Was it listed with the Multiple Listing
21 Service?

22 A: No.

23 Q: Okay. So what did you do when you found out?

24 A: I contacted the first people who had made an
25 offer back in I guess spring of '07 and asked

1 them if they would be interested in resuming
2 negotiations and they said they would. So I
3 prepared an offer, which that offer did not
4 become a contract because, you know, we didn't
5 come to terms on the price. So at that time I
6 called other investors that I know and found
7 some people who indicated they were very
8 interested in participating in developing the
9 property. So I had them over to the property,
10 showed it to them and they were very excited
11 about it and indicated their belief that they
12 would participate in the project. I went and
13 talked to a local bank and got the assurance of
14 financing and what the terms would be. And at
15 that point we drafted an offer on the property.

16 Q: Okay. And I think -- is Exhibit Four there?

17 A: Yes, sir.

18 Q: Okay. Now, is that the contract that you're
19 referring to?

20 A: Yes. This is a clean copy of it.

21 Q: Is that the same as the original offer that was
22 submitted to the Pinner family?

23 A: The first time with the other -- now this is a
24 different group of people, if that's what
25 you're asking.

- 1 Q: I'm asking -- you said it was a clean document.
- 2 A: Oh, it's a clean copy. Yes. The first one got
- 3 faxed back and forth so many times it became
- 4 pretty well illegible, so we started working
- 5 with a cleaner copy.
- 6 Q: And is this the final cleaned up copy that was
- 7 signed by everybody?
- 8 A: I appears to be, Tommy.
- 9 Q: Okay. In the contract that you submitted and
- 10 it was ultimately signed by all the parties,
- 11 were there any contingencies?
- 12 A: Yes, sir. Overall the contract was subject to
- 13 financing.
- 14 Q: Okay.
- 15 A: Also, there were other contingencies which I
- 16 use kind of the boilerplate development
- 17 contingencies that I had used before on other
- 18 development deals and in which I tried to state
- 19 the process of how we would go from offer
- 20 through development and closing.
- 21 Q: And we don't need to go through it line by
- 22 line, but just a general summary. What were
- 23 the contingencies that needed to be met before
- 24 you could close on this piece of property?
- 25 A: In general, once you make an offer you do put

1 up earnest money that's at that point
2 refundable. There are due diligence, what we
3 call due diligence terms, and I won't go into
4 detail, but that -- the whole purpose of due
5 diligence is to ensure that the property can be
6 developed, that it will be approved by the
7 state or the county or whoever all has to
8 approve it for what you want to do with it.
9 And at that point, if the municipalities or the
10 state say yes we would approve this, then at
11 that point you make a decision, you know, yeah,
12 this looks like we can perform on it so you get
13 your financing together and proceed to closing.
14 Generally, at that point after you get your
15 approvals and you make your go/no-go decision,
16 you do make the money hard. In other words, it
17 becomes non-refundable at that point.

18 Q: All right. The contract called for \$30,000 in
19 earnest money.

20 A: Uh-huh (affirmative response). Initially.

21 Q: How did that -- tell the Commission about what
22 happened with the earnest money. I believe the
23 checks are there.

24 A: Yes.

25 Q: Exhibit Number Five.

1 A: The first check was what Sally Grooms who
2 worked with me, Sally was going to put up the
3 earnest money and she gave me this check to
4 accompany the initial offer. And I did send it
5 along with the offer to Andy Bowers.

6 Q: Okay.

7 A: The second check was somewhere in the back and
8 forth negotiations of the contract, they wanted
9 an additional \$5,000 to the initial earnest
10 money, and so Sally gave me an additional check
11 which I again sent to Mr. Bowers.

12 Q: And what's the date on the second check?

13 A: 3/21/08.

14 Q: Okay. And was the contract ultimately signed
15 and ratified and initialed by all parties?

16 A: Yes, it was, and we received it back five, six,
17 seven days after this check was written.

18 Q: I believe Mr. Bowers testified March 28th or
19 something like that.

20 A: Okay. Something.

21 Q: When the contract had been fully executed by
22 all the parties, what happened with that
23 \$30,000 earnest money?

24 A: The \$30,000 earnest money, I found out Sally
25 had believed she had -- was going to have

1 backing for those funds --

2 MS. MAGARGLE: Again, I'm going to --

3 Q: Don't say what Sally said.

4 A: Okay. All right.

5 Q: What did you learn --

6 A: It was conveyed to me that these checks, that
7 the \$5,000 -- how do I -- well, can you help me
8 out how to phrase this?

9 Q: No. Just answer the question.

10 A: Okay. It was my understanding --

11 Q: Did you deposit those checks?

12 A: No, I did not because I was led to believe that
13 they were -- the funds were not there to cover
14 the full amount. That they were for the five
15 but not the 25.

16 Q: Okay. So without good funds for the earnest
17 money, what did you do?

18 A: What I did was I -- Sally tried to get it
19 covered, but when she did not, the person who
20 had promised her said once again they were not
21 going to come through with the money, I called
22 one of my good friends that I have -- we've
23 borrowed money back and forth over the years
24 for various purposes and I asked her if she
25 could loan me some money.

1 Q: Don't tell us what your friend said.

2 A: No, I'm just -- I asked her to loan me some
3 money and she said yes. Well --

4 Q: You can't say what other people said.

5 A: This is hard.

6 Q: So you found somebody that would cover the
7 earnest money check?

8 A: Absolutely.

9 Q: So what did you do next? Did you get the money
10 to put it in the Asset Realty account?

11 A: No, I didn't, and that's where I made my big,
12 bad judgment mistake. I did not. I, at first,
13 was going to obtain the money and my friend
14 said well, it's in an interest bearing account
15 that's earning real good and I said well, just
16 leave it there until it's needed, and I did not
17 put it in a separate trust account.

18 Q: At that point in time was the earnest money
19 refundable?

20 A: Yes.

21 Q: But even though it was refundable, should it
22 have still been put into an escrow account?

23 A: Yes, sir, it should have.

24 Q: And is there any excuse or justification or
25 reason that you have for not putting that money

1 in an earnest money account?

2 A: No, it was very bad judgment on my part. At
3 that time I thought everything was going to go
4 through and it wouldn't be a problem and really
5 did not think too much beyond that. I was more
6 focused on hiring the engineers and proceeding
7 with the deal.

8 Q: Okay. And so what did you do when you thought
9 you had the earnest money in place? You hired
10 the engineers?

11 A: I hired the engineers. I hired a corporate
12 attorney to form the partnership so that we
13 could ultimately bring in the investors who had
14 expressed interest. Hired an accountant.

15 Q: Who was the engineer that was --

16 A: It was B.P. Barber.

17 Q: Okay. And what was B.P. Barber supposed to do?

18 A: B.P. Barber was going to -- we were going to
19 engage them to handle all the development of
20 the project with regards to the engineering and
21 surveying, also to assist in getting through
22 everything at the county and state level, all
23 the approvals that had to be done.

24 Q: Okay. Look back with me at the contract,
25 Exhibit Four, if you will. And I'm looking at

1 the page that has the fax number five in the
2 top, right-hand corner. You're in the right
3 document.

4 A: Okay.

5 Q: Page five.

6 A: Page five, sorry. All right.

7 Q: All right. What was, number one, what was the
8 first thing that had to be done or needed to be
9 accomplished in order for this contract to
10 close?

11 A: The first thing in how I drew this up was we
12 were going to have to obtain what's commonly
13 known as a perk test, but it was a subdivision
14 approval for DHEC for the ability to use
15 private septic systems.

16 Q: And did you get that approval?

17 A: I did not get subdivision approval. I did get
18 the DHEC representative to come out and kind of
19 spot check the lots and he told me it was
20 generally going to be suitable for septic
21 systems. However, they had changed their way
22 of doing things and they would not issue a
23 letter at that point like they used to. They
24 were now under a different format where they
25 could not issue the subdivision approval until

1 they actually had a whole lot layout from the
2 engineer.

3 Q: So did you --

4 A: So I had a vague approval but not an official
5 approval that I could construct any septic
6 systems with.

7 Q: So what did you do next?

8 A: We elected, based on the fact that it was
9 generally looked like they were going to be
10 okay for septic systems, to proceed on with
11 doing the remaining due diligence and that
12 involved a boundary survey and it involved a
13 topographical survey. And the topographical
14 survey ended up taking way longer than we had
15 hoped for.

16 Q: Okay. What about the Richland County approval
17 that was required in paragraph two?

18 A: We never made it that far.

19 Q: Okay.

20 A: By the time the time expired, we still had E.P.
21 Barber out in the field with machines trying to
22 cut the lines for the topographical survey and
23 we simply ran out of time. We never finished
24 the due diligence that would enable us to
25 schedule the development services needed.

1 Q: So you never even got to the point where you
2 could schedule --

3 A: No, sir.

4 Q: And when you said -- and what -- we've heard a
5 lot of testimony today about when the contract
6 expired with the different dates. What were
7 you operating under?

8 A: When I went back and was seeing where we were
9 at certain points, like when we ran out of
10 time, I looked and it appeared to me the
11 contract expired right at the end of July.

12 Q: All right. So when you couldn't get all of
13 your due diligence done and the contract July
14 29 date was approaching, what did you do?

15 A: I talked with Andy Bowers about -- and notified
16 him, as I had a couple times before, just about
17 the delays. I got a, one of the engineers from
18 B.P. Barber during sometime in there to send me
19 an email, which I gave to Andy, about what was
20 taking so long. And we just generally, Andy
21 and I typically discussed how to get the
22 project done.

23 Q: Okay.

24 A: And what was -- what was going on there.

25 Q: Did the Pinners give you an extension at that

1 time?

2 A: No, not at that time. We were talking about
3 it, and I ended up toward the end of August
4 drafting an extension. The reason that we
5 didn't have one before that was that I -- it
6 came to my attention that they were talking,
7 entertaining an offer or some inquiries from
8 another party who it appeared would have more
9 favorable terms than what we had offered. And
10 also it came to my attention that they were
11 also having discussions with Richland County
12 about possibly putting the land in a
13 conservation easement.

14 Q: All right. I'm handing you what's been marked
15 as Respondent's Exhibit One.

16 MR. LYDON: Can I enter this?

17 MR. CHAIRMAN: Hand one to the reporter.

18 (Respondent's Exhibit Number One was admitted into
19 evidence.)

20 Q: Ms. Patrick, can you identify what's been
21 handed to you and is marked as Respondent's
22 Exhibit One?

23 A: Yes, it's the request for extension that I
24 faxed over to Andy Bowers.

25 Q: Okay. Page one is the fax cover sheet?

1 A: Correct.

2 Q: When did you send this request over to Mr.
3 Bowers?

4 A: I sent it -- this is date stamped the afternoon
5 of August 29, 2008.

6 Q: All right. Now, going on to the second page,
7 what was the extension that you were asking him
8 for?

9 A: Originally I sent it after it was executed or,
10 you know, Sally executed it on 8/22/08, I had
11 sent it to Andy -- .

12 Q: All right, slow down just a minute.

13 A: Okay.

14 Q: So down at the bottom, Sally Grooms --

15 A: Yes.

16 Q: -- executed it on 8/22/08.

17 A: Correct. And it, at that time, stated that we
18 wanted an extension through the end of the year
19 because the engineers were telling me that it
20 was going to take through the end of the year
21 to get through the approvals with Richland
22 County. So I asked for an extension because
23 otherwise it couldn't happen.

24 Q: And did they agree to the December 31
25 extension?

1 A: No, they didn't. It was indicated to me that
2 they would maybe look at a month at a time and
3 let's try to get 30 days and then go from
4 there.

5 Q: So did you strike through the December 31 date?

6 A: Yes, I did.

7 Q: And then I believe Ms. Grooms initialed it?

8 A: Correct.

9 Q: And the date she did that?

10 A: On August 29th.

11 Q: Is there anything in here about paying \$30,000
12 to get this extension through September 30,
13 2008?

14 A: No, there's not.

15 Q: All right. And so you sent this to?

16 A: I sent it to Mr. Bowers.

17 Q: Okay. Did you get anything back from Mr.
18 Bowers in response to this?

19 A: No, I didn't.

20 Q: Until much later?

21 A: Until much later. I did November 4th.

22 Q: So August 29, 30, 31 comes and goes and you
23 haven't heard anything, is that correct?

24 A: I hadn't received anything in writing, no.

25 Q: Okay.

1 A: We had some conversations about how we might
2 possibly get back in the deal.

3 Q: Okay. You were still interested in doing the
4 deal?

5 A: Absolutely..

6 MR. LYDON: I've got Exhibit Two, Mr. Chairman, I'd
7 like to --

8 MS. MAGARGLE: And I guess just like with our
9 exhibits, the only thing I would object to --
10 actually, there's hearsay in here about whether
11 or not there was any other deals.

12 MR. LYDON: And I agree that the hearsay should not
13 be considered by the Board.

14 MR. SAXON: Well, the Commission said earlier that
15 anything they accept that has hearsay, just
16 because we accept it, we're still not going to
17 use hearsay. The Commission is still not going
18 to use hearsay in making a decision.

19 MR. LYDON: Thank you. And that's not the purpose
20 of the -- that's not what it's being --

21 (Respondent's Exhibit Number Two was admitted into
22 evidence.)

23 Q: What is Exhibit Two, Ms. Patrick?

24 A: It's some emails. The bottom part is from
25 myself to Mimi.

1 Q: Who is Mimi?

2 A: Mimi is one of the sellers.

3 Q: Why did you feel comfortable sending an email
4 to Mimi Pinner?

5 A: Just she was the one I knew the best. We had
6 known each other for a long time and she had
7 sent me a notification that she had moved
8 because I'm on her email list and she'd send
9 jokes and that kind of thing. And I just hit
10 respond and --

11 Q: What was the date on that email to her?

12 A: It is Friday, September 5, 2008.

13 Q: And what did it say?

14 A: You want me to summarize it?

15 Q: Just generally why did you send it to her, what
16 was the purpose?

17 A: Okay. Because I had presented an extension,
18 tried to get extensions and I had -- was led to
19 believe that we were not going to be able to
20 get an extension and I was upset because I had
21 worked so long and so hard on the project.

22 Q: So as of September 5th, you hadn't gotten a
23 response to your --

24 A: Correct.

25 Q: -- extension request and so you asked Ms.

1 Pinner what was going on?

2 A: Yes, and I -- in this I indicated that I had
3 talked to Andy, you know, had the conversation
4 with Andy about getting an extension and he
5 said it wasn't a problem and at this point when
6 I wrote this I thought it was a problem, and I
7 go on just to kind of tell her what my concerns
8 were and mentioned that I had been made aware
9 there was somebody else wanting to purchase the
10 property and I said at least can you -- if that
11 happens, can you put me in touch with them so
12 maybe they can purchase the engineering because
13 it's very expensive.

14 Q: So as of September 5, 2008, what did you
15 believe the status of the contract was?

16 A: I thought it was expired and had not been
17 renewed.

18 Q: And you had requested an extension.

19 A: Correct.

20 Q: But you'd gotten no response?

21 A: Correct.

22 Q: All right. What happened next?

23 A: Referring to this exhibit still?

24 Q: I don't need you to go back through the email
25 response. Just what happened next in the

1 development?

2 A: What happened next in the development was I was
3 still on the path of I knew it would take till
4 the end of the year to get all the due
5 diligence done, so I was trying to get an
6 extension to protect us through that. I was
7 trying to get my original investors back in the
8 deal to see if they were interested in picking
9 the project back up and working on it.

10 Q: Okay.

11 A: And that's pretty much it.

12 Q: What happened with your financing during this
13 period?

14 A: In that period of time I got a call from the
15 bank that I was -- had been -- you know, they
16 had assured me we were going to get the
17 financing and he said he needed to meet with
18 me, and me and Ms. Grooms went down and met
19 with the bank and they said that they were
20 going to have to withdraw their financing
21 because of the downturns in the economy that
22 late summer, early fall; that they were no
23 longer doing acquisition and development loans.

24 Q: During this time period was anybody contacting
25 you asking about earnest money or deposits or

1 additional earnest money or anything?

2 A: No, not at that time. Huh-uh (negative
3 response).

4 Q: And again, had you gotten the acceptance on the
5 contract extension?

6 A: No.

7 Q: So again, you thought the deal was -- you
8 thought the contract was expired, although you
9 were hoping that maybe you could put it back
10 together.

11 A: I was hoping to put back together because we
12 had a lot of money and time sunk into it
13 already, and still wanted to develop it.

14 Q: All right. And at some point, referring to
15 Exhibit Four, were you presented with an
16 opportunity to extend the contract?

17 A: Yes. At some point in there Andy did indicate
18 that there was a possibility that we could get
19 an extension through the end of the year. And
20 he said that if that extension was granted, Mr.
21 Bufkin would draw it up and that it would
22 require additional earnest money and if the --
23 we didn't get it closed by the end of the year,
24 that there would be -- they would want an
25 additional \$75,000 to be added to the purchase

1 price to compensate for delaying into another
2 year.

3 Q: And did Mr. Bufkin prepare a proposed contract
4 extension?

5 A: Yes, he did, and I believe it was faxed to
6 Sally's fax machine I believe on around October
7 14th, something like that.

8 Q: Who did it come from? Who did --

9 A: It came from Andy, to the best of my knowledge

10 Q: Okay. And that would be these pages ten and 11
11 of Exhibit Four?

12 A: Yes. With the exception that it was blank at
13 that time.

14 Q: Right.

15 A: It hadn't been signed by anybody.

16 Q: Sure. And we see on page ten, there's a fax
17 line from the Bufkin Law Firm on 10/7/2008.

18 A: Uh-huh (affirmative response).

19 Q: So Mr. Bufkin faxed it to somebody on
20 10/7/2008, correct?

21 A: Right.

22 Q: And then on the next page, if you look above
23 that, there's the October 14, 2008 fax.

24 A: Uh-huh (affirmative response).

25 Q: And that's when it was sent to Ms. Grooms?

1 A: To the best of my knowledge, uh-huh.

2 Q: Okay. And what did Ms. Grooms do when she got
3 this contract extension?

4 A: She sat on it for a little while and I really
5 don't remember how long. At that point we were
6 talking to another developer. At that point
7 our bank financing had fallen through and we
8 were talking to other potential backers, other
9 banks, and hitting a wall everywhere we turned.
10 And then we found a very strong developer here
11 in the midlands who showed some interest in the
12 property and so I met with him and his
13 partners, Sally and I did at their office. And
14 then we met with them out at the land, and then
15 they contacted B.P. Barber and got a lot of
16 data from B.P. Barber about the possibility of
17 taking over the project and some of the
18 development costs that were estimated, those
19 types of things. So we had high hopes of
20 getting back in the project. This new
21 developer was going to include us in it too,
22 and like partner up with us.

23 Q: Okay.

24 A: So we were quite excited.

25 Q: So at that point did Sally Grooms sign this

1 document?

2 A: Yes, we -- Sally was getting ready to go out of
3 town and we said before we go into leaving with
4 the new developer, the new partner, that we
5 needed to get protected, because sometimes you
6 get cut out of deals and we didn't want that to
7 happen, so we needed to have some kind of
8 extension. And Sally signed it, she brought it
9 to me and she said witness this and fax it for
10 me, I'm going out of town. So I witnessed it
11 and I faxed it to Andy.

12 Q: Okay. So your -- that's your signature?

13 A: Uh-huh (affirmative response). On the witness.

14 Q: Did you read it before you witnessed it?

15 A: No, I didn't. I just simply witnessed her
16 signature and sent it. And it had not been
17 signed by any of the other parties at the time,
18 so.

19 Q: So at that point it was still just in
20 negotiations?

21 A: Right. It was an offer as it were.

22 Q: Okay. So then what happened?

23 A: We were not able to put together a meeting
24 between the new development partner and the
25 sellers and they just didn't seem interested in

1 talking about it, and we thought they would be
2 very interested in maybe reviving the deal, but
3 when the meeting didn't happen, I at some point
4 right around the very first of November --
5 well, I remember now. What -- what started
6 this is Mr. Bufkin did start calling around
7 like he said. He started calling around and
8 asking where's my \$185,000. And I was very
9 shocked at the amount because I had no idea
10 about 185 or where it came from, and --

11 Q: You knew about the 30?

12 A: I knew about the 30. I didn't know about 185.
13 So I was quite shocked. So at that point --
14 and also we did not have the executed what we
15 were just looking at. Anyway, so I pulled out
16 my copy of this, and I read it, what --

17 Q: And when you say this, you're talking about
18 this --

19 A: -- what Sally had signed.

20 Q: -- you're talking about this --

21 A: I'm talking about page --

22 Q: -- Pinner family contract extension?

23 A: Yes, that Mr. Bufkin had prepared. I did pull
24 it out and look at it and I saw that it had
25 lots of things that I didn't agree with in

1 there, and at that time Sally and I called an
2 attorney that we know who is a real estate
3 attorney and sat down and met with him to see
4 what does this do to us that she has signed
5 this and it's incorrect.

6 Q: And so -- now, don't tell me what you said to
7 the attorney or what the attorney said to you.

8 A: Okay.

9 Q: What did you do after that meeting? Did you
10 contact Mr. Bowers?

11 A: Yes, I contacted him because we were going line
12 by line down this and it mentioned an extension
13 had been given through the end of September
14 with a \$30,000 earnest money and I called him
15 and said I never got that, and he said he would
16 fax it to us.

17 Q: All right. Well, let's go through this.

18 A: Sure.

19 Q: Not in too much detail but a little bit.

20 A: Sure.

21 Q: The second whereas clause says that the closing
22 date was June 29, 2008. Is that correct?

23 A: No.

24 Q: Was that ever in anything?

25 A: No.

1 Q: The next paragraph said that subsequently the
2 parties agreed that in return for an additional
3 \$50,000 there would be an extension through
4 August 29, 2008.

5 A: No, that was not my understanding of what the
6 contract called for because the contract called
7 for a \$50,000 deposit of earnest money to be
8 placed, if the Richland County Development
9 Services Team review meeting would have then
10 given us a favorable response and had we chosen
11 to go ahead with the contract at that point, my
12 belief is the contract then called for an
13 additional \$50,000 earnest money to be put up
14 and it would be non-refundable and it would
15 basically guarantee that we stayed in place
16 until closing.

17 Q: And that \$50,000 was due once Richland County
18 approved the project?

19 A: Correct, because --

20 Q: And just to be clear, did Richland County ever
21 approve this project?

22 A: No, sir.

23 Q: The next paragraph is one I think you're
24 referring to. In return for an additional
25 \$30,000, there was an additional extension

1 through September 30, 2008. Was that correct?

2 A: We asked for that additional extension which we
3 reviewed a moment ago, but I had not received
4 it back.

5 Q: That was Exhibit One.

6 A: Exhibit One, okay, yes.

7 Q: So you --

8 A: And I was not aware until 11/4 that it had been
9 executed.

10 MR. LYDON: All right. I'm not going to use Exhibit
11 Three or Four, going ahead with Exhibit Five.

12 MR. SAXON: What is Three and Four?

13 MR. LYDON: Four was a duplicate of what she'd
14 already done and Three was one that she had an
15 objection to and I decided just to withdraw it.

16 MR. SAXON: Well, for the court reporter's and fair
17 record keeping purposes, if you will mark this
18 Respondent's Exhibit Three, not Five.

19 MR. LYDON: Okay.

20 COURT REPORTER: Respondent's Three.

21 (Respondent's Exhibit Three was admitted into
22 evidence.)

23 Q: All right. Before we get to Exhibit Three, you
24 read his contract extension and you contacted
25 Mr. Bowers?

1 A: After I went over it with the other attorney.

2 Q: Yes.

3 A: Yes.

4 Q: And what did you tell him?

5 A: I told him that it was not correct and that we
6 could not -- let me get it. We could not do
7 this. We did not have all the monies that were
8 in here. We had hoped that there could be a
9 meeting between us, the Pinners and the new
10 partner, which is why Sally signed the
11 extension in the first place, or this document,
12 was an attempt to pick up the contract and
13 continue it.

14 MS. MAGARGLE: Object as to what Sally -- I don't
15 think she can testify as to what Sally --

16 MR. CHAIRMAN: Sustained.

17 A: Okay.

18 MS. MAGARGLE: -- was thinking or doing.

19 Q: So you told him that --

20 A: Well, I told him that we could not perform on
21 this. It was, (A), it was incorrect, I had not
22 read it when Sally did it and we could not
23 proceed with the contract. We didn't have
24 financing, we didn't have backing and we did
25 not have the new developer, a meeting with

1 them, so it was dead.

2 Q: And you also asked him about this extension
3 through September 30, 2008?

4 A: Correct, and he faxed it to us and --

5 Q: And that's Exhibit Three that we just --

6 A: Correct.

7 Q: -- entered. All right. Let's look at Exhibit
8 Three. And is that -- so that's Mr. Bower's
9 fax cover sheet?

10 A: Uh-huh (affirmative response).

11 Q: And he sent it to you on November the 4th at
12 what time?

13 A: Let me see. He sent it to Sally's fax, so this
14 is 6:30 p.m.

15 Q: And that was the first time you learned that
16 the Pinner family had executed the addendum and
17 agreed to the extension until September 30,
18 2008?

19 A: Yes.

20 Q: And when the Pinner family signed it, did they
21 put anything in here about \$30,000?

22 A: No, they didn't.

23 Q: So this whole notion of payment of \$30,000 for
24 an extension through September 30th, you don't
25 know where that came from?

1 A: No.

2 Q: Wasn't anything that was proposed?

3 A: No, it wasn't in here and I didn't know this
4 had even been done.

5 Q: Until the November 4th --

6 A: Until November the 4th.

7 Q: Okay.

8 A: And at that time I told Andy that we had the
9 \$30,000 to honor -- you know, we had \$30,000,
10 but we didn't have anything else.

11 Q: \$30,000 for what, for the original?

12 A: That's when we -- we got confused too because
13 I wasn't sure if the -- I thought the deal had
14 expired and then I didn't know this had been
15 extended and at that time we were trying to
16 figure out if we owed anything or not, going
17 back through the contract on all the
18 contingencies and the dates and everything, and
19 it looked like I might indeed be on the hook
20 for \$30,000.

21 Q: That was the initial \$30,000, right?

22 A: I guess so.

23 Q: Okay.

24 A: Yeah.

25 Q: So from July 29, 2008 through November 4, 2008,

1 did you think that you had a valid contract in
2 place?

3 A: No, I thought --

4 Q: Or an extension?

5 A: -- I had a -- I was trying to do it, but I
6 really didn't think I had a valid contract in
7 place, no.

8 Q: And no extensions?

9 A: No.

10 Q: All right. Did you offer to pay the \$30,000?

11 A: Yes.

12 Q: And what -- were they willing to accept the
13 \$30,000?

14 A: No. Mr. Bufkin indicated he wanted 180,000 --
15 \$185,000.

16 MS. MAGARGLE: I would object to -- objection to
17 hearsay as to what --

18 Q: Mr. Bufkin wrote the November 24th letter --

19 A: He wrote the -- he wrote the letter that
20 indicated that they were looking for \$185,000.

21 Q: Okay. What happened after that? Was a lawsuit
22 filed?

23 A: Well, first we thought -- I thought it was an
24 earnest money dispute. I thought we may be on
25 the hook for \$30,000, going back and looking at

1 everything. And Mr. Bufkin's letter indicated
2 they wanted \$185,000. So the contracts, my
3 understanding, they go through mediation. So
4 we agreed to mediate and Mr. Bufkin I believe
5 filed to go to mediation with CCAP. And that
6 mediation never occurred and I was served with
7 a civil action.

8 Q: And was that lawsuit ultimately settled?

9 A: Yes, it was settled.

10 Q: Looking at Exhibit One.

11 MR. MAGARGLE: Your Exhibit One?

12 MR. LYDON: No. Petitioner's Exhibit One, which is
13 the Notice of Charges.

14 A: Okay.

15 Q: Ms. Patrick, you were served with that document
16 and this is the charges that we're here about
17 today, correct?

18 A: Sure, yes, sir.

19 Q: Under III, paragraph one, what is your response
20 to the -- that initial paragraph one?

21 A: It's pretty much correct. There was another
22 member of Riverpath, but I guess that's neither
23 here nor there. The contract was finally
24 ratified more toward the end of March?

25 Q: It was dated March 8th, I believe.

- 1 A: Yes, that was the initial offer, uh-huh.
- 2 Q: But generally paragraph one is correct?
- 3 A: Generally it's correct, yeah.
- 4 Q: And you do not dispute anything in there?
- 5 A: No, huh-uh.
- 6 Q: How about paragraph two?
- 7 A: Of what I know about this, this is correct. I
8 did not inform my broker in charge or office
9 manager that I was entering into that contract.
- 10 Q: Why not?
- 11 A: This piece of property was not a Multiple
12 Listing property, it was not a FSBO, it was
13 just something I knew about and we were making
14 an offer on our own behalf. And it's kind of
15 common practice that if you want to buy
16 something that's not a Multiple Listing
17 property and you're buying it on your own
18 behalf and not representing someone else, that
19 you didn't have to run it through your
20 brokerage company.
- 21 Q: Were you aware of any company policy that
22 required you to run this contract through?
- 23 A: No, I wasn't, because, like I said, it was
24 common practice too. Lots of agents did that.
25 They bought something from the courthouse steps

1 or, you know, they --

2 Q: Okay. Are you aware of any statute or
3 regulation that required you to turn in the
4 contract to Asset Realty?

5 A: Not unless you're handling it for -- if I'm
6 representing another person and I am their
7 agent, certainly.

8 Q: Right.

9 A: But if I'm representing myself, I don't know of
10 any statute that requires that.

11 Q: Okay. All right, paragraph three. This talks
12 about the earnest money. What is your response
13 to paragraph three?

14 A: The contract did indicate that \$30,000 would be
15 placed in the account of Asset Realty and it
16 was never placed in Asset's account, that is
17 correct.

18 Q: And that's for the reasons that you explained
19 earlier?

20 A: Yes.

21 Q: None of which were good reasons.

22 A: None of which were good reasons. It was very
23 poor reasons, but -- and it is true that we
24 presented copies of the two checks. It is not
25 true that it was to give the appearance that

1 the money had been placed into the appropriate
2 trust account. At the time the checks were
3 written, that's where they were made out to.
4 And then things changed. The funds weren't
5 there, as I indicated before, and I made sure
6 they were covered in another manner.

7 Q: But at the time that the checks were presented
8 to them, the contract, had it been signed in
9 fact?

10 A: No, it hadn't. You don't have to deposit the
11 money until within 48 hours of final
12 acceptance. And at the time those checks were
13 presented, as I said before, that was earlier
14 on in the negotiations.

15 Q: Okay. And then paragraph four says that you
16 continued negotiations with the agent for the
17 Pinner family for several months. Is that
18 true?

19 A: No, the contract stood on its own. I mean, it
20 was a contract and we continued due diligence
21 for several months following the initial
22 signing of the contract.

23 Q: And then it says the contract was extended
24 numerous times which led to more money being
25 placed in the trust account. Was the contract

1 extended numerous times?

2 A: At that time I did not know it had because I
3 had not received the extension and I had not
4 asked for -- we had not gotten to the
5 development services meeting and so I mean, you
6 know, things just were simply not progressing.
7 We were stuck in due diligence.

8 Q: So the only -- there was only one extension on
9 the contact?

10 A: There was one extension that I wrote up.

11 Q: And you didn't learn --

12 A: I didn't know I got that. So I was not placing
13 the additional earnest monies because I didn't
14 know I had that extension. And the other
15 contingencies that -- my interpretation says
16 once you get to a certain, you know, due
17 diligence, you've completed due diligence, got
18 your approvals from the county, then we were to
19 put in more earnest money. And since we never
20 got to that, I really did not -- it never
21 crossed my mind to come up with additional
22 money.

23 Q: And then the next statement is that there was
24 to be \$185,000 in trust. What did you think
25 should have been in earnest money deposit?

1 A: I thought when I -- by the time we got to the
2 very end and I found out there was an extension
3 granted or apparently granted that I didn't
4 know about, then I thought well we might
5 definitely owe \$30,000, but certainly not 185.

6 Q: And then paragraph five, the contract was in
7 fact terminated?

8 A: Correct, it was terminated a long time ago, and
9 then --

10 Q: Terminated July 29, '08.

11 A: It was terminated then and we had several
12 attempts to extend it and I didn't know they
13 had happened. And then the last extension was
14 to extend it, and that certainly never happened
15 because it called for the deposit of \$185,000
16 earnest money. Or not earnest money, but
17 earnest money and penalty funds, and we
18 couldn't do it.

19 Q: Did you constantly reassure anybody that there
20 was \$185,000 in a trust account?

21 A: No.

22 Q: Did you lead anybody to believe that these
23 various additional earnest money deposits were
24 being put in a trust account?

25 A: No. This sentence, may I read this?

1 Q: Yes.

2 A: Okay. This says including indicating that the
3 money had been transferred to Acquire Real
4 Estate. The only time I mentioned Acquire or
5 Hugh Cooper, which was brought up earlier, was
6 when we were talking about if we were granted
7 an extension and partnered up with this new
8 developer, that obviously that was going to
9 involve a substantial deposit of earnest money,
10 and at that time it could -- you know, we were
11 talking about whether to place it with Acquire
12 or place it with Hugh or perhaps even Mr.
13 Bufkin. But the extension never happened, so.

14 Q: All right. What's the status of your real
15 estate license?

16 A: It is -- I'm classified an inactive broker.

17 Q: How long is -- how did that come about and how
18 long has that been?

19 A: When I received a copy of the initial letter
20 that Mr. Bufkin copied a bunch of people on and
21 he copied the Real Estate Commission, and it
22 had a accusations in it, I was pretty horrified
23 and scared, and I thought it was just an
24 earnest money dispute and I really thought it
25 would go to mediation in just a few months and

1 be cleared up. So this other attorney that I
2 spoke to --

3 Q: Don't tell me what an attorney said.

4 A: Okay. I was advised that it might be a good
5 idea to just lay low and put my license
6 inactive until it was resolved and then to
7 reapply for licensure and move on.

8 Q: And at what point --

9 A: And I thought that was going to happen in just
10 a few months.

11 Q: At what point did you take your license
12 inactive?

13 A: It was real late November of 2008.

14 Q: Okay.

15 A: And I received confirmation from LLR that they
16 had changed me to inactive broker status on
17 about December 4th I think is what my notice
18 says.

19 Q: And so you have not been in the realty business
20 for the past two years and two or three months?

21 A: No, I've been out of work a long time. I did
22 renew my license back when they were up for
23 renewal this June I believe it was. I went and
24 took my continuing ed and renewed as an
25 inactive broker.

1 Q: All right. How much has this cost you? Not
2 talking about any lost income. I'm talking
3 about out of pocket.

4 MS. MAGARGLE: And I guess I'm going to object to
5 relevance here of how much it's cost her. I
6 mean, I don't know how much relevance --

7 MR. LYDON: That's fine. I'll withdraw the
8 question.

9 Q: Is it your desire to get back into the real
10 estate business?

11 A: Absolutely. I very much want to get back in
12 real estate. And this has been a nightmare.
13 There was just a lot of confusion. I have --
14 I've had a very good real estate career. I've
15 done lots of transactions, lots and lots. I
16 was a real high producer, lots of transactions,
17 and I'm proud of my reputation. I've got a
18 great reputation. And this has just really
19 upset me. I definitely used some very poor
20 judgment with regards to the initial earnest
21 money deposit. I absolutely did. I had it in
22 -- not in Asset Realty's trust account as the
23 contract led to believe. And that was really
24 stupid of me. And I did not, however, not
25 place other earnest money funds in because I

1 did not feel they were due. I stand by my
2 interpretation of the contract that I was
3 trying to close the deal. I was trying to
4 develop this property.

5 Q: Thank you so much.

6 A: So I really hope you will see fit to let me get
7 back to my career because I really miss it.

8 Q: Answer any questions Ms. Magargle has, please.

9 A: Sure.

10 MS. PATRICK - CROSS EXAMINATION BY MS. MAGARGLE:

11 Q: All right, Ms. Patrick.

12 A: Uh-huh (affirmative response).

13 Q: Actually, I've listened to your testimony about
14 the documents and I must admit that I'm
15 extremely confused about a lot of things.
16 Maybe you can clear them up.

17 A: Okay.

18 Q: You stated that you knew the money was not
19 available, that the earnest checks that you had
20 gotten, at least the \$25,000 was not available,
21 is that what you testified to earlier?

22 A: Yes, at the time the contract was final
23 ratification that was due to be made good
24 funds, yes.

25 Q: Okay. And who did you tell that to? Who did

1 you inform that that money wasn't available?

2 A: I didn't inform anyone. I just simply made
3 sure the funds were good.

4 Q: And you found out they weren't good and you
5 didn't tell anybody involved in the contract,
6 anybody in the Pinner family or Mr. Bowers or
7 anybody that oh, by the way, I've signed this
8 contract, we've got it ratified, it's good, but
9 I don't have any of the earnest money; is that
10 correct?

11 A: That's correct, I did not, because same day I
12 immediately covered it.

13 Q: Immediately covered it how? Did you have the
14 money in hand?

15 A: No.

16 Q: Did you have it in a trust account where it's
17 supposed to be?

18 A: No, I didn't.

19 Q: Did you have it at Asset Realty's trust
20 account?

21 A: No.

22 Q: And again, you utilized Asset Realty and told
23 everybody that you were an agent representing,
24 and correct me if I'm wrong, but I'm just
25 looking at the contract which is our Exhibit

1 Number Four, you signed as selling agent; is
2 that correct?

3 A: That's correct.

4 Q: Do you sign at all anywhere in here as
5 purchaser?

6 A: No, I did not.

7 Q: So you signed constantly as seller's agent
8 representing that you were with Asset Realty,
9 is that correct?

10 A: I worked with Asset Realty, certainly.

11 Q: Now, you also wanted to --

12 **MR. CHAIRMAN:** Excuse me, Ms. Magargle, seller's
13 agent or buyer's agent?

14 **MS. MAGARGLE:** Did I say seller, I meant buyer's
15 I'm sorry.

16 A: Buyer's.

17 **MS. MAGARGLE:** I apologize.

18 Q: Anyway, at any point in time, did you tel
19 anybody at Asset Realty that you were doing
20 this contract since you were doing representing
21 that you worked at Asset Realty?

22 A: The management, no, I did not.

23 Q: And I think you testified a minute ago that
24 you're a BIC?

25 A: I was and then I --

1 Q: And so -- I'm sorry, go ahead.

2 A: I was, but then I just have a broker's license.

3 Q: Okay. So --

4 A: I turned in my broker in charge license and
5 change it back to just broker.

6 Q: So as a broker in charge or having had that
7 license, are you telling the Commission that
8 you don't know the rules and understand that as
9 a broker in charge, that stuff is supposed to
10 be going through the broker in charge and the
11 money is supposed to be put in a trust account
12 and all those documents are supposed to be
13 going through there, is that what you're
14 telling the Commission?

15 A: No, not really. I -- what I'm telling them is
16 that I do fully understand that had I accepted
17 funds, earnest money funds from a third party
18 that was John Doe --

19 Q: And I guess here's my question then.

20 A: Yeah.

21 Q: If you're alleging that you didn't accept funds
22 from a third party and I think your statement
23 and I think you've made this statement even to
24 our investigator, that your belief is that
25 nobody is hurt because they're your funds, is

1 that -- would that be an accurate
2 interpretation of what you believe; that since
3 it's your funds you don't -- nobody is getting
4 hurt?

5 A: I don't think I would have said something like
6 that. What I would have said, I'm sure, is if
7 it's my funds, I'm not aware of something in
8 the real estate law -- everywhere I've looked,
9 it says funds belonging to others.

10 Q: Okay.

11 A: And --

12 Q: And the earnest money technically in the long
13 run belongs to someone else because you broke
14 the contract. So that earnest money
15 technically belonged to somebody else, is that
16 not correct?

17 A: That is not correct. That hasn't been proven
18 to be correct.

19 Q: Well, obviously there is, that's a civil issue
20 to be perfectly honest with you, and so we're
21 not going to get into it. Actually, that was
22 handled in civil court.

23 A: Right.

24 Q: The difference is is that you're required as
25 representing yourself as working for a company

1 to not only run that contract through them but
2 to put the earnest money into the trust
3 account, correct?

4 A: That was not my understanding.

5 Q: Which -- so basically you're just saying you
6 don't understand what the statutes require; is
7 that what you're saying?

8 A: Not what -- not -- yes, I am saying that, not
9 with regards to that particular type of
10 transaction I'm not.

11 Q: That's important for them to know that you
12 didn't -- that you're admitting that, you know,
13 you didn't do things appropriately. Now, you
14 also testified that you felt the contract
15 expired on July 29th, is that correct?

16 A: That's correct.

17 Q: Okay. Could you show me where it says that in
18 the contract?

19 A: Let me find the contract first, and then we'll
20 --

21 Q: It's State's Exhibit Number Four. I'm sorry.
22 You've got it open right there and it's the
23 other part of that.

24 A: Oh, okay. All right. Referring to the
25 contract addenda, and there are several, the

1 first addendum which is fax page five.

2 Q: Uh-huh (affirmative response).

3 A: It says closing is subject to the following
4 terms and conditions, and it in there indicates
5 a number of contingencies.

6 Q: And we're going to get into the contingencies.
7 What I'm trying to -- and I'm not trying to
8 interrupt. You're obviously more than welcome
9 to elaborate. My question to you was this.
10 Where did you get the July 29th date from?
11 Where does it state that in the contract?

12 A: Okay. The due diligence period is generally
13 the period in which I was given time to get
14 certain things done and it mentions 30 days and
15 90 days. So if I count four months after final
16 ratification, I believe that works out to the
17 end of July.

18 Q: Now, let me ask you. You've done many of these
19 contracts, correct?

20 A: Yes, ma'am.

21 Q: The closing date, which is when the contract
22 would technically come to an end, is normally
23 going to be stated in the contract, is that not
24 correct?

25 A: It is not correct necessarily on a contingent

1 contract. Many of them give other statements,
2 such as subject to receiving approval or
3 subject to something or other.

4 Q: Anyway, on page -- I'll ask you to turn to page
5 three of that document, fax page number three,
6 of the contract. And does it not state in
7 there the 29th of August 2008 as the closing
8 date?

9 A: Yes. Closing, yes.

10 Q: Now, again, you're saying that you thought that
11 it ended July 29th and you tried to -- or you
12 explained to them why you thought that.

13 A: Uh-huh (affirmative response).

14 Q: I'm just slow and don't quite understand why
15 you thought they would close on July 29th. But
16 if you thought that the contract expired on
17 July the 29th, why did you write an extension
18 on August the 22nd?

19 A: Because I was trying to get back into the deal.

20 Q: You were trying to get back into the deal?

21 A: Absolutely.

22 Q: So you believe that the contract had already
23 expired; however, you write an extension on the
24 22nd, which is seven days before what the
25 contract says is the closing date?

1 A: There's a difference between due diligence
2 expiration and closing expiration. And I was
3 going by the contingencies, which certainly the
4 contingencies must be satisfied before you ever
5 set a closing date. So the contingencies
6 expired incomplete.

7 Q: Now, again, when we were talking about that
8 extension, you said oh I didn't -- I think your
9 testimony was, I didn't know that the extension
10 had been accepted by the Pinner family.

11 A: That's correct.

12 Q: On your State's Exhibit Number -- or not
13 State's. On your Exhibit Number Two which is
14 the email, and I think you read it from bottom
15 up.

16 A: Correct.

17 Q: Anyways, starting at the bottom, on September
18 the 5th, you would agree with me that it says
19 that I asked Andy if you guys would extend the
20 closing. He said no problem.

21 A: Right.

22 Q: Then it says, when Andy said no problem on an
23 extension, I kept my same path. That's on
24 September the 5th. Is that correct?

25 A: That's when I wrote this email.

1 Q: Yes, ma'am.

2 A: And I'm referring to past, certainly past
3 happenings.

4 Q: So the extension of the contract which you sent
5 out there on the 22nd, you allege that you
6 didn't hear anything back until November. All
7 I'm trying to get at is that's the extension
8 that you're referring to in here, right?

9 A: Correct, correct.

10 Q: Then if you go up to -- obviously they respond
11 back and then you respond back on September the
12 10th and you say -- it says now he said the new
13 offer wait away.

14 A: Uh-huh (affirmative response).

15 Q: So I'm proceeding full steam ahead.

16 A: Right.

17 Q: So again, you're under -- based on this email,
18 everything is still a go?

19 A: Not on paper, no, ma'am.

20 Q: Then why are you proceeding full steam ahead if
21 you don't believe that everything is still a
22 go?

23 A: When --

24 Q: Wouldn't you say wait, wait, wait, I'm not
25 going to pay all this money and keep going

1 forward if there's no deal there?

2 A: That's correct. There was --

3 Q: So why are you saying you're proceeding full
4 steam ahead on September the 10th, I believe it
5 was?

6 A: I think you're making an assumption of what I
7 am proceeding full steam ahead with. At that
8 point I was proceeding full steam ahead with
9 what I had promised Andy I would do, which is
10 to meet with B.P. Barber and get an in depth
11 cost analysis of the time and the cost that
12 would be required to complete the project, also
13 to get my backers back in the deal and a lot of
14 other things I was working on at that time.

15 Q: And speaking of B.P. Barber, I mean the whole
16 reason they didn't pan out is because you
17 didn't pay them, correct? I mean that was a --
18 they were not doing anything because, and you
19 knew that, that they were doing anything
20 because they weren't getting paid; is that
21 correct?

22 A: That is not correct. I paid them a good bit of
23 what they're owed, and I had them stop. I told
24 them the contract expired and we didn't have an
25 extension.

1 Q: Now, you said that the Richland County
2 approval, you testified that Richland County
3 approval was required for the extra \$50,000, is
4 that --

5 A: Correct.

6 Q: -- is that what --

7 A: That's my understanding.

8 Q: Now, I would like for you to turn back to
9 State's Exhibit Number Four.

10 A: Okay.

11 Q: If you'll turn to page, figure out what page it
12 is, six. At the top it says fax page number
13 six.

14 A: Uh-huh (affirmative response).

15 Q: Do you agree with me that it says the purchaser
16 shall deposit \$30,000 earnest money with Asset
17 Realty?

18 A: Uh-huh (affirmative response).

19 Q: This earnest money will become non-refundable
20 after 120 days, correct?

21 A: That's what it says, yes, ma'am.

22 Q: Nowhere in there does it say 120 days after any
23 due diligence period, correct?

24 A: Not on that page.

25 Q: It says 120 days.

1 A: Not on that page it does not. On the prior
2 page, however, it's a different story.

3 Q: It has listed out due diligence stuff, but
4 nowhere in regards to the earnest money does it
5 say -- I mean this paragraph doesn't say money
6 will become non-refundable after 120 days of
7 the due diligence period. It says 120 days, is
8 that correct?

9 A: That's what that sentence says, yes, ma'am.

10 Q: And then it says at the end of that 120 days,
11 the purchaser will deposit an additional
12 \$50,000 earnest money, also non-refundable, and
13 proceed to closing. Closing to take place on
14 or before August 29, 2008.

15 A: Uh-huh (affirmative response).

16 Q: That's what that says, correct?

17 A: That's correct.

18 Q: So basically in that paragraph it says after
19 120 days that earnest money becomes non-
20 refundable and then \$50,000 after that 120 days
21 is to be put down.

22 A: That's what that paragraph says, yes, ma'am.

23 Q: And the contract was signed, obviously the date
24 was kind of up there in the air, but the end of
25 March, correct?

1 A: Correct.

2 Q: So 120 days from the end of March you would
3 agree with me that if it's March then you've
4 got April, May, June. So sometime the end of
5 June, beginning of July is 120 days from the
6 date of that contract.

7 A: End of July.

8 Q: I mean end of July. What did I say, end of
9 June, I'm sorry. You're right, end of July,
10 beginning of August is what I meant to say.

11 A: That is indeed approximately 120 days.

12 Q: Now, at what point in time did you ever inform
13 anyone that you were also one of the
14 buyers/purchasers?

15 A: I don't think I ever formally informed anyone.

16 Q: So you never put anything in writing as
17 required by the statute to let anybody know
18 that you were one of the buyers?

19 A: No.

20 Q: I want you to flip now to page ten, the fax
21 page ten on State's Exhibit Number Four again.
22 I'm sorry.

23 A: Okay.

24 Q: Obviously everyone is very familiar with this
25 exhibit. We've gone through it a bunch. So

1 all I'm going to get to is, first of all, Mr.
2 Bowers called and talked to you about this
3 extension, correct?

4 A: Before I received the blank form, yes, we
5 discussed what the possible terms might be and
6 that Mr. Bufkin would be drawing it up.

7 Q: So you were very familiar -- familiar with the
8 fact that there was going to be a contract
9 extension coming, and you get the contract
10 extension and you sign this, is that correct?

11 A: I'm a witness.

12 Q: You still signed it. I understand you're a
13 witness, but is that your signature on there?

14 A: Yes.

15 Q: Okay. So you normally sign documents that you
16 don't read?

17 A: If I'm asked to witness a document, I certainly
18 do.

19 Q: But again, most importantly, you knew what this
20 was and you had already discussed this with Mr.
21 Bowers?

22 A: Not in that format, no. We discussed before me
23 ever receiving it in general terms what would
24 be included.

25 Q: Well, considering the fact that this was

1 something that you are contracted, you were
2 doing for the buyers, you didn't feel it was
3 imperative to read it at that point in time
4 apparently.

5 A: I didn't. I didn't read it until later and
6 that was bad.

7 Q: Could that be because you felt like you already
8 knew everything that was going to be in there
9 because you had already discussed it, like Mr.
10 Bowers testified, with Mr. Bowers?

11 A: I discussed with Mr. Bowers some of the terms
12 that were being proposed, yes.

13 Q: So you knew that there was going to be \$185,000
14 required to --

15 A: No, I did not.

16 MS. MAGARGLE: Beg the Commission's indulgence.
17 That's all I have for this witness.

18 MR. LYDON: I don't have anything. I asked Ms.
19 Patrick to answer any questions the
20 commissioners have.

21 MR. CHAIRMAN: Ms. Patrick, please answer any
22 questions that the members of the Commission
23 may have for you. Ms. Takacs?

24 QUESTIONS BY THE COMMISSION:

25 MS. TAKACS: You didn't -- you were representing the

1 parties in a transaction, the developer?

2 A: At the time the contract was written?

3 MS. TAKACS: Uh-huh (affirmative response).

4 A: There were three of us who were agents who had
5 people we had worked with in the past or, you
6 know, that had given us a verbal indication
7 that they were going to become part of this
8 partnership. And they asked us to go on and
9 get the ball rolling, and then we hired an
10 attorney to draw up the partnership agreement
11 and, you know, as things went along, then they
12 would guarantee the loan and those types of
13 things

14 MS. TAKACS: Was there any discussion of agency
15 representation or who was representing who?

16 A: Yes, there was actually. When it first started
17 there was just us three agents and we were
18 representing ourselves basically. And the
19 investors who were going to later be involved
20 in this hopefully and indicated they were going
21 to, I did send agency forms to all them and
22 discussed agency with them, but it had not come
23 up yet because they weren't on paper anywhere.

24 MS. TAKACS: Did you sign an agency disclosure form
25 telling the seller that you were representing

1 yourselves?

2 A: No, no I didn't, huh-uh.

3 **MR. EDWARDS:** Ms. Patrick, there were three licensed
4 real estate people that were the buyers and
5 none of the three licensed real estate people
6 who were the buyers felt any need to inform the
7 seller that they were real estate people?

8 A: I can't answer for the other two, but --

9 **MR. EDWARDS:** There was never any discussion about
10 that?

11 A: -- these folks -- well, these folks knew me.
12 We knew each other and I knew they knew I was
13 an agent and it really just truthfully did not
14 come up that I had to do some kind of formal
15 statement because I'd known them, I had done
16 other business with them, and in some of the
17 business it was a deal that didn't happen I was
18 going to be an agent and the buyer and it was
19 -- it just really escaped my attention.

20 **MR. EDWARDS:** So you had done this before?

21 A: On another potential deal that was not a
22 listing. I've never done anything like this on
23 a listing or while representing another party,
24 absolutely not.

25 **MR. EDWARDS:** Never disclosed that you were an agent

1 and that you were also the buyer?

2 A: Not in writing, no. Huh-uh (negative
3 response).

4 **MR. CHAIRMAN:** You understand that even if I stop at
5 your house and you've got up a sale by owner
6 sign in the yard and say I like this house and
7 I want to buy it, that I have to disclose to
8 you that I am a real estate licensee in the
9 state of South Carolina?

10 A: Yes, sir, you do. And if it's my house, I have
11 to disclose to you that I'm an owner/agent.

12 **MR. CHAIRMAN:** That's right. And you did not do
13 that in this case?

14 A: They know me, they know I'm an agent.

15 **MR. CHAIRMAN:** Do you know what the law said it has
16 to be in writing?

17 A: I believe it said it had to be in writing. And
18 yes, sir, the residential contract form has a
19 place to check and says, yes, I'm an agent or
20 one of the parties is an agent. The land
21 contract doesn't. And I just didn't do it. I
22 didn't think to add it, no, I didn't.

23 **MR. CHAIRMAN:** Why did you not inform your broker of
24 this transaction?

25 A: We -- it's common practice if you buy something

1 from -- let's say I go and buy something from
2 the courthouse steps, I don't go and tell my
3 broker I'm going to buy a foreclosure on the
4 courthouse steps.

5 MR. CHAIRMAN: But you don't list your broker as
6 holding the earnest money when you do that?

7 A: That is correct.

8 MR. CHAIRMAN: You make a deposit to the master in
9 equity in that case?

10 A: Absolutely. And that's what I did wrong. I've
11 admitted that. That was very, very poor
12 judgment on my part. That was really not smart
13 at all, sir. Because I can see where that gave
14 the appearance that I was representing my
15 broker or some other person, but that was not
16 the case. But I do see where that makes it
17 look that way, I do.

18 MR. CHAIRMAN: You have the earnest money checks
19 made out to the brokerage firm?

20 A: Correct.

21 MR. CHAIRMAN: You have a brokerage firm receiving a
22 commission on the contract of sale?

23 A: Un-huh (affirmative response).

24 MR. CHAIRMAN: And you did not inform your broker?

25 A: That's correct.

1 MR. CHAIRMAN: That's -- is that part is very
2 puzzling to me.

3 A: It was very bad judgment, sir.

4 MR. CHAIRMAN: Mr. Saxon, do you have that section
5 of the law, that agency disclosure?

6 MS. YOUNG: While they're looking that up, I don't
7 believe that you disclosed that the agent that
8 signed the contract was a licensed agent
9 either. That's not disclosed either.

10 A: That's correct, it's not.

11 MR. CHAIRMAN: So let me make sure I understand what
12 I've heard and it's -- the more I've heard the
13 less I'm sure of what I've heard. You have
14 admitted and your attorney has stipulated that
15 you've admitted in the charges against you that
16 you have agreed with paragraphs one, two, three
17 -- I can't even read my own writing -- and
18 four.

19 A: Okay. I'm sorry, sir. I needed to see the
20 notice. Here we go, I've got it, okay. I'm
21 sorry.

22 MR. CHAIRMAN: You agreed to purchase the property.

23 A: Un-nun (affirmative response).

24 MR. CHAIRMAN: And also on paragraph three, the
25 contract calls for an initial earnest money

1 deposit of \$30,000 to be placed in the escrow
2 account at Asset Realty.

3 A: That's correct.

4 MR. CHAIRMAN: This money was never placed in
5 Asset's escrow account. However, Respondent
6 presented copies of two checks totaling \$30,000
7 made out to Asset Realty to give the appearance
8 that money had been placed in the appropriate
9 trust account.

10 A: I disagree with the intent, but the outcome is
11 the same. It was not placed in the correct
12 account, sir.

13 MR. CHAIRMAN: But you showed those two checks
14 totaling \$30,000 to the broker representing the
15 sellers?

16 A: Yes.

17 MR. CHAIRMAN: And said I have this earnest money?

18 A: At the time I thought it was there, yes, sir.

19 MR. CHAIRMAN: The time meaning between the 48 hours
20 that you said that you --

21 A: No. Once again, the first check was sent with
22 the initial writing of the contract. The next
23 one came several weeks later and then the
24 contract was ratified maybe five, six, seven
25 days after that.

1 MR. CHAIRMAN: Whatever happened to the checks?

2 A: They are still sitting in either mine or
3 Sally's file.

4 MR. CHAIRMAN: They're what?

5 A: They're in a file. The original checks.

6 MR. HARLEY: You admitted one of those checks
7 cleared yourself, didn't you? Did you make
8 \$25,000?

9 A: Yes, sir. I called a friend and asked if I
10 could borrow that much money, yes, sir.

11 MS. YOUNG: But that was not put in a trust account?

12 A: Correct. It was not put in the trust account.

13 MR. HARLEY: It was not in a trust account?

14 A: No, sir, I did not put it in the trust account.

15 MR. HARLEY: Where did you keep that money?

16 A: Ultimately or at that time?

17 MR. HARLEY: At that time.

18 A: At that time I left it -- I told my friend to
19 hold it in her account at her bank.

20 MR. BIGGERS: But I believe you implied to say that
21 you returned that money back to the one that
22 gave it to you, the \$25,000.

23 MS. YOUNG: She never took it.

24 MR. BIGGERS: Oh she never took it.

25 MS. YOUNG: I did take it.

1 MR. BIGGERS: She had the check, though.

2 A: Yes, I did actually get the money from her
3 later when I -- when I thought the deal was
4 expired, I called her up and said now I need
5 the money and I took that money and I paid the
6 engineer with it and made a payment to the
7 engineer with it, so she had it there for me.

8 MR. CHAIRMAN: We've been here a good part of the
9 day and a big part of the dispute or the
10 contention is the difference between \$30,000
11 and \$185,000, is that accurate?

12 A: That's accurate, as well as any malicious
13 intent, yes, sir.

14 MS. YOUNG: But I don't that's really the issue,
15 though, Mr. Chairman. I think the issue is the
16 actual laws that she broke. Not necessarily
17 the amount.

18 MR. CHAIRMAN: Any members of the Commission have
19 any additional questions?

20 MR. HARLEY: I may be out of line a little bit, but
21 that development cost that you put -- paid that
22 in the project itself, where did that money
23 come from?

24 A: Most of it came out of my own pocket, sir,
25 because bills came due before the partnership

1 was fully formed and so the wealthy people had
2 not yet remitted their funds to get into the
3 deal and they ultimately never did, so I paid
4 it out of my own pocket.

5 **MR. HARLEY:** So how much money was that?

6 A: I'd say I've already paid various marketing
7 firms and the engineers probably upward of
8 \$60,000 I would think that I have paid them,
9 and I owe more.

10 **MR. HARLEY:** That's a pretty good estimate?

11 A: Absolutely.

12 **MR. HARLEY:** Okay. That's all I've got. I just
13 wondered.

14 A: Sure, that's fine.

15 **MR. CHAIRMAN:** Any additional questions? Ms.
16 Magargle, who would like to close first?

17 **MS. MAGARGLE:** Not I.

18 **MR. CHAIRMAN:** Thank you, ma'am.

19 **MS. PATRICK:** Sure. Thank you.

20 **CLOSING BY MR. LYDON:**

21 **MR. LYDON:** I'll be very brief because you've been
22 here long enough and based on the questions
23 that you're asking, I think you've got a pretty
24 good understanding of what happened and how it
25 happened. As I stated at the beginning, Ms.

1 Patrick makes no excuses, not trying to avoid
2 the fact that she mishandled that initial
3 \$30,000. And that's been her position from the
4 get-go and somebody commented well it's not
5 about the amount but the laws broken. She
6 acknowledges that she broke the law with
7 respect to that \$30,000. But she was not going
8 to sit back and let somebody say that she broke
9 the law with respect to \$185,000. I told you
10 that that \$185,000 was the result of what I
11 believe was a misunderstanding. I believe that
12 bore itself out from the witness stand.
13 Usually in a case when I'm involved you have
14 the purchaser saying this is the amount or this
15 is the deadline or whatever and the seller is
16 saying something different. What I heard was
17 Dr. West, Dr. Pinner, Andy Bowers and Mr.
18 Bufkin all saying different things about what
19 contingencies had to be met, what the
20 expiration date of the contract was. Somebody
21 said it was July 29th. Somebody said it was
22 August 29th. Somebody said they didn't know,
23 that was up to the lawyers to figure out.
24 There was no -- and I think Ms. Patrick
25 explained what her understanding was and I

1 think it's consistent with the terms of the
2 contract, which is that she had until July 29th
3 to do her due diligence. If everything came
4 back as approved and she wanted to extend the
5 contract, she had to pay another \$50,000 and
6 then it would close on August 29, 2008. If the
7 due diligence wasn't done or the \$50,000 didn't
8 get paid, the contract was over. And that in
9 fact happened. The due -- the contingencies
10 weren't met, the \$50,000 didn't get paid, the
11 contract expired. There were continuing
12 efforts to revive the deal, but there were no
13 representations made by Ms. Patrick or anybody
14 else that additional earnest money was being
15 put up or that they should be anywhere near
16 \$185,000. She was trying to get it done, she
17 did spend \$60,000 out of her own money on
18 engineering and development and that sort of
19 stuff, but there was no \$185,000 that should
20 have been there or that was missing. Everybody
21 agrees that this document, I think it's page
22 ten of Exhibit Four, here it is, which is the
23 one that summarizes what's happened since the
24 beginning is not correct. Every single person
25 on the stand testified that this document does

1 not accurately state what transpired since that
2 contract was done. And this is the document
3 that the \$185,000 comes from, this is the only
4 one. So it's our position that we acknowledge
5 that \$30,000 should have been put in the Asset
6 Realty escrow account. We acknowledge that Ms.
7 Patrick should have disclosed her agency, the
8 fact that she was an agent and was also a
9 purchaser. But to suggest that she somehow
10 stole or mishandled or lied or misrepresented
11 \$185,000 and extensions over a six month period
12 of time, she vigorously disputes that. I think
13 the evidence supports her position that that's
14 not what happened. In fact, I believe Mr.
15 Bowers testified that in August he -- he felt
16 pretty sure that the \$50,000 hadn't been paid
17 and that the contract was over and he told the
18 Pinner family that. So the notion that this thing
19 was ongoing and that more money was being put
20 into these escrow accounts comes from this
21 Pinner family contract extension that Mr.
22 Bufkin prepared and Mr. Bufkin acknowledged
23 that he prepared it based on looking at the
24 contract and what other people had told him had
25 happened, not firsthand knowledge. The

1 firsthand knowledge is what Mr. Bowers
2 testified to, what Ms. Patrick testified to,
3 what Dr. West testified to, what Dr. Pinner
4 testified to, and I believe that that
5 establishes that there was \$30,000 that
6 absolutely was not handled the way it should
7 have been. From a legal standpoint, from a
8 practical standpoint, from a corporate
9 standpoint, it was mishandled, absolutely.
10 Beyond that, I believe Ms. Patrick did act in
11 accordance with the contract, that there was no
12 additional earnest money that should have been
13 put down and there is no evidence,
14 documentation that I've seen where she showed
15 or presented to anyone any indication that
16 there was additional earnest money being
17 deposited into Asset Realty's account or to any
18 other escrow account. And in summary, this has
19 cost her a lot of money out of pocket. This
20 has cost her a lot of money in lost income.
21 She's been out of work for two years and two or
22 three months. And, but this one mistake
23 handling the \$30,000 shouldn't define the rest
24 of her life. We've all make bad decisions
25 we've all had, you know, things we wish hadn't.

1 happened in our past and we have to deal with
2 the consequences, there's no doubt about it.
3 But those consequences, except in extraordinary
4 situations, should not be something that is on
5 your back, is a burden that restricts you for
6 the rest of your life. And I would suggest
7 that for the two years that she's been
8 inactive, the amount of money this has cost her
9 out of pocket and the amount of money that
10 she's lost being unemployed is a huge penalty
11 and a huge burden that she's had to bear. And
12 I really appreciate y'all's time and your
13 attention. You've been very attentive to this
14 and questions indicate or evidence that and we
15 appreciate your consideration. Thank you.

16 **MR. CHAIRMAN:** Thank you, sir. Ms. Magargle.

17 **CLOSING STATEMENT BY MS. MAGARGLE:**

18 **MS. MAGARGLE:** Thank you. Obviously we came before
19 you and brought you the facts. I think we've
20 proven all the facts. One of the things that
21 I want you to consider, I mean obviously she
22 admits to half the stuff in here, but then we
23 get into kind of some of the nuts and bolts of
24 paragraphs four and five which, you know,
25 here's the thing. What I want y'all to think

1 about, and I'm not going to go through each and
2 every person's testimony. We brought in here
3 multiple witnesses. These witnesses have
4 nothing to gain from this. They're not sitting
5 back here willingly. You heard I had a doctor
6 drive here from Atlanta, she missed all this
7 time and stuff from her practice. I had
8 another doctor locally that's here having to
9 take his patients' time. You know, I've got
10 people that are here that do real estate,
11 lawyers, you name it, they are all here and
12 they have nothing to gain from what they told
13 you. However, there is one person who has a
14 lot to gain by what she tells you, and the
15 thing that I find interesting is that one
16 person who sits at the other table and is the
17 Respondent doesn't even answer half the
18 questions. Or one minute she's talking about
19 out of one side of her mouth and the other
20 minute she's talking out of the other side of
21 her mouth. She never even asked or answered
22 the question that y'all asked her, if I'm not
23 mistaken, two if not three or more times. You
24 asked her, did you ever tell them that you were
25 a buyer? Did you ever tell them you were

1 buyer? Did you ever tell them you were a
2 buyer? And every time she responded back to
3 you they knew I was an agent, they knew I was
4 an agent. That's not the question. They sat
5 up there and told you they never knew she was
6 also one of the purchasers. She never answered
7 that question, though. She just kept telling
8 you well they knew I was an agent. Well, of
9 course they knew she was an agent, she signed
10 off as the agent. That's not the issue. The
11 issue is that she was the buyer and the agent
12 and she never disclosed that. She never,
13 again, like I say, what else did she say. In
14 one breath she says I think -- I think I was on
15 the hook for \$30,000, but then she said, well
16 the contract, I didn't believe the contract was
17 in place. Again, well, you don't believe the
18 contract's in place, then why do you believe
19 you're on the hook for the \$30,000. I think
20 it's perfectly clear, you can look at this
21 contract, she signed it as the witness, but
22 most importantly, her buyer signed this
23 contract. There may be some disputes about
24 certain dates like June the 29th may not be a
25 date that they're talking about. However, the

1 rest of this stuff explicitly spells out and
2 she assures Mr. Bowers, who in turn assures the
3 Finner family, that there is \$185,000 sitting
4 in a trust account somewhere. But in reality
5 she knows all along that there's not a penny
6 sitting in any trust account anywhere, on top
7 of the fact that Asset Realty doesn't even have
8 a clue that any of this is going on, and this
9 is in October. They don't find out until
10 December. So you know, this is a contract. It
11 is signed. It states what it states. She
12 can't go back and change it. This is what they
13 agreed to. On top of the fact that you go back
14 and look at the first contract, who drafted
15 that? She told you who did. She drafted it.
16 How did she not know her own dates? How did
17 she not know when it was going to close? But
18 in her own contract that she drafted, in the
19 addendum, it specifically states about the
20 earnest money; \$30,000, which is non-refundable
21 after 120 days and then after that \$50,000 is
22 supposed to go down. That's as plain as day.
23 There's 80 right there. And then you get into
24 the fact that they asked for 75 to extend it
25 even beyond on the second contract. It's all

1 in writing. Y'all are very intelligent, y'all
2 know about contracts. Look at them, it's all
3 right here in black and white. Nowhere in
4 there says that none of this has -- you have to
5 wait for the due diligence period. It says
6 after 120 days, period. Then even beyond that
7 in black and white she signs an extension.
8 This, to the State, is absolutely unacceptable.
9 The statutes that she's violated and the fact
10 that it's kind of like oh well I just didn't
11 think about it or yeah, I guess I should of,
12 but you know, just on a normal basis, we don't
13 normally do that. Well, you know, that to me
14 even leads to what I'm getting ready to tell
15 y'all, and that is the State's position is, is
16 that this is not an individual that needs a
17 license. Y'all need to take her license.
18 Y'all need to revoke it and let her know that
19 she cannot have her license back. The State is
20 requesting that you not let her have her
21 license back and that you revoke it. If you
22 chose not to do that, I would definitely ask
23 that she at the very least be on probation for
24 an extended period of time, that she not be a
25 broker in charge, that she take multiple

1 classes because apparently she doesn't
2 understand what she's supposed to do with a
3 contract when she gets it and what she's
4 supposed to do with earnest money. I just
5 don't think this is somebody that needs to have
6 a license, but if y'all are going to allow her
7 to have a license and y'all make that decision,
8 which is ultimately yours, I would ask that you
9 put extreme restrictions on what she's allowed
10 to do. Thank you.

11 **MR. CHAIRMAN:** We've heard testimony from the
12 Respondent and the State. Is there a motion to
13 have a disposition or to go into executive
14 session to discuss the merits of the case?

15 **MR. BIGGER:** I make a motion we go into executive
16 session.

17 **MR. HARLEY:** Second.

18 **MR. CHAIRMAN:** Those in favor.

19 (All Committee Members signified by saying aye.

20 **MR. CHAIRMAN:** In executive session the merits of
21 the case will be discussed, no votes will be
22 taken.

23 (Off the Record)

24 **MR. CHAIRMAN:** We are now back in open session and
25 we'll be discussing the matter of the State v.

1 Vanessa Patrick, license number 22479. Is
2 there a motion as to the disposition of this
3 case?

4 **MR. EDWARDS:** Mr. Chairman, I'd like to make a
5 motion that Ms. Patrick's license be revoked
6 and she be fined \$2,500 to be paid within six
7 months.

8 **MR. CHAIRMAN:** Do we have a second?

9 **MR. HARLEY:** I second that motion.

10 **MR. CHAIRMAN:** We have a motion and a second. Let
11 me restate it to make sure we understand,
12 revocation plus a fine of \$2,500 due within six
13 months. Is that correct?

14 **MR. EDWARDS:** That's correct.

15 **MR. CHAIRMAN:** Any discussion? All in favor signify
16 by saying aye.

17 (All Committee Members signified by saying aye.)

18 **MR. CHAIRMAN:** Any opposed like sign? The ayes have
19 it. The hearing is closed.

20 (There being nothing further, the hearing was
21 concluded at 3:15 p.m.)

22

23

24

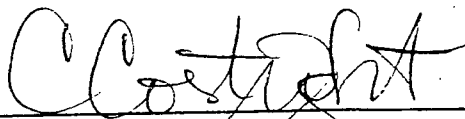
25

CERTIFICATE

This is to certify that the within hearing consisting of One Hundred Eighty-Two (182) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 7, 2011.



Christine A. Cortright
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 28, 2016

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE REAL ESTATE COMMISSION**

IN THE MATTER OF:

**VANESSA PATRICK
License Number 22479**

OIE # 2009-27

Respondent.

**NOTICE OF CHARGES AND NOTICE
OF HEARING**

I.

That Respondent license is presently lapsed by the South Carolina Real Estate Commission, hereinafter referred to as the Commission, but at all times relevant to this matter Respondent was duly licensed by the Commission.

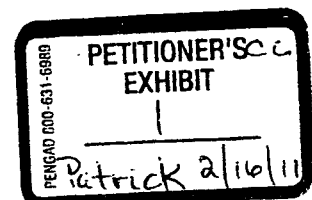
II.

That the Commission has jurisdiction over Respondent and the subject matter of this action.

III.

That Respondent has violated S.C. Code Ann. §§ 40-1-110(c), (f), (g) and (k); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10) and (20) (1976, as amended) in that:

1. On or about March 8, 2008, Respondent and another co-worker from Asset Realty, S. S. G., entered in a contract to purchase property located in Little Mountain, S.C. The contract was to purchase approximately two hundred and eighty-eight point sixty-two (288.62) acres for five million, three hundred and ninety six thousand dollars (\$5,396,000.00). The sellers of this property were the P family, individuals known to Respondent.
2. Although this contract was completed on a contract form traditionally used by Asset Realty, Respondent never informed her broker in charge or the manager of the office that she was negotiating this contract or that she had entered into this contract. Further, Respondent's broker-in-charge nor the office manager consented to this transaction being handled by Respondent, especially the way it was being handled by Respondent.



3. The contract called for an initial earnest money deposit of thirty thousand dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset's escrow account. However, Respondent presented copies of two checks totaling the thirty thousand dollars (\$30,000.00) made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
4. Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times which lead to more money being placed into the trust account based on the contract. All total, by approximately December of 2008, there was suppose to be approximately one hundred eighty-five thousand dollars (\$185,000.00) being held in the trust account. However, there were no funds located in the trust account. When asked to produce the trust money, Respondent was unable to do so due to the fact that Respondent had not been placing any money into the escrow account.
5. The contract was terminated and Respondent was unable to produce any money in regards to this transaction despite constant reassurance on her part that the money was in the trust account. Throughout the entire process, Respondent led the sellers to believe that the money was located in a trust account, including indicating that the money had been transferred to Acquire Real Estate, when Respondent transferred her license to this agency. Again, Respondent never informed her new broker in charge that she had this contract pending nor did she place any money into their trust account.

IV.

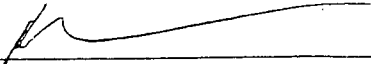
YOU ARE HEREBY NOTIFIED that the Real Estate Commission will conduct a hearing on **November 16, 2010, at 10:00a.m.**, in the Kingstree Building, 110 Centerview Drive, **Room 105**, Columbia, South Carolina, to hear the charges against you as stated above. The hearing is held pursuant to the authority of S.C. Code Ann. §§ 40-57-170; 40-57-180; and 40-57-200.

FURTHER, you are notified that you may appear, present evidence on your behalf, and confront and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*

FURTHER, you are advised that if the Commission finds that you are in violation of the statutes or regulations of the Commission, your license to practice Real Estate in South Carolina may be suspended or revoked in accordance with Commission Statute § 40-57-150 or the Commission may take such other disciplinary action as is warranted.

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
STATE REAL ESTATE COMMISSION**

Columbia, South Carolina
10/13, 2010.



PAULA S. MAGARGLE
Assistant General Counsel
Department of Labor, Licensing & Regulation
PO Box 11329
Columbia, SC 29211-1329
(803) 896-4849

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE STATE REAL ESTATE COMMISSION

IN THE MATTER OF:

VANESSA K. PATRICK
License Number REL.22479

OIE # 2009-27

Respondent

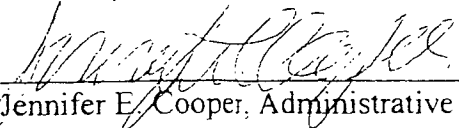
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within **Notice of Charges and Notice of Hearing** upon the persons hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested and by regular first class mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

Thomas E. Lydon, Esq.
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

Vanessa K. Patrick
108 Wateree Creek Road
Irmo, SC 29063

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION


Jennifer E. Cooper, Administrative Assistant
LLR-Office of General Counsel
Post Office Box 11329
Columbia, SC 29211-1329

Columbia, SC
10/13. 2010.

7010 1670 0000 0980 188

U.S. Postal Service
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 (Postage Only; No Insurance Coverage Provided)
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Postage \$ 68
 Certified Fee 2004-27 REC
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)
 Total Postage

Sent To: **Thomas E. Lydon, Esq.**
P.O. Box 12519
Columbia, SC 29211

Street, Apt. No. or PO Box No.
 City, State, ZIP

PS Form 3811, February 2004

7010 1670 0000 0980 1765

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Postage Only; No Insurance Coverage Provided)
 (השלמת תשלום בלבד; אין כיסוי ביטוח)

Postage \$ 68
 Certified Fee 2004-27 REC
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)
 Total Postage

Sent To: **Vanessa K. Patrick**
108 Wateree Creek Road
Irmo, SC 29063

Street, Apt. No. or PO Box No.
 City, State, ZIP

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee
 B. Received by (Printed Name) [Signature] C. Date of Delivery 10/13/10
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

1. Article Addressed to: 2004-27 REC
 Thomas E. Lydon, Esq.
 P.O. Box 12519
 Columbia, SC 29211

2. Article Number (Transfer from service label)
 7010 1670 0000 0980 1888

Domestic Return Receipt
 102595-02-M-15/10

SENDER: COMPLETE THIS SECTION

1. Article Addressed to: 2004-27 REC
 Vanessa K. Patrick
 108 Wateree Creek Road
 Irmo, SC 29063

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☐ Addressee
 B. Received by (Printed Name) Vanessa K. Patrick C. Date of Delivery 10/13/10
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label)
 7010 1670 0000 0980 1765
 PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-15/10

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

In the Matter of:

VANESSA PATRICK
License No. REL.22479

OIE # 2009-27

Respondent

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the Real Estate Commission will conduct a hearing on **February 16, 2011, at 10:00 a.m.**, in the Kingstree Building, 110 Centerview Drive, **Room 105**, Columbia, South Carolina, to hear the charges against you as stated above. The hearing is held pursuant to S.C. Code Ann. §§ 40-57-170; 40-57-180; and 40-57-200 (1976, as amended).

FURTHER, you are notified that you may appear and present evidence on your behalf and confront, and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, § 1-23-310, *et seq.*, S.C. Code of Laws (1976, as amended).

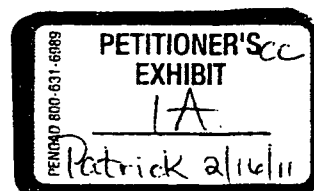
FURTHER, you are advised that if the Commission finds that you are in violation of the statutes or regulations of the Commission, your license to practice Real Estate in South Carolina may be suspended or revoked in accordance with S.C. Code Ann. § 40-57-170 (1976, as amended) or the Commission may take such other disciplinary action as is warranted.

**SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION
STATE REAL ESTATE COMMISSION**

BY: _____

PAULA S. MAGARGLE
Assistant General Counsel

1/16, 2011.



SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE STATE REAL ESTATE COMMISSION

IN THE MATTER OF:

VANESSA K. PATRICK
License Number REL.22479

OIE # 2009-27

Respondent

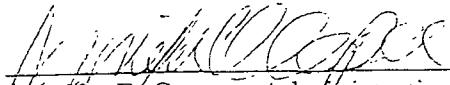
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within **Notice of Hearing** upon the persons hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested and by regular first class mail, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

Thomas E. Lydon, Esq.
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

Vanessa K. Patrick
108 Wateree Creek Road
Irmo, SC 29063

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION


Jennifer E. Cooper, Administrative Assistant
LLR-Office of General Counsel
Post Office Box 11329
Columbia, SC 29211-1329

Columbia, SC
1/16, 2011.

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7010 1670 00 0980 2236

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Postmark
2004-27 REC
11/6/11
Patrick NDH city

Sent To
Thomas E. Lydon, Esq.
P.O. Box 12519
Columbia, SC 29211

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal ServiceTM
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For delivery information visit our website at www.usps.com

Postage	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	

Postmark
2004-27 REC
11/6/11
Patrick NDH

Sent To
Vanessa K. Patrick
108 Wateree Creek Road
Irmo, SC 29063

PS Form 3800, August 2006 See Reverse for Instructions

[Track & Confirm](#)

[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: **7010 1670 0000 0980 2229**

Service(s): **Certified Mail™**

Status: **Delivered**

Your item was delivered at 9:09 am on January 07, 2011 in COLUMBIA, SC 29211

Track & Confirm

Enter Label/Receipt Number.

Detailed Results:

- **Delivered, January 07, 2011, 9:09 am, COLUMBIA, SC 29211**
- **Notice Left, January 07, 2011, 6:52 am, COLUMBIA, SC 29211**
- **Arrival at Unit, January 07, 2011, 6:51 am, COLUMBIA, SC 29211**

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email

2009-27 REC
Retrick
NOH
+ 0.00ff

Henry P. Bufkin
Attorney

BUFKIN LAW FIRM
P. O. DRAWER 419
208 NORTH MAIN STREET
PROSPERITY, SC 29127
TELEPHONE (803) 364-2233
FAX (803) 364-4445
Bufkinlaw@backroads.net

Timothy D. Savidge
Attorney/Associate

November 24, 2008

Vanessa Patrick, Agent
Acquire Real Estate, Inc.
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

Katy Sale Dunn, BIC
Acquire Real Estate, Inc.
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

Sally Sale Grooms
Riverpath Investors, LLC
[REDACTED]
Irmo, SC 29063

Jeff Bond, BIC
Asset Realty, Inc.
P. O. Box 290219
Columbia, SC 29229

Jeff Z. Brooker III
Riverpath Investors, LLC
717 Lady Street, Suite G
Columbia, SC 29201

Hugh M. Cooper, Esquire
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

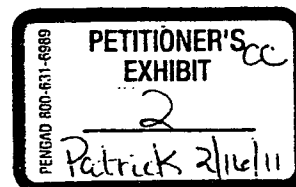
RE: Demand to close or produce earnest money
Pinner Family -- Sellers
Riverpath Investors, LLC -- Sally Sale Grooms, Principle
288.62 acres, Richland County, SC - TMS# 02900-01-013

Dear Ladies and Gentlemen:

I represent the Pinner Family in their attempts to enforce the Contract for the Sale of the above described property.

In March 2008, Riverpath Investors, LLC, entered into a contract for the purchase of 288.62 acres in Richland County from members of the Pinner Family. This contract was the sale of 288.62 acres at \$19,000.00 per acre for a total of \$5,396,000.00. The Purchasers agreed to deposit \$30,000.00 in escrow on this contract, to be held in the escrow account of Asset Realty, where Vanessa Patrick was an agent. The earnest money was to become non-refundable to the Purchasers at the end of the 120 day due diligence period on July 29, 2008. This contract was signed on behalf of the Purchasers by Sally Sale Grooms. The funds were guaranteed to be deposited by Vanessa Patrick.

H/P



RECEIVE

DEC 01 2008

QBB

This contract also provided that if the Purchasers were to proceed beyond the due diligence deadline of July 29, 2008, they were to deposit an additional non-refundable earnest money deposit of \$50,000.00 (making a total of \$80,000.00 earnest money held by Asset Realty). The Sellers agent, Andy Bowers of Hometown Realty, was assured by Vanessa Patrick that this additional money had been deposited in the Asset Realty trust account.

The contract also provided that when it was determined that the closing could not take place by August 29, 2008, the Sellers would grant a one time 30 day extension of the contract until September 30, 2008. An additional \$30,000.00 in non-refundable earnest money was deposited in trust with Asset Realty for this extension. Vanessa Patrick assured the Sellers agent, Andy Bowers, that this additional \$30,000.00 had been deposited in the Asset Realty trust account. This earnest money on deposit was then to have been \$110,000.00.

The last contract extension, extending the closing date to not later than December 31, 2008, was done in October, 2008. In return for this extension, the Purchasers agreed to a non-refundable penalty of \$75,000.00, making the total funds in escrow \$185,000.00. This extension also required that those funds be transferred to my trust account. This contract extension was signed by all of the relevant members of the Pinner Family, as well as, Sally Sale Grooms, on behalf of Riverpath Investors, LLC, and witnessed by Vanessa Patrick.

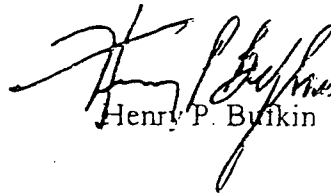
Vanessa Patrick was the primary contact in all of these negotiations and she gave the assurances to the Sellers agent that these funds (\$185,000.00) were on deposit in the trust account of her real estate agency. At some point in time, Vanessa Patrick became an agent for Acquire Real Estate and gave assurances that the money in escrow had transferred from Asset Realty to the trust account of Attorney Hugh Cooper. When Hugh Cooper denied having had these funds, Vanessa Patrick then said they were on deposit with Acquire Realty. Upon being pushed to transfer the escrow funds to my trust account in accordance with the last contract modification, Vanessa Patrick became unresponsive and would not answer telephone calls. A telephone call to the broker-in-charge of Acquire Real Estate, Katy Sale Dunn, revealed that no such amount was on deposit and that all Katy Sale Dunn could account for was \$20,000.00, which Vanessa Patrick brought with her. No funds have been transferred to the Sellers, or me, their attorney, thus far.

The Pinner Family stands ready and willing to comply with the terms of the Contract, so long as Riverpath Investors, LLC complies with the terms of the Contract and transfers \$185,000.00 to my trust account. The failure to comply with the terms of the contract, by the Purchaser, have been extraordinary. It would appear that the terms of the contract have been breached. It would also appear that several real estate agents have breached their fiduciary responsibility with regards to gathering the funds and depositing them in trust. Lastly, it would appear that fraud may have occurred in that Purchasers have signed contract extensions which demanded the deposit of earnest money funds with the knowledge that no such funds were provided. This goes to the heart of the real estate transaction which the real estate commission regulates.

On behalf of the Pinner Family, it is demanded that the \$185,000.00 non-refundable earnest money (including penalty) be transferred to my trust account by Thursday, December 4, 2008. Failure to comply will be considered a purchaser default of the contract with all remedies available to the Sellers.

No corporate veil will protect the Purchasers, or their agents, from the conspiracy and fraud of the individual parties.

Respectfully,



Henry P. Butkin

HPB:1fb

cc: SC Labor Licensing Board - Real Estate Commission

January 5, 2009

ASSET REALTY, INC.

Mr. John Sowell
SC Dept of LLR
Dept of Investigations
Columbia, SC

Dear Mr. Sowell;

The matter concerning Sally Grooms, Salesman, Vanessa Patrick, Broker, Katie Sale Dunn, BIC and Nancy Curtis, Salesman and the Pinner family (sellers) came to our attention in early December 2008. Sometime between December 4 and December 10, 2008, Asset Realty, Inc. (ARI) received a letter from the Pinner family attorney, Mr. Henry Bufkin. This was the first time, Jeff Bond, BIC, I or anyone from the management or administrative staff of ARI had knowledge of this sales contract or the existence of same.

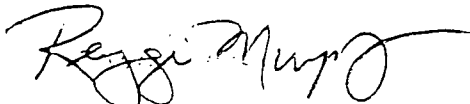
The enclosed paperwork has been assembled over the past few weeks in an effort to ascertain what happened and when. The enclosed correspondence clearly states by Grooms and Patrick, the purchase was being made outside the control or direction of Asset Realty, Inc. contrary to the writings on the sales contract and contrary to company policy. The purpose behind this contradiction and violation of company policy is unknown to the management of Asset Realty, Inc., at this time. We can only surmise it was to avoid paying the company a monetary commission.

I have enclosed all the documentation we have at this point, including our sales/listings log (Item D) during the period of March-April 2008. All paperwork turned in to the office is to be logged in with type of paperwork, agent and date turned in. No entry exists for this transaction, further leading us to believe they had no intention of having ARI involved in this sale. I have also conducted a search of the office computers and the only item I found there was what appears to be a roughly drawn pro-forma, also enclosed (Item E)

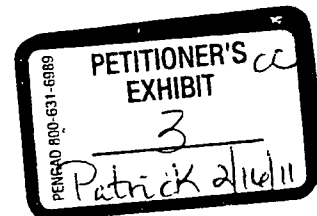
We (ARI) are fully willing to cooperate with all matters involving this investigation. We are extremely chagrined by the audacity of the actions of these agents and that they have besmirched the name and reputation of Asset Realty, Inc. in such a blatant and reckless manner for what we can only assume at this point was for personal financial gain.

Please, do not hesitate to contact me or my office for any clarification to the enclosed paperwork or should you need any additional information in the prosecution of this case.

With regards,



Reggie Murphy, Gen. Mgr.
Asset Realty, Inc.
803.772-3800



Cc: Mr. Henry Bufkin
Mr. Jeffry Bond, BIC Asset Realty, Inc.
Mr. Andy Bowers, BIC Hometown Realty
Encl

Enclosures:

1) Letter from Henry Bufkin to Vanessa Patrick et. al.

- Item A – Copy of Sales Contract received from Andy Bowers December 11, 2008
- Item B – Jeff Bond response to Henry Bufkin letter.
- Item C – Letter from Jeff Bond to Rex Casterline, attorney. Mr. Casterline has not been retained as of this date to represent ARI.
- Item D – Copy of log book at ARI Irmo office, from March 3-April 22, 2008. No entry regarding Wash Lever Rd. or earnest money.
- Item E - What appears to be a pro-forma found on office computer. Appears to have been drawn up to entice investors to this project. Found January 3, 2009.
- Item F (a) (b) (c) – Email back and forth between Reggie Murphy, GM ARI and Sally Grooms and Vanessa Patrick.
- Item G – Email, supposedly authored by Vanessa Patrick to Mr. Henry Bufkin outlining the events of this contract of sale and also clearly stating the transaction was being conducted outside the purview, direction and control of Asset Realty, Inc.

END ----- NOTHING FOLLOWS



1606 Wilson Road
P.O. Box 553
Newberry, South Carolina 29108

Phone (803) 276-9700
Fax (803) 276-4178

FAX TRANSMITTAL REPORT

DATE: 12/11/08

NAME: Reggie Murphy

COMPANY NAME: Asset Realty

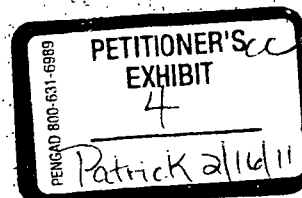
CITY: Columbia STATE: SC

FAX #: 803-798-2398

FROM: Andy Bowers

MESSAGE: Contract from Vanessa Patrick
between Riverpath Investors, LLC (Buyers)
& Pinner Family (sellers)

TOTAL PAGES INCLUDING COVER SHEET: 11



(A)



LAND, LOTS AND ACREAGE CONTRACT OF SALE

(Standard Form of The Greater Columbia Association of REALTORS®. Rev. 01/02.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

Agency Confirmation: Purchaser and Seller acknowledge that a S.I.R. Real Estate Commission Agency Disclosure has been executed by the Purchaser prior to making this offer and by the Seller prior to its presentation and serves as written confirmation to the agreed upon agency status.

1. DATE
A contract to purchase is offered this 8th day of MARCH, 2008
by RIVERPATH INVESTORS, LLC
to _____, Purchaser(s)
_____, Seller(s)
2. PROPERTY DESCRIPTION
Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:
Lot _____ Block _____ Section _____ Subdivision _____
Address: 0 WASH LEVER ROAD
Tax Map: 02900-01-13 City LITTLE MOUNTAIN Zip 29075
County of RICHLAND State of South Carolina.
3. PRICE
The sales price is \$ 5,396,000.00
A. \$ 30,000.00 Earnest Money (paid by cash, ☒ check, ☐ other) held in trust by ASSET REALTY, INC.
B. \$ See Addendum Balance of down payment at closing is to be in the form of a cashier's check or certified funds.
C. \$ 730 Loan amount (type marked below) to be obtained by Purchaser.
4. FINANCING
CONVENTIONAL ☒ SELLER CASH ☐ NO FINANCING REQUIRED; OTHER TERMS COMMERCIAL LL
A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit-worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.
B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the specified date of closing.
5. CLOSING COSTS
Purchaser's closing costs shall be paid by PURCHASER. Seller's prepaid items shall be paid by PURCHASER.
Discount points (if any) shall be paid by PURCHASER. If Seller pays closing costs, prepaid items, and/or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ 100.
6. LOAN PROCESSING APPLICATION FINANCING
Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.
7. ADDITIONAL CONTINGENCIES, CONDITIONS
SEE ADDENDUM

01/02
103

Purchaser's Initials 443-8-2008 DATE 4-3-08 HAVE READ THIS PAGE Seller's Initials _____ DATE _____ HAVE READ THIS PAGE

for LPA
QPB
MBP
2/2/08

8. SURVEY, TITLE
EXAMINATION,
INSURANCE

9. CONDITION OF
PROPERTY

10. WELL, SEPTIC
SYSTEMS,
ENVIRONMENTAL
INSPECTIONS

11. CONVEYANCE
DATE OF
CLOSING

12. POSSESSION

13. EXTENSION OF
AGREEMENT

14. BROKERAGE
FEE

15. EARNEST
MONEY

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the subject property prepared. If a survey indicates that property does not meet the following minimum specifications 2.54 ACRES (dimensions square feet, acres), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall complete this sale according to the terms and conditions of this Contract.

The Listing and Selling Brokers and their Agents recommend that Purchaser select an attorney to examine the title to the property, and obtain all appropriate insurance coverage, including that required by the lender.

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

A. The Seller represents that the property is: ☒ or is not ☐ located in a flood zone. PORTION PER COUNTY RECORDS
B. Seller represents that the property is: ☒ or is not ☐ subject to a mandatory association fee (i.e., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is \$ _____ per _____ and shall be current at closing.

C. Seller represents that the property is: ☒ or is not ☐ subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment, the assessment has ☐ or has not ☒ been paid. If assessment has not been paid, it shall be paid by Seller in the amount of \$ _____ and/or ☐ Purchaser in the amount of \$ _____.

D. If the property may be connected to public/community water or sewer systems, the tap fees of \$ N/A shall be paid by _____.

F. Seller represents that the property is: ☒ or is not ☐ subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of this Contract.

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors or government authority qualified in the appropriate fields. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports within the same twenty (20) business day period, this section is nullified in its entirety.

A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of this Contract and refund of Purchaser's earnest money.

B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.

C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat any defects or conditions at the Seller's expense. In return Purchaser agrees to complete this sale according to the terms of this Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete this sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or this Contract is void.

Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time limits herein provided, or Purchaser's acceptance of the deed at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of INVESTORS, LLC and delivered to the stipulated place of closing. This transaction shall be closed on or before See Addendum; 08/29/08.

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights or property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement, if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein. 3% Commission to Acet Realty, Inc. at closing.

Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and court costs, the same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into an interest bearing account. Purchaser agrees to and understands that he has been informed of his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted will ☒ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

01/02
2003

Purchaser's Initials _____ DATE _____ HAVE READ THIS PAGE. Seller's Initials _____ DATE _____ HAVE READ THIS PAGE.

16. ADJUSTMENTS Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other as including homeowner's association fees, regime fees or the like shall be adjusted as of the date of closing. Tax pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an by Purchaser and/or Seller when the current year's taxes are determined.
17. ROLLBACK TAXES If applicable, rollback taxes shall be the responsibility of PURCHASER.
18. NON-RESIDENT TAXES Seller agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding requirements of sellers who are not residents of South Carolina as defined in the said statute.
19. FIRE OR CASUALTY In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such term earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this
20. DEFAULT If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this In the event the Contract is rescinded, one half of the earnest money shall then be paid to the Broker(s), not to commission due each Broker, and the remaining balance of earnest money shall be paid to Seller. Upon default Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall to the award of their costs, including reasonable attorney's fees. See Addendum Page 3.
21. MEDIATION Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchase or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be bind Carolina Code Ann. Section 15-48-10, et seq. shall not apply to this Contract.
22. ENTIRE CONTRACT AND BINDING CONTRACT The parties agree that this written Contract expresses the entire agreement between the parties, and that there is agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, heirs, personal representatives, successors and assigns as state law permits.
23. EXPIRATION OF OFFER This offer from Purchaser shall be withdrawn at 6 o'clock P.m (ET) on 3/17/08 unless accepted or countered by Seller in written form prior to such time.
24. FAX Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of a signed contract.
25. SURVIVAL If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.
26. DEFINITIONS In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance Contract, excluding Saturdays, Sundays and South Carolina legal holidays.
27. HUD/CLOSING STATEMENT RELEASE Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing Broker and Broker copies of the HUD-1 settlement statement for the transaction.
28. DISCLAIMER The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of express or implied, as to the physical condition of the property or as to condition of or existence of improvements, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, or implied, concerning the condition of the property, any matters which would be reflected by a current survey property, or the accuracy of the published square footage; (C) Give no warranty, express or implied, as to the Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income or other possible benefits to the Purchaser.

This is a legally binding contract, Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS THEREOF, this Contract has been duly executed by the parties hereto.

Witness as to Purchaser: Vanessa Patrick Purchaser: David Thomas Date: 3-8-2008 SSN: _____

Witness as to Seller: _____ Purchaser: _____ Date: _____ SSN: _____

Witness as to Seller: _____ Seller: See addendum for seller's signatures Date: _____ SSN: _____

Witness as to Seller: _____ Seller: _____ Date: _____ SSN: _____

Listing Agent: Vanessa Patrick Office: ASSET REALTY INC. Telephone Number: (803) 360-0489

Selling Agent: _____ Office: _____ Telephone Number: _____

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____

O'CLOCK

M. ED SMITH

**ADDENDUM TO CONTRACT OF SALE
APPROXIMATELY 284 ACRE TRACT BORDERING WASH LEVER ROAD**

Closing is subject to the following terms and conditions:

1. Purchaser shall deposit ~~\$25,000.00~~ ^{29,000.00} earnest money with Asset Realty, Inc. upon acceptance of offer. Purchaser shall obtain preliminary evaluation by SCDHEC to determine if subject tract is generally suitable for conventional septic systems for Purchaser's desired lot density. Purchaser shall also submit Request for Subdivision Approval package to SCDHEC. **Purchaser requests 30 days** to obtain the field evaluation and receive Subdivision Approval. *QPB MEED ALM*
2. Should subject tract prove unsuitable for conventional septic systems, or should Purchaser fail to receive Subdivision Approval, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall proceed with scheduling a Pre-Development Planning Session or Development Review Team meeting, as necessary, with Richland County Development Services. The meeting schedule is subject to Development Services; however, Purchaser understands "time is of the essence" and shall make a good faith attempt to prepare for and schedule the meeting at the earliest possible time. **Purchaser requests 90 days** to obtain results from the appropriate meeting.
3. Should results of the Development Services meeting prove unsatisfactory, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall deposit an additional ~~\$25,000.00~~ ^{\$29,000.00} earnest money, and shall schedule **closing to occur within 60 days** of obtaining favorable results from Development Services. *QPB 30 MEED ALM*
On or before 8/29/08.
4. At any time during the "due diligence" period, should any due diligence activity including but not limited to utilities, zoning, floodplain or wetlands delineation, county or DOT access policies, etc. indicate tract is not suitable for Purchaser's intended use, Purchaser may at his discretion void contract. Further, all earnest monies, except non-refundable monies accompanying a contract extension, shall be refunded to Purchaser.
5. Should any "due diligence" activity be delayed for reasons beyond Purchaser's control, Purchaser shall promptly notify Seller of such delay, provide documentation as to the nature of the delay, and otherwise demonstrate Purchaser has pursued due diligence activities in a timely manner. If Purchaser has demonstrated good faith in due diligence activities, Seller shall extend due diligence period accordingly, not to exceed ~~the~~ ^{one} 30-day extensions. For ~~each~~ ^{one} 30-day extension, Purchaser shall deposit an additional ~~\$5,000~~ ^{\$30,000.00} earnest money, and such additional earnest money deposits shall be non-refundable. *QPB MEED ALM*
6. Should any due diligence activity be resolved more quickly than the time allotted, Purchaser shall notify Seller of favorable results and next phase shall commence. *QPB MEED ALM*

7. Purchaser shall obtain a new boundary survey during the due diligence period. The contractual Purchase Price is based upon 284 acres at \$19,000.00 per acre. Should survey reveal acreage is more or less than 284 acres, Purchase Price shall be adjusted accordingly. Further, should first phase of due diligence (DHEC Subdivision Approval) indicate the tract is not suitable for Purchaser's use, and contract is voided under terms of this Addendum, Seller shall reimburse Purchaser for one-half the cost of the survey, not to exceed \$10,000.00, and survey shall become property of Seller.

PPB
S.D.
MEPB
JH

5/10/10

MEPB
LPH
JH

ADDENDUM TO CONTRACT OF SALE DATED 3/08/08, PAGE 3

PARAGRAPH 20, DEFAULT

If purchaser shall default under this contract, Seller shall have the option of suing for damages, or rescinding the contract. In the event the contract is rescinded, all earnest money will be paid to sellers.

EARNEST MONEY

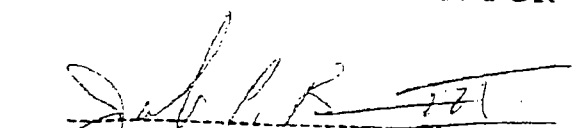
Purchaser shall deposit \$30,000.00 earnest money with Asset Realty, Inc. This earnest money will become non-refundable after 120 days. At the end of 120 days, purchaser will deposit an additional \$50,000 earnest money, also non-refundable, and proceed to closing. Closing to take place on or before August 29, 2008.

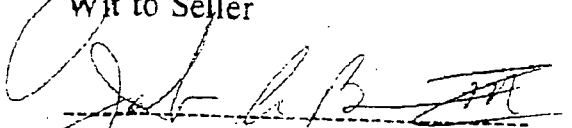
APP
OM
MEPB

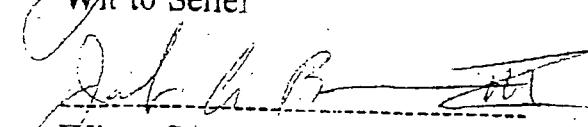
MEPB
LPS
W

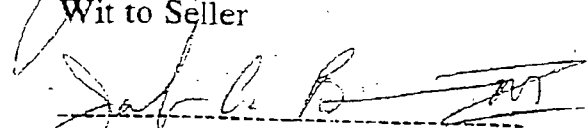
ADDENDUM TO CONTRACT OF SALE DATED 3/18/08

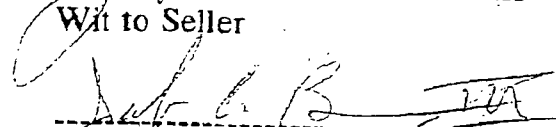
SELLERS' SIGNATURES FOR CONTRACT DATED 3/18/08

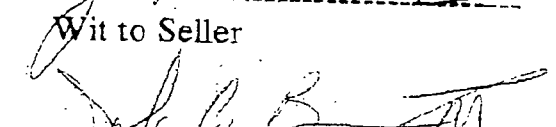

Wit to Seller

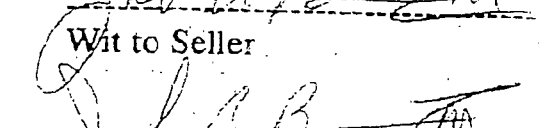

Wit to Seller

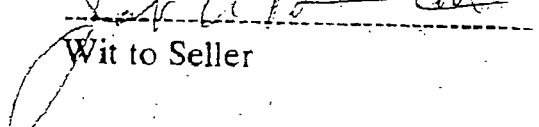

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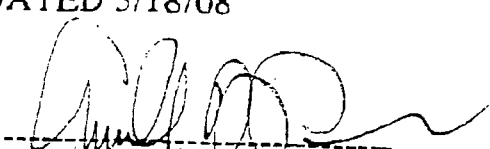

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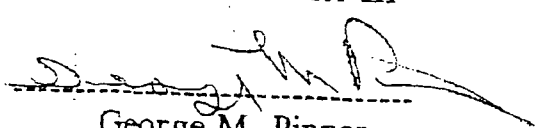

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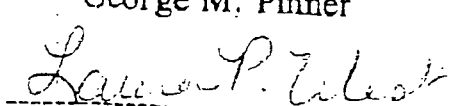

Wit to Seller

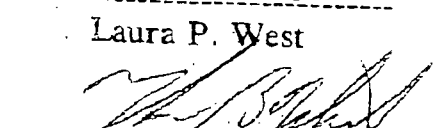

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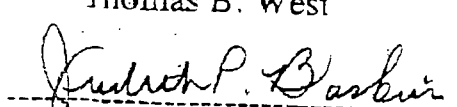

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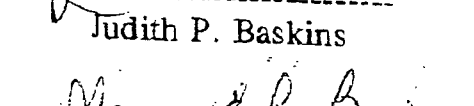

Carroll A. Pinner III

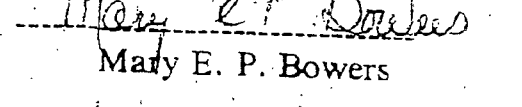

George M. Pinner

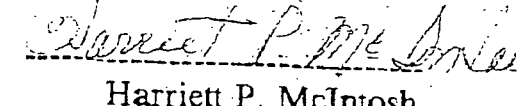

Laura P. West


Thomas B. West


Judith P. Baskins


Mary E. P. Bowers


Harriett P. McIntosh


NOT NEEDED
Laura Leigh Reddick

STATE OF SOUTH CAROLINA) PINNER FAMILY TO RIVER PATH INVESTORS
COUNTY OF NEWBERRY) CONTRACT EXTENSION

WHEREAS, there exists a valid contract between members of the Pinner Family, as Sellers, to River Path Investors, LLC, as Purchasers dated March 8, 2008 for the sale of 288.62 acres in Richland County, South Carolina; and

WHEREAS, that contract was for approximately \$5,396,000.00 sales price with \$30,000.00 as non-refundable earnest money being paid at time of contract signing and being held by Asset Realty with a closing date no later than June 29, 2008, and

WHEREAS, subsequently the parties agreed that in return for an additional \$50,000.00 in non-refundable earnest money (total \$80,000.00), an additional 30 day extension of time would be granted so that the closing was to take place on or before August 29, 2008. This money was also deposited in the trust account of Asset Realty; and

WHEREAS, the parties further agreed that in return for an additional \$30,000.00 in non-refundable earnest money (total \$110,000.00), and additional extension of time so that the closing was to take place on or before September 30, 2008. This money was also deposited in the trust account of Asset Realty; and

WHEREAS, the parties have now agreed that due to the delays caused by Richland County, the contract will be extended to not later than December 31, 2008 and that in return for that further extension of time, the Buyers will deposit an additional \$75,000.00 which will be a non-refundable penalty fee for not closing before September 30, 2008; and

WHEREAS, the parties have agreed that the earnest and penalty money is to be held in escrow in the trust account of Henry P. Bufkin, Attorney for the Sellers.

NOW THEREFORE, the parties hereto agree that the original contract dated March 8, 2008, to include several amendments, shall be amended one more time, to include the deposit of \$75,000.00 in non-refundable penalty funds and the closing of the contract is to be extended to not later than December 31, 2008.

Dated: October __, 2008

Witness to Seller

Witness to Seller

Witness to Seller

SELLERS

Carroll A. Pinner III

George M. Pinner

Laura P. West

Pinner Family to River Path Investors
Contract Extension
Page 2

[Signature]
Witness to Seller

[Signature]
Witness to Seller

[Signature]
Witness to Seller

[Signature]
Witness to Seller

[Signature]
Thomas E. West

[Signature]
Judith F. Baskins

[Signature]
Mary E. P. Bowers

[Signature]
Harriet P. McIntosh

[Signature]
Witness to Buyer

Witness to Buyer

BUYER

River Path Investors, LLC

By: [Signature]

By: _____

Sally Sale Grooms
Joe C. Grooms, Jr.
 Irmo, SC 29063
 803-732-3083

8898
 67-160/532

39 108

PAY TO THE ORDER OF Asset Realty, Inc. \$25,000.00
Twenty five thousand and no/100 DOLLARS

BB&T - Branch Banking and Trust
 Irmo, South Carolina

In God We Trust
 Support Our Troops

for River Path LLC member Sally S. Grooms

⑆053201607⑆000 9998

Sally Sale Grooms
Joe C. Grooms, Jr.
 Irmo, SC 29063
 803-732-3083

10017
 67-160/532

3/21 108

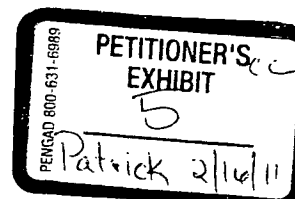
PAY TO THE ORDER OF Asset Realty, Inc. \$5000.00
Five thousand and no/100 DOLLARS

BB&T - Branch Banking and Trust
 Irmo, South Carolina

In God We Trust
 Support Our Troops

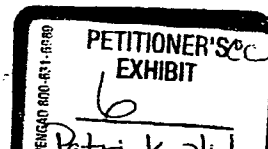
for River Path Earnest Sally S. Grooms

⑆053201607⑆000 0016



PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
3/3/08	listing	235 Condor Route	Sue Crapp
3/4/08	closing	4 Green Shank, Irmo	J. B. Angles
3/4/08	"	118 Woodview Ct., Lex	"
3/4/08	listing	145 Letha Lane	Darnell Tober
3/4/08	listing	126 Breezes Way	Darnell Tober
3/4/08	listing	325 Spruce Glen Drive	Darnell Tober
3/4/08	Sale	909 Kean Road	Co 9
3/4/08	Close	777 Treasant	Co 9
3/4/08	Other	-	Hartwig
3/4/08	Other	101 Montford Way earnest money	Hartwig
3/4/08	sale	2029 Parliament Rd	K. Sandifer / Co
3/4/08	closing	lots 2, 3, 4 & 5 Long Rd.	V. Putrich
3/5/08	Closing	336 Hellenor Dr	C. Ford
3/5/08	Sale	5 Forest Walk Ct	John Stue
3/5/08	D/S Reg.	7413 Turnbridge Ln	Co 9
3/5/08	sale	924 BLUE RIDGE	Ramon Luna
3/6/08	sale	3821 OLD TOWN STREET	Ramon Luna
3/6/08	listing	301 Rapids Ct	Jane Bennett
3/6/08	listing	Evelyn Street - Lot 22	Jane Bennett
3/6/08	Sale	5 Pittsford Court	Spencer DeBor
3/7/08	listing	3814 N Main St Coln	R. Davis
3/10/08	Sale	859 White Fawn Drive	M. Ballou
3/10/08	Sale	118 Wentlock Circle	Sgt. Guggen
3/10/08	closing	438 CROFT	Kimberly
3/10/08	closing	227 RIVER STATION	Ramon Luna
	Sale	501 Westlawn Rd	Linda Murphy
	listing	216 Laurel Oak Ln.	" "



(D)

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
2-10-08	Sale	111 Redbud Ct, W. Lake 24170	Sandra Peluso
3-10-08	Sale	4016 Serpentine Trm	Miranda
11	Listing	5298 Peach Rd, Ridgeway	Linda Murphy
2-10-08	Sale	102 Heritage Valley Park	Carol Fairclough
3/10/08	Listing	47 Greenbrook	J. Jones
3/11/08	Closing	18 Barrys Lucotti	Franklin
3/11/08	Listing	1194 WINDYBROOK NEWBERRY	Franklin
3/11/08	Listing	421 Highwater Chapin	Franklin
3/11/08	Sale	1208 Bushyview Rd	Franklin
3/12/08	Sale	1359 Dunbar Rd	Franklin & Murphy
12	Listing	5505 Coast	J. Jones
3/12	List	500 Tanager Hill	Listing
3/12	~~Listing~~ closing	~~500~~ 132 Glencrest	Listing
3/12	Sale	500 Tanager Hill	Listing
3/12	Sale	151 Flaystone Way Lot 12	M. Ballagh
3/13	Sale	345 Galbraith	C. Jones
3/13	Sale	115 Villanova	Quinn
3/13	Sale	230 Nelson Ave	Quinn
3-14	Sale	3009 Juniper Road B-27	Amy Dickson
3-15	Sale	170 FOXBRIAR	Quinn
3-15	Sale	115 SIDDINGTON	Quinn
3-15	Sale	204 Mossfield Rd	Quinn
3-15	Outstanding Lead	-501 Bradbury	Quinn
3-15	Referral	2014 Emerald Bay - Augusta GA	Quinn
3-15	Sale	116 Tailfeather Way	Burton
3-17	closing	301 Renew Court Hunter	M. Bowens
	listing	2800 Park Street	Linda Murphy

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
1/17/08	Listing	521 Parlock Rd.	Jennifer Fry
3/17/08	Sale	521 Parlock Rd	Jennifer Fry
3/17/08	Sale	140 Pebble Branch	J. Barden
3/17/08	Sale	413 Hwy 38	Co 9
3/17/08	Listing	413 Jeton	J. Barden
3/17/08	Sale	7602 Shiran Street	Sue Goss
3/17/08	Listing	497 Woodhouse Ln	K. Richardson
3/17/08	Sale	213 Spring Frost Drive	M. Ballagay
3/17/08	Sale	404 Running Bear Court	M. Ballagay
3/17/08	Change Status	3613 Thurmond St.	CE - J.
3/17/08	Sale	12 Whitestone Ct	R. Milan
3/17/08	Closing	146 Karry Gibbons Dr	R. Milan
3/18/08	Sale	102 Heritage Village Lane	C. B. Baker
3/18/08	Closing	112 Woodbury Dr	Jennifer Fry
3/18/08	Closing	102 Signal Lane IRMO 29063	Bob Duker Laura Parnell
3/18/08	Closing	3821 Old Jones Street	Kevin Turner
3/18	Closing	500 Timber Mill	Dawn HARR
↑	other	↑	↑
↑	o/s Regmt	↑	↑
3/19	Sale	121 Foxglove Ave	K. Milan
3/19	Listing	4471 Lakewood Dr	Christina Miller
3/19	Closing	220 Gisker Lane	R. MILAN
3/19	Sale	220 GISKER LANE	R. MILAN
3/19	Listing	420 Coops Ct	J. Brown
3/20	Closing	512 P. Henderson Rd	Christina Miller
3/20	Listing	1457 Peach Festival Rd	Christina Miller
3/20	Closing	2212 Emsworth	Christina Miller

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
3/20/08	Sale	118 Haynesway Pl	J. Brown
3/22/08	Listing	1722 Citrus Ave	X. Jeffrey
3/22/08	Listing	152 Kylesmunt Road	K. Jeffrey
3/22/08	Contract Sale	109 Bass Pointe Ln	John Smith
3/20/08	Closing	100 Fairview	B. Traubner
3/21/08	Closing	488 Duker Hill Rd	R.P. Balcer
3/21/08	Closing	206 Waterville	R.P. Balcer
3/24/08	Listing	10 Brittany Way	Sat Guran
3/24/08	Sale	427 Coops Ct	F. Brown
3/24/08	Sale	104 Mullrace Ct. Lot & Build. Tech	B. Traubner
3/24/08	CLOSING	12 WHETSTONE CR CT	R. ALLAM
3/25/08	Listing	124 Castle Vale Drive Tract	J. L. Brown
3/25/08	Listing	4916 Bonnie Forest Drive, Trmo	P. Masuria
3/25/08	CLOSING	121 Scanley Rd Trmo SC	K. Decker
3/25/08	Closing	Lot 14 Buckman Mill Rd	V. Patrick
3/25/08	SE START	2820 Park St. Con	L. Wray
3/25/08	Listing	1074 Waterway Ct Apt 2902	V. Patrick
3/25/08	015 Reg?	Warranty libel - 401 Sweetbriar	
3/25/08	Listing	133 W. 11th St. Con	L. Wray
3/26/08	Sale	235 Condor Route	Sue Craggs
3/26/08	Pr Sale	142 Sandkupper Unit 6	M. Johnson
3/26/08	Sale	" " " "	" "
3/26/08	Closing	3609 Juneau Road	Annie Duckson
3/26/08	Listing	113 Jumbo Ct.	Christy Brown
3/26/08	Listing	309 SUMMIT AVE	Christy Brown
3/27/08	Listing	6988 E. 11th St	Christy Brown
3/27/08	Listing	445 Clayton Park	L. Keffern

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
3/27/08	closing	118 Tarpan Ln Drive	S. Greer
3/27/08	closing	118 Tarpan Ln Dr.	B. Troughton
3/27/08	CLOSING	1470 BENHAM RD	G. GARRISON
3/27/08	CO'S	2319 N. Lake	Co. 9
3/27/08	Co. 9	219 Ashe St	Co. 9
3/27/08	SALE	306 LEAMINGTON	R. MILAM
3/28/08	SALE	641 HAMLIN WAY	R. MILAM
3/28/08	SALE	TOM SAWYER LN LOT 4	R. MILAM
3/28/08	SALE	202 STOCKMERE T.D	R. MILAM
3/28/08	SALE	636 HAMLIN WAY	R. MILAM
3/28/08	OUTSTAND	1208 PEARCE HAVEN	R. MILAM
3/28/08	CLOSING	306 LEAMINGTON	R. MILAM
3/28/08	Listing	205/209 La Torca	Co. 9
3/28/08	Closing	111 Redbud Ct	S. PELUSI
3/30/08	SALE	106 CLUB CT	K. H. H. H.
3/30/08	SALE	4 ELM SPRING CT	J. H. H. H.
3/31/08	Closing	205 Buda Ct	K. H. H. H.
3/31/08	Closing	117 Millhouse	K. H. H. H.
3/31/08	LIST	180 Shinglet Hill	N. H. H. H.
3/31/08	SALE	180 Shinglet Hill	N. H. H. H.
3/31/08	Closing	111 BERNARD MILL	G. BOWERS
3/31/08	Listing	2112 Cedarwood Lot	Stella
3/31/08	Closing	1819 Shady Grove, Inmo	Grond/Curtis
4/1	Listing	325 Clearview	J. Jones
4/1	Closing	368 Valley Heights Lane	M. Jones
4/1	Closing	1017 Green Pasture	M. Jones
4/1	Sale	190 Woodland Rd Inmo	M. Jones
4/2	Closing	345 Galloway	Co. 9

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
4/1/08	4/1/08	2112 St Andrews Rd	Steele
4/1/08	CLOSING	641 HAMLIN WAY	R. MILAN
4/1/08	CLOSING	636 HAMLIN WAY	R. MILAN
4/2	Closing	140 Shumart Hill Rd	HARTWIG
1	List	101 Fairfield Way	1
	Sales	101 Fairfield	
	Sales	4029 Kings Dr, Newberry	
4-2	Sale	115 Peachtree Lane	Annex Duckson
4/2	Sale	1207 Sycamore	J. Jones
4/3	COS	912 Oak Street	Co 9
4/3	Listing	617 Fox Hill Lane	Mike Kinnert
4/3	Listing	235 Silverberry Lane	Co 9
4/3	COS	707 Woodhaven	Co 9
4/3	List	136 Sycamore	Co 9
4-3	Sale	102 Hayworth Ave	F. Brooks
4-4	List	2519 Alex Ave Newberry	HARTWIG
4-4	Sale	2519 Alex Ave Newberry	HARTWIG
	Closing	1539 Dunbar Rd, Cayce SC	L. Murphy
11	(Co 9)	219 Ash	Co 9
4/11	SALES	320 CLARK STREET, HARPIN	Kim Lenton
4/11	CLOSING	859 White Fir Dr	Mike Hall
4/11	CLOSING	404 Newberry River Court	Mike Hall
4/11	Closing	104 Millrace Ct.	B. Thompson
4/17	Sale	1 Blue Mountains	J. Jones
4/17	Listing	127 Rolling Creek Circle	Steve Grogan
4-5	Sale	O Church Rd Barksburg	Steve Grogan
4-8	Listing	107 Water Way Ct, Unit A	V. Patrick

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
4-8-08	Sale	1029 Jones rd	CO-9
4/8/08	Sale	Lot 1 Backman Meadows Rd.	V. Patrick
4/8/08	Sale	120 Cog Hill Drive	L. Dubois
4/8/08	Listing	11035 Delcor	L. Dubois
4/8/08	Listing	104 Eagle Court	L. Dubois
4/8/08	Listing	216 Pond South Lane	L. Dubois
4/9/08	Sale	725 Harbor Vista Drive	M. Balley
4/9/08	Other	Misc	H. A. Twigg
	Closing	101 Mainfield	H. A. Twigg
4-9-08	For sale Contract	0 Church Rd Batesburg	Sue Speaks-Ruff
4/9/08	Sale	141 Country Lake Drive	Curtis/Brumby
4/9/08	Listing	1135 Ebenezer Rd.	Curtis/Brumby
4/9/08	Sale	3003 Thormond	CO-9
4/10/08	Sale	4428 Augusta Hwy	L. Dubois
4/10/08	Closing	115 S. D. W. L. T. W.	R. J. Turner
4/10/08	Closing	5807 Kenna Dr	Kyle Bardsell
4/10/08	Sale	531 Parlock Rd.	Jennifer Frye
4/10/08	Sale	184 Springway Dr. Cda & 24200	Buster/Grimm
4/11/08	~~Sale~~	5 Forest Walk Ct	Steele
4/11/08	Sale	120 Hawks Ridge Lane	B. Traupham
4/11/08	Closing	6 FALLAW RE. GASTON, J.C.	A. Moore
4/11/08	Closing	2519 Alex	H. A. Twigg
4/13/08	Listing	344 Porth Circle	K. Bowers
4/13/08	Sale	147 Spence Shores Court	K. Bowers
4/13/08	Closing	704 Mossfield Rd	C. Allen
4/14/08	Closing	1612 Atascadero	Sandifer/Richards
4/14/08	Sale	28 CARRAGE CARS CT	KIRBY C.

PAPERWORK LOG

DATE	SALE LISTING CLOSING	ADDRESS	AGENT
4/14	Sale	11 Charlay Horse	KIRBY C
4/17	Closing	7602 Shivan Street	Sue Craggs
4/17	listing	363 Sandpiper Drive	Sue Craggs
4/17	Closing	202 STOCKMOOR	R. MILAN
4/17	listing	178 Cedar Vale	Munro
4/18	Closing	4046 Serpentine	Munro
4/18	LISTING	219 E. Creek	KIRBY C
4/18	Sale	219 E. Creek	Kirby C
4/18/08	LISTING	132 GOLD RD LEXINGTON	JANICE MANSCH
4/18/08	Closing	102 Huitap Village Lane	C. Barnes
4/18/08	Closing	240 Swain Place LN	Doth C
4/18/08	listing	395 Summerwind Pelion	D Salter
4/18/08	Closing	937 Bushberry Rd Pelion	D Salter
4/18/08	listing	2301 Clark	Coq
4/18/08	CO's	2319 Wilake Drive	Coq
4/18/08	Sale	136 Salen Rd.	Coq
4/18/08	Sale	2301 Clark St.	Coq
4/18/08	~~Closing~~ Closing	126 Chadford	Munro
4/18/08	Reloc EM	521 Parlock Rd	Jennifer Frye
4/18/08	Closing	521 Parlock Rd	Jennifer Frye
4/21/08	Closing	130 Condor Creek Rd	Frank Muehlke
4/21/08	Closing	103 Lawrence Rd	Frank Muehlke
4/21	Closing	395 Summerwind Pelion	D Salter
4/21	Closing	521 Parlock Rd	Jennifer Frye
4/21	Closing	235 Condor Route	Sue Craggs
4/21	Sale	125 Nursery Ridge Farm	T. Bynum
4/22	Closing	4009 Kings D. Monterey	Hartley

* * * Communication Result Report (Aug. 29. 2008 1:17PM) * * *

1) ASSET REALTY IRMO
2)

Date/Time: Aug. 29. 2008 1:16PM

File No. Mode	Destination	Pg(s)	Result	Page Not Se
2868 Memory TX	2764178	P. 3	OK	

Reason for Error
 1) Hang up or line fail
 2) No answer
 3) Exceeded max. E-mail size

E 2) Busy
 E 4) No facsimile connection

Asset Realty, Inc.
 IRMO Regional Office
 144 Lehigh Lane, Suite 6
 Columbia, SC 29210



FAX TRANSMITTAL FORM

To: Andy Bowers

From: Vanessa Patrick

Name/Dept.:

Phone: 803-798-2300 300-0489

CC:

Fax: 803-798-2398

Phone number:

Date Sent:

Fax number: 276-4178

Time Sent:

Number of pages including cover page: 3

Message: Extension requested.



ADDENDUM

ADDENDUM DATE 8/27/08

CONTRACT DATED 3/8/08

BETWEEN SELLER

AND PURCHASER Riverpath Investors, LLC

IN REFERENCE TO ~~Wash Lever Rd~~, TMS # 02900-01-13

THIS ADDENDUM IS HEREBY MADE A PART OF THE ORIGINAL CONTRACT.
BOTH PURCHASER AND SELLER AGREE TO THE FOLLOWING:

8/29/08
Pursuant to the attached estimated time frame for obtaining the land disturbance permit from Richmond County, Purchaser requests contract be extended to on or before ~~December 31, 2008~~ ^{September 30, 2008}. Purchaser acknowledges that time is of the essence with regards to performance on this contract and extension. Purchaser has demonstrated ability and willingness to expedite due diligence activities to-date, and will continue to expedite the remainder of such activities throughout the extension period.

WITNESS

SELLER

DATE

WITNESS

SELLER

DATE

[Signature]
WITNESS

[Signature]
PURCHASER

8/27/08
DATE

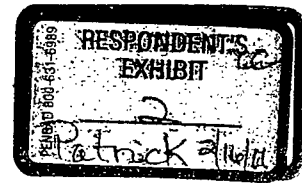
WITNESS

PURCHASER

DATE

Timothy D. Savidge

From: "Laura West" <laurapwest@gmail.com>
 To: "Tim Savidge" <tim@bulkinlawfirm.com>
 Sent: Wednesday, July 22, 2009 7:19 PM
 Subject: Fwd: OFFICIAL ISLAND GIRL another email from Vanessa to Mimi



Begin forwarded message:

From: mimipinner@aol.com
 Date: July 22, 2009 4:49:58 PM EDT
 To: laurapwest@gmail.com
 Subject: Fwd: OFFICIAL ISLAND GIRL

-----Original Message-----

From: Vanessa Patrick <vanessapattick1@hotmail.com>
 To: mimipinner@aol.com
 Sent: Wed, Sep 10, 2008 2:43 pm
 Subject: RE: OFFICIAL ISLAND GIRL

We are still planning to close, but Andy had told me we were not going to be able to get an extension (which we needed since the survey and topo took so long). He told me there was another offer on the table. Now he said that new offer went away, so I am proceeding full steam ahead. Vanessa

To: vanessapattick1@hotmail.com
 Subject: Re: OFFICIAL ISLAND GIRL
 Date: Wed, 10 Sep 2008 14:03:34 -0400
 From: mimipinner@aol.com

Vanessa,

My computer has been down for a few days and just got your e-mail. Are you telling me that your people are not going to close???? After all we have been through with this property???????

Mimi

-----Original Message-----

From: Vanessa Patrick <vanessapattick1@hotmail.com>
 To: mimipinner@aol.com
 Sent: Fri, 5 Sep 2008 9:13 am
 Subject: RE: OFFICIAL ISLAND GIRL

Mimi, I am still working on closing the Lover tract. I had asked Andy if you guys would extend the closing, and he said no problem, now there is a problem! When I found out the surveying was taking longer than planned, I immediately asked about the extension because I either needed to scramble for quicker closing OR continue to work on the engineering. When Andy said no problem on extension, I kept on my same path.

My question to you is, I have spent WELL over \$150K on this due diligence. If I am going to possibly lose the project, who is the party "waiting in the wings" to close it? All I ask is that you put me in contact with them so if I can't pull it out, maybe I can sell them the engineering work I have paid for, such as the topography survey, elevation studies, wetlands studies, etc. That will keep us from losing so much, which will pretty much put me under. The work I have paid for or will soon be billed for is useful to anyone regardless of the nature of their project, and there is no need to duplicate it.

Vanessa

060022

7/22/2009

Aug. 29. 2008 1:16PM ASSET REALTY IRMO

No. 286E P. 2

ADDENDUMADDENDUM DATE 8/29/08CONTRACT DATED 3/8/08

BETWEEN SELLER

AND PURCHASER Riverpath Investors, LLCIN REFERENCE TO Wish Lever R.R., TMS # 02900-01-13THIS ADDENDUM IS HEREBY MADE A PART OF THE ORIGINAL CONTRACT.
BOTH PURCHASER AND SELLER AGREE TO THE FOLLOWING:

8/29/08
Pursuant to the attached estimated time frame for obtaining the land disturbance permit from Richland County, Purchaser requests contract be extended to on or before September 30, 2008. Purchaser acknowledges that time is of the essence with regards to performance on this contract and extension. Purchaser has demonstrated ability and willingness to expedite due diligence activities to-date, and will continue to expedite the remainder of such activities throughout the extension period.

<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Jessie Barbin</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Laura Pulert</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Mary Ellen Bowers</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Harold D. McShane</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
WITNESS	SELLER	DATE
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
WITNESS	SELLER	DATE
<u>[Signature]</u>	<u>Melinda Groom</u>	<u>8/22/08</u>
WITNESS	PURCHASER	DATE

WITNESS

PURCHASER

DATE

South Carolina
Department of Labor, Licensing and Regulation



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4300
FAX: (803) 896-4471
www.llronline.com

Division of Legal Services

Nikki Haley
Governor

Catherine B. Templeton
Director

June 6, 2011

VIA REGULAR MAIL AND E-MAIL

Amanda M. Scott, Law Clerk to the
Honorable Ralph K. Anderson, III
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

**RE: Vanessa Patrick vs. South Carolina Department of Labor, Licensing and
Regulation, Real Estate Commission
Docket No.: 11-ALJ-11-0168-AP**

Dear Ms. Scott:

During the course of preparing the Respondent's Motion to Conform Appellant's Brief to the Requirements of Rule 37(B) or in the Alternative Strike, it was found that the Record on Appeal filed in this matter is missing page 233. Accordingly, please find enclosed for filing, an original and one (1) copy of page 233 to be included in the Record on Appeal. By copy of this letter, I am serving a copy of page 233 upon Ms. Patrick.

If a formal motion is required, please let me know as soon as practical and I will prepare and file a motion accordingly.

Your assistance in this matter is appreciated. Please do not hesitate to contact me directly should further discussion or information be desired in this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Lil Ann Gray'.
Lil Ann Gray
Staff Counsel

LAG/
Enclosures
cc: Vanessa Patrick (via regular mail)



1606 Wilson Road
P.O. Box 553
Newberry, South Carolina 29108

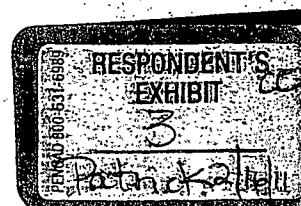
Phone (803) 276-9700
Fax (803) 276-4178

FAX TRANSMITTAL REPORT

DATE: 11/4/08NAME: Vanessa Patrick

COMPANY NAME: _____

CITY: Cole STATE: SCFAX #: 732-3083FROM: Andy BowersMESSAGE: _____

_____TOTAL PAGES INCLUDING COVER SHEET: 3

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

**APPEAL FROM THE
SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE REAL ESTATE COMMISSION**

In the Matter of:

Vanessa Patrick,
License No. 22479,
Respondent.

Case No. 2009-27

NOTICE OF APPEAL

Pursuant to Rule 33 of the Rules of the Administrative Law Court, Vanessa Patrick gives notice of appeal of the Final Order entered by the South Carolina Real Estate Commission in the above-captioned matter, which was mailed to Vanessa Patrick on February 24, 2011. In accordance with Rule 33, Vanessa Patrick submits the following information:

A. Party requesting the appeal:

Vanessa Patrick
1187 Kiblers Bridge Road
Prosperity, SC 29127
(803)521-3614

B. Grounds for appeal:

1. Real Estate Commission (Agency) erred in procedures prior to the hearing, causing an unreasonable delay in addressing the Respondent's request for license reactivation: (a) Agency erroneously indicated in the official file that licensee had permanently surrendered her license in lieu of an investigation, (b) Agency investigator indicated licensee was wasting her time pursuing a license reactivation due to the "egregious allegations" against her, and violated state law by stating Respondent's alleged license surrender was an admission of guilt. (c) Both versions of the Notice of Charges contained many factual errors, and the document failed to adequately explain how Respondent's actions allegedly violated cited license law. Respondent asked for clarification but none was given. (d) Neither Notice of Charges contained exhibits of the "evidence" supporting the charges: agency provided Respondent with such only 9 days prior to the hearing. Therefore, Respondent and her attorney did not have sufficient time or information to adequately prepare Respondent's defense.
2. Agency attorney indicated verbally and in writing that Respondent was in danger of being "punished" for asking for a reschedule of the first hearing date when Respondent's counsel could not be present.

3. Agency attorney erred by refusing to delay hearing due to a personal tragedy which compromised attorney's ability to conduct the hearing in a professional manner. Due to a miscarriage of pregnancy suffered on the morning of the hearing, the agency attorney caused many delays and displayed emotional outbursts, including tears and several venomous outbreaks during the closing moments of the hearing. For example, attorney stated to the Commission that Respondent thought the Commission was stupid.
4. Agency attorney repeatedly objected to Respondent's counsel's attempts to correct misstatements of "facts" with regards to the contract as "irrelevant"; however, those same "facts" were a primary basis for the disciplinary action and were made public as "FINDINGS OF FACT" in the agency's FINAL ORDER.
5. Agency attorney erred by stating a contract addendum was drafted by Respondent, when in fact it was drafted by Seller's agent.
6. Agency attorney erred by stating project engineers failed to complete tasks because they were not being paid.
7. FINAL ORDER erred in concluding Respondent gave sellers false and misleading information about the buyer's ability to close: at the time contract was written Respondent had obtained commitments of support from two multi-millionaires and a local financial institution. All financial parties withdrew their support due to the 2008 economic crisis, among other factors.
8. FINAL ORDER erred in concluding Respondent should have notified Acquire Broker-in-Charge of contract and placed earnest money funds into Acquire's trust account, as the contract was clearly expired by the time Respondent transferred her license to Acquire.
9. FINAL ORDER erred in stating Respondent made constant assurances that \$185,000 was in any trust account; contract contingencies requiring such deposits were never met.
10. FINAL ORDER erred in concluding the underlying contract was in effect through December 2008, and that numerous extensions demanded multiple earnest money deposits totaling "approximately" \$185,000.
11. FINAL ORDER erred in concluding the Respondent was guilty of violating S.C. Code 40-57-145(A)(4), as the Sellers were represented by the BIC of another firm as well as an attorney, had never approached Respondent about representing them, and the property in question was never listed by Respondent's firm.
12. FINAL ORDER erred by stating Respondent failed to remit monies coming into her possession which belong to others. Earnest money funds belonged to Respondent and were not the funds of others.
13. The Commission erred by implying banks' withdrawal of financing from development projects due to the 2008 economic crisis was Respondent's fault and it was "an expensive lesson for Respondent to learn."
14. Agency erred by unreasonably abridging Respondent's right to engage in her profession by failing to meet the burden of proving Respondent, in light of her long and untarnished career, poses a threat to the health, safety or welfare of the public. Sanctions were unduly

harsh in light of the Respondent's willingness to cooperate in the matter. Agency failed to consider that the underlying civil action had been settled to the full and final satisfaction of the Plaintiffs/Complainants, who had failed in the civil action to substantiate damages. Agency's attorney unduly influenced the Commission's decision by indicating they would be directly responsible for harming the public if Respondent was relicensed.

15. Agency has damaged Respondent's reputation by issuing as public record the above misstatements of fact and erroneous conclusions of law.

C. Copy of the Final Order: Attached as Exhibit A

D. Copy of the Request for Transcript: Attached as Exhibit B

E. Certificate of Service: Attached as Exhibit C

Vanessa Patrick
1187 Kiblers Bridge Road
Prosperity, SC 29127
(803)521-3614

March 24, 2011

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South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services

Nikki Haley
Governor

Catherine B. Templeton
Director



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
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March 29, 2011

Jana Shealy, Clerk
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: Vanessa Patrick vs. South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission

Dear Ms. Shealy:

Enclosed for filing, please find the original and one (1) copy each of the Motion to Conform and Strike or in the alternative, Motion to Seal, together with the Certificate of Service for Ms. Patrick, prepared in the above referenced matter. Kindly return the filed copies to this office via interagency mail.

Your assistance in this matter is appreciated. Please do not hesitate to contact me directly should further discussion or information be desired in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lil Ann Gray".
Lil Ann Gray
Staff Counsel

LAG/
Enclosures
cc: Vanessa Patrick (via regular mail)

FILED

MAR 29 2011

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Vanessa Patrick,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, Real Estate
Commission,

Respondent,

Docket No.:

**MOTION TO CONFORM AND STRIKE
OR IN THE ALTERNATIVE,
MOTION TO SEAL**

COMES NOW the Respondent, South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission, and hereby moves the Court for an Order requiring the Appellant to conform her Notice of Appeal to the requirements of Rule 33(B) of the Administrative Law Court Rules of Procedure by including a general statement of the grounds for appeal, and further directing the Appellant, in accordance with Rule 12(f), SCRCP, to strike and remove the redundant, immaterial, impertinent, or scandalous matter currently contained therein. In the alternative, if the above stated matter is not stricken from the Notice of Appeal, the Respondent requests that the Notice of Appeal be sealed in accordance with Rule 41.1, SCRCP.

The Appellant has included irrelevant, inflammatory, and extremely personal information about Respondent's hearing counsel that is neither relevant to, nor an appropriate ground, for appeal. Specifically, section three (3) of the Appellant's Notice of Appeal includes certain specific and detailed personal health matters attributed to the Respondent's hearing counsel that

FILED

MAR 29 2011

1 Lee

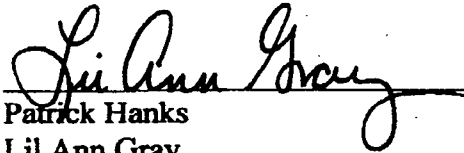
SC ADMIN. LAW COURT

serves no useful purpose other than to embarrass and disparage counsel. Further, such statements do not support any valid or legal basis for Appellant's appeal.

Therefore, the Respondent requests that the Appellant be required to conform her Notice of Appeal to the requirements of Rule 33(B) by striking and removing the irrelevant, inflammatory, and extremely personal information contained in the Notice of Appeal and instead, set forth a general statement of the grounds for appeal. In the alternative, the Respondent requests that the Notice of Appeal, as a public record, be appropriately sealed from public disclosure.

Respectfully Submitted,

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Real Estate Commission

A handwritten signature in cursive script, appearing to read "Lil Ann Gray", is written over a horizontal line.

Patrick Hanks

Lil Ann Gray

Attorneys for Respondent

Post Office Box 11329

Columbia, South Carolina 29211-1329

(803) 896-4607

March 29, 2011.

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

**APPEAL FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION,
REAL ESTATE COMMISSION**

Docket No. 11-ALJ-11-0168-AP

Vanessa Patrick.....Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation, Real Estate
Commission.....Respondent.

APPELLANT'S BRIEF

Lil Ann Gray, Esquire
SC Dept. of Labor, Licensing & Regulation
Post Office Box 11329
Columbia, SC 29211
803-896-4607
grayl@llr.sc.gov
Attorney for Respondent

Vanessa Patrick
1187 Kiblers Bridge Road
Prosperity, SC 29127
803-521-3614
Pro Se Appellant

STATEMENT OF THE ISSUES ON APPEAL

Appellant, Vanessa Patrick, acknowledged at the hearing and admits again in this brief that she negligently violated the South Code of Laws governing the conduct of real estate licensees by not placing earnest money totaling thirty thousand dollars (\$30,000.00) in her Broker-in-Charge's escrow account and by failing to disclose her licensee status in writing. Appellant thus understands and fully expects punishment for these mistakes in judgment, two mistakes in an otherwise untarnished and lawfully conducted real estate career spanning approximately twelve years.

It is Appellant's argument on appeal, however, that the Real Estate Commission's decision to permanently revoke her real estate license – a decision that effectively deprived Appellant of her livelihood – was unwarranted based on the *actual* evidence / law and therefore unduly harsh. Specifically, Appellant contends the Commission and the Agency's prosecuting attorney committed multiple errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into some fictitious scheme / conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various facts.

Appellant also contends that her procedural due process rights were violated by: (1) being given the Commission's evidence against her only nine days prior to her hearing thereby making it extremely difficult to prepare an appropriate defense; (2) being prosecuted and judged on two charges not included in the Real Estate Commission's Notice of Charges; (3) being prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given; and (4) being unfairly prejudiced by the inappropriate admittance of hearsay "evidence," the foundation of which was never established when initially introduced or thereafter through additional and allegedly "supportive" testimony.

Finally, Appellant argues that previous case law further justifies her contention that the punishment of permanent revocation was unfair and unduly harsh. In a litany of other professional licensing cases, far more egregious behavior – such as a pharmacist stealing and selling controlled substances – or similar behavior as Appellant's resulted in less severe punishment and not permanent revocation.

In light of the above and what follows more specifically below, Appellant requests relief from this Court. Specifically, Appellant requests that the Real Estate Commission's decision to permanently revoke her real estate license be reversed and a more appropriate and equitable punishment be levied: i.e. a punishment more in line with what Appellant actually did rather than a punishment clouded by speculation, innuendo, and factual / legal errors.

STATEMENT OF CASE AND RELEVANT FACTS

On or before the Spring of 2007, Appellant was contacted by Mimi Bowers – one of the Pinner family members who owned the Little Mountain property at the heart of this case and a person well-known to Appellant – who inquired whether Appellant as a real estate agent knew of anyone interested in purchasing said property. Appellant located potential buyers and as

their agent attempted to broker a deal for the Pinner family's land. Ms. Bowers and presumably the rest of her family elected, however, to contract with other buyers. But this contract eventually fell through.

Consequently, in February of 2008, Ms. Bowers again contacted Appellant to gauge any further interest. Appellant, working for *Asset Realty* at the time (and later in the process for *Acquire Real Estate, Inc.*), was indeed still interested and secured preliminary financing from South Carolina Bank & Trust ("SCB&T") as well as two seasoned real estate investors with the means and financial ability to purchase the land. Appellant also began preparations to form *Riverpath Investors LLC* with fellow *Asset* real estate agents Sally Grooms and Nancy Curtis in order to start the process as quickly as possible. The above-mentioned private investors were also to become partners in *Riverpath* as the financiers.

In March of 2008, Appellant drafted an offer on behalf of the planned LLC and presented said offer to real estate **licensee** Andy Bowers who also knew Appellant well and whom Appellant assumed was acting as the seller's agent in this transaction. (It was later discovered, however, that Mr. Bowers was only advising the Pinner family and helping to facilitate the process, but had no legal agency agreement with the sellers). At this juncture, it is important to note the proposed transaction was not a typical real estate deal. The Pinner property was never listed on the MLS and did not have a listing agent. This was essentially a private deal between two private parties. Furthermore, it is equally important to note the Pinner family and Mr. Bowers possessed **actual** knowledge that Appellant was a licensed real estate agent via previous interactions. In fact, in another transaction occurring simultaneously between Appellant and a subset of the Pinner family, the family possessed actual knowledge that Appellant was a licensee as well as a member of the purchasing entity.

Appellant's offer was written on the standard offer form used by virtually all real estate agents but did include *Asset Realty's* name on the form. Sally Grooms signed said offer and wrote an earnest money check for twenty-five thousand dollars (\$25,000.00). In one of the counter-offers, terms called for an additional five thousand dollars (\$5,000.00) in earnest money; again Sally Grooms initialed the offer and wrote the check. See Appellant's Exhibit 1. The final-executed contract provided by Andy Bowers to Appellant and her "partners" was delivered on or about March 29, 2008. See Appellant's Exhibit 2-A and Appellant's Exhibit 2-B (final "clean copy"). Said contract called for thirty thousand dollars (\$30,000.00) in refundable earnest money as well as a one hundred and twenty (120) day due diligence **contingency** period. *Id.* When Ms. Grooms was unable to cover the earnest money checks, Appellant secured said sum. This money was not placed, however, in *Asset's* escrow account.

The contract was ultimately signed by the relevant parties but was not accompanied by the required written disclosure that Appellant was a licensed real estate agent. Unlike form residential housing contracts, a form land contract does not contain a section specifically providing for said disclosure. Even though Mr. Bowers and the Pinner family knew Appellant's licensee status, Appellant did mistakenly fail to disclose said status in writing.

Between April and June of 2008, the due diligence required by the contract as well as other developments commenced. They included: (1) engaging BP Barber as the project engineer; (2) engaging one attorney to set up *Riverpath Investors LLC* and another attorney to advise on the securities implications of having an out-of-State investor; (3) engaging a CPA firm; (4)

engaging a closing attorney to review the contract and perform a preliminary title search; and (5) conducting aerial photos, a video shoot, and various other marketing tasks.

In late July of 2008, Appellant notified Mr. Bowers that the required due diligence had been significantly delayed due to several factors including, but not limited to, significant changes in the manner Richland County approved subdivisions and the survey taking much longer than normal due to the difficulty of the terrain, weather, and thickness of the vegetation. As the contract was set to expire within a month, Appellant indicated an extension would be needed to complete due diligence and continue with the terms of the contract. In the interim, Appellant learned that the Pinner family was considering another competing offer and had also approached Richland County about placing their property in a conservation easement. *See Transcript of Hearing at pp. 94-96.*

To determine a reasonable timeframe during which due diligence could be completed and contract contingencies removed, Appellant contacted BP Barber who informed her that the required due diligence would not be completed until December 31, 2008. Appellant promptly wrote an extension reflecting Barber's estimate but was advised by Mr. Bowers to request an extension through September 30, 2008 and then take matters a month at a time. Appellant did as asked (*see Appellant's Exhibit 3*) but ***never received the extension***. Accordingly, the contract expired on August 29, 2008. *See again Appellant's Exhibit 2-B.*

Beginning in September and continuing through early October, talks resumed as apparently the competing purchasers were no longer in the picture. ***Although the contract remained expired***, Appellant tried anew to secure financing but SCB&T withdrew its support due to the economic recession and the original private investors became unwilling to move forward in the absence of bank leverage.

In mid-October of 2008, Mr. Bowers faxed the "Pinner Addendum" as drafted by Pinner family attorney Henry Bufkin which purported to extend the already expired contract through December 31, 2008. *See Appellant's Exhibit 4.* At the time, said Addendum had not been executed by Sellers. The Pinner Addendum, however, was incorrect from the very first paragraph. Indeed, this paragraph stated that a "valid contract" existed between *Riverpath Investors LLC* and the Pinner family. But as mentioned multiple times above there was no valid contract because said contract had by its own terms expired on August 29, 2008.

In late October of 2008, a new and willing investor entered the picture but wanted to renegotiate the original yet expired contract as little progress had been made. Said investor was not interested in joining Appellant and the still partially formed *Riverpath Investors LLC*, but did plan to use his own development LLC and engage Appellant and Sally Grooms as buyer's agents. Accordingly and in an attempt to protect their position and obtain time for such negotiations to occur, Sally Grooms signed the Pinner Addendum. Appellant only signed as a ***witness*** to Ms. Groom's signature. The Addendum was then faxed to Mr. Bowers and the Pinner family for their signature. But before the Addendum executed by the Sellers was delivered to Appellant or Ms. Grooms, Mr. Bufkin began to demand the transfer of one hundred and eighty-five thousand dollars (\$185,000.00) in earnest money deposits to his trust account. Appellant informed Mr. Bowers that the terms of the Addendum were incorrect and could not in any event be met by the now ***former purchasers***. Appellant further explained that any hope of completing some sort of deal required meeting with the new investor.

Sellers, however, refused to do so, and on November 24, 2008 Mr. Bufkin sent a letter of “demand to close or produce earnest money” and copied the Real Estate Commission. *See* Appellant’s Exhibit 5. In order to devote their full attention to resolving this matter, Appellant and Ms. Grooms voluntarily placed their licenses on inactive status on December 4, 2008. Subsequently, the Sellers asked Andy Bowers to contact the new investor directly.

Subsequent to the demand letter, several settlement offers were made to Mr. Bufkin but all were rejected. Instead, Mr. Bufkin opted for CCRA mediation. Before the mediation could commence, however, he also filed a civil lawsuit against Appellant and Ms. Grooms, among others.

On March 9, 2009 Appellant received a letter from Real Estate Commission investigator John Sowell asking Appellant to surrender her license in lieu of an investigation. *See* Appellant’s Exhibit 6. Appellant and her attorney Tommy Lydon denied the request. *See* Appellant’s Exhibit 7.

For the remainder of 2009 and into early 2010, the civil case grinded along and was eventually remanded to mediation. That too proved fruitless. As time continued to pass and Appellant was sidelined from her livelihood, she sought to reinstate her license. Multiple calls to Mr. Sowell and two visits to LLR yielded no response. On March 11, 2010, Appellant’s attorney spoke to Mr. Sowell who indicated even if the civil case was settled, a hearing would still be needed due to the nature of the allegations. In April of 2010, Appellant finally spoke personally with Mr. Sowell but was unable to arrange a meeting or to present Mr. Sowell with her evidence. Appellant next spoke with the Director of the Real Estate Commission, Jay Pitts, who informed Appellant she had permanently surrendered her license and the Commission did not wish to revisit the matter. However, on May 7, 2010, Appellant received a renewal application from LLR indicating her license status as “inactive” – ***not permanently surrendered***. *See* Appellant’s Exhibit 8. Appellant’s attorney then wrote Mr. Sowell on May 17, 2010 (*see* Appellant’s Exhibit 9) and again on May 21, 2010 (*see* Appellant’s Exhibit 10), and spoke to Agency counsel Sheridan Spoon on May 20, 2010 to confirm and reiterate that Appellant had not permanently surrendered her license and that her case be reopened.

Receiving no response from LLR, Appellant, wishing to proffer her evidence to LLR, wrote Director Adrienne Youmans on September 9, 2010. *See* Appellant’s Exhibit 11. Director Youmans merely responded that Appellant’s case had been reopened, but no meeting was granted. *See* Appellant’s Exhibit 12.

Ultimately the case was reopened and on October 13, 2010, Appellant received a vague Notice of Charges ***without accompanying evidence against Appellant*** as well as a Notice of Hearing scheduled for November 16, 2010. *See* Appellant’s Exhibit 13. Appellant’s attorney requested a new hearing date as he would be unavailable. Agency’s attorney interjected by notifying the Board that Appellant had written to LLR “outside the knowledge of her attorney,” (*see* Appellant’s Exhibit 14) but an extension was granted nonetheless.

On January 6, 2011, all parties to the civil action executed a *Confidential Settlement Agreement and General Release* thereby effectively ending all litigation. Appellant’s attorney notified LLR of this development and again requested a similar settlement between Appellant

and LLR. *See* Appellant's Exhibit 15. Instead, a new Notice of Hearing was issued and set for February 16, 2011. Appellant's attorney again asked that the Notice of Charges be explained and evidence against Appellant be provided. On February 2, 2011, LLR instead issued a *Memorandum of Agreement and Stipulations* which asked Appellant to admit to charges LLR had still not clearly defined or provided evidence in support thereof. *See* Appellant's Exhibit 16. Appellant refused to sign the memorandum and again offered to meet with LLR officials and present exonerating evidence in hopes of obtaining an equitable resolution. Appellant's offer was refused.

Finally, on February 8, 2011, Appellant received copies of the evidence against her. *See* Appellant's Exhibit 17. A mere nine days later on February 16, 2011, Appellant's hearing was held before the Board of the Real Estate Commission and her real estate license was permanently revoked. Consequently, Appellant filed her Notice of Appeal with the Court on March 24, 2011.

STANDARD OF REVIEW

Pursuant to South Carolina Code Ann., Section 1-23-380(5), the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Furthermore, and pursuant to the accompanying "Note" to ALC Rule 38, "[i]n all cases involving pro se litigants or those without substantial knowledge or experience in administrative matters, the administrative law judge may make reasonable efforts to ensure fairness." As elaborated on in *Larry A. Yates v. South Department of Labor, Licensing and Regulation, et.al.*, No. 07-ALJ-11-0321-AP: "This court is mindful of the difficulties facing pro se litigants and its duty to assist them to ensure fairness . . . This court is also aware that appellate courts will occasionally hear an appeal despite poorly-stated grounds for appeal if the court is able to readily determine the issue to be reviewed and the appeal appears to have merit." p. 4 (citing *Sandel v. Cousins*. 266 S.C. 19, 221 S.E.2d 111 (1975)).

APPELLANT'S ARGUMENT

- I. The Real Estate Commission's decision to permanently revoke Appellant's real estate license was unwarranted and unduly harsh as the Commission and the Agency attorney committed errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into a fictitious scheme / conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various facts / law, all without substantial supporting evidence.

The standard an administrative body must adhere to is well-established in the State of South Carolina. Specifically, "[a]n administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Kiawah Property Owners Group vs. Public Serv. Comm'n of South Carolina and Kiawah Island Utility, Inc.*, 338 S.C. 92, 95-96, 525 S.E.2d 863, 865 (1999) (citing *Porter v. S.C. Public Serv. Comm'n.*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998)). A Court "will not accept an administrative agency's decision at face value without requiring the agency to explain its reasoning . . . [f]indings of fact must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence in the record and whether the law has been properly applied. *Jimmy Landry Gardner, DDS v SCDLLR*, No. 01-ALJ-11-0517-AP (citing *Parsons v. Georgetown Steel*, 318 S.C. 63, 456 S.E.2d 366 (1995) and *Able Communications, Inc. v. S.C. Public Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)). "Where material facts are in dispute, the administrative body must make specific, express findings of fact." *Gardner* (citing *Able*). See also *Timothy J. Barlowe v. SCDLLR*, No. 03-ALJ-11-0372-AP ("an administrative agency must make specific findings of fact and explain its rationale in sufficient detail so as to afford meaningful judicial review").

In this regard, a court "will not accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." *Thomas R. King v. SCDLLR*, No. 01-ALJ-11-0558-AP (citing *Porter v. S.C. Public Serv. Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998)). "The fact finding element of an order requires that the trial adjudicator be mindful of the difference between material facts that are disputed and material facts that are undisputed. If a material fact is disputed, the Board must decide the factual dispute in a direct and unambiguous manner. *King* (citing *Able*). "Further, for material, disputed facts, the agency must present some rationale as to how it decided the disputed fact." *King* (citing *Porter*). "Moreover, the evidence the adjudicative body relies upon must constitute substantial evidence." *Id.* "Substantial evidence is neither a mere scintilla of evidence nor evidence viewed blindly from one side of a case, but rather is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." *Id.* (citing *Carroll v. Gaddy*, 295 S.C. 426, 368 S.E.2d 909 (1988)). Simply stated: "an adequate order will have at least three elements . . . a determination of the facts, a determination of the conclusions drawn from those facts, and third (and most importantly) an explanation of how and why the determined facts led to the conclusions reached." *Id.*

As mentioned above, Appellant acknowledges and admits she negligently failed to place the thirty thousand dollars (\$30,000.00) in earnest money into an escrow account and further acknowledges and admits that she failed to disclose in writing her status as a licensee even though the Pinner family and their advisor / agent Andy Bowers possessed actual knowledge that Appellant was indeed a licensed real estate agent. For these negligent mistakes, Appellant understands that punishment is necessary. However, Appellant feels strongly – and argues accordingly – that the Real Estate Commission’s penalty of permanent license revocation was unfair and unduly harsh. Specifically, Appellant contends the Commission did not meet its duty under the above-cited case law and that the Commission and the Agency’s attorney prejudiced Appellant and her case via numerous misstatements / misunderstandings of fact / law and baseless speculation and innuendo. *See State v. Craig*, 267 S.C. 262, 227 S.E.2d 306 (1976) (wherein the SC Supreme Court stated “conduct of a prosecutor calculated to arouse prejudice against the accused, and to prevent him from having a fair trial will not be tolerated”).

1. The Real Estate Commission

- a. The Real Estate Commission (“Commission”) erred and unfairly prejudiced Appellant by incorrectly stating that Appellant had allowed her license to lapse. *See* “Findings of Fact” at para. 1. This is patently false. Appellant had paid all necessary fees and taken the necessary continuing education courses in order to maintain her inactive Broker license status. *See again* Appellant’s Exhibit 8. The Commission presented no evidence, much less substantial evidence, to the contrary.
- b. The Real Estate Commission (“Commission”) erred and unfairly prejudiced Appellant by erroneously indicating in Appellant’s file that she had permanently surrendered her license in lieu of an investigation and that placing her license on inactive status was tantamount to an admission of guilt. However and as Appellant pointed out above, she placed her license on inactive status in order to devote her full attention to resolving the allegations against her. Furthermore, Section 40-1-150 of the SC Code Laws states unequivocally that “the surrender of an authorization to practice may *not* be considered an admission of guilt in a proceeding.” [Emphasis added].
- c. The Commission erred and prejudiced Appellant by erroneously concluding Appellant violated SC Code Sections 40-57-130 and 40-1-110(1)(a). *See* Final Order “Conclusions of Law” at para. 1. Section 40-57-130 deals with the conditions of renewing one’s license as well as continuing education and exemptions thereto. Subsection “B” deals only with said exemptions while Subsection “A” provides that a broker or salesman – as a condition of active license renewal – must meet certain educational requirements. Appellant can only guess the Commission was referring to its earlier factual conclusion that her license had lapsed, apparently because she didn’t meet Section 40-57-130’s educational requirements. But as demonstrated above, this was a patently false conclusion of fact. Appellant’s license did not lapse due to a violation of Section 40-57-130(A); in fact, LLR sent Appellant notice to renew her inactive

status. *See again* Appellant's Exhibit 8. Consequently, the Commission erroneously convicted Appellant of a violation she clearly and unquestionably did not commit.

In a similar fashion, the Commission also erred in concluding Appellant violated Section 40-1-110(1)(a). Said section provides, in relevant part "(1) A board may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who: (a) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest acts or omitted a material fact *in obtaining licensure* under this article." [Emphasis added]. There is nothing in the record – not a single shred of evidence – to justify this conclusion of law. At all times prior to the Commission's investigation and subsequent hearing, Appellant's license was on inactive status. In fact, she was required to have her file reviewed by the Commission before changing said status. The Commission presented no evidence Appellant submitted false or fraudulent paperwork or made false or fraudulent statements during that process. Appellant cooperated fully with the Commission's investigation and even offered on multiple occasions to assist. Accordingly, the Commission erroneously convicted Appellant again of a violation she clearly and unquestionably did not commit.

Finally, it is important to note neither 40-57-130 or 40-1-110(1)(a) appeared on Appellant's Notice of Charges, yet she was convicted of violating both. Please see below at section II (2) of Appellant's brief for a discussion of how this action (or omission) violated Appellant's procedural due process rights.

- d. The Commission's Final Order erred and unfairly prejudiced Appellant by stating as fact that real estate licensees are required to obtain consent from their Broker-in-Charge ("BIC") prior to purchasing unlisted property on their own behalf. *See* "Findings of Fact" at para. 3. This too is false. There is nothing in Title 40, Chapter 57 of the South Carolina Code of Laws – or anywhere else – that expressly prohibits an agent from also being a principal in a given real estate transaction. Thus, it is common practice among real estate agents to purchase and/or sell property on their own behalf without notifying their BIC.
- e. The Commission's Final Order erred and prejudiced Appellant by erroneously concluding Appellant presented copies of two checks to "give the appearance that the money had been placed into the appropriate trust account." *See* "Findings of Fact" at para. 4. This is nothing more than speculation by the Commission and is not supported by any substantial evidence. As quoted above in the *King* case, "the evidence the adjudicative body relies upon must constitute substantial evidence . . . [s]ubstantial evidence is neither a mere scintilla of evidence nor evidence viewed blindly from one side of a case, but rather is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." *See also Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995) (an agency's findings may "not be based upon surmise, conjecture, or speculation . . .").

- f. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant should have notified the BIC at Acquire Realty of the contract and placed earnest money funds into said BIC's trust account. *See* "Findings of Fact" at para. 5 and 6. Appellant transferred her license to Acquire on October 8, 2008. This transfer was well after the contract had expired at the end of August. And even if one accepts as fact the contract had been extended through the end of September (an extension that Mr. Bowers could not substantiate though documentary evidence, *see* Transcript of Hearing at p. 65), the contract still would have expired at the end of September. Again, this is before Appellant transferred her license.
- g. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(B)(8). *See* "Conclusions of Law" at para. 6. Appellant did not enter this transaction on behalf of her BIC. Instead, three licensees were representing themselves – via a proposed LLC – in the purchase of an *unlisted* property. Accordingly, no agency relationship was established or ever existed between Appellant's BIC and a principal.
- h. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(D). *See* "Conclusions of Law" at para. 8. There are two statutes concerning disclosure by licensees who are also principals to a contract. Section 40-57-135 (C)(6) states, in relevant part "A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate. A license meets the requirements of this section by disclosing in underlined capital letters on the first page of the contract his license status . . ." The second statute, Section 40-57-135(D), attempts to regulate fraudulent acts by a licensee who takes advantage of a past or present client to whom fiduciary responsibilities were or are owed. This more serious statute states "No licensee either directly or indirectly may buy for his own account or for a corporation or any other business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to all parties involved." In fact, the relative seriousness of this second statute is reiterated by its inclusion in "Grounds for Disciplinary Action, Section 40-57-145(16). Appellant was charged with and sanctioned under (D), yet this statute was incorrectly applied as clearly Appellant did not have an agency relationship with the sellers nor was she approached to have such agency relationship. Dr. Laura West testified "we asked Andy to be the person that could be there on a daily basis to deal with Vanessa and that he would then deal with me and then I would deal with the family." *See* Transcript of Hearing at p. 81. Dr. West then described how she understood Appellant's agency role: "I thought she was representing the purchaser." *Id.* at p. 83.

In the Notice of Charges issued by LLR, section 40-57-135(C)(6) is expressly not listed. Yet, the charge under this section was discussed at length during the hearing and was included in *eight* of the Final Order's Conclusions of Law. Well-established case law clearly states that lack of notice is a violation of Appellant's procedural due process rights. See *Larry A. Yates v. South Carolina Department of Labor, Licensing and Regulation, et. al.*, No. 07-ALJ-11-0321-AP, at p. 15 ("Similar to an indictment in a criminal case, the Commission is limited to prosecuting the charges identified in the notice of charges"); *Huber v. S.C. State Bd. of Physical Therapy Examiners*, 316 S.C. 24, 27-28, 446 S.E.2d 433, 435 (1994) (failure to give notice that improper record keeping for other patients would be basis for sanction was violation of procedural due process where only one patient was referenced in notice of charges). Accordingly, Appellant's rights were prejudiced by being prosecuted for a charge not listed in the Notice of Charges but that obviously played a significant role in the Commission's decision.

The Board further demonstrated its confusion over the statutes, their applicability and requirements when Ms. Takacs asked Appellant "did you sign an agency disclosure form telling the seller that you were representing yourselves?" Appellant answered in the negative as the form in question had not been in use for many years. See Transcript of Hearing at pp. 163-64. Board Member Mr. Edwards asked "there were three licensed real estate people that were the buyers and none of the three licensed real estate people who were the buyers felt any need to inform the seller that they were real estate people?" *Id.* at p. 164. Appellant responded to this line of inquiry, i.e., concerning disclosure of licensee status while also a buyer, as follows: "I've never done anything like this (failure to disclose position in writing) on a listing or while representing another party, absolutely not" thereby demonstrating Appellant's correct grasp of the statutes. In her closing remarks, however, the Agency's attorney stated "of course they knew she was an agent, she signed off as the agent. That's not the issue. The issue is that she was the buyer and the agent and she never disclosed that." *Id.* at p. 178. Even then – at essentially the end of the hearing – confusion over the two statutes still reigned and therefore negatively and unfairly affected Appellant.

Reflecting this confusion is the Commission's Final Order which inexplicably used entirely different wording from that found in either of the two disclosure statutes by sanctioning Appellant for "failure to disclose the nature of her relationship with potential sellers and buyers." See "Conclusions of Law" at para. 2, 3, 4, 5, 9, 10, 11, and 13. But neither statute, as explained above, provides for such language. Instead, it seems the Commission and the Agency attorney morphed the two statutes into one, thereby unfairly prejudicing Appellant at the hearing and by committing an error of legal application in the Final Order.

- i. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-137(K) by giving Sellers false and misleading information about the buyers' ability to

close. See “Conclusions of Law” at para. 9. Again, there is no substantial evidence Appellant violated this Section. In fact, at the time the contract was written, Appellant had obtained financial commitments from an accredited bank as well as two private investors. See Appellant’s Exhibit 18. This financial support was only withdrawn in late September and early October of 2008 due to the growing economic crisis.

- j. The Commission’s Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(4), 40-1-110(c), (f), or (g); specifically how Appellant’s actions endangered and were a harm to the general public. See “Conclusions of Law,” para. 2, 3, 4 and 11. There exists no substantial evidence to justify such a conclusion. Sellers were represented by the BIC of another firm as well as an attorney, had never been approached by Appellant to represent them, and the property in question was never listed by Appellant or her firm. Furthermore, Appellant’s twelve year record as a licensee was unblemished prior to this proceeding. See *Anonymous Physician v. SCDLLR, et. al.*, No. 08-ALJ-11-0368-AP (wherein the court found the Medical Board’s penalty too harsh in light of Respondent’s “one-time lapse in judgment” and the “absence of other evidence . . . either before or after the incident . . .”).
- k. The Commission’s Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(10). See “Conclusions of Law” at para. 12. At no time throughout this process did Appellant possess funds that “belonged to others.” The thirty thousand dollars (\$30,000.00) in earnest money belonged to Appellant and her “partners” and not anyone else. And said earnest money was refundable to Appellant once the contingencies in the contract were not met.
- l. The Commission erred and unfairly prejudiced Appellant by failing to consider the entire body of evidence even though said evidence was offered on several occasions. On many occasions, Appellant attempted to provide the Commission with evidence brought to light in the Civil Action which would rebut the complaint against her, to no avail. She also wished to have a meeting to provide confidential mitigating evidence explaining Appellant’s decision to retain the earnest money in an account other than Asset Realty’s trust account, and to prove this action was clearly not intended to harm the Seller. These mitigating circumstances dealt with another civil case that had been settled (Appellant was not implicated in said case) and Appellant was hesitant to come forth publicly or in writing with certain sensitive information that could have jeopardized the defense for Appellant as well as Asset Realty in the Pinner civil case which, at that point, was still ongoing. Appellant also did not offer this mitigating evidence in the hearing because her counsel was concerned that Appellant might unwittingly violate the nondisclosure terms of the Pinner Settlement Agreement.

In any event, the reason Appellant and her “partners” decided not to deposit funds into Asset’s trust account, nor to tell the BIC about the transaction, was

because the BIC had recently mishandled an earnest money dispute thereby causing a lawsuit to be filed against Asset. He had also endangered funds belonging to a client represented by Appellant. In that case, Appellant represented an LLC in a land purchase as well as the development and resale of various lots. A Purchaser, who waived representation by Asset in writing, entered into a Contract of Sale to purchase a lot. Prior to closing, Purchaser's attorney advised him not to close due to a title problem. Seller's attorney insisted title was clear but Purchaser voided the contract and asked for return of the earnest money. Seller consented in writing to release said earnest money. Purchaser's attorney had Purchaser execute a different release form; the Asset BIC refused to release the earnest money because they had not signed the same form. Appellant argued with the BIC – to no avail – that the contract indicated funds could be released due to a cloud on title, and both Principals had agreed on the disposition of funds.

Predictably, the Purchaser sued Asset and the Sellers. The Sellers notified Appellant they were now disputing the earnest money. Appellant discovered her BIC planned to release the disputed earnest money to the Purchasers in partial settlement of the lawsuit but without the consent of Asset's Seller / Client. Appellant notified said Seller / Client of the BIC's intent. Consequently, the BIC accused Appellant of "meddling" and threatened to terminate Appellant's employment. He also docked Appellant's subsequent commission checks for the BIC's legal fees – although Appellant was *not* named as a respondent in that civil action nor implicated in any misconduct – rather than turning in the case to the Errors and Omissions Insurance carrier. See Appellant's Exhibit 19.

While this episode does not justify Appellant's actions in the case at hand, it does explain why Appellant – in conducting a transaction for herself and her "partners" – was hesitant to trust the Asset BIC with her earnest money. It is not an excuse by any means, but Appellant does wish the Court to know she did not fail to deposit the earnest money into Asset's escrow account without some cause. In Appellant's mind, she was protecting said money for both herself and the Sellers (Pinner family).

2. Agency Attorney

- a. The Agency's attorney unfairly prejudiced Appellant by failing to consider the contract as a whole and instead "cherry-picked" the provisions she liked and disregarded the rest as irrelevant. See *Skull Creek Club Ltd. P'ship v. Cook & Book, Inc.*, 313 S.C. 283, 286, 437 S.E.2d 163, 165 (Ct. App. 1993) (in determining the intent of the contracting parties, the court should construe the contract as a whole, and read together different provisions dealing with the same subject matter).

The second Addendum was drafted by the Seller or Seller's agent and is one of the documents upon which the Sellers' earnest money demands were based. Likewise, the Agency's attorney interprets the second Addendum to mean that,

unconditionally, earnest money would become non-refundable at the end of 120 days and additional earnest money of \$50,000 would be due at that time, also non-refundable, with closing to occur on or before 8/29/08. In doing so, however, the Agency's Attorney obviously fails to consider the elements of the contract as a whole, as indicated in her cross-examination of Appellant, *see* Transcript of Hearing at pp. 158-59, and by stating in her Closing Statement "nowhere in [the second Addendum does it say] that none of this has – you have to wait for the due diligence period . . . [i]t says after 120 days, period." *See* Transcript of Hearing at p 180. *See also* Transcript of Hearing at pp. 158-59.

Appellant maintains that the terms in the second Addendum *must* be considered along with all terms of the Contract and first Addendum. *See again* Exhibit 2-B. Had the second Addendum been intended to replace, void or otherwise invalidate other key elements of the preceding documents, such would have been stated and "conflicting" elements struck through. For example, the Contract of Sale in Item 4 indicates the contract was subject to financing and also states in the last sentence of Item 6 "[i]f loan cannot be obtained, earnest money will be refunded to Purchaser". Had the second Addendum been intended to make all earnest monies non-refundable after certain dates had passed, *regardless of the financing contingency*, the last sentence in Contract Item 6 would have been struck by the sellers, but was not.

Item 7 refers to "see Addendum" as detailing "Additional Contingencies." The first Addendum begins by stating "closing is subject to the following terms and conditions" then outlines due diligence contingencies. Specifically with regards to earnest money, this Addendum calls for the following: Item 1: "Purchaser shall deposit \$30,000 earnest money with Asset Realty, Inc. upon acceptance of offer" (final acceptance and delivery of contract was 3/28/08). Item 3: "*should results* (of meeting with Richland County Development services) *prove satisfactory*, Purchaser shall deposit an additional \$50,000 earnest money...." Thus, viewing all documents together as a congruent whole, Appellant interpreted the terms – with regards to earnest money – as **all** applicable contingencies (time and results) would have to be met for the contract to continue and earnest money deposits to be required. *See* Appellant's Exhibit 20. Consequently, since DHEC subdivision approval was never obtained, as acknowledged by Mr. Bowers in cross-examination (*see* Transcript of Hearing p. 59), and since the Richland County DRT meeting never occurred, as acknowledged by Mr. Bowers, (*see* Transcript of Hearing p. 60) the additional \$50,000 earnest money deposit was not made.

Finally, Item 5 states (upon the condition of delay in due diligence): "Seller shall extend due diligence period accordingly, not to exceed one 30 day extension. For one 30-day extension, Purchaser shall deposit an additional \$30,000 earnest money, and such additional earnest money deposit shall be non-refundable." To Appellant's knowledge, this extension was never granted as Appellant did not receive such executed extension. (*See* Appellant's Exhibit 21 where she discusses project status with BP Barber after said "missing"

extension would have been in effect). As a result, the \$30,000 deposit was never made. Although Mr. Bowers on November 4, 2008 produced a copy of the purported extension, *see* Appellant's Exhibit 22, at least one Seller, Mimi Bowers, was unaware the extension had been executed 11 days after her signature and date were allegedly placed upon the extension document. *See* Appellant's Exhibit 23. And once again, for the second Addendum to have nullified the contingencies listed in the first Addendum, the contingencies would have been struck out - yet they were not. Accordingly, Appellant interpreted the second Addendum to be a simplified restatement of earnest money requirements already set forth in the preceding Contract of Sale and first Addendum. *See* Appellant's Exhibit 24.

- b. The Agency's attorney unfairly prejudiced Appellant by misleading the Board when she stated the project engineers failed to complete their tasks because they weren't being paid. *See* Transcript of Hearing at p. 157. The truth, however, is the project engineers were significantly delayed due to Richland County altering its normal method of approving subdivisions and due to bad weather and the difficulty of the terrain. *See* Appellant's Exhibit 25. Furthermore, at the time the due diligence contingency in the contract had expired, the engineers had been paid for their services. *See* Appellant's Exhibit 26.
- c. The Agency's attorney unfairly prejudiced Appellant by misleading the Board that Appellant had drafted the second Addendum to the contract when in fact it was drafted by Mr. Bowers. *See* Transcript of Hearing at p. 179. Along with the original Contract of Sale is the first Addendum entitled "Approximately 284 Acre Tract Bordering Wash Lever Road." *See again* Appellant's Exhibit 2-A. This was prepared by Appellant and referred to on Page 1 of the Contract of Sale in Item 7 entitled "Additional Contingencies, Conditions." *Id.* Please note the original Addendum contains Items 1 through 7 spanning two pages, is initialed and dated by purchaser Sally Grooms on 3/8/08, and bears an Asset Realty fax date stamp of 3/8/08 thereby indicating it was a part of the original offer. The second "Addendum to Contract of Sale Dated 3/8/08, Page 3" (hereinafter referred to as the "second Addendum"), however, was prepared by Sellers' "agent." Please note the document bears a time stamp consistent with that of Hometown Realty on 3/14/08 and, at the bottom left corner, is initialed by Laura P. West (one of the Sellers) and dated 3/14/08. Appellant's partner, Sally Grooms, then made a counter-offer to the terms of the Addendum, initialing and dating it 3/21/08. The document was then faxed back to Hometown Realty as evidenced by the Asset Realty date stamp of 3/21/08. Changes were agreed to, initialed by Sellers, and faxed back to Appellant as evidenced by the date stamp of 3/25/08. Clearly then, the second Addendum was *not* prepared by Appellant as was alleged by the Agency's attorney. It is therefore reasonable to conclude that Appellant indeed interpreted the terms of the Seller's Addendum in a different manner than was purportedly intended by the Sellers.

- d. The Agency's Attorney erred in insisting the underlying contract was in effect through December 2008, and that numerous extensions demanded multiple earnest money deposits totaling "approximately" \$185,000. Final Order states "contract was terminated" but fails to state the critical facts *when* and *by whom*. Since the contract actually expired in late summer 2008 without completion of due diligence and Appellant and her "partners" were unable to obtain financing at any time during the fall of 2008 (and notified Sellers of such), the above statement is patently untrue. The Agency's attorney failed to provide substantial evidence to support her position, which was carried forward into the Final Order.

3. Conspiracy

Finally, it merits noting that Appellant's "partner" and apparent co-conspirator Sally Grooms applied to have her real estate license re-instated shortly after Appellant's own license was permanently revoked. Ms. Groom's license was indeed re-instated without a hearing, consent agreement, or penalty even though the Commission had marked her file as a "pending claim." This occurred despite the fact she signed both earnest money checks, signed the contract, signed all addendums as well as the Pinner Addendum (whereas Appellant only signed as a witness), was named as a Defendant in the civil case, and was at all times a significant participant throughout the entire process. That the Commission sought only to try Appellant further suggests that Appellant was targeted for selective prosecution and was essentially made a scapegoat for a deal that went south.

II. Appellant's procedural due process rights were violated by: (1) being given the State's evidence against her only nine days prior to her hearing; (2) being prosecuted and judged on charges not included in the State's Notice of Charges; (3) being prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given in explanation; and (4) being unfairly prejudiced by the inappropriate admittance of hearsay "evidence."

1. In *Hayne D. McMeekin, MD v. SCDLLR*, No. 96-ALJ-11-0392-AP, the court stated "[t]he right of an accused to be fully informed of the offense charged against him is among the fundamental due process rights essential to a fair trial. The offense with which a party is charged should be specified so plainly and substantially as to enable the accused to understand the nature of the offense charged and to allow him to be prepared to meet the charge at the proper time. Warrants which are vague, indefinite and uncertain do not fully inform the accused of the nature and the cause of the accusation, and are in violation of . . . the South Carolina State Constitution." See also *State v. Randolph*, 239 S.C. 79, 121 S.E.2d 349 (1961); *McConnell v. Kennedy*, 29 S.C. 180, 7 S.E. 76, 80 (1888).

In the case at hand, the Notice of Charges merely contains a list of statutory provisions followed by five brief paragraphs that are neither clear nor substantial. As noted in Appellant's "Statement of Facts," Appellant and her attorney asked

several times for clarification as to the Notice of Charges and more specifically for the State's evidence against her. Appellant finally received said evidence a mere nine days before the hearing. This is hardly enough time to mount a diligent and rigorous defense. "The true test of notice in a contested case setting is whether the licensee ***understood*** the issue litigated ***and*** was given a full opportunity to litigate it and to justify his actions." *McMeekin* under section II(B) [emphasis added]. While Appellant did technically "litigate" these issues via a hearing, she did so with precious little time to prepare an adequate defense for a hearing that involved such a complex transaction. Furthermore, the "true test of notice" is a two part test. Appellant's frequent requests for clarification clearly show she did not fully understand the charges against her.

2. In the Commission's "Conclusions of Law" Appellant is found guilty of violating Sections 40-57-130 and 40-1-110(1)(a). In the Notice of Charges, however these two sections are expressly not listed thereby depriving Appellant of the required notice regarding the charges levied against her. Well-established case law clearly states that lack of notice is a violation of Appellant's procedural due process rights. See *Larry A. Yates v. South Carolina Department of Labor, Licensing and Regulation, et. al.*, No. 07-ALJ-11-0321-AP, at p. 15 ("Similar to an indictment in a criminal case, the Commission is limited to prosecuting the charges identified in the notice of charges"); *Huber v. S.C. State Bd. of Physical Therapy Examiners*, 316 S.C. 24, 27-28, 446 S.E.2d 433, 435 (1994) (failure to give notice that improper record keeping for other patients would be basis for sanction was violation of procedural due process where only one patient was referenced in notice of charges). That Appellant's procedural due process rights were unfairly prejudiced by these omissions is without question, as Sections 40-1-110(1)(a) and 40-57-130 were expressly cited by the Commission as two of the three statutory grounds for revoking Appellant's license. See "Conclusions of Law" at para. 1.
3. In the Commission's Conclusions of Law Appellant is found guilty of violating Sections 40-57-135(D) and 40-57-137(K). These statutes were cited in the Notice of Charges, but the written Section III contained no reference to any activities allegedly performed by Appellant that would have constituted such violations. Therefore, in the absence of further explanation, Appellant was ill-prepared to defend herself in the Hearing. Again, in *Hayne D. McMeekin, MD v. SCDLLR*, No. 96-ALJ-11-0392-AP, the court stated "The offense with which a party is charged should be specified so plainly and substantially as to enable the accused to understand the nature of the offense charged and to allow him to be prepared to meet the charge at the proper time."
4. Over the objection of Appellant's counsel, the Commission erred in admitting a letter written by Pinner family attorney Henry Bufkin – a letter copied to the Real Estate Commission – as the bulk of the letter was based on hearsay. See again Appellant's Exhibit 5. For example, the letter states on several occasions that Mr. Bowers had received assurances from Appellant that monies had been placed in a trust account. The letter also referenced conversations with attorney Hugh Cooper and Acquire Broker-in-Charge Katie Dunn. As Mr. Bufkin did not have firsthand knowledge of these "assurances" and was relating information secondhand from

Cooper and Dunn, said statements are clearly hearsay. *See* SCRE Rule 801(c) (“hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted”); SCRE Rule 802 (“hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute”). *See also* *Jolly v. State*, 314 S.C. 17, 443 S.E.2d 566 (1994); *Lee v. Gulf Ins. Co.*, 248 S.C. 296, 149 S.E.2d 639 (1966) (it is consistent with the general rule that hearsay is not admissible unless it fits within an exception to the hearsay rule). As Appellant’s attorney correctly stated at the hearing: “if [Mr. Bufkin] writes a letter that says this is what these people told me, that’s hearsay.” *See* Transcript of Hearing at pp. 22-23.

Furthermore, the Bufkin letter goes on to state it would “appear” the contract had been breached, it would “appear” several real estate agents had breached their fiduciary duties, and it would “appear” that fraud may have occurred. He concluded with “[n]o corporate veil will protect the Purchasers, or their agents, from the *conspiracy* and *fraud* of the individual parties.” *See again* Appellant’s Exhibit 5 [emphasis added]. Once again, Mr. Bufkin could have only reached these conclusions via secondhand conversations with Mr. Bowers, members of the Pinner family, and others. *See* Transcript of Hearing p. 24 (wherein Mr. Bufkin states that the information contained in the letter came from “*facts as they were portrayed to me* by the various parties, the members of the Pinner family and Andy Bowers, their advisor”) [Emphasis added]. *See also id.* at p. 26 (wherein Mr. Bufkin admits he “never had any contact with Ms. Patrick”). Yet, he nonetheless strongly suggests – even accuses – Appellant and others of various violations including conspiracy and fraud.

The State’s attorney offered no justifiable hearsay exceptions to justify the letter’s admittance. Instead, she justified admittance by saying “those people are here to verify the information.” *Id.* at p. 23. With that, the Board overruled Appellant’s attorney’s hearsay objection to Mr. Bufkin’s letter with the Chairman incredulously stating “*hopefully* some of these facts [contained in the letter] will come out during further testimony.” *Id.* [emphasis added] Equally incredulous is the Board ultimately admitted the letter into evidence: “[t]o the extent it contains hearsay, *and I think it’s uncontested that it does*, no hearsay from this document or anything else will be used in the making of any decision by the Board.” *Id.* at p. 39 [emphasis added].

The “facts” referenced by the Chairman, however, **did not** come out. First, neither Hugh Cooper nor Katie Dunn appeared at the hearing. Second, Mr. Bowers did testify at the hearing but admitted on cross-examination he never saw any more earnest money checks / deposits besides the thirty thousand dollars (\$30,000.00) as required by the contract and he never asked Appellant for proof of additional earnest money checks / deposits. *Id.* at p. 62 and pp. 64-66. On re-direct, Mr. Bowers further testified that he simply assumed the additional earnest money was being deposited. *Id.* at pp. 68-69. *See also id.* At p. 70 (wherein Mr. Bowers again stated: “I didn’t ask for proof, I didn’t ask for additional checks, but I was under the impression that the money, \$50,000, had been put in escrow”). Clearly, Mr.

Bower's assumptions do not constitute Mr. Bufkin's testimony that his letter was based on the "**facts** as they were portrayed to me . . ." [Emphasis added].

Third and finally, the testimony of the two Pinner family members also failed to substantiate the contents of the letter. On direct, Dr. Laura West admitted she relied "strictly" on Mr. Bowers regarding the transaction. *Id.* at 84-85. On cross-examination, Dr. West further admitted she never had any direct communications – orally or in writing – with Appellant regarding additional earnest money and more specifically whether said earnest money had been deposited. *Id.* at p. 85. Likewise, Dr. Carroll Pinner also testified that he relied on Mr. Bowers as well as his sister Dr. West and that he too never had any direct communication – either orally or in writing – with Appellant. *Id.* at p. 93. In fact, Dr. Pinner admitted that most of his knowledge came from his sister who was in turn communicating information she had received from Mr. Bowers. *Id.* at pp. 93-94 ("triple hearsay" as Appellant's attorney observed at trial).

As the Court stated in *Kevin Robinson v. SCDLLR*, No. 00-ALJ-11-0347-AP: "[i]mproper admission of hearsay evidence is reversible error when the admission causes prejudice. *See also State v. Craig*, 267 S.C. 262, 227 S.E.2d 306 (1976) (wherein the SC Supreme Court stated: "[r]eversible error in the admission of testimony is dependent on the existence of **probable** prejudice to the accused" [emphasis added]). In the case at hand, Mr. Bufkin's letter and the lengthy discussion that followed literally kicked off Appellant's hearing as it was essentially the first piece of so-called evidence heard. Further, it was admitted into the official record even though the Commission itself acknowledged it was based on hearsay. And if it was "uncontested" that the letter contains hearsay, then why was it admitted into evidence at all? Is it reasonable the Board simply ignored the letter's contents with it now an official part of the record (also now an official part of the record on appeal) and after an in-depth discussion of the letter at trial? *See again State v. Craig*, (wherein the SC Supreme Court also stated: "[a]n instruction to disregard incompetent evidence or the withdrawal of such evidence usually is deemed to have cured the error in its admission **unless** on the facts of the particular case it is **probable** that notwithstanding such instruction or withdrawal the accused was prejudiced" [emphasis added]). As noted above, the letter in question contains multiple inflammatory suppositions as well as straight-out accusations. Accordingly, any reasonable person would conclude that Appellant was probably prejudiced by the admittance and discussion of said letter as it set the tone of the hearing and planted the seed of Appellant's guilt within the mind of the Board.

- III. The Real Estate's Commission's decision to permanently revoke Appellant's real estate license was unfair and unduly harsh in light of previous case law where far more egregious behavior, as well as similar behavior to Appellant's, resulted in less severe punishment and not permanent revocation.

1. Non-Real Estate Licensing Cases

In *Anonymous Physician v. Department of Labor, Licensing & Regulation*, No. 08-ALJ-11-0368-AP, said physician – a licensed psychiatrist – consumed an indeterminate quantity of alcohol, arrived for work late the next day where she immediately felt sick and nauseated, and then attempted to leave. She saw no patients nor did she perform any official duties. She was, however, confronted by hospital staff and took a blood alcohol test which indicated a level of .115. The hospital's medical director reported these findings to the Medical Board which ultimately resulted in a formal complaint against the physician by LLR. A hearing was held and the Board did not revoke or even suspend her license; rather they imposed a public reprimand as well as five years of random screening and substance abuse monitoring. *Id.* at p. 3.

On appeal, the presiding Administrative Law Judge reversed this decision stating the physician “was clearly guilty of a *one-time lapse of judgment*. However, in the absence of other evidence of alcohol abuse (or any other substance abuse), either before or after the incident of June 24, 2004, a requirement of five years monitoring cannot be considered reasonable by any measure.” *Id.* at p. 4 [emphasis added]. The ALJ went on to hold that the Board had abused its discretion because there was no evidence she posed a danger to the public. *Id.* In so holding, the ALJ also stated: “There is a distinction between the Board’s statutory authority to impose a range of authorized sanctions . . . and its discretion to impose a particular sanction in an individual case based on the unique facts of that case. Mere statutory authority to impose sanctions is not enough to justify a particular decision. *It must also meet a standard of reasonableness.*” *Id.* [emphasis added].

In a Pharmacy Board case entitled *In the Matter of Richard J. Redden, R.Ph.*, OIE #2007-46, a licensed pharmacist admitted he “diverted” schedule III controlled substances from a hospital and a pharmacy and then “distributed” said substances to a third party. The Board subsequently concluded that the pharmacist (1) “intentionally used a fraudulent statement in a document connected with the practice of pharmacy”; and (2) “committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public . . .” As punishment, the Board prohibited him from ever acting as a Pharmacist-in-Charge, fined him five hundred dollars (\$500.00), subjected him to monitoring by the SC Recovering Professional Program, prohibited him from partaking any mood-altering substances, and subjected him to random alcohol and drug tests. They did not, however, suspend or revoke his license.

In a case before the Board of Chiropractic Examiners entitled *In the Matter of Scott Andrew Ratamess, DDC*, OIE # 2005-39 & 2005-40, a licensed chiropractor admitted to billing two patients’ insurance companies multiple times for services that were not performed, not documented, nor medically necessary. Furthermore, he “fraudulently upcoded” his exam of one patient to a level not supported by his notes when he billed the insurance company, and his record-keeping in general was not in compliance with acceptable standards in terms of coding, billing, and data entry of charges.

The Board concluded that the chiropractor had (1) obtained or assisted in obtaining fees under dishonest, false and fraudulent circumstances; (2) committed a dishonorable, unethical and unprofessional act that is likely to deceive, defraud or harm the public; (3) violated the code of professional ethics as adopted by his profession; (4) used a false or fraudulent statement in a document connected with the practice of chiropractors; and (5) made misleading, deceptive, untrue or fraudulent representations or communications. For these violations – again, like the case above, ripe with words such as “fraud,” “dishonorable” and “unethical” – the chiropractor’s license was not revoked. Rather, the Board simply ordered him to complete two four hour courses in insurance billing and record-keeping / documentation.

2. Real Estate Licensing Cases

In *Larry A. Yates v. South Carolina Department of Labor, Licensing and Regulation, et.al.*, No. 07-ALJ-11-0321-AP, Mr. Yates – a licensed real estate agent – was charged by the Real Estate Commission with failing to execute a written buyers’ representation agreement with his principals, failing to disclose certain defects in the home to his principals, and unlawfully using a contract of sale form that falsely indicated his principals had received sellers’ property disclosure form when in fact they had not. *Id.* at p. 2.

After his hearing was held, the Commission concluded that Yates had (1) failed “to provide ‘the written disclosure statement in question,’ while indicating in a contract with [his principals] that the written document was provided”; (2) failed “to execute a written agency agreement” with his principals; (3) failed to “disclose to [his principals] all relevant facts concerning the transaction”; (4) failed “to provide an agency disclosure form . . . at the appropriate time; and (5) failed “to disclose the party for whom he acted as agent in a real estate transaction, as evidenced by his failure to provide [his principals] the ‘written disclosure statement’”. *Id.* at pp. 2-3

For these five violations, LLR issued an order suspending Yates license for six months. LLR also imposed a fine of twenty-five hundred dollars (\$2,500.00) and required Yates to complete courses in the law of agency and in the law of contracts. *Id.* at p.1.

In a Real Estate Commission decision entitled *In the Matter of Cynthia L. Kirby*, Case # 2009-03 and 2009-04, a licensed Property Manager-in-Charge (“PMIC”) entered a Consent Order and admitted that between June 2008 and December 2008 a minimum of six trust account checks were returned for insufficient funds, no monthly reconciliations of the trust accounts were conducted, and the escrow account ultimately became insolvent. For her actions, the Commission fined her one thousand dollars (\$1,000.00) and suspended her PMIC license for two years. However, the Commission *also ruled the civil penalty could be stayed and the two year suspension reduced to a two year probation if she completed a Real Estate Broker’s “A” course within twelve months from receipt of the judgment.*

In another Real Estate Commission decision entitled *In the Matter of Mary S. Marino*, Case # 2009-93, a licensed real estate Broker-in-Charge (“BIC”) entered a Consent Agreement whereby she admitted *failing to maintain a trust account* and other related documents and also failed to properly supervise her sales licensee. In case of the latter, the sales licensee had deposited rents from a condo complex into an operating account but without delivering said rents to the BIC (Ms. Marino) for independent accounting as required by the Practice Act. In response, the Commission fined the BIC five hundred dollars (\$500.00), and suspended her BIC license for three years and her sales license for two years. Once again, however, the Commission allowed Ms. Marino the opportunity to have her two year sales license reduced to probation upon completion of an Ethics in Real Estate course and a Risk Management course.

In yet another Real Estate Commission decision entitled *In the Matter of William F. Bellamy, Jr.*, Case #2008-54, a real estate licensee entered a Consent Agreement and admitted receiving two checks in the amount of five thousand dollars (\$5,000.00) each as earnest money in conjunction with two contracts. In both instances, he failed to turn in the checks to his Broker-in-Charge. The Commission fined the licensee one thousand dollars (\$1,000.00) and further required him to attend an Ethics course. *See also In the Matter of John Clay Branyon*, OIE # 2010-49 (wherein respondent was publicly reprimanded, fined five hundred dollars (\$500.00), and required to take an Ethics course after admitting to not turning in twenty-five hundred dollars (\$2,500.00) in earnest money to his Broker-in-Charge).

And finally in still another a Real Estate Commission decision entitled *In the Matter of Michael G. Benton*, Case # 2009-60, a real estate licensee entered a Consent Agreement whereby he admitted failing to turn in multiple earnest money checks to his Broker-in-Charge. The Commission publicly reprimanded licensee and suspended his license for one year. Yet again, however, the Commission allowed the suspension to be reduced to probation following the completion of Ethics and Risk Management courses.

3. Summary

In considering the above cases and also factoring in Appellant’s arguments above, it seems patently obvious that Appellant’s punishment was unduly harsh and grossly unfair. Far worse behavior did not result in permanent revocation. And similar behavior was often met with reprimands, fines and suspensions – the last two which could often be avoided by completing certain educational requirements. If there is one difference between Appellant’s case and the others – especially the cases involving the Real Estate Commission – it is that many licensees admitted to the charges levied against them rather than fighting them. In this sense, a reasonable person could conclude Appellant was punished more severely for diligently defending herself, her career, and her good name. Certainly Appellant’s actions did not warrant the Agency attorney’s conclusion, *see* Transcript of Hearing, p.180; “that is the State’s position is, is that this is not an individual that

needs a license. Ya'll need to take her license. Ya'll need to revoke it and let her know that she cannot have her license back. The State is requesting that you not let her have her license back and that you revoke it."

CONCLUSION

Once again, Appellant acknowledged at the hearing and admits again in this brief that she negligently violated the South Code of Laws governing the conduct of real estate licensees by not placing earnest money totaling thirty thousand dollars (\$30,000.00) in her Broker-in-Charge's escrow account and by failing to disclose her licensee status in writing. While Appellant had reason to distrust her BIC and while Andy Bowers and the Pinner family possessed actual knowledge of Appellant's licensee status, Appellant still understands and fully expects punishment for these mistakes in judgment. But they are just two mistakes in an otherwise untarnished and lawfully conducted real estate career spanning approximately twelve years. *See again the Anonymous Physician case* (wherein the court found the Medical Board's penalty too harsh in light of Respondent's "one-time lapse in judgment" and the "absence of other evidence . . . either before or after the incident . . .").

Appellant feels strongly, however, that her argument above shows the Real Estate Commission's decision to permanently revoke her real estate license – a decision that effectively deprived Appellant of her livelihood – was unwarranted based on the *actual* evidence / law and therefore unduly harsh. Specifically, Appellant showed that the Commission and the Agency's attorney committed multiple errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into some grand scheme / conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various facts.

Appellant also showed that her procedural due process rights were violated by: (1) being given the Commission's evidence against her only nine days prior to her hearing thereby making it extremely difficult to prepare an appropriate defense; (2) being prosecuted and judged on two charges not included in the Real Estate Commission's Notice of Charges; and (3) being unfairly prejudiced by the inappropriate admittance of hearsay "evidence," the foundation of which was never established when initially introduced or thereafter through additional and allegedly "supportive" testimony.

Finally, Appellant showed that previous case law further justifies her contention that the punishment of permanent revocation was unfair and unduly harsh. In a litany of other professional licensing cases, far more egregious behavior or similar behavior as Appellant's resulted in less severe punishment and not permanent revocation.

Accordingly then and in light of the evidence Appellant has presented, Appellant again respectfully requests relief from this Court. Specifically, Appellant requests that the Real Estate Commission's decision to permanently revoke her real estate license be reversed and a more appropriate and equitable punishment be levied – a punishment more in line with what Appellant actually did rather than a punishment clouded by speculation, innuendo, and factual / legal errors. As the Court also stated in the *Anonymous Physician case*: "[i]n light of the Board's demonstrated propensity to arrive at findings and conclusions beyond what the

evidence supports, it would be fundamentally unfair to give the Board a 'fresh bite of the apple' . . . [t]he record contains substantial evidence to conclude [Respondent] exercised poor judgment . . . however, I find the sanctions imposed to be unduly harsh as a matter of law."

EXHIBIT

1

**Sally Sale Grooms
Joe C. Grooms, Jr.**

Irmo, SC 29063
803-732-3083

9998

67-160/532

Asset Realty Inc.
Twenty two thousand and no/100

BB&T - Branch Banking and Trust
Irmo, South Carolina

In God We Trust
Support Our Troops

River Path Earnest = *Sally S. Grooms*

053201607: [REDACTED] 9998

**Sally Sale Grooms
Joe C. Grooms, Jr.**

Irmo, SC 29063
803-732-3083

10017

67-160/532

Asset Realty Inc.
Five thousand and no/100

BB&T - Branch Banking and Trust
Irmo, South Carolina

In God We Trust
Support Our Troops

River Path Earnest = *Sally S. Grooms*

053201607: [REDACTED] 0017

EXHIBIT

2a

Mar. 21. 2008 11:27AM ASSET REALTY TRMOX

No. 1312 P. 2 P. 2

Mar. 14 2008 4:13PM HP LASERJET FRM

Mar. 10. 2008 12:55PM

ASSET REALTY TRMO

No. 1091 P. 2/7

P. 2



LAND, LOTS AND ACREAGE
CONTRACT OF SALE

Contract Form of The Greater Columbia Association of REALTORS, Inc. (GCA) is published by law by the National Multiple Listing Service, Inc. (NMLS) and is subject to the terms and conditions of the NMLS. The NMLS is a service of the National Association of REALTORS (NAR) and is subject to the terms and conditions of the NAR. The NAR is a service of the International Association of REALTORS (IAR) and is subject to the terms and conditions of the IAR. The IAR is a service of the International Franchise Association (IFA) and is subject to the terms and conditions of the IFA. The IFA is a service of the International Franchise Association (IFA) and is subject to the terms and conditions of the IFA.

1. DATE: A contract to purchase is entered into this 10th day of March 2008 by and between Asset Realty TRMO LLC and Asset Realty TRMO LLC.

2. PROPERTY DESCRIPTION: Subject to the terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described premises with improvements and fixtures thereon:
Lot: Block Section: Sub for Sub
Address: 2000 1st St
Tax Map: 02-000-01-13 City: Los Angeles State: CA
County of: Los Angeles State of: California

3. PRICE: The sales price is \$5,000,000.00 to be paid as follows:
A. \$5,000,000.00 in cash at closing.
B. \$0.00 in cash at closing.
C. \$0.00 in cash at closing.
4. FINANCING: CONVENTIONAL, CASH, OTHER (FINANCING REQUIRED), OTHER (FINANCING REQUIRED).

5. CLOSING COSTS: All closing costs are to be paid by the Seller, except for the cost of the title insurance policy, which shall be paid by the Purchaser.

6. LOAN PROCEEDS: The loan proceeds shall be used for the purchase of the property.

7. ADDITIONAL COMMENTS: The Seller represents and warrants that the property is free of all liens and encumbrances, except as otherwise disclosed in writing.

8. SIGNED: Asset Realty TRMO LLC and Asset Realty TRMO LLC

9. WITNESSES: Asset Realty TRMO LLC and Asset Realty TRMO LLC

10. DATE: 3/10/08

11. SIGNATURE: Asset Realty TRMO LLC and Asset Realty TRMO LLC

12. DATE: 3/10/08

13. SIGNATURE: Asset Realty TRMO LLC and Asset Realty TRMO LLC

Handwritten notes: LPM, MEB, AMP, 3/24/08, 3/24/08, 3/24/08

Handwritten notes: LPM, MEB, AMP, 3/24/08, 3/24/08, 3/24/08

HP LASERJET FAX

'ASSET REALTY TRNO'X

No. 1312 P. 4 P-4

HP LASERJET FAX

ASSET REALTY INFO

No. 1091 7-9/71

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 ALB
 Low
 3-2-08
 200M
 200M

Mar 25 2008 9:33AM HP LASERJET FAX

Mar 21 2008 11:29AM ASSET REALTY IRMO

No. 1312 P. 6 P. 8

P. 5

Mar 10 2008 12:57PM ASSET REALTY IRMO

No. 1091 P. 5/3

**ADDENDUM TO CONTRACT OF SALE
APPROXIMATELY 2.4 ACRE TRACT BOUNDING WASHLEVER ROAD**

Closing is subject to the following terms and conditions:

1. Purchaser shall deposit ~~32,000.00~~ ^{32,000.00} earnest money with Asset Realty, Inc. upon acceptance of offer. Purchaser shall obtain preliminary evaluation by SCDHEC to determine if subject tract is generally suitable for conventional septic systems for Purchaser's desired lot density. Purchaser shall also submit Request for Subdivision Approval package to SCDHEC. Purchaser requires 30 days to obtain the field evaluation and receive Subdivision Approval.

2. Should subject tract prove unsuitable for conventional septic systems, or should Purchaser fail to receive Subdivision Approval, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall proceed with scheduling a Pre-Development Planning Session or Development Review Team meeting, as necessary, with Richmond County Development Services. The meeting schedule is subject to Development Services; however, Purchaser understands "time is of the essence" and shall make a good faith attempt to prepare for and schedule the meeting at the earliest possible time. Purchaser requests 90 days to obtain results from the appropriate meeting.

3. Should results of the Development Services meeting prove unsatisfactory, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall deposit an additional ~~32,000.00~~ ^{32,000.00} earnest money, and shall schedule closing to occur within 60 days of obtaining favorable results from Development Services.

4. Any time during the "due diligence" period, should any due diligence activity including but not limited to utilities, zoning, floodplain or wetlands delineation, county or DOT access policies, etc. indicate tract is not suitable for Purchaser's intended use, Purchaser may at his discretion void contract. Further, all earnest monies, except non-refundable monies accompanying a contract option, shall be refunded to Purchaser.

5. Should any "due diligence" activity be delayed for reasons beyond Purchaser's control, Purchaser shall promptly notify Seller of such delay, provide documentation as to the nature of the delay, and otherwise demonstrate Purchaser has pursued due diligence activities in a timely manner. If Purchaser has demonstrated good faith in due diligence activities, Seller shall extend due diligence period accordingly, not to exceed ~~30-day~~ ^{30-day} extensions. For each 30-day extension, Purchaser shall deposit an additional ~~32,000.00~~ ^{32,000.00} earnest money, and such additional earnest money deposits shall be non-refundable.

6. Should any due diligence activity be retained more quickly than the time allotted, Purchaser shall notify Seller of favorable results and next steps shall commence.

32,000.00

LMW 3/14/08

LMW
JPB
MEB
AMM
3/14/08

MEB
3/21/08
LMW

LMW
3/21/08
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LMW
3/21/08
MEB
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Mar 25 2008 8:34AM HP LASERJET FAX

P. 6

Mar 21 2008 1:29AM ASSET REALTY TRMO^{TX}

No. 1312 P. 7 P-7

Mar 14 2008 4:15PM HP LASERJET FAX

P. 5

Mar 10 2008 12:57PM ASSET REALTY TRMO

No. 1091 P. 6/7

7. Purchaser shall obtain a new boundary survey during the due diligence period. The contractual Purchase Price is based upon 281 acres at \$19,000.00 per acre. Should survey reveal acreage of more or less than 281 acres, Purchase Price shall be adjusted accordingly. Further, ~~the due diligence period shall indicate that the Seller warrants the~~ Buyer's use for any purpose and is not intended under terms of this contract and the Addendum. Seller shall reimburse Purchaser for the cost of the survey and survey shall become the property of the Seller. Further, should first phase of due diligence (DNHC Subdivision approval) indicate the tract is not suitable for Purchaser's use, and contract is voided under terms of this Addendum, Seller shall reimburse Purchaser for one-half the cost of the survey, and survey shall become the property of Seller.

\$10,000.00

Asy
3-21-08

Not to exceed
OMB
MEB
JPB
2/20/08
LM

Asy
3-8-08
LM
3/14/08

JPB
OMB
MEB
2/20/08
LM

ADDENDUM TO CONTRACT OF SALE DATED 3/8/08, PAGE 3

PARAGRAPH 20. DEFAULT

If purchaser shall default under this contract, Seller shall have the option of suing for damages, or rescinding the contract. In the event the contract is rescinded, all earnest money will be paid to sellers.

EARNEST MONEY

Purchaser shall deposit \$50,000.00 earnest money with Asset Realty, Inc. This earnest money will become nonrefundable after 120 days. At the end of 120 days, purchaser will deposit an additional \$50,000.00 earnest money, also nonrefundable, and proceed to closing. Closing to take place on or before August 29, 2008.

This contract from sellers shall be withdrawn at 5:00 P.M. EDT on 3/21/08 unless accepted or countered by purchaser in written form prior to such time.

LM 3/14/08



LAND, LOTS AND ACREAGE CONTRACT OF SALE

(Standard Form of The Greater Columbia Association of REALTORS®, Rev. 01/02.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

Agency Confirmation: Purchaser and Seller acknowledge that a S.C. Real Estate Commission Agency Disclosure has been executed by the Purchaser prior to making this offer and by the Seller prior to its presentation and serves as written confirmation to the agreed upon agency status.

1. DATE A contract to purchase is offered this 8th day of MARCH, 20 08
by RIVERPATH INVESTORS LLC, Purchaser(s)
to _____, Seller(s).
2. PROPERTY DESCRIPTION Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:
Lot _____ Block _____ Section _____ Subdivision _____
Address Q WASH LEVER ROAD
Tax Map # Q2900-01-13 City LITTLE MOUNTAIN Zip 29075
County of RICHLAND, State of South Carolina.
3. PRICE The sales price is \$ 5,396,000.00 to be paid as follows:
A. \$ 30,000.00 Earnest Money paid by cash, check, other
held in trust by ASSET REALTY, INC.
B. \$ See Addendum Balance of down payment at closing is to be in the form of a cashier's check or certified funds.
C. \$ TBD Loan amount (type marked below) to be obtained by Purchaser.
4. FINANCING CONVENTIONAL ☒ SELLER CASH (NO FINANCING REQUIRED) OTHER TERMS COMMERCIAL LOAN
A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit-worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.
B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the specified date of closing.
5. CLOSING COSTS DISCOUNT POINTS Purchaser's closing costs shall be paid by PURCHASER. Purchaser's prepaid items shall be paid by PURCHASER.
Discount points (if any) shall be paid by PURCHASER. If Seller pays closing costs, prepaid items, and or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed \$ NA.
6. LOAN PROCESSING APPLICATION FINANCING Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately, and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.
7. ADDITIONAL CONTINGENCIES, CONDITIONS SEE ADDENDUM.

8. SURVEY, TITLE
EXAMINATION,
INSURANCE

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the subject property prepared. If a survey indicates that property does not meet the following minimum specifications 2.04 ACRES (dimensions, square feet, acres), Purchaser may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall complete this sale according to the terms and conditions of this Contract.

The Listing and Selling Brokers and their Agents recommended that Purchaser select an attorney to examine the title to the property, and obtain all appropriate insurance coverage, including that required by the lender.

9. CONDITION OF
PROPERTY

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

- A. The Seller represents that the property is ☒ or is not ☐ located in a flood zone. PORTION PER COUNTY RECORDS
- B. Seller represents that the property is ☐ or is not ☒ subject to a mandatory association fee (i.e., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is \$ per and shall be current at closing.
- C. Seller represents that the property is ☐ or is not ☒ subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment, the assessment has ☐ or has not ☒ been paid. If assessment has not been paid, it shall be paid by Seller in the amount of \$ and/or Purchaser in the amount of \$.
- D. If the property may be connected to public/community water or sewer systems, the tap fees of \$ NA shall be paid by .
- E. Seller represents that the property is ☐ or is not ☒ subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of this Contract.

10. WELL, SEPTIC
SYSTEMS,
ENVIRONMENTAL
INSPECTIONS

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors or government authority qualified in the appropriate fields. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports within the same twenty (20) business day period, this section is nullified in its entirety.

- A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of this Contract and refund of Purchaser's earnest money.
- B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.
- C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat any defects or conditions at the Seller's expense. In return Purchaser agrees to complete this sale according to the terms of this Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete this sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or this Contract is void.
- Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time limits herein provided, or Purchaser's acceptance of the deed at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

11. CONVEYANCE
DATE OF
CLOSING

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of KIETPANY INVESTORS LLC and delivered to the stipulated place of closing. This transaction shall be closed on or before See Addendum; 08/29/08.

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights or property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

13. EXTENSION OF
AGREEMENT

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date.

14. BROKERAGE
FEE

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement, if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein. 3% Commission to Asset Realty, Inc. at closing.

15. EARNEST
MONEY

Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and court costs, the same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into an interest bearing account. Purchaser agrees to and understands that he has been informed of his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted will ☒ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

01/02
2 of 3

Purchaser's Initials) DATE Aug 3-8-2008 HAVE READ THIS PAGE. Seller's Initials) DATE HAVE READ THIS PAGE.

16. ADJUSTMENTS Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessments, including homeowner's association fees, regime fees or the like shall be adjusted as of the date of closing. Tax prorrations pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be prorated on that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by Purchaser and/or Seller when the current year's taxes are determined.
17. ROLLBACK TAXES If applicable, rollback taxes shall be the responsibility of PURCHASER.
18. NON-RESIDENT TAXES Seller agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.
19. FIRE OR CASUALTY In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this Contract.
20. DEFAULT If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, ~~one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker, and the remaining balance of earnest money shall be paid to Seller.~~ Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees. See Addendum Page 3.
21. MEDIATION Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchaser, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be binding. South Carolina Code Ann. Section 15-48-10. et. seq. shall not apply to this Contract.
22. ENTIRE CONTRACT AND BINDING CONTRACT The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, their principals, heirs, personal representatives, successors and assigns as state law permits.
23. EXPIRATION OF OFFER This offer from Purchaser shall be withdrawn at 6 o'clock P.m (ET) on 3/17/08, unless accepted or countered by Seller in written form prior to such time.
24. FAX Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.
25. SURVIVAL If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.
26. DEFINITIONS In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance of this Contract, excluding Saturdays, Sundays and South Carolina legal holidays.
27. HUD/CLOSING STATEMENT RELEASE Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing Broker and Selling Broker copies of the HUD-1 settlement statement for the transaction.
28. DISCLAIMER The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvements, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, express or implied, concerning the condition of the property, any matters which would be reflected by a current survey of the property, or the accuracy of the published square footage; (C) Give no warranty, express or implied, as to title; (D) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract, Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto

Witness as to Purchaser: Rebecca Shaw Purchaser: Debbie Thomas Date: 3-8-2008 SSN: _____

Witness as to Purchaser: _____ Purchaser: _____ Date: _____ SSN: _____

Witness as to Seller: _____ Seller: See addendum for seller's signatures Date: _____ SSN: _____

Witness as to Seller: _____ Seller: _____ Date: _____ SSN: _____

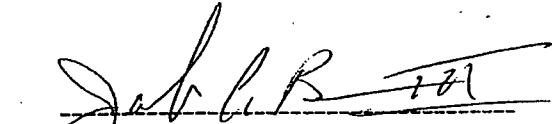
Listing Agent: VANESSA PATRICK Office: ASSET REALTY INC. Telephone Number: (803) 360-0489

Selling Agent: _____ Office: _____ Telephone Number: _____

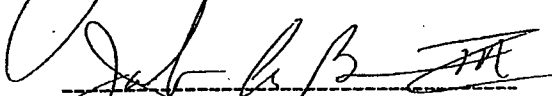
FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK _____ M. (ET) ON _____

ADDENDUM TO CONTRACT OF SALE DATED 3/18/08

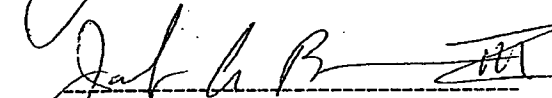
SELLERS' SIGNATURES FOR CONTRACT DATED 3/18/08



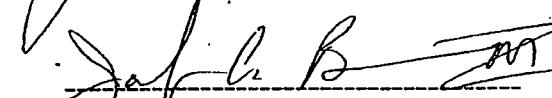
Wit to Seller



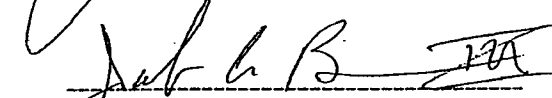
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Wit to Seller



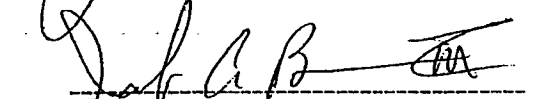
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Wit to Seller



Wit to Seller

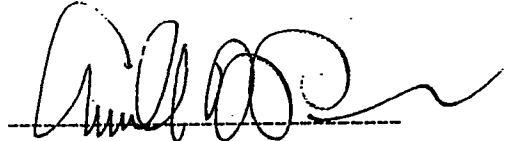


Wit to Seller

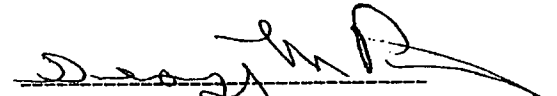


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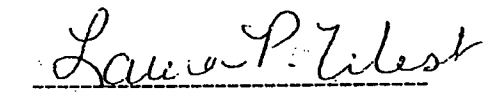
Wit to Seller



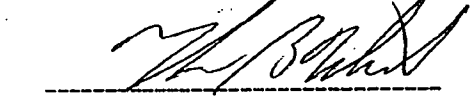
Carroll A. Pinner III



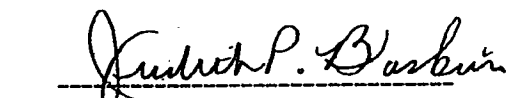
George M. Pinner



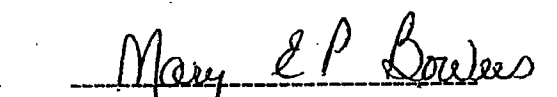
Laura P. West



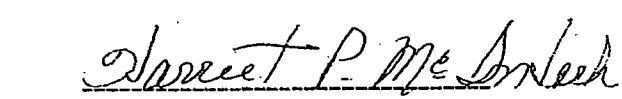
Thomas B. West



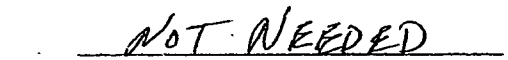
Judith P. Baskins



Mary E. P. Bowers



Harriett P. McIntosh



Laura Leigh Reddick

**ADDENDUM TO CONTRACT OF SALE
APPROXIMATELY 284 ACRE TRACT BORDERING WASH LEVER ROAD**

Closing is subject to the following terms and conditions:

1. Purchaser shall deposit ~~\$25,000.00~~ ^{39,000.00} earnest money with Asset Realty, Inc. upon acceptance of offer. Purchaser shall obtain preliminary evaluation by SCDHEC to determine if subject tract is generally suitable for conventional septic systems for Purchaser's desired lot density. Purchaser shall also submit Request for Subdivision Approval package to SCDHEC. **Purchaser requests 30 days** to obtain the field evaluation and receive Subdivision Approval.

2. Should subject tract prove unsuitable for conventional septic systems, or should Purchaser fail to receive Subdivision Approval, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall proceed with scheduling a Pre-Development Planning Session or Development Review Team meeting, as necessary, with Richland County Development Services. The meeting schedule is subject to Development Services; however, Purchaser understands "time is of the essence" and shall make a good faith attempt to prepare for and schedule the meeting at the earliest possible time. **Purchaser requests 90 days** to obtain results from the appropriate meeting.

3. Should results of the Development Services meeting prove unsatisfactory, Purchaser may at his discretion void contract and all earnest monies shall be refunded to Purchaser. Should results prove satisfactory, Purchaser shall deposit an additional ~~\$25,000.00~~ ^{\$39,000.00} earnest money, and shall schedule closing to occur within ~~60~~ ³⁰ days of obtaining favorable results from Development Services. **on or before 8/29/08.**

4. At any time during the "due diligence" period, should any due diligence activity including but not limited to utilities, zoning, floodplain or wetlands delineation, county or DOT access policies, etc. indicate tract is not suitable for Purchaser's intended use, Purchaser may at his discretion void contract. Further, all earnest monies, except non-refundable monies accompanying a contract extension, shall be refunded to Purchaser.

5. Should any "due diligence" activity be delayed for reasons beyond Purchaser's control, Purchaser shall promptly notify Seller of such delay, provide documentation as to the nature of the delay, and otherwise demonstrate Purchaser has pursued due diligence activities in a timely manner. If Purchaser has demonstrated good faith in due diligence activities, Seller shall extend due diligence period accordingly, not to exceed ~~the~~ ^{one} 30-day extensions. For ~~each~~ ^{one} 30-day extension, Purchaser shall deposit an additional ~~\$5,000~~ ^{\$30,000.00} earnest money, and such additional earnest money deposits shall be non-refundable.

6. Should any due diligence activity be resolved more quickly than the time allotted, Purchaser shall notify Seller of favorable results and next phase shall commence.

7. Purchaser shall obtain a new boundary survey during the due diligence period. The contractual Purchase Price is based upon 284 acres at \$19,000.00 per acre. Should survey reveal acreage is more or less than 284 acres, Purchase Price shall be adjusted accordingly. Further, should first phase of due diligence (DHEC Subdivision Approval) indicate the tract is not suitable for Purchaser's use, and contract is voided under terms of this Addendum, Seller shall reimburse Purchaser for one-half the cost of the survey, not to exceed \$10,000.00, and survey shall become property of Seller.

JPB
Jm
MEPB
Jm

3/10/11

MEPB
LIPW
W

ADDENDUM TO CONTRACT OF SALE DATED 3/08/08, PAGE 3

PARAGRAPH 20, DEFAULT

If purchaser shall default under this contract, Seller shall have the option of suing for damages, or rescinding the contract. In the event the contract is rescinded, all earnest money will be paid to sellers.

EARNEST MONEY

Purchaser shall deposit \$30,000.00 earnest money with Asset Realty, Inc. This earnest money will become non-refundable after 120 days. At the end of 120 days, purchaser will deposit an additional \$50,000 earnest money, also non-refundable, and proceed to closing. Closing to take place on or before August 29, 2008.

APP
AM
JAN
MEPB

JAN
MEPB
LNU
K

ADDENDUM

ADDENDUM DATE 8/22/08

CONTRACT DATED 3/8/08

BETWEEN SELLER

AND PURCHASER Riverpath Investors, LLC

IN REFERENCE TO Wash Lever Rd, TMS # 02900-01-13

THIS ADDENDUM IS HEREBY MADE A PART OF THE ORIGINAL CONTRACT.
BOTH PURCHASER AND SELLER AGREE TO THE FOLLOWING:

Pursuant to the attached estimated time frame for obtaining the land disturbance permit from Richland County, Purchaser requests contract be extended to on or before ~~December 31, 2008~~ ^{September 30, 2008}. Purchaser acknowledges that time is of the essence with regards to performance on this contract and extension. Purchaser has demonstrated ability and willingness to expedite due diligence activities to-date, and will continue to expedite the remainder of such activities throughout the extension period.

WITNESS_____
SELLER_____
DATE_____
WITNESS_____
SELLER_____
DATE_____
WITNESS_____
PURCHASER_____
DATE_____
WITNESS_____
PURCHASER_____
DATE

Dec 11 2008 5:41PM HP LASERJET FAX

10/07/2008 07:41 0033644445

THE BUFKIN LAW FIRM

PAGE 01/02

P. 10

STATE OF SOUTH CAROLINA) PINNER FAMILY TO RIVER PATH INVESTORS
COUNTY OF NEWBERRY) CONTRACT EXTENSION

WHEREAS, there exists a valid contract between members of the Pinner Family, as Sellers, to River Path Investors, LLC, as Purchasers dated March 8, 2008 for the sale of 288.62 acres in Richland County, South Carolina; and

WHEREAS, that contract was for approximately \$5,396,000.00 sales price with \$30,000.00 as non-refundable earnest money being paid at time of contract signing and being held by Asset Realty with a closing date no later than June 29, 2008; and

WHEREAS, subsequently the parties agreed that in return for an additional \$50,000.00 in non-refundable earnest money (total \$80,000.00), an additional 30 day extension of time would be granted so that the closing was to take place on or before August 29, 2008. This money was also deposited in the trust account of Asset Realty; and

WHEREAS, the parties further agreed that in return for an additional \$30,000.00 in non-refundable earnest money (total \$110,000.00), and additional extension of time so that the closing was to take place on or before September 10, 2008. This money was also deposited in the trust account of Asset Realty; and

WHEREAS, the parties have now agreed that due to the delays caused by Richland County, the contract will be extended to not later than December 31, 2008 and that in return for that further extension of time, the Buyers will deposit an additional \$75,000.00 which will be a non-refundable penalty fee for not closing before September 30, 2008; and

WHEREAS, the parties have agreed that the earnest and penalty money is to be held in escrow in the trust account of Henry P. Bufkin, Attorney for the Sellers.

NOW THEREFORE, the parties hereto agree that the original contract dated March 8, 2008, to include several amendments, shall be amended one more time, to include the deposit of \$75,000.00 in non-refundable penalty funds and the closing of the contract is to be extended to not later than December 31, 2008.

Dated: October __, 2008

Witness to Seller

Witness to Seller

Witness to Seller

SELLERS

Carroll A. Pinner III

George M. Pinner

Laura P. West

Dec 11 2008 5:41PM HP LASERJET FAX
Oct 14 2008 11:40AM HP LASERJET FAX
10/27/2008 07:41 0033644405

p. 11
p. 3

THE BUKIN LAW FIRM

PAGE 02/02

Pinner Family to River Path Investors
Contract Extension
Page 2

[Signature]
Witness to Seller
[Signature]
Witness to Seller
[Signature]
Witness to Seller
[Signature]
Witness to Seller

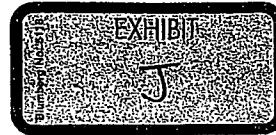
[Signature]
Thomas B. West
[Signature]
Judith P. Baskins
[Signature]
Mary E. P. Bowers
Mary E. P. Bowers
[Signature]
Harriet P. McIntosh

[Signature]
Witness to Buyer

Witness to Buyer

BUYER
River Path Investors, LLC
By: [Signature]
By: _____

EXHIBIT
5



Henry P. Bufkin
Attorney

BUFKIN LAW FIRM
P. O. DRAWER 419
208 NORTH MAIN STREET
PROSPERITY, SC 29127
TELEPHONE (803) 364-2233
FAX (803) 364-4445
Bufkinlaw@backroads.net

Timothy D. Savid
Attorney/Associat

November 24, 2008

Vanessa Patrick, Agent
Acquire Real Estate, Inc.
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

Katy Sale Dunn, BIC
Acquire Real Estate, Inc.
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

Sally Sale Grooms
Riverpath Investors, LLC
[REDACTED]
Irmo, SC 29063

Jeff Bond, BIC
Asset Realty, Inc.
P. O. Box 290219
Columbia, SC 29229

Jeff Z. Brooker III
Riverpath Investors, LLC
717 Lady Street, Suite G
Columbia, SC 29201

Hugh M. Cooper, Esquire
1812 Lincoln Street, 1st Floor
Columbia, SC 29201

RE: Demand to close or produce earnest money
Pinner Family -- Sellers
Riverpath Investors, LLC -- Sally Sale Grooms, Principle
288.62 acres, Richland County, SC -- TMS# 02900-01-013

Dear Ladies and Gentlemen:

I represent the Pinner Family in their attempts to enforce the Contract for the Sale of the above described property.

In March 2008, Riverpath Investors, LLC, entered into a contract for the purchase of 288.62 acres in Richland County from members of the Pinner Family. This contract was the sale of 288.62 acres at \$19,000.00 per acre for a total of \$5,396,000.00. The Purchasers agreed to deposit \$30,000.00 in escrow on this contract, to be held in the escrow account of Asset Realty where Vanessa Patrick was an agent. The earnest money was to become non-refundable to the Purchasers at the end of the 120 day due diligence period on July 29, 2008. This contract was signed on behalf of the Purchasers by Sally Sale Grooms. The funds were guaranteed to be deposited by Vanessa Patrick.

H/A

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This contract also provided that if the Purchasers were to proceed beyond the due diligence deadline of July 29, 2008, they were to deposit an additional non-refundable earnest money deposit of \$50,000.00 (making a total of \$80,000.00 earnest money held by Asset Realty). The Sellers agent, Andy Bowers of Hometown Realty, was assured by Vanessa Patrick that this additional money had been deposited in the Asset Realty trust account.

The contract also provided that when it was determined that the closing could not take place by August 29, 2008, the Sellers would grant a one time 30 day extension of the contract until September 30, 2008. An additional \$30,000.00 in non-refundable earnest money was deposited in trust with Asset Realty for this extension. Vanessa Patrick assured the Sellers agent, Andy Bowers, that this additional \$30,000.00 had been deposited in the Asset Realty trust account. This earnest money on deposit was then to have been \$110,000.00.

The last contract extension, extending the closing date to not later than December 31, 2008, was done in October, 2008. In return for this extension, the Purchasers agreed to a non-refundable penalty of \$75,000.00, making the total funds in escrow \$185,000.00. This extension also required that those funds be transferred to my trust account. This contract extension was signed by all of the relevant members of the Pinner Family, as well as; Sally Sale Grooms, on behalf of Riverpath Investors, LLC, and witnessed by Vanessa Patrick.

Vanessa Patrick was the primary contact in all of these negotiations and she gave the assurances to the Sellers agent that these funds (\$185,000.00) were on deposit in the trust account of her real estate agency. At some point in time, Vanessa Patrick became an agent for Acquire Real Estate and gave assurances that the money in escrow had transferred from Asset Realty to the trust account of Attorney Hugh Cooper. When Hugh Cooper denied having had these funds, Vanessa Patrick then said they were on deposit with Acquire Realty. Upon being pushed to transfer the escrow funds to my trust account in accordance with the last contract modification, Vanessa Patrick became unresponsive and would not answer telephone calls. A telephone call to the broker-in-charge of Acquire Real Estate, Katy Sale Dunn, revealed that no such amount was on deposit and that all Katy Sale Dunn could account for was \$20,000.00, which Vanessa Patrick brought with her. No funds have been transferred to the Sellers, or me, their attorney, thus far.

The Pinner Family stands ready and willing to comply with the terms of the Contract, so long as Riverpath Investors, LLC complies with the terms of the Contract and transfers \$185,000.00 to my trust account. The failure to comply with the terms of the contract, by the Purchaser, have been extraordinary. It would appear that the terms of the contract have been breached. It would also appear that several real estate agents have breached their fiduciary responsibility with regards to gathering the funds and depositing them in trust. Lastly, it would appear that fraud may have occurred in that Purchasers have signed contract extensions which demanded the deposit of earnest money funds with the knowledge that no such funds were provided. This goes to the heart of the real estate transaction which the real estate commission regulates.

HPB

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On behalf of the Pinner Family, it is demanded that the \$185,000.00 non-refundable earnest money (including penalty) be transferred to my trust account by Thursday, December 4, 2008. Failure to comply will be considered a purchaser default of the contract with all remedies available to the Sellers.

No corporate veil will protect the Purchasers, or their agents, from the conspiracy and fraud of the individual parties.

Respectfully,



Henry P. Bufkin

HPB:tfb

cc: SC Labor Licensing Board – Real Estate Commission

(50)



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: Information
Office of Investigations (803) 896-4656
Wages and Child Labor (803) 896-7680
www.llr.state.sc.us

March 9, 2009

Vanessa K Patrick
108 Wateree Creek Rd.
Irmo, SC 29063

Re: Complaint from Henry Bufkin
SCREC File #: 2009-27

Dear Ms. Patrick:

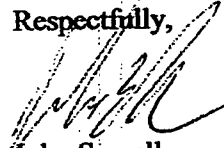
It is my understanding that you wish to surrender your real estate license in lieu of a formal hearing.

Accordingly, I have enclosed a voluntary surrender of license document that will accomplish what you are requesting. If you agree with the contents of that document, sign it and return it to me within fifteen (15) days after receipt. Failure to return the signed document will result in this agency filing a formal complaint against you in this matter.

You will receive back a copy of the final documents for your records once all signatures are obtained.

If you have any questions regarding this matter, please feel free to contact me at (803) 896-9785

Respectfully,


John Sowell
Investigator III



REPLY TO
THOMAS E. LYDON
DIRECT DIAL 803-227-2292
tlydon@mgclaw.com
COLUMBIA

FILE COPY

May 27, 2009

Mr. John Sowell
Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, SC 29211

Re: *Vanessa K. Patrick*
SCREC File No. 2009-27

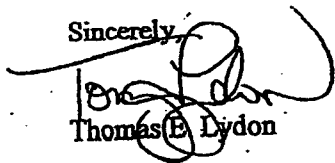
Dear Mr. Sowell:

This firm has been retained to represent Vanessa Patrick in connection with the complaint filed by Henry Bufkin and the lawsuit he filed against Ms. Patrick and others on behalf of Carroll A. Pinner, III, *et al.* (Civil Action No. 09-CP-40-2354), pending in Richland County.

This letter is in response to your letter to Ms. Patrick dated March 9, 2009. I met with Ms. Patrick, and she advised me that she does not intend to surrender her real estate license. I would appreciate it if you would let me know what the basis is for your understanding to the contrary.

Please forward all future communications concerning this matter to me.

Sincerely,



Thomas E. Lydon



Mark Sanford
Governor
Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Office of Licensure and Compliance



110 Centerview Drive
Post Office Box 12517
Columbia SC 29211
Phone: (803) 896-4501 or 896-4400
Fax: (803) 896-4525 or 896-4570
www.llr.state.sc.us

May 7, 2010

RE: 2010 - 2012 SC Real Estate Commission

Dear Licensee:

Enclosed you will find your 2010-2012 Real Estate Commission Renewal Application. Because of a complaint received concerning your activities as a licensee, you are not eligible to renew online. Please complete the enclosed form and return to this office along with the appropriate fee on or before June 30, 2010 to the address below:

SC Dept of Labor, Licensing and Regulation
SC Real Estate Commission
Office of Licensure and Compliance
110 Centerview Drive, Suite 306
PO Box 12517
Columbia, SC 29211

It is your responsibility to update all information, including your contact information. Failure to do so could result in additional disciplinary action.

The renewal of your license does not affect the ongoing investigation or any disciplinary action which may result from it. I encourage you to work toward a prompt resolution of all issues concerning your license.

You can verify your license at the Board's web site at <http://www.llr.state.sc.us/POL/rec/>. Please allow 10 business days for processing after you submit your application to verify your license. If you have further questions, please contact Tanya Styles at (803) 896-4542 or Latonea Jones at (803) 896-4569.

Sincerely,

Annette M. Disher
Annette M. Disher
Renewal Manager

Enclosure: 2010-2012 Renewal Application

SC DEPARTMENT OF LABOR LICENSING AND REGULATIONS
REAL ESTATE COMMISSION
OFFICE OF LICENSURE AND COMPLIANCE

INACTIVE LICENSE RENEWAL 2010-2012

Renewal Instructions

1. Complete all information requested on this form, sign and date application. Incomplete applications will be returned.
2. Information in our files is pre-printed on this form. Make any necessary corrections and attach additional sheets as necessary.
3. Mail completed application with a payment made payable to LLR-Real Estate Commission, P.O. Box 12517, Columbia, SC 29211-2517; Telephone number (803) 896-4501. Applications must be postmarked by the Post Office on or before June 30, 2010.

*License Number: 22479

VANESSA K PATRICK
108 WATEREE CREEK RD
IRMO SC 29063

ALL RENEWAL FEES ARE DUE BY JUNE 30, 2010.
AFTER JUNE 30, 2010 THE LICENSE IS LAPSED AND MUST
BE REINSTATED.

Address (Make any personal address changes
here):

Type of License & Fee (check one)

☒	INACTIVE BROKER	\$150
☐	INACTIVE PROPERTY MANAGER	\$150
☐	INACTIVE SALESMAN	\$150
☐	INACTIVE TIMESHARE REGISTRANT	\$150

1187 Kibler Bridge Rd.
Prosperity SC 29127

NOTE: IF YOU WISH TO ACTIVATE YOUR LICENSE, YOU NEED TO COMPLETE AND SUBMIT THE
"REQUEST FOR LICENSE REACTIVATION" FORM LOCATED ON THE COMMISSION'S WEB SITE
(<http://www.llr.state.sc.us/POL/REC/>).

- Yes ☐ No ☒ Since you last renewed your license, has any professional disciplinary action been taken against you in any state since you have become licensed in South Carolina that has not been previously disclosed? If Yes, please include a full written explanation.
- Yes ☐ No ☒ Since you last renewed your license, have you been convicted of or have pled guilty or nolo contendere to a felony or crime of moral turpitude or are there charges pending against you now that has not been previously disclosed? If Yes, please include a full explanation and documentation.

I affirm the above information supplied by me is true.

Signature

Vanessa K. Patrick

Date

6/28/2010

Failure to check one option and/or to affirm the information by signing the form will result in the notice being returned to you. Notices mailed back to the Commission after the deadline will be subject to late penalties. Forms must be postmarked not later than June 30.



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Office of Licensure and Compliance



110 Centerview Drive
Post Office Box 12517
Columbia SC 29211

Phone: (803)896-4501 or 896-4400
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www.llr.state.sc.us

July 13, 2010

VANESSA K PATRICK
108 WATEREE CREEK RD
IRMO SC 29063

2010 - 2012

INACTIVE REGISTRATION

This is to certify that you are registered as inactive with LLR – Real Estate Commission for the license period ending June 30, 2012.

To activate your license during this period of inactive registration, please contact this office.

1
chattmaj



ATTORNEYS AT LAW

REPLY TO
THOMAS E. LYDON
DIRECT DIAL 803-227-2292
tlydon@mgclaw.com
COLUMBIA

May 17, 2010

Mr. John Sowell
Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, SC 29211

Re: *Vanessa K. Patrick*
SCREC File No. 2009-27

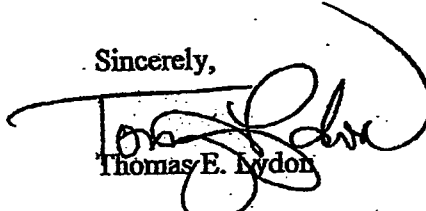
Dear Mr. Sowell:

This letter is to follow up on our previous letters and telephone conversations concerning the status of Vanessa Patrick's real estate license.

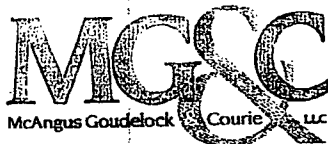
As stated in my letter of May 27, 2009, Ms. Patrick has not surrendered her real estate license. Also, Ms. Patrick recently informed me that her license is scheduled to expire in June of this year. Obviously, she does not want the license to expire. Please let me know what steps Ms. Patrick needs to take in order to renew her license.

I look forward to hearing from you.

Sincerely,


Thomas E. Lydon

cc: Ms. Vanessa Patrick



ATTORNEYS AT LAW

REPLY TO
THOMAS E. LYDON
DIRECT DIAL 803-227-2292
tlydon@mgclaw.com
COLUMBIA

May 21, 2010

Mr. John Sowell
Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, SC 29211

Re: *Vanessa K. Patrick*
SCREC File No. 2009-27

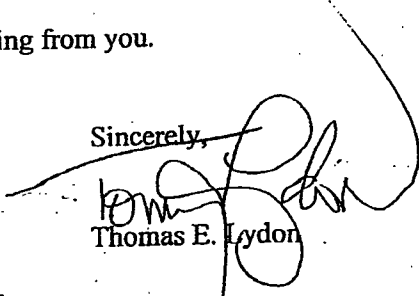
Dear Mr. Sowell:

This letter is to follow up on my letter of May 17, 2010, concerning the referenced matter.

I spoke to Sheridan Spoon today in connection with my inquiry about Ms. Patrick renewing her license. It is my understanding that the outstanding complaint against her must be resolved in order to renew the license. Therefore, we are requesting that the investigation be reinstituted as soon as possible.

I look forward to hearing from you.

Sincerely,


Thomas E. Lydon

cc: Paula Magargle, Esquire
Ms. Vanessa Patrick

Ms. Adrienne Youmans

Department of Labor, Licensing and Regulation

Post Office Box 11329

Columbia, SC 29211

Re: Vanessa K. Patrick

SCREC File No. 2009-27

September 9, 2010

Dear Ms. Youmans:

I have tried, unsuccessfully, since early 2010 to come to a resolution with LLR regarding the reinstatement of my real estate license, which I voluntarily placed on Inactive Broker status in late 2008 as a result of a Demand Letter and resulting Civil Action filed by the Bufkin Law Firm against me and others. LLR has treated me with great disrespect, given that I have for many years had a reputation among my peers and local attorneys for a greater knowledge of contracts and agency than is usually displayed by my peer licensees. Seasoned criminals are afforded more rights by the American justice system, and certainly have more access to "due process", than I have been afforded by LLR in resolving this matter. I have been unreasonably withheld from reinstating my license and therefore regaining my livelihood, adding to my financial devastation as the result of the lawsuit and the underlying economic downturn. Even my attorney, Tommy Lydon, has not been able to get satisfactory status reports from your staff. By bringing this to your direct attention, I trust I will be given fair and prompt treatment and my license be quickly reinstated.

I have attached for your review the letter from the Bufkin Law Firm which started this matter, and the latest in my communications with John Sowell of your staff, which included my written response to Mr. Bufkin's letter. Of course, I have received no response from Mr. Sowell.

Most disturbing to me has been the manner in which Mr. Sowell has treated me. Not only has he ignored most of my calls and inquiries, and those of my attorney, he has NEVER ONCE discussed with me the facts surrounding my case. In fact, he told me in a phone conversation that I was wasting my time trying to get reinstated due to the "egregious allegations" made by Mr. Bufkin: he is obviously unaware that "allegations" are often proven untrue. Since he has no direct knowledge of the facts in the case, and has made no attempt to speak with me or my attorney regarding the facts, I find it utterly incomprehensible that he would make up his mind and "sentence" me without due process. I contacted Jay Pitts in an attempt to resolve the matter; however, Mr. Sowell then derailed my efforts by informing Mr. Pitts that I had "permanently surrendered my license in lieu of an investigation," which was untrue.

Only when my attorney produced evidence that I had NOT permanently surrendered my license did Mr. Sowell abandon that tactic, yet Mr. Pitts never called me back nor responded to my messages.

My attorney then spoke to an LLR attorney who indicated that my request for license reinstatement was due to be considered in an IRC meeting sometime in August. Hence, I wrote the attached letter to Mr. Sowell and enclosed the rebuttal, in an attempt to show that there was another side to the story. August has come and gone, so I asked my attorney to find out if my case was considered in the IRC and if there was a timetable in which my case would be further considered. Mr. Sowell's response, after multiple inquiries, was only that we would be given plenty of notice if we were to have a hearing. Therefore, I am facing another interminable delay in reinstatement, which is unacceptable.

Regarding my unfair treatment by LLR, and the unreasonable withholding of my license privileges, I am prepared to hire an attorney who specializes in professional licensing matters, and I am also prepared to bring this matter to the attention of several politicians at the local and state levels with which I have long-standing professional relationships. However, in fairness to you, since I am sure you have not been made aware of this matter, I would like to see if you can help me resolve this without further unpleasantness. I do not expect to be simply handed back to Mr. Sowell or Mr. Pitts, as they have demonstrated no willingness to see justice done (or even consider the facts.) I would like to speak with you directly, or to be placed in contact with a knowledgeable member of your staff who can look beyond the big numbers in Mr. Bufkin's letter, analyze the contract and surrounding events, compare it to other cases which have been resolved by LLR in the past, and enable me to get on with my career. This contract is not as simple as the typical residential home sale, so it needs to be analyzed by someone well-versed in contract law. As I mentioned in my attached response, the Mediator who heard the case in the court system stated "I ignored the he-said, she-said and went back to the contract." She reviewed the contract, prepared a time-line of events, and concluded that the plaintiff had no grounds by which to demand \$185,000 in earnest money and certainly not to demand specific performance on the contract. I want the same consideration from LLR as was given by the Mediator.

As I have said to Mr. Sowell and Mr. Pitts, who have not responded, I also invite you to meet with me and discuss the actual terms and conditions of the underlying contract and the associated timeline..

Sincerely,

Vanessa K. Patrick

1187 Kiblers Bridge Road

Prosperity, SC 29127

(803)521-3614

Vanessapattick1@hotmail.com

Mr. John Sowell

Department of Labor, Licensing and Regulation

Post Office Box 11329

Columbia, SC 29211

Re: Vanessa K. Patrick

SCREC File No. 2009-27

July 23, 2010

Dear Mr. Sowell:

I understand from my attorney, Tommy Lydon, that my request for license reinstatement is due to be considered in a Board meeting sometime in August. Accordingly, attached please find my response to the letter from the Bufkin Law Firm, dated November 24, 2008.

Please ensure the Board is made aware that the preponderance of the allegations contained in Mr. Bufkin's letter are untrue, and a great deal of information now exists in the form of exhibits, depositions, etc. that will clearly support my case for reinstatement. I will gladly make those facts available to LLR for review if this assists in the prompt resolution of this matter.

I also invite you to meet with me and discuss the actual terms and conditions of the underlying contract and the associated timeline.

I look forward to hearing from you on this matter.

Sincerely,

Vanessa K. Patrick

1187 Kiblers Bridge Road

Prosperity, SC 29127

(803)521-3614

RESPONSE TO BUFKIN LAW FIRM DEMAND

Below is a discussion of the Demand prepared by Henry Bufkin of the Bufkin Law Firm. Since this Demand was sent to the Real Estate Commission as well as to several of the addressees, the following should be noted:

- (1) The letter was never delivered to Vanessa Patrick or Sally Grooms. We received a copy of the Demand from attorney Jeff Brooker.
- (2) Vanessa Patrick and Sally Grooms voluntarily placed their Real Estate licenses on inactive status for the following reasons:
 - a. We considered it a good faith gesture to place our real estate practices on hold while we attempted to resolve the issues. We attempted to reason with Mr. Bufkin regarding the untrue allegations contained in the Demand letter, to no avail.
 - b. Considering this matter to simply be an Earnest Money dispute, Vanessa Patrick and Sally Grooms signed a form with CCAR agreeing to participate in mediation. We thought the matter would be resolved in a few months. Then, when the Civil Action was filed, we did not feel it prudent to deal with a Civil Action AND a LLR inquisition at the same time. We felt the matter would be best handled in the court system. Accordingly, our new attorney Tommy Lydon contacted John Sowell who indicated he would place the investigation on hold pending the outcome of the court process, and that he would accept the court findings in lieu of a separate LLR hearing.
- (3) The Bufkin Law Firm, in its pursuit of the Civil Action, has consistently and blatantly veered away from analyses of the actual terms of the underlying contract, although (with one exception listed in Item (4)(a) below) the terms of the contract were the basis for all the actions we, the defendants, undertook with regards to this transaction. Rather, the Bufkin Law Firm has set itself up as the disciplinary arm of LLR, basing the entire case not upon the terms of the contract, but upon painting us as renegade agents who operated with total disregard of the law. Our reputations paint a different picture entirely.
- (4) Other notable occurrences:
 - a. Through our then attorney, Jeff Brooker, we made a very generous settlement offer **although the terms of the contract did not warrant such a settlement**. The settlement offer was designed and intended to avoid lengthy and costly court proceedings AND to acknowledge and make restitution for our single lapse in judgement; to not place the funds in Asset Realty's escrow account. The Sellers refused our settlement offer. (It is interesting that in depositions, some of the Sellers testified they were never made aware of our settlement offer at all, while another was told our offer was grossly different than we actually offered.)
 - b. Henry Bufkin filed a Civil Action, stating incorrectly that we had "refused" to mediate. Upon further investigation, we found his basis for such a claim was a letter written by CCAR to Mr. Bufkin stating we were "not interested" in mediation. Our attorney at the time, Jeff Brooker, had told us that CCAR was hesitant to hold the mediation due to the complexity of the situation. However, to our knowledge and our attorney's knowledge,

CCAR had not made a final decision in the matter, and we were waiting to be informed of the mediation date. Inexplicably, CCAR's letter to Mr. Bufkin was not copied to either us or our attorney, so we had no opportunity to respond.

- c. When CCAR failed to provide mediation services, the legally prescribed response is to obtain another mediator. However, Mr. Bufkin inappropriately filed a Civil Action. We then had to have a court hearing to send the matter BACK to mediation.
- d. In deposition, we discovered that the purported Seller's agent, Andy Bowers, **did not have an agency agreement** in effect with the Sellers and was to be paid no commission. However, he was repeatedly held forth by himself, the Sellers and by Mr. Bufkin in his Demand letter to be the "sellers agent." (In depositions various Sellers testified that their past dealings with me, when conducted directly with the Sellers, were conducted honorably and with no questions as to my integrity, my position in the dealings, etc. It was only when communications were held through their "agent" that problems arose). **We relied on Mr. Bowers, as the Seller's true legal agent, to exercise the degree of care as is required in a fiduciary relationship according to State Law; however, no such relationship existed.**
- e. Depositions, mediation and a pre-trial review by a judge have all indicated the Sellers and their "agent" had wildly conflicting understandings of the contract, the development process, and other pertinent facts, and in 16 months the Plaintiffs' attorney has not presented a viable case. As a stalling tactic, the Plaintiffs have now filed for an extension.

Below is my response to individual allegations found in the Demand letter:

- (1) Page 1, Paragraph 2. "The Purchasers agreed to deposit \$30,000 in escrow on this contract, to be held in the escrow account of Asset Realty...". This statement is true. We did not deposit the earnest money into the account of Asset Realty. The funds were present and held in another non-approved account, in violation of real estate law. We have never disputed this fact. However, it must be noted that SC real estate law repeatedly refers to "funds belonging to another" with regards to handling of earnest money. In this case, the funds in question did not belong to another, but belonged to Vanessa Patrick, and therefore did not endanger the public in any way. Vanessa Patrick has NEVER failed to properly remit, deposit or otherwise account for "funds belonging to another" in any real estate transaction.
- (2) Page 1, Paragraph 2. "The earnest money was to become non-refundable to the Purchasers at the end of the 120 day due diligence period...". This is NOT true. The contract stated the completion of due diligence activities AND a certain amount of time would trigger the non-refundability of earnest money. The due diligence activities were not completed and the Sellers were notified of the status.
- (3) Page 2, Paragraph 1. "...they were to deposit an additional non-refundable earnest money deposit of \$50,000...". Again, the tests as provided for in the contract were not met, most notably the first one stated - "Should results (of the Development Services meeting) prove satisfactory...". Since the due diligence activities were incomplete, and the Seller's agent was

notified of this status, no additional earnest money funds were due, deposited, or purported to have been deposited. Also, note Mr. Bufkin's first reference to Andy Bowers as the "Sellers agent."

- (4) Page 2, Paragraph 2. "An additional \$30,000 in non-refundable earnest money was deposited in trust with Asset Realty for this extension." Not true. Once again, several tests or contingencies were included in the contract regarding such extension, and not all tests were met. Riverpath Investors requested an extension; however, such extension agreement was not granted nor delivered to Riverpath Investors. In fact, the "missing extension", which only came to light after Mr. Bufkin's demand letter was sent, appears to have executed well after the dates accompanying the signatures on the document, as clearly evidenced in exhibits submitted in depositions regarding this case which indicate at least one Seller (who had purportedly already signed the extension in question) had no knowledge of the execution of such extension up to 10 days after the so-called execution dates. Other exhibits indicate neither Riverpath Investors nor BP Barber Engineering knew an extension had been granted. In fact, Vanessa Patrick had been told by the "Sellers agent" that the Sellers were planning to accept a better offer. **Therefore, no additional earnest money funds were due, deposited, or purported to have been deposited, and we considered the contract officially expired.**
- (5) Page 2, Paragraph 3. "In return for this extension, the Purchasers agreed to a non-refundable penalty of \$75,000.00, making the total funds in escrow \$185,000.00. Several points to consider: (1) in no documentation is the \$75,000.00 defined as "earnest money," yet Mr. Bufkin's complaint alleges the penalty funds were to be considered earnest money. The "Seller's agent" had indicated verbally that the penalty was to be assessed as an increase in Sales Price should the contract fail to close by December 31, 2008. Although Sally Grooms signed the extension in question, for reasons that can be discussed in greater detail if necessary, the Sellers did not sign until a much later date and, in the interim, the Purchasers verbally withdrew the request for extension. These events were extensively covered in depositions, and the "Seller's agent" stated in deposition that this document was not binding since the monies were not deposited and the Sellers never actually granted the extension through Dec. 31, 2008.
- (6) Page 2, Paragraph 4. "She (Vanessa) gave assurances to the Sellers agent that these funds (\$185,000.00) were on deposit in the trust account of her real estate agency. Not true, as we believed the deal to be dead, once again, and that no earnest money funds were due the Sellers. The deposit that was to be made to Hugh Cooper was in the amount of \$30,000 that I told Andy Bowers we could come up with and deposit into his account IF the Sellers agreed to meet with a prospective new investor who may be able to revive the deal, which had been expired since late summer. When Hugh indicated the funds should actually be deposited with Acquire Real Estate, Inc. if the deal was to be revived, I told the Sellers that the funds were to be deposited there. However, Katie Sale Dunn refused to accept the deposit as she had no knowledge of the deal and there was a cloud over the status of the deal. All along I communicated to the "Sellers agent" that we did not have \$185,000 but could put up \$30,000 to get back in the deal, and, if terms were reached with the new investor they could discuss additional earnest money funds with him.

- (7) Page 2, Paragraph 5. "The Pinner Family stands ready and willing to comply with the terms of the Contract, so long as Riverpath Investors, LLC complies with the terms of the Contract and transfers \$185,000.00 to my trust account." Complying with the terms of the Contract, which incidentally was expired, never called for deposit of \$185,000.00 in Bufkin's trust account, and Riverpath was not liable to deposit such funds to continue with the contract.
- (8) Page 2, Paragraph 5. "The failure to comply with the terms of the contract, by the Purchaser, have been extraordinary." Not true. The contract had long since expired. Prior to expiration, all terms and conditions had been met with the exception of the account in which the original earnest money had been kept. Once the contract clearly expired, the "Sellers agent" indicated there would not be an extension, and the due diligence was not completed, those funds contractually reverted back to the Purchaser and were not due the Seller. **Therefore, the location of the funds was immaterial to the Seller as the funds were not due the Seller.** (Also, as mentioned in an earlier paragraph, the funds in questions were not "funds belonging to another," so the location of the funds was not material with regards to endangering the public). Afterward, any and all activities with regards to the Contract were attempts to renew the contract, obtain financing and backing, complete the due diligence, etc. Since no meeting of the minds ever occurred in this regard, the contract remained expired.
- (9) Page 2, Paragraph 5. "Several real estate agents have breached their fiduciary responsibility with regards to gathering the funds and depositing them in trust." As licensees and as Purchasers, we represented ourselves. Numerous documents and conversations reported in deposition confirm that the Plaintiffs were aware that Sally Grooms and Vanessa Patrick were licensees and principals. Under SC law, NO fiduciary responsibilities exist between a Purchaser's agent and a Seller. It is interesting that the plaintiff's attorney would mention the importance of "fiduciary responsibility", as it came to light that the Sellers had no written agreement with their "agent" as prescribed by real estate law.
- (10) Page 2, Paragraph 5. "...it would appear that fraud may have occurred in that Purchasers have signed contract extensions which demanded the deposit of earnest money funds with the knowledge that no such funds were provided." No fraud occurred. The first written extension request was never delivered to the Purchasers, so no monies were provided. The contract had expired so the initial earnest money deposit reverted back to the Purchasers. The final contract extension was verbally withdrawn prior to its execution by the Sellers, as bank financing and other monetary backing was not available, and the "Sellers' agent" agreed to set up a meeting between the Pinner Family and the prospective new investor to "try and get the property sold."
- (11) Page 3, Paragraph 1. "...it is demanded that the \$185,000.00 non-refundable earnest money (including penalty) be transferred to my trust account...". Once again, the contract was expired, attempts to extend it had failed (primarily due to the withdrawal of bank financing due to economic reasons in late 2008) and we were trying to revive the deal under a new investor. It was not possible to revive or extend the contract under the terms of remitting \$185,000.00 to Mr. Bufkin's account. At the time Sally Sale Grooms signed the extension, we believed that one of the original investors was prepared to remit the funds and back the deal; however, she changed her mind due to stock market conditions and the Sellers refused to meet with the new backers – hence the verbal withdrawal of the extension.

(12)Page 3, Paragraph 2. "the conspiracy and fraud of the individual parties." No such conspiracy and fraud occurred. The Purchasers fully intended to develop the property; however, realignment of the Richland County Development Services division and its attendant regulations, changes to DHEC's subdivision regulations, unexpected delays experienced by the engineering firm (all communicated with the Seller), the Seller's statement that they were planning to accept a better offer (resulting in the expiration of the initial contract), the withdrawal of bank and individual backing due to the economic deterioration, and subsequent failures of the parties to come to terms to revive the deal all contributed to the demise of this contract. However, as careful review by the mediator indicated, **the contract was dead and such earnest money sums as claimed in Mr. Bufkin's Demand were not and are not payable to the Sellers.** All facts were communicated to the purported "Sellers agent".

As the facts, in light of the findings of the judiciary system to-date, clearly indicate, Vanessa Patrick and Sally Sale Grooms only committed one technical violation of the regulations. The initial earnest money deposit was not placed in Asset Realty's escrow account. We understand that it was a violation. However, in fairness the following must be considered:

- (1) The earnest money funds were not funds remitted by a member of the public. They were our own funds and we represented ourselves in the transaction. We have never and would never mishandle funds remitted by a client/member of the public.
- (2) The earnest money funds were indeed set aside, although not in the proper account, until the contract had expired. At expiration, the funds were used to pay an engineering bill related to the debts incurred in the attempted development of the property.
- (3) Both of us placed our licenses in inactive status, as a good faith gesture, pending resolution of the issue. We have been without our licenses and therefore our livelihoods for well over one and one-half years due to the legal actions taken by the Sellers to delay resolution of this matter, particularly when it has become clear that they have not established a viable case against us. The damages we have suffered as a result, including legal fees and loss of income, and the development bills in excess of \$100,000 as a result of the development's failure, approach or perhaps exceed \$500,000.00.
- (4) We have made several generous settlement offers with the Sellers, all of which have been refused, in acknowledgement of the single violation, **even though the funds were not and are not contractually due the Sellers.**

In conclusion, our lives and livelihoods have been severely compromised since Fall 2008. Our nation's economic crisis directly led to our project's financing to be withdrawn, by public and private entities. Not only our time but personal resources totaling more than \$100,000 have been lost or are owed. We have amassed significant legal bills defending ourselves in a case that was clearly a simple earnest money dispute that should have been settled within a few months' time in mediation, turned into a circus by an attorney who has promulgated cases in the past which have had little basis in law (see Administrative Court ruling, Docket 96-AIJ-07-0439-CC). We have, most importantly, lost our ability to continue to practice in our chosen profession, in which we had earned excellent reputations. Not only have we lost nearly two years of income, the resultant damage in terms of loss of name recognition in

the marketplace is immeasurable. In light of the significant damages we have already suffered by our inability to practice real estate, and the preponderance of facts indicating Mr. Bufkin's allegations are grossly untrue, we request that Vanessa K. Patrick and Sally Sale Grooms be allowed to reinstate their real estate licenses as soon as possible. We will be glad to make available the documentation presented as a result of judicial system proceedings which clearly exonerate us of all violations except the single one to which we have admitted. Clearly, when considering we were representing ourselves and NOT the public and dealing with our own money and not money remitted by the public, comparing this single violation to similar and/or more reprehensible violations (and those attendant penalties handed down by LLR), we have already undergone punishment greatly exceeding any fines or probationary periods typically enacted, and request that we be immediately reinstated in good standing. We would not object to a Consent Order with reinstatement with a probationary period, as we have no problems complying faithfully with all other matters of real estate law in the past or future.



Mark Sanford
Governor
Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
(803) 896-4300
FAX: (803) 896-4393
www.llr.state.sc.us

September 16, 2010

Ms. Vanessa Patrick
1187 Kiblers Bridge Road
Prosperity, SC 29127

Dear Ms. Patrick:

This letter is being sent to you in response to correspondence dated September 9, 2010, regarding the reinstatement of your real estate license by the South Carolina Real Estate Commission.

An investigation was initiated on February 11, 2009 regarding allegations surrounding a purchase of land and earnest money that was not deposited according to contract terms. It is the policy of this agency to not pursue a complaint when the licensee places their license on inactive status. Because your license was placed on inactive status on December 4, 2008, the file was closed and your license flagged with a notation of "Do not renew pending unresolved disciplinary action."

Your case has been reopened and the legal department is presently planning on placing your case on the November docket of the South Carolina Real Estate Commission meeting. Your attorney will be given proper notice as to the time and hearing date as it becomes available.

Sincerely,

Adrienne Riggins Youmans

ARY:pf

South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services
Office of General Counsel

Mark Sanford
Governor

Adrienne Riggins Youmans
Director



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October 13, 2010

CONFIDENTIAL

Thomas E. Lydon, Esq.
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

RE: In the matter of Vanessa K. Patrick
License #: REL. 22479

Dear Mr. Lydon:

I will be prosecuting this case on the State's behalf. Please find enclosed a Notice of Charges and Notice of Hearing for your client.

Please feel free to contact me at (803) 896-4849 if you have any questions.

Sincerely,


Paula S. Magargle
Assistant General Counsel

PSM/jec

Encl.

cc: Vanessa K. Patrick
108 Wateree Creek Road
Irmo, SC 29063

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE REAL ESTATE COMMISSION**

IN THE MATTER OF:

**VANESSA PATRICK
License Number 22479**

OIE # 2009-27

Respondent.

**NOTICE OF CHARGES AND NOTICE
OF HEARING**

I.

That Respondent license is presently lapsed by the South Carolina Real Estate Commission, hereinafter referred to as the Commission, but at all times relevant to this matter Respondent was duly licensed by the Commission.

II.

That the Commission has jurisdiction over Respondent and the subject matter of this action.

III.

That Respondent has violated S.C. Code Ann. §§ 40-1-110(c), (f), (g) and (k); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10) and (20) (1976, as amended) in that:

1. On or about March 8, 2008, Respondent and another co-worker from Asset Realty, S. S. G., entered in a contract to purchase property located in Little Mountain, S.C. The contract was to purchase approximately two hundred and eighty-eight point sixty-two (288.62) acres for five million, three hundred and ninety six thousand dollars (\$5,396,000.00). The sellers of this property were the P family, individuals known to Respondent.
2. Although this contract was completed on a contract form traditionally used by Asset Realty, Respondent never informed her broker in charge or the manager of the office that she was negotiating this contract or that she had entered into this contract. Further, Respondent's broker-in-charge nor the office manager consented to this transaction being handled by Respondent, especially the way it was being handled by Respondent.

3. The contract called for an initial earnest money deposit of thirty thousand dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset's escrow account. However, Respondent presented copies of two checks totaling the thirty thousand dollars (\$30,000.00) made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
4. Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times which lead to more money being placed into the trust account based on the contract. All total, by approximately December of 2008, there was suppose to be approximately one hundred eighty-five thousand dollars (\$185,000.00) being held in the trust account. However, there were no funds located in the trust account. When asked to produce the trust money, Respondent was unable to do so due to the fact that Respondent had not been placing any money into the escrow account.
5. The contract was terminated and Respondent was unable to produce any money in regards to this transaction despite constant reassurance on her part that the money was in the trust account. Throughout the entire process, Respondent led the sellers to believe that the money was located in a trust account, including indicating that the money had been transferred to Acquire Real Estate, when Respondent transferred her license to this agency. Again, Respondent never informed her new broker in charge that she had this contract pending nor did she place any money into their trust account.

IV.

YOU ARE HEREBY NOTIFIED that the Real Estate Commission will conduct a hearing on **November 16, 2010, at 10:00a.m.**, in the Kingstree Building, 110 Centerview Drive, **Room 105**, Columbia, South Carolina, to hear the charges against you as stated above. The hearing is held pursuant to the authority of S.C. Code Ann. §§ 40-57-170; 40-57-180; and 40-57-200.

FURTHER, you are notified that you may appear, present evidence on your behalf, and confront and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*

FURTHER, you are advised that if the Commission finds that you are in violation of the statutes or regulations of the Commission, your license to practice Real Estate in South Carolina may be suspended or revoked in accordance with Commission Statute § 40-57-150 or the Commission may take such other disciplinary action as is warranted.

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION
STATE REAL ESTATE COMMISSION**

Columbia, South Carolina
10/13, 2010.



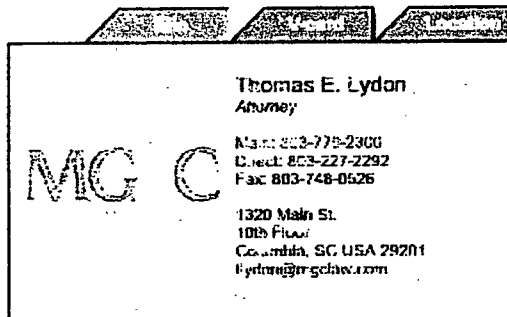
PAULA S. MAGARGLE
Assistant General Counsel
Department of Labor, Licensing & Regulation
PO Box 11329
Columbia, SC 29211-1329
(803) 896-4849

Windows Live Hotmail Print Message

Page 1 of 1

FW: Vanessa Patrick

From: **Tommy Lydon** (tlydon@mgclaw.com)
 Sent: Tue 10/26/10 8:34 AM
 To: **vanessapattick1@hotmail.com**
 1 attachment
 Patrick, V..pdf (278.1 KB)



10/26
 NOTE: Called Tommy to inquire
 about word "punish." He said that
 was what Paula said.
 WP

From: Paula Magargle [mailto:magarglep@LLR.SC.GOV]
 Sent: Monday, October 25, 2010 4:00 PM
 To: Jamie Saxon; Tommy Lydon; Jamie Saxon
 Subject: RE: Vanessa Patrick

Dear Mr. Saxon:

I apologize for the late response on the part of the State but I was out of the office most of last week. I will state up front that the State will leave this decision up to the Chairman. However, I have attached two letters regarding this case for consideration. One letter is from the Respondent to Adrienne Youmans (Director of LLR) and the other is her Youmans' response. I attach these letters simply to say that it appears that Ms. Patrick is not happy with the fact that her case has not been before the Commission for resolution, and this all has been done (as far as I am aware) without the knowledge of her attorney. Therefore, I believe that the State would be remiss in not letting you know what has occurred, albeit outside the knowledge of her attorney. I would ask that only the substance of these letters be discussed with the Chairman but felt that both you and Mr. Lydon needed to be aware of what has been sent to this office by Ms. Patrick. Thanks.

rodi magargle

From: Jamie Saxon [mailto:saxonj@scdllr.com]
Sent: Friday, October 22, 2010 1:45 PM
To: Tommy Lydon; Jamie Saxon
Cc: Paula Magargle
Subject: RE: Vanessa Patrick

Via this e-mail, I'm inviting the State to respond to the continuance request. Once I've received it, I'll contact the Commission's chairperson and get a decision as quickly as possible.

Thanks,

Jamie Saxon

From: Tommy Lydon [mailto:tydon@mgclaw.com]
Sent: Thursday, October 21, 2010 3:44 PM
To: saxonj@llr.sc.gov
Cc: magarglep@llr.sc.gov
Subject: Vanessa Patrick

Please see attached letter requesting that the hearing in this matter be rescheduled.



ATTORNEYS AT LAW

REPLY TO

THOMAS E. LYDON

DIRECT DIAL 803-227-2292

tlydon@mgclaw.com

COLUMBIA

January 20, 2011

Via Electronic Mail and U.S. Mail
 Paula S. Magargle, Esquire
 South Carolina Department of LLR
 Post Office Box 11329
 Columbia, SC 29211

Re: *Vanessa K. Patrick*
 License #:REL 22479

Dear Paula:

This letter is to follow-up on our telephone conversations regarding this matter. As we discussed, the civil lawsuit filed by the Pinners has been settled. A copy of the Settlement Agreement and Mutual Release is enclosed. As you can see, Ms. Patrick contributed only \$6,000.00 to the settlement. She felt very strongly that she could successfully defend the claims asserted against her at trial. However, the amount that she was asked to contribute was significantly less than the attorney's fees and expenses that she would have incurred in going to trial. Therefore, she felt like she had no choice other than to settle.

Now that the civil action has been resolved, we would like to explore the possibility of reaching an agreement with respect to the LLR proceedings. In order for us to evaluate whether this is possible, I thought it would be helpful for me to set forth our position on the allegations stated in the Notice of Charges.

The allegation concerning the property and the price is generally correct. However, the contract was not finalized until later on in March of 2008.

With regard to the second allegation, the contract form used was a LAND, LOTS AND ACREAGE CONTRACT OF SALE. The language on the top of the first page reads as follows: (Standard Form of The Greater Columbia Association of REALTORS. Rev. 01/02.) This form is available for use by the entire real estate industry. The form itself states that use of the form is universal and is not intended to identify the user. The Asset Realty label was merely a sticker affixed to a contract form and photocopied for convenience of use.

I am not aware of any statute or regulation that requires a licensee to notify his broker of intent to purchase a For Sale By Owner property (not listed in MLS and not offered for sale through a real estate brokerage) on his own behalf. To my knowledge, a licensee's BIC or office manager does not have to consent to or otherwise approve such a transaction. It is my

CHARLESTON | COLUMBIA | GREENVILLE | CHARLOTTE | RALEIGH | MYRTLE BEACH
 1320 MAIN STREET, 10TH FLOOR □ POST OFFICE BOX 12519 □ COLUMBIA, SC 29211 □ 803-779-2300 PHONE □ 803-748-0526 FAX
WWW.MGCLAW.COM

Paula S. Magargle, Esquire
January 20, 2011
Page 2

understanding that it is not unusual for licensees to buy or sell properties on their own behalf without the knowledge or consent of their BIC.

Regarding the initial earnest money deposit, it is true that the contract called for the initial deposit to be placed in Asset's escrow account. However, it is not correct that the check copies were presented "to give the appearance that the money had been placed into the appropriate trust account." First, at the time the offer was made, the parties expected that the funds would be deposited in Asset's escrow account, but South Carolina law does not require the checks to be actually deposited into an escrow account until after the offer is ratified and becomes a contract.

During the period of time between offer and contract, the maker and other members of the partnership decided not to deposit the funds into Asset Realty's escrow account for several reasons. First, the purchasers were purchasing the property on their behalf and the property was not listed in MLS. Therefore, they did not have to run the sale through Asset Realty. Second, the purchasers' research of the applicable law indicated that funds "belonging to others" are required to be placed into escrow. These funds did not "belong to others." Finally, as the funds were earmarked from an earning asset, and there would be significant period of time between contract and closing, it did not make economic sense to put the funds in a non-interest bearing account.

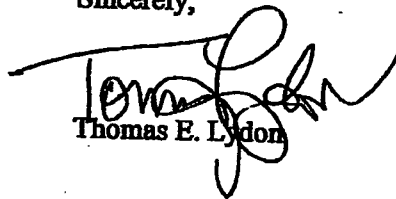
With regard to the continued negotiations, the parties did not continue negotiations for several months following the initial signing of the contract. The contract stood on its own until problems started occurring with due diligence and it became apparent that a contract extension would be necessary. The contract was not extended several times. To the contrary, the purchasers believed in September of 2008 that the contract had expired and that the property was no longer under contract. Thereafter, the purchasers learned that the sellers were still willing to honor the terms of the contract, so communications between the purchasers and the sellers' agent resumed. However, the purchasers were not able to come up with the additional earnest money required by the sellers, so the contract was not extended through December 31, 2008, as had been requested by the purchasers. Finally, at the time Respondent transferred her license to Acquire Real Estate, the contract had expired and no trust funds existed.

In summary, the failure to deposit the initial earnest money into the Asset Realty escrow account was poor judgment, since the contract called for the funds to be held at Asset and the photocopies of the first earnest money checks indicated they were payable to Asset. The sellers should have been notified the funds were not to be held at Asset and the contract amended to reflect the change.

Paula S. Magargle, Esquire
January 20, 2011
Page 3

Once you have had an opportunity to review this information, please let me know if you have any questions or need anything else. As we have discussed, we are very interested in trying to resolve this matter.

Sincerely,

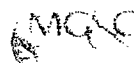
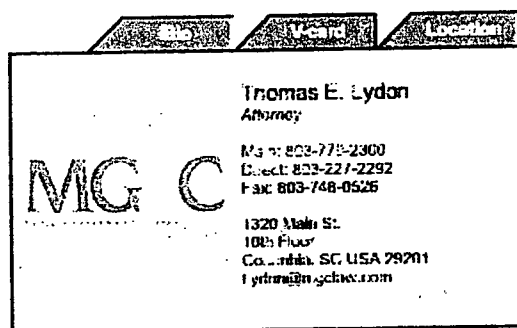


Thomas E. Lydon

FW: Memorandum of Agreement

From: **Tommy Lydon** (tlydon@mgclaw.com)
Sent: **Wed 2/02/11 6:08 PM**
To: **Vanessa Patrick** (vanessapattick1@hotmail.com)
1 attachment
Patrick.MOA.doc (40.5 KB)

Just received this from Paula Magargle. I have not reviewed it yet, but I will take a look at it tonight. Paula said that she has not had a chance to proofread it, so it probably has typos.



Please consider the environment
before printing this e-mail

From: Paula Magargle [mailto:magarglep@scdllr.com]
Sent: Wednesday, February 02, 2011 5:39 PM
To: Tommy Lydon
Cc: Jennifer Cooper
Subject: Memorandum of Agreement

Tommy:

Attached please find the MOA which we discussed on the phone. If you have any further questions please do not hesitate to contact me. Thanks.

Paula S. Magargle

Assistant General Counsel

110 Centerview Drive

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

IN THE MATTER OF:

**VANESSA PATRICK
License Number 22479**

OIE # 2009-27

Respondent.

**MEMORANDUM OF AGREEMENT
AND STIPULATIONS**

WHEREAS, the South Carolina Real Estate Commission (hereinafter "the Commission") has received an initial complaint with respect to Vanessa Patrick, Respondent; and

WHEREAS, a Notice of Charges and Notice of Hearing has been served and filed alleging that Respondent has violated S.C. Code Ann. §§ 40-1-110(c), (f), (g), and (k); 40-57-135(B)(8), (C)(2), and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10), and (20). A copy of the Notice of Charges and Notice of Hearing is attached hereto and incorporated herein as **Exhibit 1**. A copy of a letter from Henry Bufkin, seller's attorney, dated November 24, 2008, is attached hereto and incorporated herein as **Exhibit 2**. A copy of a statement from Respondent is attached hereto and incorporated herein as **Exhibit 3**. A copy of the work log from Asset Realty is attached hereto and incorporated herein as **Exhibit 4**. A copy of the real estate contract with Asset Realty letterhead is attached hereto and incorporated herein as **Exhibit 5**. A copy of the checks made out to Asset Realty for earnest money is attached hereto and incorporated herein as **Exhibit 6**. A copy of a letter from Reggie Murphy of Asset Realty to Investigator Sowell is attached hereto and incorporated herein as **Exhibit 7**. A copy of an e-mail from Jeff Bond of Asset Realty, dated December 14, 2008, to the seller's attorney Henry Bufkin is attached hereto and incorporated herein as **Exhibit 8**. A copy of the deposition of Respondent dated December 11, 2009, is attached hereto and incorporated herein as **Exhibit 9**.

WHEREAS, Respondent, admitting to the above stated violations of the South Carolina Code Ann., has advised that she wishes to waive formal hearing procedures and dispose of this matter pursuant to Section 1-23-320(f), in lieu of, *inter alia*, a hearing before a hearing officer or panel appointed by the Commission; and

WHEREAS, Respondent will participate in a Final Order Hearing pursuant to Section 40-1-10 *et seq.* at such time as the Commission shall require for the purpose of determining an appropriate sanction.

NOW THEREFORE RESPONDENT STIPULATES AND ADMITS to the following facts, along with the exhibits and other material referenced herein, to be considered by the Commission in determining an appropriate sanction in connection with the disciplinary matter pending against Respondent:

1. Respondent license is currently inactive.
2. On or about March 8, 2008, Respondent and another co-worker from Asset Realty, S. S. G., entered in a contract to purchase property located in Little Mountain, S.C. The contract was to purchase approximately two hundred and eighty-eight point sixty-two (288.62) acres for five million, three hundred and ninety six thousand dollars (\$5,396,000.00). The sellers of this property were the P family, individuals known to Respondent.
3. Although this contract was completed on a contract form traditionally used by Asset Realty, Respondent never informed her broker in charge or the manager of the office that she was negotiating this contract or that she had entered into this contract. Further, Respondent's broker-in-charge nor the office manager consented to this transaction being handled by Respondent, especially the way it was being handled by Respondent.
4. The contract called for an initial earnest money deposit of thirty thousand dollars (\$30,000.00) to be placed in the escrow account at Asset Realty. This money was never placed in Asset's escrow account. However, Respondent presented copies of two checks totaling the thirty thousand dollars (\$30,000.00) made out to Asset Realty, to give the appearance that the money had been placed into the appropriate trust account.
5. Respondent and the agent for the P family continued negotiations regarding the contract for several months following the initial signing of the contract. The contract was extended numerous times which lead to more money being placed into the trust account based on the contract. All total, by approximately December of 2008, there was suppose to be approximately one hundred eighty-five thousand dollars (\$185,000.00) being held in the trust account. However, there were no funds located in the trust account. When asked to produce the trust money, Respondent was unable to do so due to the fact that Respondent had not been placing any money into the escrow account.
6. The contract was terminated and Respondent was unable to produce any money in regards to this transaction despite constant reassurance on her part that the money was in the trust account. Throughout the entire process, Respondent led the sellers to believe that the money was located in a trust account, including indicating that the money had been transferred to Acquire Real Estate, when Respondent transferred her license to this agency. Again, Respondent never informed her new broker in charge that she had this contract pending nor did she place any money into their trust account.

RESPONDENT ADMITS that the aforementioned acts of Respondent present grounds that constitute misconduct, as alleged.

RESPONDENT AGREES that at the Final Order Hearing, Respondent shall appear and, under oath, answer questions, if any, by members of the Commission or its counsel, and be subject to cross-examination regarding this matter and Respondent's practice. Respondent's answers may be considered by the Commission in rendering its decision. Respondent may

present mitigating testimony and other evidence to the Commission regarding an appropriate sanction in this matter.

IN WITNESS WHEREOF, the parties hereto, having agreed to the matters related above, have executed this Memorandum of Agreement and Stipulations, to be effective the latter date appearing below.

AND IT IS SO AGREED.

_____, 2011

VANESSA PATRICK
RESPONDENT

_____, 2011

THOMAS E. LYDON
Attorney for Respondent

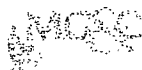
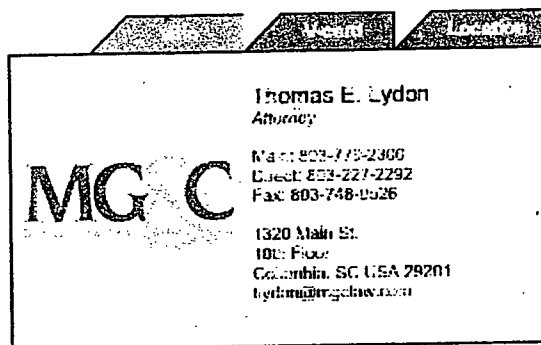
_____, 2011

PAULA S. MAGARGLE
Assistant General Counsel
S.C. Department of Labor, Licensing & Regulation
P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4849

Windows Live Hotmail Print Message

Exhibits from LLR are attached

From: **Tommy Lydon** (tlydon@mgclaw.com)
Sent: Tue 2/08/11 10:20 AM
To: **Vanessa Patrick** (vanessapattick1@hotmail.com)
1 attachment
Patrick exh 2, 7, 8.pdf (2.2 MB)



Please consider the environment
before printing this email.

EXHIBIT

18

Promissory Note

From: **Vanessa Patrick** (vanessapattick1@hotmail.com)

Sent: Thu 9/18/08 11:14 AM

To: diane.creel@ecolab.com

Attachments:

[Promissory Note - Draft \(9/18/08\)](#)

Diane, attached is a draft of the note. The way I propose for this to work is for us to execute this note and then convert it to units of the LLC once the property is purchased. That way the bank considers it part of the down payment. Pro forma financials indicate you should come close to doubling your money on this.

Also, we are still looking for some guarantors on the purchase note. In exchange for a limited guaranty we are proposing a 50% rate of units in the partnership to the amount of the guaranty. For example, if you sign the note and a limited guaranty for \$2 million, you would receive the equivalent of a \$1 million cash investment in the LLC. Therefore, just for signing the guaranty and possibly assisting with interest payments for a few months, you would receive the return as if you had invested \$1 million cash, i.e. a \$1 million payout. (Based on current pro forma).

As far as security goes, I cannot use the land to secure it until we acquire it. However, if you are uncomfortable with a promissory note, I could personally give you a lien on my mountain property (I have \$300K equity) and/or a commercial tract I own (\$125K equity - no other liens). I want you to be comfortable, but we need this money NOW to catch up the engineers and proceed.

The LLC agreement and investor docs which would replace this note should be ready in draft form by the end of the week.

Are you still in town? What is the time frame I can hopefully get the money so I can let the engineering firm know.

Thanks, Vanessa (803)360-0489

①
NOTES FROM BROOKER MTE TO SET UP LLC

5.4

2.2

7.4

AK

Tommy will have to waive his mechanic's lien for lot releases.

Question: does Tommy expect a preferred return after the bank is paid? Diane?

Question: what is equity position for those who provide a limited guaranty? Needs to be expressed in a percentage of the value of the guaranty. Perhaps start w/ 25% cents on dollar

Question: will contributors/guarantors be passive investors or management partners?

Attorneys suggest a "manager-managed LLC" (Sally, Nancy and VP) where we three make the decisions on behalf of the entity. With this comes personal responsibility. Each manager/partner will have one equal vote, with a majority needed for each decision. No single partner ~~has~~ has veto.

River Property

From: Diane Creel (dcreel@ecovation.com)

Sent: Sun 4/27/08 1:03 PM

To: vanessapattick1@hotmail.com

Vanessa, I talked to Kelly on Friday and we are in for \$300,000 for a start. This should give you some cash to work with. So, let me know when you have the contracts ready to go.

Hope all is well.

VANESSA KEENE PATRICK, BROKER
ASSET REALTY, INC.
146-B LEISURE LANE
COLUMBIA, SC 29210

Kelly Caves
Merrill Lynch
111 West Ocean Boulevard
Long Beach, CA 90802

March 18, 2008

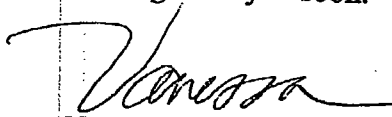
Kelly:

In response to our telephone conversation last week, I have prepared the enclosed package on the RiverPath project. I am also forwarding a copy to Diane Creel. My narrative will give you an idea of the project concept, local market, development plan, comparable sales, and more. Should you require more details on any given aspect, please do not hesitate to contact me.

You indicated that the willingness of a local bank to finance such a venture was of primary interest to you. I contacted Brent Mackie, a senior commercial lender at South Carolina Bank & Trust. Brent knows me and my projects, and is familiar with the property. With a strong guarantor such as Diane, SCB&T would be pleased to finance this project. Subject to rate changes, of course, Brent offered Prime floating or 6.5% fixed for up to 3 years with assuming 80-85% LTV. The 15-20% equity position can be achieved by cash or a combination of cash, CD's on deposit with SCB&T, and equity present at closing per appraisal.

Brent will be happy to prepare a loan commitment letter should Diane and/or the investment group decide to pursue this purchase and development opportunity. He is excited about the prospects of RiverPath, and would very much like to be involved in the financing.

Thank you in advance for considering this venture on behalf of Diane. I look forward to hearing from you soon.



Vanessa Keene Patrick
(803)360-0489
vanessapattick1@hotmail.com

Re: River Tract

From: Diane Creel (dcreel@ecovation.com)
Sent: Fri 3/07/08 3:42 PM
To: vanessapatrack1@hotmail.com

Forgot to tell you, she is in CA, PST

----- Original Message -----

From: Diane Creel
To: 'vanessapatrack1@hotmail.com' <vanessapatrack1@hotmail.com>
Sent: Fri Mar 07 15:41:18 2008
Subject: Re: River Tract

Vanessa, Kelly Caves at Merrill Lynch is my financial advisor. She will be in the office next week and her number is 562-491-1504.

----- Original Message -----

From: Vanessa Patrick <vanessapatrack1@hotmail.com>
To: Diane Creel
Sent: Fri Mar 07 13:43:26 2008
Subject: RE: River Tract

When the monsoon quits, I'll get over to look at the condo.

Go ahead and put me in contact with your advisors. I need to know what they are looking for so I can put it together. I need to firm up pretty quickly how much they want to allocate to this project. I have roughed out a development workplan, if that would help.

Here's what I need from you before you take off again...we have 2 options here: (1) get the purchase price and development money all in cash. Unless you part with more, at this moment that will mean bringing more partners on board. (2) you and the developer put up a chunk of cash and borrow the remainder. Easily done with a big cash investment. Number one reduces interest carry and dilutes risk, but also dilutes earnings and sometimes puts too many cooks in the kitchen, decision-wise. Number 2 adds to interest carry and risk but simplifies process and keeps your profits close at hand. How do you lean? I need direction so I can call in more money folks if needed.

On another note, do you and Jerri (did I spell it right?) ride horses?

Vanessa

Subject: Re: River Tract
Date: Thu, 6 Mar 2008 06:55:36 -0500
From: dcreel@ecovation.com
To: vanessapatrack1@hotmail.com

She does have the keys, it is unit 13A.

----- Original Message -----

From: Vanessa Patrick <vanessapatrack1@hotmail.com>
To: Diane Creel
Sent: Wed Mar 05 23:49:00 2008
Subject: RE: River Tract

Does Miss Phyllis have a key to your condo? If so, I can get over to look at it ASAP. Regarding the river property, I am meeting with Tommy tomorrow (Thursday) at 1:00 and hope to have more information for you/your advisors then. Vanessa

Subject: Re: River Tract
Date: Wed, 5 Mar 2008 19:59:37 -0500
From: dcreel@ecovation.com
To: vanessapattick1@hotmail.com

Hi Vanessa. I am back and ready to go again. I leave for Australia Saturday on business.. Let me know when you are ready to talk to my financial advisors.

I am ready to list the condo now. So let me know if you are still interested.

----- Original Message -----
From: Vanessa Patrick <vanessapattick1@hotmail.com>
To: Diane Creel
Sent: Thu Feb 28 09:22:37 2008
Subject: RE: River Tract

I have secured another partner who is an experienced developer - he has done many developments for large national builders as well as local builders. By developer, I mean ground-up...permits, installing roads, utilities, etc. He has gone to Charleston to check on some things there and to start determining exactly what he can put up. I am meeting with him next week and will let you know the outcome.

He has developed all over the state and says this is the best tract he's ever seen.

Later, hope vacation is doing the trick. Vanessa

Re: River Tract

From: Diane Creel (dcreel@ecovation.com)
Sent: Sun 2/24/08 3:15 PM
To: vanessapattick1@hotmail.com

will talk to my advisors tomorrow. I know they will have a lot of questions on permits, process and partners before we make a decision. I don't think this is something you can expect a quick turn around on. I understand our sense of urgency but we can't move this fast on significant investments. Because I am retiring next year, I need investments that meet my retirement portfolio needs.

will be in country most of the day tomorrow and will talk to them.

----- Original Message -----
From: Vanessa Patrick <vanessapattick1@hotmail.com>
To: Diane Creel
Sent: Sat Feb 23 18:17:03 2008
Subject: RE: River Tract

How much do you want to invest in the river? I need to know how much on the purchase and how much, if any, on the development. The more on the purchase, the quicker I can put together the deal and tie it up. Please advise ASAP so I can get something together this week.

Will you be available via email or cell while in Turks and Caicos? When do you return? Otherwise, give me the above figures and if I get things put together I'll go ahead with at least enough to secure the property subject to due diligence, and we can work out the remaining details later. Did you have a chance to review the contract addendum? If you are OK with that, I could proceed in your absence if necessary.

Thanks

/anessa

Subject: Re: River Tract
Date: Sat, 23 Feb 2008 11:51:52 -0500
From: dcreel@ecovation.com
To: vanessapattick1@hotmail.com

Vanessa, I have talked to my financial advisors and since I just sold the company, they are in the process of designating how the portfolio should be invested. At this point they are unprepared to designate \$5+M to this transaction. Having said that, if you can get a group together they would be prepared to think about a lesser investment.

Sorry about the delay in getting back to you, I have had the travel week from hell in the Northeast and Midwest. I will be leaving Monday for the Turks and Caicos for a little rest - much overdue.

On another long subject, I bought a condo in [REDACTED] before Dad died. It is just now finished and closed. In the meantime, I bought a condo across the street from Mom, which is much more convenient. My intent is to put [REDACTED] on the market. It is Unit [REDACTED]. I have not at all been impressed with Russell's effort out there and was wondering if you would list it or if you would recommend someone if this is not something you do.

Let me know about the condo and let me know if you have a group together on the river property.

Thanks,

Diane

----- Original Message -----

From: Vanessa Patrick <vanessapattick1@hotmail.com>
To: Diane Creel
Sent: Sat Feb 23 11:00:34 2008
Subject: River Tract

Hope you have a chance to look it over this weekend - this seems to have caught you in a busy time - but sometimes that is when great opportunities slap us in the face. I have done very well with my real estate investments. I prefer them over the alternatives, since they are secured and it would take an act of God to make me lose my principal! At this price you are walking in with a great deal of instant equity just in the raw land...and a unique waterfront tract, at that.

Later, Vanessa

Re: River Property

From: Diane Creel (dcreel@ecovation.com)
Sent: Sun 2/17/08 10:38 PM
To: vanessapatrack1@hotmail.com

Hi Vanessa. I am traveling with my blackberry but will be back at my computer on Tuesday afternoon to look at the photos.. Do you currently have any other participants for this tract?

Most of my real estate investments have been in LLP's with a group. So, I am not very smart about the financial development of the property and infrastructure, etc.

I will talk to my financial advisors on Tuesday as well.

Talk to you soon.

----- Original Message -----

From: Vanessa Patrick <vanessapatrack1@hotmail.com>
To: Diane Creel
Sent: Sun Feb 17 18:51:02 2008
Subject: River Property

Diane, thanks so much for your interest in the Broad River tract. Attached are a few photos to give you an idea of the beauty of this tract. I will overnight you a more detailed package tomorrow.

VANESSA KEENE PATRICK, BROKER
ASSET REALTY, INC.
146-B LEISURE LANE
COLUMBIA, SC 29210

Diane Creel
Ecovation
Eastgate Square, Suite 200
50 Square Drive
Victor, NY 14564

February 18, 2008

Dear Diane:

Enclosed for your review is more information on the Broad River tract. I have included a preliminary pro forma for you and your financial advisor. Sales prices for each type of lot are quite conservative in that they were based on a wealth of comparable sales in the immediate area in neighborhoods with weaker amenity packages or no amenities at all. Cost figures are based upon my best estimate (lacking a development layout at this point) using typical gross-to-net acreage, current road construction costs, etc.

One salient point is this: due to the favorable shape of the land relative to the existing paved road frontage, **revenues generated by development and sale of the first phase only should cover or nearly cover the Purchase Price and Development Costs of the entire tract.** Therefore, the developer's interest carry (or similar financial consideration) and associated exposure is greatly minimized.

Low density developments, such as the one I propose, are in great demand and sales have remained quite strong during the recent year and so far in 2008, whereas high-density lot sales are lagging. Other benefits to you, the developer, are as follows: (1) the county and DHEC approval process for low-density developments is greatly streamlined, particularly since rezoning is avoided; (2) private wells and septic systems, permissible only to low-density developments and with costs borne by the homeowner, may be utilized. In high-density developments, public water and sewer lines must be installed by the developer at an extremely high cost and consuming many extra months of approvals and installation times, all while the interest clock is ticking; (3) similar developments in other nearby cities have an excellent track record – this will be Columbia's flagship venture and will fill a great void in the marketplace.

You asked if there were other potential participants. Yes – I can connect you with a diverse pool of partners. One investor-client manages a pool of pension funds and routinely invests in "no-brainer" projects. Another group is the senior partners of a large SC/NC law firm. Others are realtor/investors. These parties would possibly provide funding and thus dilute your personal risk (but also the reward). Another party (parents

and son) already ready and willing to commit to this specific project is a strong, experienced local development group with a stellar track record. They could participate in two ways: a limited monetary contribution and/or an extensive development, infrastructure and marketing contribution. This group, in fact, would normally have taken on this project alone, but are midway along in two large projects and recently made another large land purchase in coastal South Carolina.

I have enclosed for your review a partially completed Contract of Sale and Addendum. If you wish to proceed, I urge you to take action to tie up this tract, pending due diligence, so this opportunity will not pass us by.

I look forward to hearing from you.



Vanessa Keene Patrick
(803)360-0489 cell
vanessapattick1@hotmail.com

Diane C. Creel

Director

Goodrich Corporation

Charlotte, NC

Sector: INDUSTRIAL GOODS / Aerospace/Defense Products & Services

Director

Allegheny Technologies, Inc.

Pittsburgh, PA

Sector: BASIC MATERIALS / Industrial Metals & Minerals

Director

Enpro Industries, Inc.

Charlotte, NC

Sector: INDUSTRIAL GOODS / Industrial Equipment & Components

62 Years Old

Retired Chairman, Chief Executive Officer and President, Ecovation, Inc., a wastewater management systems company that was acquired by Ecolab in February 2008. Ms. Creel holds a Bachelor of Arts degree and a Master of Arts degree from the University of South Carolina. Ms. Creel was Chairman, Chief Executive Officer and President of Ecovation, Inc. from May 2003 to September 2008. Prior to joining Ecovation, Ms. Creel served as Chief Executive Officer and President of Earth Tech from January 1993 to May 2003, Chief Operating Officer from 1987 to 1993 and Vice President from 1984 to 1987. Ms. Creel was director of business development and communications for CH2M Hill from 1978 to 1984, manager of communications for Caudill Rowlett Scot. (Houston, Texas) from 1976 to 1978, and director of public relations for LBC&W, Architects-Engineers-Planners, Columbia, South Carolina from 1971 to 1976. Ms. Creel currently serves on the Board of Directors of Allegheny Technologies and EnPro Industries, Inc.

Forbes Ranking

Goodrich - 806th on the Forbes Global 2000 in 2010
Allegheny Technologies - 1,474th on the Forbes Global 2000 in 2009
Goodrich - 913rd on the Forbes Global 2000 in 2009
Goodrich - Forbes 400 Best Big Companies in 2009
Allegheny Technologies - Forbes 400 Best Big Companies in 2008

Director Compensation (Goodrich Corporation)

Fees earned or paid in cash	\$93,000.00
Stock awards	\$90,000.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$91.00
All other compensation	\$43,466.00
Total Compensation	\$226,557.00

Director Compensation (Foster Wheeler AG)

Fees earned or paid in cash	\$60,879.00
Stock awards	\$26,598.00
Option awards (in \$)	\$24,557.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$112,034.00

Director Compensation (Foster Wheeler AG)

Fees earned or paid in cash	\$87,288.00
Stock awards	\$46,461.00
Option awards (in \$)	\$37,230.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$170,979.00

Director Compensation (Foster Wheeler AG)

Fees earned or paid in cash	\$63,270.00
Stock awards	\$44,464.00
Option awards (in \$)	\$21,274.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$129,008.00

Director Compensation (Goodrich Corporation)

Fees earned or paid in cash	\$81,000.00
Stock awards	\$531,632.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$115.00
All other compensation	\$7,326.00
Total Compensation	\$443,191.00

Director Compensation (Goodrich Corporation)

Fees earned or paid in cash	\$76,000.00
Stock awards	\$538,576.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$400.00

Fees earned or paid in cash	\$85,750.00
Stock awards	\$16,250.00
Option awards (in \$)	\$25,500.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$127,500.00

Director Compensation (Enpro Industries, Inc.)

Fees earned or paid in cash	\$13,247.00
Stock awards	\$0.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$13,247.00

All other compensation	\$6,160.00
Total Compensation	\$621,136.00

Director Compensation (Goodrich Corporation)

Fees earned or paid in cash	\$72,500.00
Stock awards	\$141,341.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$338.00
All other compensation	\$0.00
Total Compensation	\$214,179.00

Director Compensation (Goodrich Corporation)

Fees earned or paid in cash	\$71,000.00
Stock awards	\$60,000.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$131,000.00

Director Compensation (Allegheny Technologies, Inc.)

Fees earned or paid in cash	\$123,500.00
Stock awards	\$45,160.00
Option awards (in \$)	\$0.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$168,660.00

Director Compensation (Allegheny Technologies, Inc.)

Fees earned or paid in cash	\$116,000.00
Stock awards	\$16,675.00
Option awards (in \$)	\$10,320.00
Non-equity incentive plan compensation	\$0.00
Change in pension value and nondisqualified compensation earnings	\$0.00
All other compensation	\$0.00
Total Compensation	\$142,995.00

Director Compensation (Allegheny Technologies, Inc.)

Windows Live

RE: Ward v. ARI, et. al.

From: Vanessa Patrick (vanessapatt1@hotmail.com)
Sent: Mon 2/25/08 1:18 PM
To: jbond200@bellsouth.net

Jeff, I am still under several listing agreements with Swiners and therefore I (and ARI) still have a agency relationship with them. I have not muddied the waters nor compromised ARI's position, as I have not communicated in any way with Ward or his attorney. My only thought was to ensure ARI did not agree to release money that Swiners had RECENTLY told me they intended to lay claim to. Swiners FULLY intends to release the earnest money should Ward also settle with them. They want this settled as much as you do.

I would not think Mr. Bullard would personally feel I went "over his head," as I have not communicated with an adversary, nor have I told him how to do his job. On the contrary, Swiners had several weeks ago clearly communicated with me that their original offer to release the earnest money had been rescinded since Ward did not agree to a quick settlement. I seemed to have information conflicting with what Mr. Bullard had, and I was trying to make sure we were all on the same page.

In short, here was the possible outcome: Ward fails to settle with Swiners, the court agrees Ward is in default and awards the earnest money to Swiners. ARI has already released the money. ARI still represents Swiners. What now?

I am in no way encouraging Swiners to hold the money, prolong our involvement, etc. Again, they would prefer a quick settlement. However, I did not want to find ARI, which I LOVE being a part of, in the position of violating a fiduciary duty to our existing client SHOULD things turn out differently. We had no such fiduciary duty to Ward.

I truly do not understand your tone with me this morning, nor your anger now. I had already deferred to your decision to release the money, as I had communicated earlier, and had resigned myself to "let it go" on a personal, financial basis. However, I would not be a very good agent nor ARI associate, and not fit to assume any position of responsibility, if I did not bring this issue to your attention. As CEO, you are entitled to do what you want with the information - I can only convey it to you.

Vanessa

From: jbond200@bellsouth.net
To: vanessapatt1@hotmail.com
CC: ari@assetrealtyinc.com; regmurph@bellsouth.net; abullard@bowersorr.com;
TBrown147@sc.rr.com
Subject: RE: Ward v. ARI, et. al.
Date: Mon, 25 Feb 2008 17:38:55 +0000

Vanessa:

I am VERY DISPLEASED that you took it upon yourself to intervene in this case after Allen had secured an agreement. You have muddied the waters. You have entered into an area where you have no expertise or license (**law**), and you have now compromised the entire issue as far as I am concerned.

Depending on how I think this through, I will probably release you from ARI and terminate our agreement over this. You have acted in a manner not consistent with the way we conduct business at ARI. You have GONE OVER MY HEAD and that of our ATTORNEY. It was not your decision to make. Even though you will incur 90% of attorney's fees, you agreed when you signed receipt of ARI's Policy Manual to abide by all policies of this firm and it's Management.

I cannot express to you enough my displeasure in your meddling. Your future commissions will be

held until your debt to ARI concerning all legal fees in this matter has been resolved. I will let you know my decision concerning whether or not your may remain with this company.

--
JEFF BOND, GRI, ABRM
President/Chief Executive Officer
Chief Broker-In-Charge
ASSET REALTY, INC. (ARI)
& Affiliated Companies:
Asset Academy of Real Estate
ARI Career Development Branch

----- Original message from Vanessa Patrick <vanessapattick1@hotmail.com>: -----

I spoke to Dewey Mitchell of Swiners this morning and asked him to clarify FOR MY BENEFIT Swiners' position as to earnest money, since my last understanding was that Swiners had been ready to refund the earnest money IF WARD DID NOT PURSUE THE CLAIM; however, since Ward did file a claim, Swiners planned to hold out on the earnest money until everyone's position became more clear.

Dewey is not aware of any pending offer to settle from Ward on the Swiners claim. He reiterated that he was not prepared to release the earnest money at this time UNLESS Ward also offers to settle with Swiners as well for return of the earnest money and, possibly, the appraisal fee, but no more. He stated if Ward continues to pursue the claim against Swiners, they plan to allow the court to decide if Ward defaulted and, if so, to demand the earnest money along with legal fees to offset some of their costs.

In light of this, I again ask you to take the Seller's position into consideration prior to agreeing to release the funds. All along, Reggie's position as conveyed to me and Mr. Ward was ARI could not release the money until ALL parties to the contract were in agreement, in writing, as to the terms of the release. At present, not ALL parties to the contract are in agreement. If ARI took a policy stand to not release the funds without consent prior to the claim, how can we now reverse this position?

Call me hard-headed, but I think you need to verify the Seller's position in case they end up claiming the funds should Ward fail to settle with Swiners.

From: abullard@bowersorr.com
To: vanessapattick1@hotmail.com
CC: jbond200@bellsouth.net; realtor38@verizon.net
Subject: RE: Ward v. ARI, et. al.
Date: Mon, 25 Feb 2008 09:40:12 -0500

Let us not forget that the issue of whether the purchaser defaulted has not been decided. That is one of ARI's counterclaims, but it is not a given. However, please be assured I have already secured consent from Swiners to refund its portion of the EM.

Allen Bullard

BOWERS ORR L.L.P

8910 T. W. ... Road

P.O. Box 25389

Columbia, SC 29224

(803) 788-5220

(803) 788-6767 (fax)

-----Original Message-----

From: Vanessa Patrick [mailto:vanessapattick1@hotmail.com]

Sent: Sunday, February 24, 2008 9:02 PM

To: Allen Bullard; jbond200@bellsouth.net

Subject: RE: Ward v. ARI, et. al.

Jeff, obviously the final decision is yours. I do have one legal question, however, and this is why I expressed the desire to determine where my Seller/Clients stand in their legal situation. My point is this: since the Purchaser defaulted, is the Seller/Client not contractually entitled to at least 50% of the earnest money, with ARI contractually entitled to the remainder? Can ARI even legally refund the earnest money without express consent of the Seller/Client? It is not ARI's money; we were the escrow agent. I certainly would not want to see ARI remit the funds to the defaulting party, only to find that the Seller/Client also demands the same funds. It seems we (ARI) are trying to offer up funds in our defense or in settlement of our position that don't even fully belong to us.

Please advise. Vanessa

From: abullard@browsersorr.com

To: jbond200@bellsouth.net; vanessapattick1@hotmail.com

CC: regmurph@bellsouth.net

Subject: RE: Ward v. ARI, et. al.

Date: Sun, 24 Feb 2008 17:21:35 -0500

All:

I will do whatever you guys want as long as it is ethical. At this point it would be perfectly ethical for me to go back to Booth and say that ARI has reconsidered and will only settle for \$2500, but, it is my opinion that the Ward's will not take it, and ARI will be left in the litigation. I do not know why he was so willing to accept the EM after pushing this issue to litigation in the first place. Booth is an odd duck. It may be because I told him I would not agree to present Vanessa for deposition until the issue of whether he will be able to continue as the Wards' counsel was resolved by a judge, or it may be because he realized he has no other claim against ARI aside from the earnest money. I would like to think it was my brilliant lawyering, but there's no way to know for certain.

I'll be truthful with you, the longer ARI stays in this litigation, the more fees are generated for my firm. I litigate all day every day, so having one more case does not bother me. However, in my opinion returning the EM, which ARI was only temporarily

CC: regmurph@bellsouth.net; TBrown147@sc.rr.com;
abullard@bowersorr.com
Subject: RE: Ward v. ARI, et. al.
Date: Sat, 23 Feb 2008 17:21:14 +0000

Vanessa:

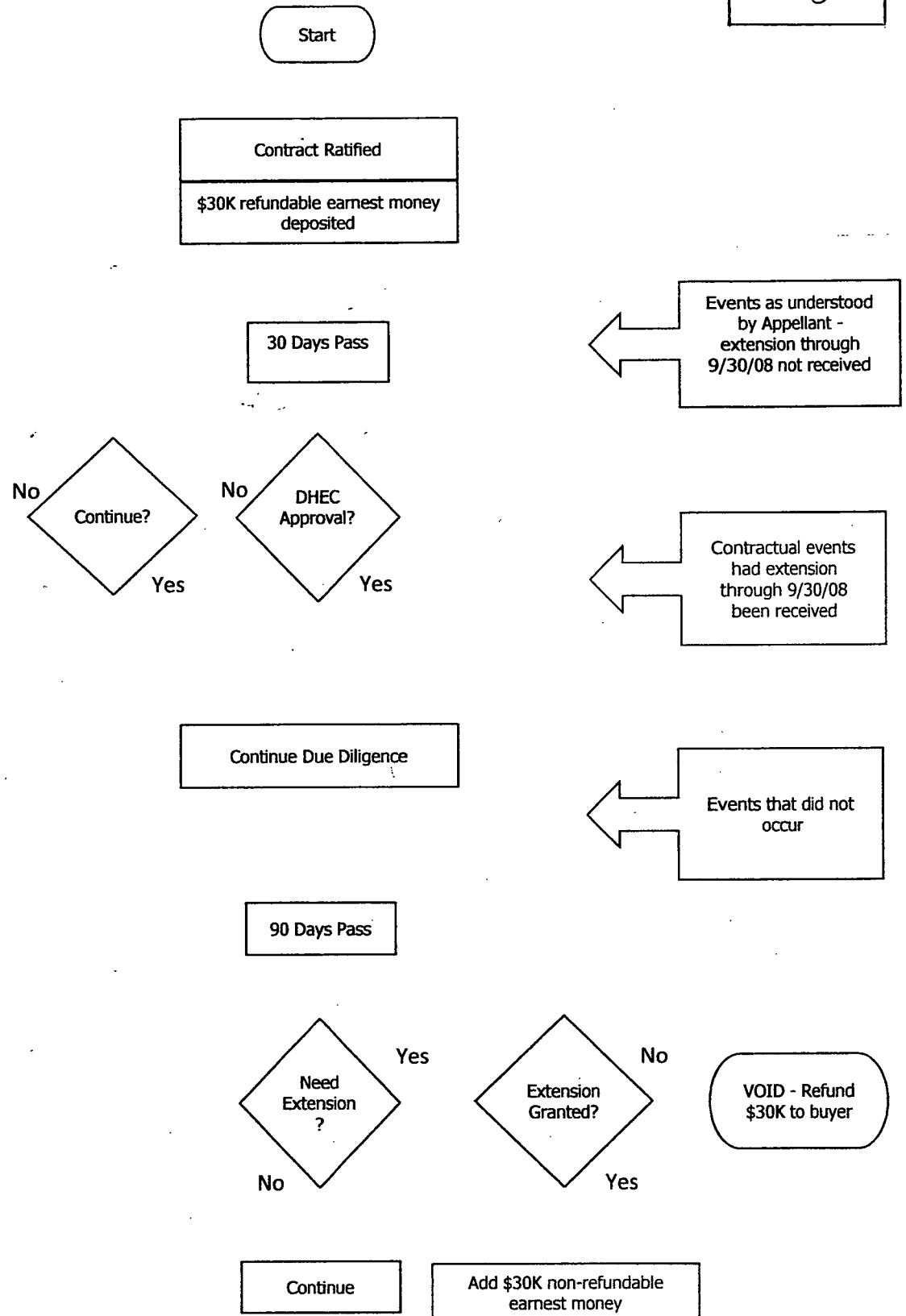
It's far better in my opinion to return the earnest money to the buyers and have them go their way than to risk drawing out this matter further. It's just part of doing business in our profession.

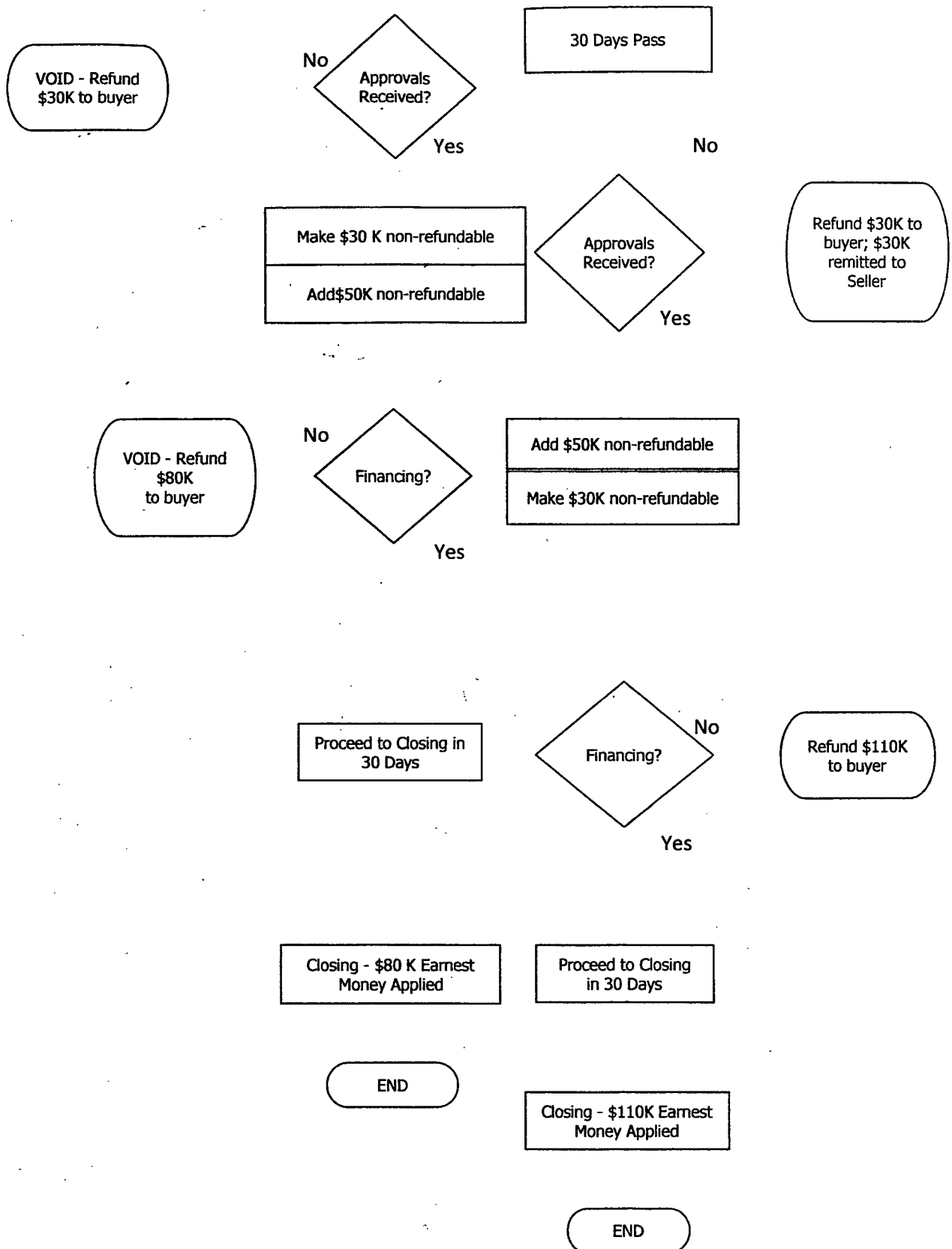
I have instructed Allen that we will indeed return the e.m. to the Wards after he obtains satisfactory documentation from them that they will not pursue this matter further with ARI. It's time to bite the bullit.

Jeff

From: abullard@bowersorr.com
To: vanessapatricks1@hotmail.com
CC: jbond200@bellsouth.net; realtor38@verizon.net
Subject: FW: Ward v. ARI, et. al.
Date: Thu, 21 Feb 2008 10:59:08 -0500

The Wards have agreed to settle the suit against ARI for \$5000 (the earnest money)(see emails below). I will ensure that the settlement agreement drafted by Mr. Booth fully releases all claims against ARI. I will let you know when you need to have the money ready to send to them. For now I will await Mr. Booth's first draft of the proposed settlement agreement. I will keep you all informed.





Subj: **Fwd: River Path Schedule**
Date: 9/16/2008 12:05:20 P.M. Eastern Standard Time
From: SallysBuck
To: curtisnh@bellsouth.net, SallysBuck

FYI

From: vanessapattick1@hotmail.com
To: jfutter@bpbarber.com
Sent: 9/16/2008 12:59:28 P.M. Eastern Standard Time
Subj: RE: River Path Schedule

Jim, looks like we are indeed going to get some sort of extension...not sure yet how much, but I'm working on that. Can we have a meeting with you to look over the topo and survey? We very much need to see the riverfront part in particular and discuss some things.

On a different note, we owe you guys a good bit of money. The funds are committed to us, but needed to be accompanied by some complicated legal documents, and the attorney was dragging his feet getting them done. Sally and I met with him last week and hopefully lit a fire under his butt. Now I have seen and commented on one of the draft docs and have returned it for revision. Hopefully the originals will be completed ASAP and the funds will be released so we can catch you up. Please bear with us. About 3 weeks passed when I was under the impression the attorney was working on the docs, only to find out something more important bumped us and he had done nothing. Again, I apologize for the delay.

Given the seller's instability, we need things to hurry up on your end so we can close this thing out ASAP. Let me know when we can meet.

Vanessa 360-0489

Subject: RE: River Path Schedule
Date: Mon, 15 Sep 2008 10:50:00 -0400
From: jfutter@BPBarber.com
To: vanessapattick1@hotmail.com
CC: iozbek@BPBarber.com; topal@BPBarber.com

Vanessa,

Ismail contacted David and the impression he got was that David was not interested.

Last time you and I spoke you indicated that you didn't think the schedule would allow you time to get the financing in place. We just heard that you might be able to get this extended.

At this time we have completed the boundary and topographic survey and the sketch plan.

We want you to confirm that you want us to continue with the plans for the DRT submittal as scheduled below.

Please let us know so we can get you a contract for this phase of the engineering.

- Wednesday, November 12, 2008 AOL: SallysBuck

Nov 04 2008 6:30PM HP LASERJET FAX

p. 1



1606 Wilson Road
P.O. Box 553
Newberry, South Carolina 29108
Phone (803) 276-9700
Fax (803) 276-4178

FAX TRANSMITTAL REPORT

DATE: 11/4/08NAME: Vanessa Patrick

COMPANY NAME: _____

CITY: Cala STATE: SCFAX #: 732-3083FROM: Andy BowersMESSAGE: _____

_____TOTAL PAGES INCLUDING COVER SHEET: 3

Aug. 29. 2008 1:16PM ASSET REALTY IRMO

No. 2868 P. 2

ADDENDUM

ADDENDUM DATE 8/29/08

CONTRACT DATED 3/8/08

BETWEEN SELLER

AND PURCHASER Riverpath Investors, LLC

IN REFERENCE TO Wish Lever Rd, TMS # 02900-01-13

THIS ADDENDUM IS HEREBY MADE A PART OF THE ORIGINAL CONTRACT.
BOTH PURCHASER AND SELLER AGREE TO THE FOLLOWING:

[Handwritten: 8/29/08]
Pursuant to the attached estimated timeframe for obtaining the land disturbance permit from Richland County, Purchaser requests contract be extended to on or before September 30, 2008. Purchaser acknowledges that time is of the essence with regards to performance on this contract and extension. Purchaser has demonstrated ability and willingness to expedite due diligence activities to-date, and will continue to expedite the remainder of such activities throughout the extension period.

<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Quinn Perkins</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Laura Pickett</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>Mary Ellen Owens</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
WITNESS	SELLER	DATE
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/30/08</u>
WITNESS	SELLER	DATE
<u>[Signature]</u>	<u>[Signature]</u>	<u>8/22/08</u>
WITNESS	PURCHASER	DATE

WITNESS

PURCHASER

DATE

-----Original Message-----

From: Vanessa Patrick <vanessapattick1@hotmail.com>
To: mimipinner@aol.com
Sent: Wed, Sep 10, 2008 2:43 pm
Subject: RE: OFFICIAL ISLAND GIRL

We are still planning to close, but Andy had told me we were not going to be able to get an extension (which we needed since the survey and topo took so long). He told me there was another offer on the table. Now he said that new offer went away, so I am proceeding full steam ahead. Vanessa

To: vanessapattick1@hotmail.com
Subject: Re: OFFICIAL ISLAND GIRL
Date: Wed, 10 Sep 2008 14:03:34 -0400
From: mimipinner@aol.com

Vanessa,

My computer has been down for a few days and just got your e-mail. Are you telling me that your people are not going to close???? After all we have been through with this property???????

MIMI

-----Original Message-----

From: Vanessa Patrick <vanessapattick1@hotmail.com>
To: mimipinner@aol.com
Sent: Fri, 5 Sep 2008 9:13 am
Subject: RE: OFFICIAL ISLAND GIRL

Mimi, I am still working on closing the Lever tract. I had asked Andy if you guys would extend the closing, and he said no problem, now there is a problem! When I found out the surveying was taking longer than planned, I immediately asked about the extension because I either needed to scramble for quicker closing OR continue to work on the engineering. When Andy said no problem on extension, I kept on my same path.

My question to you is, I have spent WELL over \$150K on this due diligence. If I am going to possibly lose the project, who is the party "walling in the wings" to close it? All I ask is that you put me in contact with them so if I can't pull it out, maybe I can sell them the engineering work I have paid for, such as the topography survey, elevation studies, wetlands studies, etc. That will keep us from losing so much, which will pretty much put me under. The work I have paid for or will soon be billed for is useful to anyone regardless of the nature of their project, and there is no need to duplicate it.

Vanessa

TIMELINE WITHOUT EXTENSION

TIMELINE WITH EXTENSION

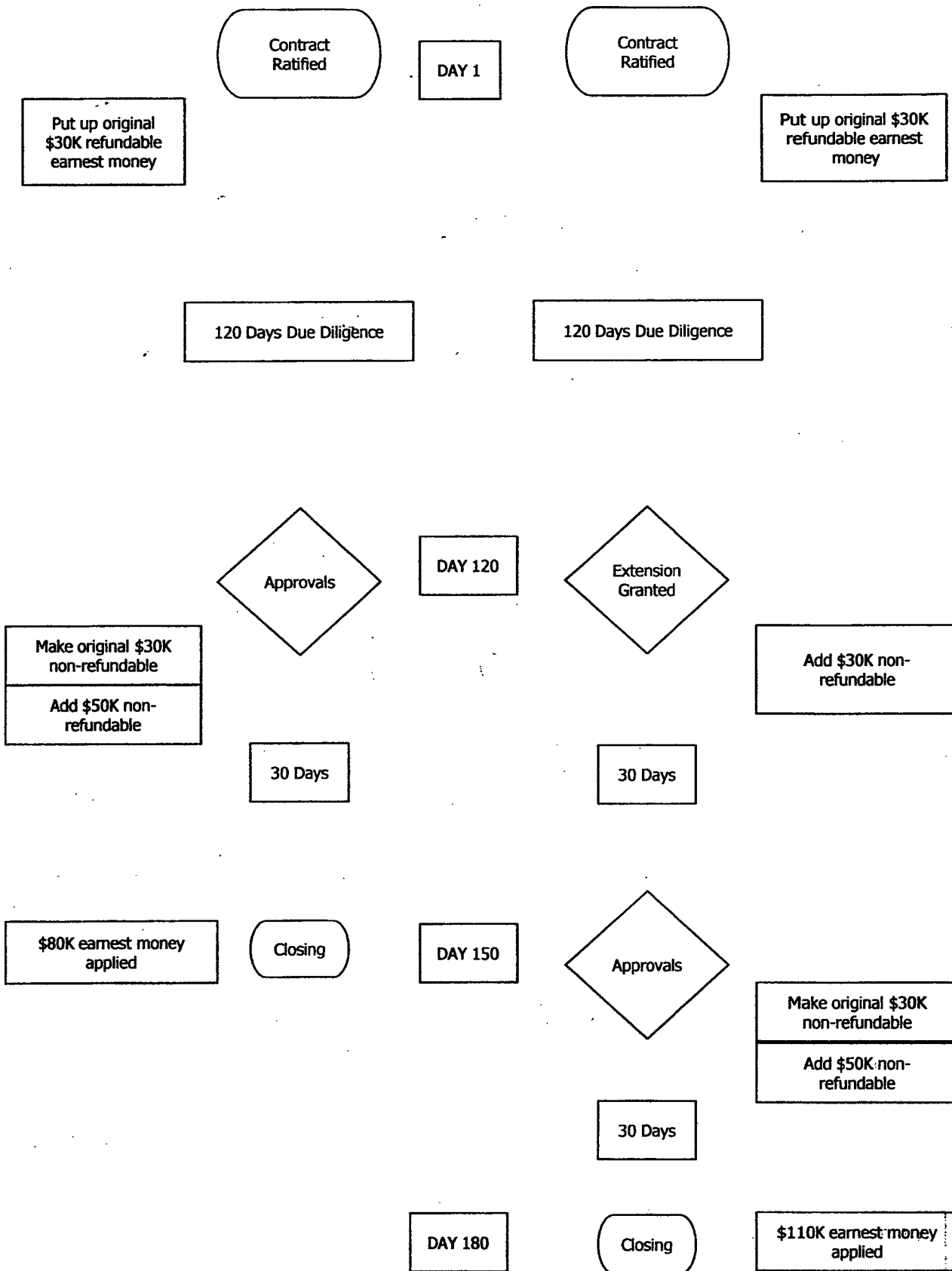


EXHIBIT
25

s Live Hotmail Print Message

Jim Futter

Senior Project Manager

BP Barber

Phone: (803) 254-4400

From: Vanessa Patrick [mailto:variessapatt1@hotmail.com]
Sent: Tuesday, August 26, 2008 12:21 PM
To: Jim Futter
Subject: RE: River Path Schedule

Jim, David Hilburn wishes to speak with you about this project. He knows it by the name "Broadhaven." Just wanted to let you know you may answer any questions he has. Thanks, Vanessa

Subject: River Path Schedule
Date: Thu, 21 Aug 2008 13:34:51 -0400
From: jfutter@BPBarber.com
To: variessapatt1@hotmail.com
CC: iozbek@BPBarber.com; sjohnson@bpbarber.com; topal@BPBarber.com

River Path Schedule:

August 29, 2008 – complete boundary and topographic survey and start engineering design of subdivision

October 31, 2008 – complete construction plans and submit to Richland County for DRT meeting

During November – meet with the different County reviewers to discuss addressing their questions before the DRT

December 4, 2008 – DRT meeting at Richland County

December 18, 2008 – expect response letter from Richland County concerning DRT comments

December 31, 2008 – expect land disturbance permit and be able to start construction

Note: The surveying has taken a longer period of time due to the thickness of the woods and the difficult terrain encountered in some areas. We have had two survey crews on the site for the last 4 weeks.

Call with any questions.

Jim

<http://by106w.bay106.mail.live.com/mail/PrintShell.aspx?type=message&cpids=f9f63fa1-...> 9/27/2009



TO: Asset Realty
146 Leisure Lane
Columbia, SC 29210

FROM: BP Barber
PO Box 1116
Columbia, SC 29202-1116
(803) 254-4400

ATTN: Ms. Vanessa Patrick

INVOICE NO.

LD8-0140
June 16, 2008

RE: River Path Subdivision
Project No. 08233
Invoice #1

Engineering and Surveying Services per Engineering agreement dated April 25, 2008.

1. Site layout design and color rendering.

\$ 3,500.00	Amount per agreement
-\$ 0.00	Amount previously invoiced
<u>-\$ 3,500.00</u>	Amount due this invoice
\$ 0.00	Balance remaining

Amount Due..... \$3,500.00

2. Boundary Survey

\$ 21,200.00	Amount per agreement
-\$ 0.00	Amount previously invoiced
<u>-\$ 18,000.00</u>	Amount due this invoice
\$ 3,200.00	Balance remaining

Amount Due..... \$18,000.00

3. Topographic Survey

\$ 95,000.00	Amount per agreement
-\$ 0.00	Amount previously invoiced
<u>-\$ 6,200.00</u>	Amount due this invoice
\$ 88,800.00	Balance remaining

Amount Due..... \$6,200.00

TOTAL AMOUNT DUE..... \$27,700.00

Period of Statement: 4/24/08 through 5/23/08

Please note that by the terms of our "Agreement", payment, in full, is due no later than July 16, 2008. Past due amounts will be subject to monthly interest at the rate of 18% per annum.

REMIT TO: BP Barber
PO Box 1116
Columbia, SC 29202-1116

365

JMF:ahm
1,750.00 1/40/D
1,750.00 3/40/D
24,200.00 8/40/D

108 W. Water Street
Columbia, SC 29203
Tel: (803) 360-0031

9321

8/6 2008

PAY TO THE ORDER OF BP Barber \$27,700.00

Twenty seven thousand seven hundred 00/100

Bank of America
Columbia, SC 29210

FOR LD8-0140

Vanessa Jones

⑆053904483⑆ 9321

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Vanessa Patrick,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, Real Estate
Commission,

Respondent,

Docket No.: 11-ALJ-11-0168-AP

**MOTION TO CONFORM
APPELLANT'S BRIEF TO THE
REQUIREMENTS OF RULE 37(B) OR IN
THE ALTERNATIVE STRIKE**

COMES NOW the Respondent, South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission, and hereby moves the Court for an Order requiring the Appellant to conform Appellant's Brief to the requirements of Rule 37(B) of the Administrative Law Court Rules of Procedure by including:

- (1) Statements of the Issues on Appeal. The Appellant should be required to present a concise and direct statement of each of the issues for review as required in Rule 37(B)(1) of the Administrative Law Court Rules of Procedure.
- (2) Statement of the Case. The Appellant should be required to include a concise history of the proceedings, insofar as necessary to an understanding of the appeal, in accordance with Rule 37(B)(2) of the Administrative Law Court Rules of Procedure. The Appellant should be required to remove references to facts and exhibits that do not appear in the Record on Appeal.
- (3) Argument. The Appellant should be required to comply with Rule 37(B)(3) of the Administrative Law Court Rules of Procedure by dividing the Appellant's Brief into as

1 *Log*

many parts as there are issues to be argued, with each such part bearing an appropriate caption, followed by a discussion and citation of authority. The Appellate should also be required to state those facts relevant to the issues presented for review by referencing the Record on Appeal.

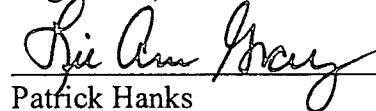
- (4) Conclusion. The Appellant should be required to comply with Rule 37(B)(4) of the Administrative Law Court Rules of Procedure by including a short conclusion stating the precise relief requested.

The Appellant has included exhibits and alleged facts in the Appellant's Brief that do not appear in the Record on Appeal. The Appellant should be further directed, in accordance with Rule 36(G) of the Administrative Law Court Rules of Procedure, to strike and remove all facts and exhibits, which do not appear in the Record on Appeal, including, but not limited to Appellant's Exhibits 2a, 6 through 12, the letter included in Exhibit 13, Exhibits 14 through 21, and Exhibits 24 through 26.

Therefore, the Respondent requests that the Appellant be required to removing all facts and exhibits in the Appellant's Brief that do not appear in the Record on Appeal, and to further conform the Brief to the requirements of Rule 37(B) of the Administrative Law Court Rules of Procedure.

Respectfully Submitted,

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Real Estate Commission



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June 6, 2011.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Vanessa Patrick,	)	Docket No.: 11-ALJ-11-0168-AP
	)	
Appellant,	)	
	)	APPELLANT'S RESPONSE TO
	)	MOTION TO CONFORM
Vs.	)	APPELLANT'S BRIEF
	)	
South Carolina Department of Labor,	)	
Licensing and Regulation, Real Estate	)	
Commission	)	
	)	
Respondent,	)	
	)	

As a *pro se* Appellant, having been financially devastated by the foregoing chain of events and barred from practicing my profession, Appellant begs the Court's forgiveness for inadvertent errors of construction and legal terminology. In *Larry A. Yates v. South Carolina Department of Labor, Licensing and Regulation, et.al.*, No. 07-ALJ-11-0321-AP, the judge states: "This court is mindful of the difficulties facing *pro se* litigants and its duty to assist them to assure fairness...This court is also aware that appellate courts will occasionally hear an appeal despite poorly-stated grounds for appeal if the court is able to readily determine the issue to be reviewed and the appeal appears to have merit." p. 4 (citing *Sandel v. Cousins*, 266 S.C. 19,221 S.E.2d 111 (1975)). See also the accompanying "Note" to ALC Rule 38: "[i]n all cases involving pro se litigants or those without substantial knowledge or experience in administrative matters, the administrative law judge may make reasonable efforts to ensure fairness." Below is Appellant's response to Respondent's Motion to Conform. If a different format is required, Appellant will make the required modifications.

Addressing the specific items in Respondent's Motion to Conform:

1. Statement of Issues on Appeal. For brevity's sake, I had summarized the issues to prevent simply restating many of them in the Argument, as many issues are nearly self-explanatory. I have now restated them in more detail in the attached Amended Statement of Issues on Appeal.
2. Statement of the Case. In Rules of Procedure for the Administrative Law Court, 37(B)(2), briefs should include a "concise history of the proceedings, insofar as necessary to an understanding of the appeal." It also permits "the date of and description of any orders or proceedings in the agency as may have affected the appeal or may throw light upon the questions involved in the appeal." As outlined in more detail below and in Appellant's Brief, such "concise history" would be woefully inadequate if it omitted, as does the Record on Appeal submitted by LLR, many written communications between Appellant or her attorney and LLR leading up to the Hearing. Therefore, I refer to a number of those communications to "throw light upon" the issues.
3. Argument. Appellant's Brief appears to comply with Rule 37(B)(3) in that it is divided into each issue, references the Record, cites authority, etc.
4. Conclusion. The Conclusion indeed states the precise relief requested. In paragraph 5, please find: "Specifically, Appellant requests that the Real Estate Commission's decision to permanently revoke Appellant's license **be reversed** and a more appropriate and equitable punishment be levied...." Further, in the last paragraph of Appellant's Statement of the Issues on Appeal, the request for relief is also stated clearly.

In response to the additional motion that Appellant remove certain exhibits, Appellant moves that those Exhibits and references to said Exhibits in Appellant's Brief be allowed to stand as they "throw light upon the questions involved in the Appeal," as permitted in Rule 37(B)(2), and are unquestionably "necessary to an understanding of the appeal."

Further, Section 1-23-380(4) states certain evidence may be considered "in cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court...." Appellant begs the Court to admit the exhibits presented in Appellant's Brief as they are material to the case, Appellant has demonstrated – in her Brief and below – why she failed to submit the evidence in the proceeding before the agency, and because Appellant is indeed alleging numerous irregularities in the agency's proceedings including failure to exercise due care in considering Appellant's case prior to the hearing. *See also* SC Code Section 1-23-380(3) (which states if it is "shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court."

Below is a brief discussion of each exhibit the agency would have Appellant strike:

(1) Exhibit 2(a) is the original version of the executed contract, the contract from which all principals to the contract operated and the contract which was the basis for the entire complaint, yet was omitted from the Record on Appeal. In fact, Appellant believes LLR **did** possess Exhibit 2(a) as evidenced by Appellant's Brief Exhibit 16: the unexecuted Memorandum of Agreement and Stipulations prepared by the agency attorney which in paragraph 2 states "a copy of the deposition of Respondent dated December 11, 2009, is attached hereto and incorporated herein as Exhibit 9," thereby indicating LLR had the deposition in their possession. Said deposition included, as Plaintiff's Exhibit Number 4 (fax w/ attachments 3/25/08), the document included as Appellant's Brief Exhibit 2(a) which LLR now moves to strike. It is also noteworthy that the Memorandum of Agreement, sent to Appellant's attorney on 2/2/11, was the first reference made by LLR to the evidence against Appellant although LLR had stymied Appellant's attempts to reinstate her real estate license for almost a full year at that point. Furthermore, no exhibits were actually attached (although Appellant was expected to sign the Memorandum) and said evidence was not forwarded (and only in part) until 2/8/11.

(2) Exhibits 6 through 12 are communications between Appellant or her attorney and LLR prior to the Hearing. Those communications clearly support Appellant's claim that LLR failed to exercise reasonable care in handling Appellant's case, specifically by mislabeling Appellant's file in such a manner as to prejudice Appellant and thus create unreasonable delays in her attempts to have her license reinstated, and by deliberate failure to obtain and consider all pertinent facts and evidence before charging and prosecuting Appellant and revoking her license. In Appellant's view, awareness of these actions certainly "throw light upon" the issues on appeal.

(3) Likewise, the letters in Exhibit 13 and Exhibits 14-16 are more communications between LLR and Appellant's attorney which Appellant also believes are material to fully understanding the context of her case.

(4) Exhibit 17 was included to show the date when LLR's "evidence" was finally sent to Appellant.

(5) Regarding Exhibit 18, Appellant was not notified in the Notice of Charges that she was to be accused of and prosecuted for allegedly misleading the Sellers as to Buyer's ability to perform. Since Appellant was not clearly charged, neither she nor her attorney were aware they needed to present evidence at the Hearing to exonerate Appellant; specifically, evidence that Appellant did in fact have strong financial backing when entering into the contract and performing the contractual Due Diligence duties until the contract expired and the financial backers withdrew. This is a critical part of Appellant's Issues on Appeal (*see* Paragraph 3) as well as the Argument (*see* Argument Section I.1.i and Section II.1 and 3). Therefore, Appellant wishes the Court to

see that such evidence (and more) existed and could have been presented for consideration in the Hearing had the Notice of Charges clearly stated the specific charge against Appellant.

(6) Exhibit 19 was included to expressly rebut LLR Attorney's litany of speculative and therefore improper statements throughout the Hearing and in the Final Order as to Appellant's intent in failing to deposit the earnest money in Asset's escrow account. Once again, LLR did not exercise reasonable care in handling Appellant's case as Appellant was never given an opportunity to explain her actions in a confidential setting although she repeatedly attempted to do so. If LLR attorney is allowed to speculate in the Record about Appellant's intent, then Appellant requests the Court should permit Appellant to respond in Argument Section I.1.e and l, with reference to Exhibit 19 as supporting evidence.

(7) Exhibits 20 and 24 are included, as is permitted in Rule 37(B)(2), to portray the terms and conditions of the contract, in graphic form, "as necessary to an understanding of the appeal."

(8) Exhibit 21 is included to rebut LLR Attorney's claim, as made multiple times in the Hearing and in the Final Order, that the contract was extended multiple times and was in effect through December 2008, but for which no evidence was presented by the State. Again, it is included as necessary for a proper and full understanding of the Issues on Appeal.

(9) Exhibits 25 and 26 rebut LLR Attorney's prejudicial claim in the Hearing that Due Diligence was not taking place because the engineers were not being paid. Had Appellant known the LLR Attorney was going to include such a speculative statement in the Hearing and had Appellant been made aware she was going to be charged with such, Appellant could have presented this, and more, exculpatory evidence.

In general and as discussed in Appellant's Brief, Argument (I)(1)(c), and (II)(2), Appellant was prosecuted and sanctioned for charges not included in the Notice of Charges, a clear violation of Appellant's fundamental due process rights. Had Appellant been made aware of all charges to be prosecuted, Appellant could have proffered exculpatory evidence at the hearing. Second, as discussed in Appellant's Brief, Argument (I)(1)(h), (II)(1), and (II)(3), a number of issues with which Appellant was prosecuted in the hearing and for which her license was revoked were not presented in the Notice of Charges in a plain or substantial manner thereby rendering Appellant ill-prepared to mount a defense in the hearing. Again, had Appellant understood the exact nature of the charges against her, Appellant and her attorney could have presented additional evidence. Third, as described in Appellant's Brief in the Statement of Case and Relevant Facts, Appellant and her attorney made numerous attempts, over the course of nearly a year, to engage various LLR personnel (including the Director) in discussions wherein Appellant could present her evidence (specifically sensitive and confidential information), explain her position, obtain clarification on the nature of the original complaint, obtain clarification on the vague Notice of Charges, review the evidence used in the charges, and obtain a meaningful explanation of exactly how Appellant's actions specifically violated license law. However, as indicated in Appellant's

Brief, Statement of Case and Relevant Facts, and exhibits, the agency rebuffed all of Appellant's offers to proffer evidence prior to the hearing. In fact, in the Transcript of Hearing at pp. 17-19 the LLR investigator assigned to Appellant's case presented as "evidence" **only** documents provided by third parties and of which he had no first-hand knowledge (pp. 40-43 of Hearing). The investigator admits he never spoke to Appellant until "after the investigation had been concluded."

Further, as discussed at length in Appellant's Brief (Argument (I)(1)(I)), Appellant was advised by her attorney to not publicly present or discuss certain sensitive information prior to the hearing except in a confidential setting, and to not publicly present this information at the hearing itself for fear of possibly violating certain settlement terms. Although Appellant and her attorney expected the hearing to result in some form of sanction, revocation came as a great surprise. Had Appellant even remotely anticipated the possibility of revocation, she would certainly have risked presenting such information in the hearing as it is material and relevant to a complete understanding of the case. Also complicating matters was the fact Appellant was given LLR's evidence only nine days prior to the hearing, hardly enough time to prepare a thorough defense especially given the vague charges levied against her.

In conclusion, Appellant reiterates that the exhibits and references to exhibits listed in Respondent's Motion to Conform Appellant's Brief are directly pertinent to the proceedings, are material to the case, support Appellant's claims of "irregularities in procedure before the agency, not in the record" and are "necessary to an understanding of the appeal." Appellant seeks to rebut LLR's speculative and therefore prejudicial statements in the hearing which were unanticipated by Appellant and for which no supporting evidence was presented by LLR. Last, Appellant seeks to provide evidence that was not provided at the Hearing because she did not know she would be prosecuted on charges that were either not included or not clearly and meaningfully set forth in the Notice of Charges.

Appellant also hopes and begs the Court – via her Brief which contains a much clearer and complete picture of her case – to refrain from remanding this case for rehearing as Appellant believes strongly the agency has displayed a marked adversarial attitude toward Appellant and has clearly demonstrated an abuse of discretion throughout the entire history of Appellant's case. "An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised..." *Anonymous Physician v. Department of Labor, Licensing & Regulation, No. 08-ALJ-11-0368-AP*. The references to exhibits presented by Appellant in the Statement of Case and Relevant Facts, which the agency now challenges, clearly show that Appellant attempted many times to discuss the case and provide evidence (in particular sensitive evidence) prior to the hearing beginning with the investigator and continuing up the ladder to the Director) but to no avail. In this regard and as found by the Administrative Law Judge in *Anonymous Physician*, "[t]his demonstrates a will to win and an adversarial perspective

that gives rise to serious doubt whether the Board, in this particular case, can faithfully discharge its duties.....” Further, although two other licensees were actively involved in the same transaction as Appellant and the original complaint specifically named another licensee, only Appellant was singled out to be prosecuted and sanctioned. Finally, the agency attorney demonstrated throughout the hearing undue antagonism toward Appellant and Appellant’s attorney as well as a dogged determination to disregard the facts of the case (even at times resorting to baseless and prejudicial speculation). This is evidenced throughout the Transcript of Hearing and, had the video of the proceedings ever been published – as is customary but has still yet to be done – on the agency website, this behavior would be even more readily apparent.

Accordingly, Appellant requests the Court to deny Respondent’s Motion to Conform.

AMENDED STATEMENT OF ISSUES ON APPEAL

- I. The Real Estate Commission's decision to permanently revoke Appellant's real estate license was unwarranted and unduly harsh as the Commission and the Agency attorney committed errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into a fictitious scheme / conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various facts / law, all without substantial supporting evidence.

1. The Real Estate Commission

- a. The Real Estate Commission ("Commission") erred and unfairly prejudiced Appellant by incorrectly stating that Appellant had allowed her license to lapse.
- b. The Real Estate Commission ("Commission") erred and unfairly prejudiced Appellant by erroneously indicating in Appellant's file that she had permanently surrendered her license in lieu of an investigation and that placing her license on inactive status was tantamount to an admission of guilt.
- c. The Commission erred and prejudiced Appellant by erroneously concluding Appellant violated SC Code Sections 40-57-130 and 40-1-110(1)(a). Neither 40-57-130 or 40-1-110(1)(a) appeared on Appellant's Notice of Charges, yet she was convicted of violating both: a violation of Appellant's procedural due process rights.
- d. The Commission's Final Order erred and unfairly prejudiced Appellant by stating as fact that real estate licensees are required to obtain consent from their Broker-in-Charge ("BIC") prior to purchasing unlisted property on their own behalf.
- e. The Commission's Final Order erred and prejudiced Appellant by erroneously concluding Appellant presented copies of two checks to "give the appearance that the money had been placed into the appropriate trust account."
- f. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant should have notified the BIC at Acquire Realty of the contract and placed earnest money funds into said BIC's trust account.
- g. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(B)(8).

- h. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(D).
- i. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-137(K) by giving Sellers false and misleading information about the buyers' ability to close.
- j. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(4), 40-1-110(c), (f), or (g); specifically how Appellant's actions endangered and were a harm to the general public.
- k. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(10).
- l. The Commission erred and unfairly prejudiced Appellant by failing to consider the entire body of evidence even though said evidence was offered on several occasions.

2. Agency Attorney

- a. The Agency's attorney unfairly prejudiced Appellant by failing to consider the contract as a whole and instead "cherry-picked" the provisions she liked and disregarded the rest as irrelevant.
- b. The Agency's attorney unfairly prejudiced Appellant by misleading the Board when she stated the project engineers failed to complete their tasks because they weren't being paid.
- c. The Agency's attorney unfairly prejudiced Appellant by misleading the Board that Appellant had drafted the second Addendum to the contract when in fact it was drafted by Mr. Bowers.
- d. The Agency's Attorney erred in insisting the underlying contract was in effect through December 2008, and that numerous extensions demanded multiple earnest money deposits totaling "approximately" \$185,000.

3. Conspiracy

The Agency alleged that Appellant acted with a "partner" and co-conspirator Sally Grooms, also a licensee. Ms. Grooms was informed the Commission had marked her file as "pending claim." However, Ms. Grooms applied to have her real estate license re-instated shortly after Appellant's own license was permanently revoked. Ms. Groom's license was reinstated without a hearing, consent agreement, or penalty, indicating Appellant was singled out for prosecution in this matter.

II. Appellant's procedural due process rights were violated prior to and during the Hearing:

1. The Notice of Charges contained only a list of statutory provisions followed by five brief paragraphs that were neither clear nor substantial, the Agency rebuffed Appellant's attempts to receive clarification, and Appellant was given the State's evidence against her only nine days prior to the Hearing.
2. In the Commission's "Conclusions of Law" Appellant was found guilty of violating Sections 40-57-130 and 40-1-110(1)(a). In the Notice of Charges, however these two sections were expressly not listed, thereby depriving Appellant of the required notice regarding the charges levied against her.
3. In the Commission's Conclusions of Law Appellant was found guilty of violating Sections 40-57-135(D) and 40-57-137(K). These statutes were cited in the Notice of Charges, but the written Section III contained no reference to any activities allegedly performed by Appellant that would have constituted such violations. Therefore, in the absence of further explanation, Appellant was ill-prepared to defend herself in the Hearing.
4. Over the objection of Appellant's counsel, the Commission erred in admitting a letter written by Pinner family attorney Henry Bufkin, as the bulk of the letter was based on hearsay. The State's attorney offered no justifiable hearsay exceptions to justify the letter's admittance, and further testimony failed to support the allegations in the letter.

III. The Real Estate's Commission's decision to permanently revoke Appellant's real estate license was unfair and unduly harsh in light of previous case law where far more egregious behavior, as well as similar behavior to Appellant's, resulted in less severe punishment and not permanent revocation.

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June 24, 2011

Honorable Ralph K. Anderson, III
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

**RE: Vanessa Patrick vs. South Carolina Department of Labor, Licensing and
Regulation, Real Estate Commission
Docket No.: 11-ALJ-11-0168-AP**

Judge Anderson:

Please consider this as a request for a thirty (30) day extension to file the Respondent's Brief in this matter. This request is not intended for delay. This request is made in an abundance of caution in that there is currently pending Respondent's motion to conform Appellant's brief to Rule 37 requirements. Appellant has recently filed her response to said motion. By copy of this letter, I am serving Ms. Patrick with a copy of this request.

Your consideration in this matter is greatly appreciated. In the event further discussion or information is required, please let us know. In my absence, please contact Pat Hanks directly. His direct dial number is 896-4477.

Respectfully,

A handwritten signature in cursive script that reads 'Lil Ann Gray'. The signature is written in black ink and is positioned above the printed name and title.

Lil Ann Gray

Assistant General Counsel

LAG/

cc: Vanessa Patrick (via regular mail)

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
REAL ESTATE COMMISSION

Docket No. 11-ALJ-11-0168-AP

Vanessa Patrick Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation,
Real Estate Commission Respondent.

BRIEF OF RESPONDENT

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STATEMENTS OF THE ISSUES ON APPEAL

- I. The Real Estate Commission's decision to permanently revoke Appellant's real estate license was unwarranted and unduly harsh as the Commission and the Agency attorney committed errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into a fictitious scheme/conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various facts/law, all without substantial supporting evidence.
- II. Appellant's procedural due process rights were violated by: (1) being given the State's evidence against her only nine days prior to her hearing; (2) being prosecuted and judged on charges not included in the State's Notice of Charges; (3) being prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given in explanation; and (4) being unfairly prejudiced by the inappropriate admittance of hearsay "evidence."
- III. The Real Estate's [sic] Commission's decision to permanently revoke Appellant's real estate license was unfair and unduly harsh in light of previous case law where far more egregious behavior, as well as similar behavior to Appellant's, resulted in less severe punishment and not permanent revocation.

STATEMENT OF THE CASE

This case originated from a complaint filed with the South Carolina Department of Labor, Licensing and Regulation (hereinafter "LLR"), Real Estate Commission (hereinafter "the Commission"). The complaint was investigated and a Notice of Charges and Notice of Hearing dated October 13, 2010 was filed and served upon the Appellant and her counsel. (R. p. 8 – 11; R. p. 197 – 201.) Thereafter, a second Notice of Hearing dated January 6, 2011 was served upon the Appellant and her counsel. (R. p. 12 – 13; R. p. 202 – 204.) The Notice of Charges alleged numerous statutory violations by Appellant and set forth the factual basis for the violations. (R. p. 8 – 9; R. p. 197- 198.) Further, the Notice of Charges referenced the specific statutes that Appellant was alleged to have violated. (R. p. 8; R. p. 197.)

On February 16, 2011, a hearing was conducted before the Commission. Appellant was present and was represented by Thomas E. Lydon, Esq. The State was represented by Paula S. Magargle, Assistant General Counsel for LLR. At the conclusion of the hearing, the Commission went into Executive Session to discuss the merits of the case. (R. p. 194.) The Commission returned to open session where a motion as to the disposition of the case was made to revoke the Appellant's license and assess a fine, the motion was seconded, and all committee members signified by saying "aye." (R. p. 195.) The Commission's February 17, 2011 written Final Order was thereafter mailed to the Appellant and her counsel on February 24, 2011. (Appellant's Notice of Appeal.)

On March 24, 2011, Appellant filed a Notice of Appeal with this Court. On March 29, 2011, Respondent filed and served its Motion to Conform and Strike or in the Alternative, Motion to Seal. On April 26, 2011, Respondent filed and served the Record

on Appeal. Appellant filed her Brief with this Court on May 26, 2011. Appellant's Brief was received by Respondent on May 27, 2011. On June 6, 2011, Respondent filed and served its Motion to Conform Appellant's Brief to the Requirements of Rule 37(B) or in the Alternative Strike. This Brief follows.

ARGUMENT

- I. Based upon the reliable, probative, and substantial evidence contained in the Record, Appellant's substantial rights were not prejudiced by the Real Estate Commission's decision to revoke Appellant's real estate license.

It is well settled that a final decision of the Commission may be reversed or modified if substantial rights of the appellant have been prejudiced because the administrative findings or decision are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, are arbitrary or capricious, are in violation of constitutional or statutory provisions, are made upon unlawful procedure, or are affected by other error of law. S.C. Code Ann. § 1-23-380(A)(6). However, a finding of fact by the Commission will not be overturned by this Court "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." *Lark v. Bi-Lo*, 276 S.C. 130, 137, 276 S.E.2d 304 (1981).

Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. *Jennings v. Chambers Dev. Co.*, 335 S.C. 249, 516 S.E.2d 453 (1999). It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Midlands Utility, Inc. v. South Carolina Dept. of Health & Envtl. Control*, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989).

The possibility of drawing two inconsistent conclusions from the evidence will not mean the agency's conclusion was unsupported by substantial evidence. *Palmetto Alliance, Inc. v. S. C. Public Service Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). Where there is a conflict in the evidence, the agency's findings of fact are

conclusive. *Id.*, see also *Harbin v. Owens-Corning Fiberglas*, 316 S.C. 423, 450 S.E.2d 112 (Ct. App. 1994). It is well settled that this Court cannot and will not substitute its judgment for that of the Commission upon a question as to which there is room for a difference of intelligent opinion. *Chemical Leamen Tank Lines v. South Carolina Pub. Serv. Comm'n*, 258 S.C. 518, 189 S.E.2d 296 (1972).

In the present case, the Commission had the benefit of seeing and hearing the testimony of the witnesses and judging their credibility and demeanor. The factual findings of an administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Kearse v. State Health and Human Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995). Applying the "substantial evidence rule," an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380(A)(6); *Toussaint v. State Bd. of Med. Exam'rs*, 303 S.C. 316, 400 S.E.2d 488 (1991).

The current case involves matters of fiduciary obligations and trust account misconduct. The Commission has consistently dealt with such misconduct through revocation of licensure as evidenced by its decisions in *Timothy J. Barlowe v. LLR*, No. 03-ALJ-11-0372-AP (February 6, 2004) and *Victor Rivera v. LLR, South Carolina Real Estate Commission*, No. 03-ALJ-11-0057-AP (October 22, 2003).

The Appellant's Brief is replete with alleged facts and exhibits that are not part of, and do not appear in the Record on Appeal. Respondent has filed its motion seeking to require the Appellant to conform her Brief to the requirements of Rule 37(B) of the Administrative Law Court Rules of Procedure. In accordance with Rule 36(G) of the

Administrative Law Court Rules of Procedure, any fact, which does not appear in the Record, will not be considered by the Court.

However, Respondent will attempt to respond to Appellant's arguments.

Appellant begins by arguing that the Commission erred and unfairly prejudiced Appellant by incorrectly stating that Appellant had allowed her license to lapse. The Notice of Charges filed in this matter included the statement that "Respondent's license is presently lapsed ... , but at all times relevant to this matter Respondent was duly licensed by the Commission." (R. p. 8) Substantial evidence was presented at the hearing that Appellant's license was actually in an inactive status at the time of the hearing but had been active at all times relevant to the matters being addressed. (R. p. 157, lines 14 – 16; R. p. 158, lines 11 – 13.) The Commission's Final Order stated as a Findings of Fact, paragraph number 1 that the " ... Respondent was duly licensed by the commission at all times relevant to this matter but her license has lapsed." (R. p. 3.) A scrivener's error resulted in the status of Appellant's license being listed as "lapsed" in the Final Order instead of "inactive." Appellant has not shown how this scrivener's error has prejudiced her. The Commission's findings and conclusions were based upon substantial evidence pertaining to specific transactions involving Appellant during a time when her real estate license was active. Appellant has sought to introduce matters that do not appear in the Record to support her argument that she was somehow prejudiced by this scrivener's error, and as such, these matters should not be considered by this Court.

Appellant next argues that the Commission erred and unfairly prejudiced her by erroneously indicating in Appellant's file that she had permanently surrendered her license in lieu of an investigation and that placing her license on inactive status was

tantamount to an admission of guilt. Appellant makes no reference to the Record in support of her argument. Appellant again seeks to introduce matters that do not appear in the Record. The Commission's Final Order does not contain any reference to the matters Appellant assertions as error or have somehow prejudiced her. Appellant's assertions pertaining to license surrender and admission of guilt do not appear in the Record on Appeal and therefore should not be considered by this Court.

Appellant next argues that the Commission erred and prejudiced Appellant by erroneously concluding Appellant violated sections 40-57-130 and 40-1-110(1)(a) by referencing the Final Order "Conclusion of Law" at para. 1. (R. p. 4.) The plain reading of the referenced paragraph is that the Commission has jurisdiction in this matter, which is not disputed by Appellant, and, upon finding that a licensee has violated the provisions of the statutory sections listed therein, the Commission has the authority to order the revocation, suspension or cancellation of a license to practice and that the Commission may assess a fine or impose a reprimand. This paragraph attempted to state the statutory basis for the Commission's authority to discipline its licensees. Clearly, this paragraph could have been drafted better. While this particular paragraph does correctly stand for the proposition that the Commission has the authority to discipline its licensees, a plain reading of that paragraph in no way states, as Appellant asserts, that the Commission found and concluded as a matter of law that she violated sections 40-57-130 and 40-1-110(1)(a).

The Commission's Final Order, beginning with paragraph number two of the Conclusions of Law, specifically sets forth each of the statutory sections Appellant was found to have violated. (R. p. 4 – 6.) Appellant asserts that her procedural due process

rights were violated because the Notice of Charges did not include allegations that the Appellant violated sections 40-57-130 and 40-1-110(1)(a). This assertion by the Appellant is misplaced as the Commission did not make any specific finding that she violated sections 40-57-130 and 40-1-110(1)(a). Appellant again attempts to assert facts that do not appear in the Record. Therefore, these assertions and arguments of the Appellant should not be considered by this Court.

Appellant does not contest the Commission's second Finding of Fact in her Brief. Therefore, this Finding of Fact by the Commission should be affirmed.

Appellant next argues that the Commission erred and prejudiced Appellant by stating as fact that real estate licensees are required to obtain consent from their Broker-in-Charge ("BIC") prior to purchasing unlisted property on their own behalf. Appellant makes reference to the Final Order, "Finding of Fact" at para. Three (R. p. 3 – 4.) Appellant's argument is misplaced in that a plain reading of that paragraph sets forth the facts that are supported by substantial evidence and Appellant's admissions that she did not inform her BIC or the manager of her office that she was negotiating the subject contract or had entered into the contract. The Commission's findings of fact further set forth that the Appellant's BIC or office manager did not consent to the subject transaction being handled by the Appellant. Nowhere in the specific finding of fact does the Commission state that licensees are required to obtain consent from their BIC as argued by Appellant. (R. p. 3 – 4.) Once again, Appellant attempts to assert facts that do not appear in the Record with her reference to "common practice." Therefore, these assertions and arguments of the Appellant should not be considered by this Court and the Commission's third Finding of Fact should be affirmed.

Appellant next argues that the Commission's Final Order erred and prejudiced Appellant by erroneously concluding Appellant presented copies of two checks to "give the appearance that the money had been placed into the appropriate trust account."

presumed intent

Appellant references "Findings of Fact" at para. 4. (R. p. 4.) Appellant asserts that this finding "is nothing more than speculation by the Commission and is not supported by any substantial evidence." Quite the contrary, considering the Record as a whole, there is substantial evidence in the Record to support the Commission's finding of fact, including the Appellant's admission during the hearing that while she disagreed with the intent, the outcome was the same. (R. p. 181, lines 4 – 18.) The possibility of drawing two inconsistent conclusions from the evidence, as asserted by Appellant, does not mean the Commission's findings and conclusions are unsupported by substantial evidence. It is well settled that where there is a conflict in the evidence, the Commission's findings of fact are conclusive. This Court cannot and does not substitute its judgment for that of an administrative agency upon a question as to which there is room for a difference of intelligent opinion. Therefore, Appellant's argument is without merit and the Commission's fourth Finding of Fact should be affirmed.

Appellant next argues that the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant should have notified the BIC at Acquire Realty of the contract and placed earnest money funds into said BIC's trust account. Appellant references "Findings of Fact" at para. five and six. (R p. 4.) Witness testimony was presented during the hearing that the subject property was listed through the multiple listing service in October 2008 and that Appellant had assured the witness that she was working with Acquire Realty. Aside from the fact that the argument

Appellant now asserts was never made to the Commission and arguably was not properly preserved for review by this Court, there is substantial evidence to support the Commission's fifth and sixth "Findings of Fact." (R. p. 68, lines 2- 25; R. p. 69, lines 1- 16.) Therefore, Appellant's argument is without merit and the Commission's fifth and sixth Findings of Fact should be affirmed.

Appellant next argues that the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated section 40-57-135(B)(8) and referencing "Conclusions of Law" at para. 6. (R. p. 5.) Appellant argues that she did not enter this transaction on behalf of her BIC. During the hearing, Appellant acknowledged that her actions gave the appearance of representing her BIC. (R. p. 179, lines 10 – 17.)

The Appellant admits in her Brief that she acknowledged at the hearing that she violated the provisions of Title 40, Chapter 57, which govern the conduct of real estate licensees. The Appellant admitted at the hearing that she did not place earnest money totaling thirty thousand dollars (\$30,000) in her BIC's escrow account. (R. p. 127, lines 21 – 25; R. p. 128, lines 1 -2; R. p. 161, lines 16 - 21.) The Appellant further admitted during the hearing that she failed to disclose her true interests in the subject transaction (R. p. 178, lines 4 – 22.), that she failed to disclose that she was a real estate licensee (R. p. 178, lines 10 – 22; R. p. 180, lines 6 – 10)), and that she did not inform her BIC (R. p. 179, lines 24 – 25).

At a minimum, the Appellant's admission that she failed to place the earnest money in an escrow account defeats her argument that the Commission's Final Order erred and unfairly prejudiced the Appellant by erroneously concluding Appellant violated

section 40-57-135(B)(8). This section requires that all cash monies or certified funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge or property manager-in-charge immediately must be delivered to the broker-in-charge or property manager-in-charge, except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge or property manager-in-charge as soon as the sales or lease agreement is ratified by both parties. The Record evidences that Appellant did not do what was required by section 40-57-135(B)(8) and the Commission correctly found Appellant had violated this section.

The remaining portions of Appellant's argument dealing with agency were not made to the Commission and arguably were not properly preserved for review by this Court. Therefore, substantial evidence appears in the Record to support the Commission's sixth Conclusion of Law that Appellant violated section 40-57-135(B)(8), and it should be affirmed.

Likewise, Appellant's arguments that the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated section 40-57-135(D) must fail. This section provides in clear and unambiguous language that no licensee either directly or indirectly may buy for his own account or for a corporation or any other business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to all parties involved. The Appellant admitted during the hearing that she failed to disclose her true interests in the subject transaction. (R. p. 178, lines 4 – 22.) Appellant's

arguments are without merit. Taking the Record as a whole, substantial evidence appears in the Record to support the Commission's eighth Conclusion of Law that Appellant violated section 40-57-135(D), and it should be affirmed.

Appellant next argues the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated section 40-57-137(K). Appellant asserts there is no substantial evidence to support the Commission's finding of violation. Once again, Appellant attempts to argue facts that are not in the Record. Further, Appellant's arguments were not properly preserved for review by this Court. Therefore, substantial evidence appears in the Record that Appellant failed to disclose the nature of her relationship with potential sellers and buyers, Appellant failed to notify her BIC of the transactions in question, Appellant failed to maintain monies in an appropriate trust account, all of which supports the Commission's ninth Conclusion of Law that Appellant violated section 40-57-137(K) in that she failed to treat all prospective sellers honestly and knowingly gave them false or misleading information about the buyer's ability to perform the terms of a transaction. The Commission's ninth Conclusion of Law should be affirmed.

Appellant continues her argument that the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated sections 40-57-145(A)(4) and 40-1-110(c), (f), and (g). Appellant challenges the Commission's determination that Appellant's actions endangered and were a harm to the general public. Section 40-57-145(A)(4) provides that the Commission may take disciplinary action against a licensee who, in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public.

Appellant's arguments are misplaced. As previously stated, substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The possibility of drawing two inconsistent conclusions from the evidence does not mean the Commission's conclusion was unsupported by substantial evidence.

In the present case, the Commission had the benefit of seeing and hearing the testimony of the Appellant and witnesses and judging their credibility and demeanor. The factual findings of the Commission are presumed to be correct and will only be set aside if unsupported by substantial evidence. In view of the reliable, probative and substantial evidence contained in the whole record, the Commission's conclusion that Appellant demonstrated bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public is well supported as set forth in the Commission's eleventh Conclusion of Law. Additionally, with the Commission making this conclusion, the Commission's determination that Appellant violated sections 40-1-110(1)(c), (f), and (g) is also well supported based upon the substantial evidence contained in the Record. Therefore, substantial evidence contained in the Record establishes that the Commission's second, third, fourth, fifth, and eleventh Conclusions of Law should likewise be affirmed.

Appellant does not challenge the Commission's tenth Conclusion of Law that she violated section 40-57-145(A)(1) in that she made a substantial misrepresentation involving a *real estate transaction*, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the

transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described in the Final Order. (R. p. 6.) Therefore, the Commission's tenth Conclusions of Law should be affirmed.

Appellant next argues that the Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated section 40-57-145(A)(10) and referencing "Conclusions of Law" at para. 12. (R. p. 4.) Appellant's argument must fail. Appellant seeks to assert that her purported ownership of the earnest money, although undisclosed to the parties to the transaction, somehow negated her statutory duties and obligations to place the earnest money in her BIC's escrow account. Section 40-57-145(A)(10) provides grounds for disciplinary action against a licensee who fails, within a reasonable time, to account for or to remit any monies coming into the licensee's possession which belong to others. Appellant cannot now assert her ownership interest, although not disclosed to the parties involved in the subject transaction, to protect herself from the discipline imposed by the Commission. Substantial evidence appears in the Record to support the Commission's finding that the Appellant violated section 40-57-145(A)(10). Therefore, the Commission's twelfth Conclusion of Law should be affirmed.

Appellant does not challenge the Commission's thirteenth Conclusion of Law that she violated section 40-57-145(A)(20) in that she violated a provision of this chapter or a regulation promulgated under this chapter, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust

account, and other facts described in the Final Order. (R. p. 6.) Therefore, the Commission's thirteenth Conclusions of Law should be affirmed.

The remaining portions of Appellant's arguments asserting error and unfair prejudice (Appellant's Brief pp. 11 – 15) are a compilation and jumble of alleged facts and evidence not found in the Record. As a result, these arguments should not be considered by the Court pursuant to Rule 36(G), Administrative Law Court Rules of Procedure.

Appellant has further alleged that the Commission abused its discretion by disciplining Appellant and revoking her license. As previously stated, an abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.

In the present case, the Commission's decisions are not arbitrary because there is a rational basis for its decisions. The Commission is charged with weighing the public interest and need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct. This decision was not based alone on one's will. The Commission's decision was made upon an established course of reasoning, exercise of judgment, adequate determining principles, and governed by fixed rules and standards. The Commission's ruling is not an abuse of discretion because the ruling was made with

substantial evidentiary support as set forth in the Record. The factual findings of the Commission in this matter are well supported by substantial evidence, including, but not limited to, Appellant's own admissions. As a result, the factual findings are presumed to be correct and should not be set aside by this Court.

There is a distinction between the Commission's statutory authority to impose a range of authorized sanctions in cases over which it has subject matter jurisdiction, as in the present matter, and its discretion to impose a particular sanction in an individual case based on the unique facts of that case, as the Appellant would assert. "The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Section 1-23-380(A)(5). *See also Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995), *Toussaint v. State Bd. Of Med. Exam'rs*, 303 S.C. 316, 400 S.E.2d 488 (1991).

An administrative sanction cannot be said to be unduly harsh if it is within the Board's authority to impose. *South Carolina Bd. of Examiners in Optometry v. Cohen*, 256 S.C. 13, 180 S.E.2d 650 (1971). The Commission is authorized to revoke, suspend, publicly reprimand, or otherwise restrict the practice or discipline a licensee when it is established that the licensee is guilty of misconduct. Sections 40-57-145 and 40-57-150(E)(1) and (2). In addition, section 40-1-120 authorizes the Commission to prescribe conditions to be met during probation. Statutory law does not provide an exclusive list of the conditions the Commission is authorized to impose. In *Deese v. South Carolina State Bd. of Dentistry*, 286 S.C. 185, 332 S.E.2d 539 (Ct App. 1985) the Court determined that a Board's discretion does not have to be exercised identically in every case. In *Deese*, the Court held that: "A penalty that is within the [Board's authority] is not rendered invalid

in a particular case because it is more severe than sanctions imposed in other cases, and mere unevenness in the application of the sanction does not render its application in a particular case unwarranted in law.” *Id.* at 286 S.C. 182, 332 S.E. 2d 539, 541.

It is well established that the Commission's decision to impose a sanction must be consonant with the purpose of its proceedings. *Wilson v. State Bd. of Med. Exam'rs*, 305 S.C. 194, 406 S.E.2d 345 (1991). The Commission meticulously weighed the public interest and need for the continued services of qualified real estate brokers against the countervailing concern that society be protected from professional ineptitude and misconduct. (R. p. 4.) *Id.* See also *Huber v. State Board of Physical Therapy Examiners*, 316 S.C. 24, 446 S.E.2d 433 (1994).

Therefore, in the present case, considering the Record as a whole, the Commission's decision to revoke Appellant's real estate license was warranted and supported by substantial evidence.

- II. Appellant failed to properly preserve for review by this Court the issues alleging that her procedural due process rights were violated by: (1) being given the State's evidence against her only nine days prior to her hearing; (2) being prosecuted and judged on charges not included in the State's Notice of Charges; and (3) being prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given in explanation.

First, Respondent submits that issues identified by Appellant as (1), (2), and (3) have not been properly preserved for review by this Court. The Supreme Court has held, on numerous occasions that "an issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised and ruled upon by the trial court. In other words, the trial court must be given an opportunity to resolve the issue before it is presented to the appellate court." *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004).

In the present case, Respondent submits that the issues identified by Appellant as (1), (2), and (3) were never raised by Appellant or ruled upon by the Commission during the hearing. Respondent further submits that Appellant never raised an objection to the Notice of Charges to the Commission. Therefore, the Commission was never given an opportunity to address this issue. Respondent submits that there are no findings of fact or conclusions of law regarding this issue in the Commission's Order. Therefore, Respondent submits that these issues should be dismissed for failing to properly preserve it for review.

The South Carolina Court of Appeals has emphasized the requirement of an objection to preserve an issue for appeal. In *Doe v. S.B.M.*, 327 S.C. 352, 488 S.E.2d 878 (Ct. App. 1997), the South Carolina Court of Appeals held:

[It is] a fundamental principle of appellate practice that an issue must be properly preserved at the trial level before it can be heard on appeal. The duty is on the litigant to make a timely objection in

order to preserve the right of review. A contemporaneous objection is required to properly preserve an error for appellate review. The failure to make an objection at the time the evidence is offered constitutes a waiver of the right to object.

note statute
where it says
"...agreed by a
Final Order..."

The *Doe v. S.B.M.* standard has been recognized and applied by the Administrative Law Court, even to *pro se* litigants. See *Thomas P. Smarsh, R.N. v. SCLLR*, Docket No. 01-ALJ-11-0255-AP (Order dated December 7, 2001).

Respondent also submits that the South Carolina Court of Appeals found in *Hancock v. Wal-Mart Stores, Inc.*, 355 S.C. 168, 584 S.E.2d 398 (Cl. App. 2003), that an issue was not preserved for review by the appellate court because it was not addressed in the final Order and the plaintiff failed to file a motion to alter or amend the judgment. Respondent submits that the present case should be controlled by the *Hancock* case because this issue was not addressed in the Commission's Final Order and Appellant did not file a motion to alter or amend the judgment. Therefore, Respondent submits that this issue should be dismissed for failing to preserve it for review by this Court.

In the alternative, Respondent asserts that Appellant attempts to argue facts, which do not appear in the Record concerning Appellant's receipt of evidence. In accordance with Rule 36(G), Administrative Law Court Rules of Procedure, this argument should not be considered by the Court and accordingly dismissed.

However, if this Court determines that the preceding issues have been properly preserved for review, then Respondent submits the following arguments in support of its position.

Appellant submits that her procedural due process rights were violated by (1) being given the State's evidence against her only nine days prior to her hearing; (2) being prosecuted and judged on charges not included in the State's Notice of Charges; and (3)

being prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given in explanation.

Appellant's argument (1) is without merit. The Notice of Charges and Notice of Hearing served upon Appellant and her counsel fully informed Appellant of the violations asserted in this matter and complies with the South Carolina Administrative Procedures Act (APA), section 1-23-320(b), which requires that the Notice shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issue involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

it was repeatedly requested

A review of the Notice of Charge plainly shows it is APA compliant. (R. p. 8 – 10.)

South Carolina Code Ann. § 1-23-370(c) states, in pertinent part, “no revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given the opportunity to show compliance with all lawful requirements for the retention of the license.” Respondent submits that the Commission fully complied with this statute as is evident by the Notice of Charges and Notice of Hearing filed and served in this case. (R. p. 8 – 10.) Additionally, the original hearing scheduled for November 16, 2010 was rescheduled to

February 16, 2011. (R. p. 12.) Clearly, Appellant and her counsel had ample opportunity to prepare for the hearing in this matter.

The Notice of Charges also clearly states the statutes that Appellant violated, as well as clearly laying out the acts that Appellant committed in violation of these statutes. (R. p. 8 – 10.) Appellant further complains that she received the State's evidence nine days prior to the hearing. Contrary to the Appellant's assertions, she was extremely familiar with both the subject transaction that formed the basis of the underlying complaint and the documents and correspondence that were the State's exhibits. Appellant and her counsel were provided with notice by mail of the facts and conduct which warranted the intended action. Further, Appellant and her counsel were given an opportunity to show compliance with all lawful requirements for the retention of the Appellant's license. Respondent complied with all requirements of the APA in providing Appellant and her counsel with notification of the pending charges. Appellant and her counsel further had a significant amount of time to prepare for this matter in that the Notice of Charges was dated and served October 13, 2010 until the hearing was held on February 16, 2011. Therefore, Respondent submits Appellant has failed to present any credible evidence that the Commission violated her procedural due process rights concerning her issue identified as (1).

Appellant's issue identified as (2) asserts that she was prosecuted and judged on charges not included in the State's Notice of Charges, specifically sections 40-57-130 and 40-1-110(1)(a). Likewise, Appellant's issue identified as (2) is without merit.

Appellant asserts that the Commission concluded Appellant violated sections 40-57-130 and 40-1-110(1)(a) by referencing the Final Order "Conclusion of Law" at para. 1. (R. p.

4.) As set forth previously, the plain reading of the referenced paragraph is that the Commission has jurisdiction in this matter, which is not disputed by Appellant, and, upon finding that a licensee has violated the provisions of the statutory sections listed therein, the Commission has the authority to order the revocation, suspension or cancellation of a license to practice and that the Commission may assess a fine or impose a reprimand. This paragraph attempted to state the statutory basis for the Commission's authority to discipline its licensees. Clearly, this paragraph could have been drafted better. While this particular paragraph does correctly stand for the proposition that the Commission has the authority to discipline its licensees, a plain reading of that paragraph in no way states, as Appellant asserts, that the Commission found and concluded as a matter of law that she violated sections 40-57-130 and 40-1-110(1)(a). The Commission's Final Order, beginning with paragraph number two of the Conclusions of Law, specifically sets forth each of the statutory sections Appellant was found to have violated. (R. p. 4 – 6). Appellant asserts that her procedural due process rights were violated because the Notice of Charges did not include these two sections 40-57-130 and 40-1-110(1)(a). This assertion by the Appellant is misplaced as the Appellant was not charged with violating, and the Commission did not make any specific finding or conclusion that she violated sections 40-57-130 and 40-1-110(1)(a). Therefore, Respondent submits Appellant has failed to present any credible evidence that the Commission violated her procedural due process rights concerning her issue identified as (2).

Appellant's issue identified as (3) asserts that she was prosecuted and judged on statutes cited in the Notice of Charges but for which no written charge was given in

explanation, specifically sections 40-57-135(D) and 40-57-137(K). Likewise, Appellant's issue identified as (3) is without merit.

The Notice of Charges and Notice of Hearing served upon Appellant and her counsel fully informed Appellant of the violations asserted in this matter and complied with the South Carolina Administrative Procedures Act, section 1-23-320(b), which requires that the Notice shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

The Notice of Charges also clearly includes a reference to the particular sections of the statutes and rules involved in the proceeding. The Notice of Charges also includes a short and plain statement of the matters asserted. If, as Appellant now attempts to argue for the first time, the statement of the matters asserted in the Notice of Charges were insufficient, Appellant or her attorney should have requested a more definite and detailed statement. This was not done. Therefore, Respondent submits Appellant has failed to present any credible evidence that the Commission violated her procedural due process rights concerning her issue identified as (3).

III. Appellant was not prejudiced by the admittance of hearsay "evidence."

Lastly, Appellant asserts that she was unfairly prejudiced by the inappropriate admittance of hearsay "evidence" when Petitioner's Exhibit 2 (hereinafter referred to as the "Bufkin letter") was admitted into evidence by the Commission. (R. p. 206.) Appellant's argument is without merit.

The Record establishes that the Bufkin letter was discussed in great detail and recognized as based on hearsay. (R. p. 31, lines 12 – 23.) Mr. Bufkin, who authored the letter, was present during the hearing and testified. (R. p. 34, line 13 through R. p. 52, line 22.) The letter itself was addressed to multiple individuals, one of which was the Appellant. Mr. Bufkin was available to the Appellant and her counsel and during the hearing was cross-examined by Appellant's counsel. (R. p. 37, lines 13 through R. p. 48, line 15.) During the hearing, and after Mr. Bufkin was examined by both attorneys, Petitioner's Exhibit 2 was admitted into evidence. At the time this exhibit was admitted, Advice Counsel for the Commission stated on the record, "to the extent it contains hearsay ... no hearsay from this document or anything else will be used in the making of any decision by the board." (R. p. 52, lines 6 – 14.)

Appellant has failed to show how the admission of the Bufkin letter caused prejudice. Appellant during the course of the hearing entered into evidence similar hearsay evidence as Respondent's Exhibit 2 (R. p. 232.) which was admitted over the State's objection. At the time this exhibit was admitted into evidence, Advice Counsel for the Commission again stated on the record, "the Commission said earlier that anything they accept that has hearsay, just because we accept it, we're still not going to use hearsay. The Commission is still not going to use hearsay in making a decision." (R.

p. 135, lines 14 - 18.) Therefore, Respondent submits Appellant has failed to present any credible evidence that the Commission violated her procedural due process rights or otherwise prejudiced the Appellant by the admittance of hearsay "evidence."

Accordingly, the Appellant's appeal should be dismissed.

- IV. The Commission's decision to revoke Appellant's real estate license was within the Commission's discretion to impose and was consistent with the Commission's prior cases involving the type of misconduct the Appellant was found to have committed.

There is a distinction between the Board's statutory authority to impose a range of authorized sanctions in cases over which it has subject matter jurisdiction, as in the present matter, and its discretion to impose a particular sanction in an individual case based on the unique facts of that case, as the Appellant would assert. "The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(A)(5). *See also Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995), *Toussaint v. State Bd. Of Med. Exam'rs.*, 303 S.C. 316, 400 S.E.2d 488 (1991).

An administrative sanction cannot be said to be unduly harsh if it is within the Board's authority to impose. *South Carolina Bd. of Examiners in Optometry v. Cohen*, 256 S.C. 13, 180 S.E.2d 650 (1971). The Commission is authorized to revoke, suspend, publicly reprimand, or otherwise restrict the practice or discipline a licensee when it is established that the licensee is guilty of misconduct. Sections 40-57-145 and 40-57-150(E)(1) and (2). In addition, section 40-1-120 authorizes the Commission to prescribe conditions to be met during probation. Statutory law does not provide an exclusive list of the conditions the Commission is authorized to impose. In *Deese v. South Carolina State Bd. of Dentistry*, 286 S.C. 185, 332 S.E.2d 539 (Ct App. 1985) the Court determined that a Board's discretion does not have to be exercised identically in every case. In *Deese*, the Court held that: "A penalty that is within the [Board's authority] is not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases, and

mere unevenness in the application of the sanction does not render its application in a particular case unwarranted in law.” *Id.* at 286 S.C. 182, 332 S.E. 2d 539, 541.

The current case involves matters of fiduciary obligations, statutory duties, disclosure, and trust account misconduct. The Commission has consistently dealt with such misconduct through revocation of licensure as evidenced by its decisions in *Timothy J. Barlowe v. LLR*, No. 03-ALJ-11-0372-AP (February 6, 2004) and *Victor Rivera v. LLR, South Carolina Real Estate Commission*, No. 03-ALJ-11-0057-AP (October 22, 2003). Appellant has sought to interject decisions of other Boards and Commissions, which would have no bearing on or control over the decisions made by the Real Estate Commission.

It is also well established that a board's decision to impose a sanction must be consonant with the purpose of its proceedings. *Wilson*. The Commission meticulously weighed the public interest and need for the continued services of qualified real estate brokers against the countervailing concern that society be protected from professional ineptitude and misconduct. (R. p. 4.) *Id.*; *Huber*.

As previously stated, the Appellant admitted at the hearing and admits in her Brief that she violated the provisions of Title 40, Chapter 57, which govern the conduct of real estate licensees. Appellant also admits that she did not place earnest money totaling thirty thousand dollars (\$30,000) in her BIC's escrow account. (R. p. 127, lines 21 – 25; R. p. 128, lines 1 -2; R. p. 161, lines 16 - 21.) Appellant does not challenge two of the Commission's Conclusions of Law. The first being that Appellant violated section 40-57-145(A)(1) in that she made a substantial misrepresentation involving a real estate transaction, as evidenced by her failure to disclose the nature of her relationship with

potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described in the Final Order. (R. p 6.) Appellant also did not challenge the Commission's Conclusion of Law that she violated section 40-57-145(A)(20) in that she violated a provision of this chapter or a regulation promulgated under this chapter, as evidenced by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts described in the Final Order. (R. p. 6.)

The Commission properly concluded that Appellant violated South Carolina Code Ann. §§ 40-1-110(c), (f), (g), and (k); 40-57-135(B)(8) and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10), and (20) by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described in the Final Order.

Appellant's arguments that the Commission's findings of fact and conclusions of law were erroneous are without merit. This Court, sitting as an appellate court, only reviews errors of law that were properly preserved for review in the lower court. Appellant failed to preserve her issues purporting to assert that her procedural due process rights were violated. There is ample testimony in the record to support the Commission's findings.

Appellant has failed to provide this Court any evidence in the record that the Commission committed any error of law. The Commission properly concluded that

Appellant had violated South Carolina Code Ann. §§ 40-1-110(c), (f), (g), and (k); 40-57-135(B)(8) and (D); 40-57-137(K); and 40-57-145(A)(1), (4), (10), and (20) by her failure to disclose the nature of her relationship with potential sellers and buyers, her failure to notify her BIC of the transactions in question, her failure to maintain monies in an appropriate trust account, and other facts as described in the Final Order. During the hearing, Appellant admitted she did not place earnest money totaling thirty thousand dollars (\$30,000) in her BIC's escrow account. (R. p. 127, lines 21 – 25; R. p. 128, lines 1 -2; R. p. 161, lines 16 - 21.) Appellant also admitted during the hearing that she failed to disclose her true interests in the subject transaction. (R. p. 178, lines 4 – 22.) In her testimony, Appellant acknowledged that her actions gave the appearance of representing her BIC. (R. p. 179, lines 10 – 17.) Finally, Appellant admits in her Brief that she acknowledged at the hearing that she violated the provisions of Title 40, Chapter 57, which govern the conduct of real estate licensees.

Appellant contends that the Commission's decision was inaccurate and not supported by any evidence and that the sanction was inappropriate. However, the sanction imposed by the Commission was within its discretion to impose. The Commission reviewed documents and heard testimony from numerous witnesses including Appellant. The Commission appropriately weighed all the evidence and testimony as evidenced from its detailed Final Order.

The Commission's specific Findings of Fact and Conclusions of Law form a well-supported basis for its decision. The Commission specifically found that Appellant failed to disclose the nature of her relationship with potential sellers and buyers; she failed to notify her BIC of the transactions in question, she failed to maintain monies in an

appropriate trust account, and set forth specific findings of fact in the Final Order. (R. p. 4 - 7.) The Commission's Final Order also contains a specific conclusion of law that the sanction was determined after weighing the public interest and the need for the continuing services of qualified real estate brokers against the countervailing concern that society be protected from professional ineptitude and misconduct. (R. p. 4.)

Respondent submits that a sanction, even one suspending or revoking a professional license, should not be disturbed on appeal so long as it was within the Commission's discretion to impose and is supported by the evidence in the record. It is well settled that this Court will not substitute its judgment for that of the agency unless the agency's determination is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Lark v. Bi-Lo, Inc.*

The Commission's decision in the present case is well supported by "substantial evidence" in that the Record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best Western Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The well-settled case law in this state has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo, Inc.* The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d. 913 (1996).

In applying the substantial evidence rule, the factual findings of the administrative

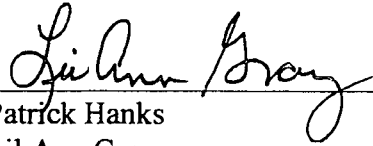
agency are presumed to be correct, and the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Gibson v. Florence Country Club*, 282 S.C. 384, 318 S.E.2d 365 (1984). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence, which Appellant has failed to do. *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996) (citing *Hamm v. AT&T*, 302 S.C. 210, 394 S.E.2d 842 (1994)). Therefore, this Court should deny and dismiss Appellant's appeal.

CONCLUSION

For all of the foregoing reasons, the decision of the Commission should be affirmed and this appeal dismissed.

Respectfully Submitted,

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Real Estate Commission

A handwritten signature in cursive script, reading "Lil Ann Gray", is written over a horizontal line.

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July 15, 2011.

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

**APPEAL FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION,
REAL ESTATE COMMISSION**

Docket No. 11-ALJ-11-0168-AP

Vanessa Patrick.....Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation, Real Estate
Commission.....Respondent.

**APPELLANT'S RESPONSE
TO RESPONDENT'S BRIEF**

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FILED

JUL 28 2011

SC ADMIN. LAW COURT

AMENDED STATEMENT OF THE ISSUES ON APPEAL

I. The Real Estate Commission's decision to permanently revoke Appellant's real estate license was unwarranted and unduly harsh as the Commission and the Agency attorney committed errors of fact and law and unfairly prejudiced Appellant by transforming her two negligent mistakes into a fictitious scheme/conspiracy to commit fraud via baseless speculation and innuendo, misapplication and misunderstanding of the relevant law, and misstatements of various fact/law, all without substantial supporting evidence.

1. The Real Estate Commission

- a. The Real Estate Commission ("Commission") erred and unfairly prejudiced Appellant by incorrectly stating that Appellant had allowed her license to lapse.
- b. The Real Estate Commission ("Commission") erred and unfairly prejudiced Appellant by erroneously indicating in Appellant's file that she had permanently surrendered her license in lieu of an investigation and that placing her license on inactive status was tantamount to an admission of guilt.
- c. The Commission erred and prejudiced Appellant by erroneously concluding Appellant violated SC Code Sections 40-57-130 and 40-1-110(1)(a). Neither 40-57-130 or 40-1-110(1)(a) appeared on Appellant's Notice of Charges, yet she was convicted of violating both: a violation of Appellant's procedural due process rights.
- d. The Commission's Final Order erred and unfairly prejudiced Appellant by stating as fact that real estate licensees are required to obtain consent from their Broker-in-Charge ("BIC") prior to purchasing unlisted property on their own behalf.
- e. The Commission's Final Order erred and prejudiced Appellant by erroneously concluding Appellant presented copies of two checks to "give the appearance that the money had been placed into the appropriate trust account."
- f. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant should have notified the BIC at Acquire Realty of the contract and placed earnest money funds into said BIC's trust account.
- g. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(B)(8).
- h. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-135(D).
- i. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-137(K) by giving Sellers false and misleading information about the buyers' ability to close.

- j. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(4), 40-1-110(c), (f), or (g); specifically how Appellant's actions endangered and were a harm to the general public.
- k. The Commission's Final Order erred and unfairly prejudiced Appellant by erroneously concluding Appellant violated SC Code Section 40-57-145(A)(10).
- l. The Commission erred and unfairly prejudiced Appellant by failing to consider the entire body of evidence even though said evidence was offered on several occasions.

2. Agency Attorney

- a. The Agency's attorney unfairly prejudiced Appellant by failing to consider the contract as a whole and instead "cherry-picked" the provisions she liked and disregarded the rest as irrelevant.
- b. The Agency's attorney unfairly prejudiced Appellant by misleading the Board when she stated the project engineers failed to complete their tasks because they weren't being paid.
- c. The Agency's attorney unfairly prejudiced Appellant by misleading the Board that Appellant had drafted the second Addendum to the contract when in fact it was drafted by Mr. Bowers.
- d. The Agency's Attorney erred in insisting the underlying contract was in effect through December 2008, and that numerous extensions demanded multiple earnest money deposits totaling "approximately" \$185,000.

3. Conspiracy

The Agency alleged that Appellant acted with a "partner" and co-conspirator Sally Grooms, also a licensee. Ms. Grooms was informed the Commission had marked her file as "pending claim." However, Ms. Grooms applied to have her real estate license re-instated shortly after Appellant's own license was permanently revoked. Ms. Groom's license was reinstated without a hearing, consent agreement, or penalty, indicating Appellant was singled out for prosecution in this matter.

II. Appellant's procedural due process rights were violated prior to and during the Hearing:

- 1. The Notice of Charges contained only a list of statutory provisions followed by five brief paragraphs that were neither clear nor substantial, the Agency rebuffed Appellant's attempts to receive clarification, and Appellant was given the State's evidence against her only nine days prior to the Hearing.

2. In the Commission's "Conclusions of Law" Appellant was found guilty of violating Sections 40-57-130 and 40-1-110(1)(a). In the Notice of Charges, however these two sections were expressly not listed, thereby depriving Appellant of the required notice regarding the charges levied against her.
3. In the Commission's Conclusions of Law Appellant was found guilty of violating Sections 40-57-135(D) and 40-57-137(K). These statutes were cited in the Notice of Charges, but the written Section III contained no reference to any activities allegedly performed by Appellant that would have constituted such violations. Therefore, in the absence of further explanation, Appellant was ill-prepared to defend herself in the Hearing.
4. Over the objection of Appellant's counsel, the Commission erred in admitting a letter written by Pinner family attorney Henry Bufkin, as the bulk of the letter was based on hearsay. The State's attorney offered no justifiable hearsay exceptions to justify the letter's admittance, and further testimony failed to support the allegations in the letter.

III. The Real Estate Commission's decision to permanently revoke Appellant's real estate license was unfair and unduly harsh in light of previous case law where far more egregious behavior, as well as similar behavior to Appellant's, resulted in less severe punishment and not permanent revocation.

STATEMENT OF THE CASE

Following the information given in the Statement of the Case and Relevant Facts in Appellant's Brief, filed on May 26, 2011, on June 6, 2011, Respondent filed and served its Motion to Conform Appellant's Brief to the Requirements of Rule 37(B) or in the Alternative, Strike. On June 20, 2011, Appellant filed and served Appellant's response to Motion to Conform Appellant's Brief and the Amended Statement of Issues on Appeal. Respondent's Brief was filed and served on July 8, 2011. This Response Brief follows.

ARGUMENT

As stated in Appellant's previous filings, Appellant made numerous attempts to proffer sensitive evidence, explain the mitigating circumstances, discuss the terms of the contract, and other details related to this matter – all the way up the ladder to the Agency Director – but to no avail. Just as important, Appellant explained in these same filings why she didn't offer this evidence at trial. Accordingly and in Appellant's view, this "additional" and material evidence is necessary to "throw light upon the questions involved in the appeal," see ALC Rules of Procedure 37(B)(2), and is crucial to a complete understanding of a rather complicated case. See SC Code Section 1-23-380(3) (if it is "shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court"); see *also* Section 1-23-380(4) (certain evidence may be considered "in cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court . . ."). Furthermore, "the factual findings of an administrative agency are presumed to be

correct and will be set aside only if unsupported by substantial evidence” *Kearse v. State Health and Human Fin. Comm’n*, 318 S.C. 198, 456 S.E.2d 892 (1995). Appellant again strongly contends many of the “factual findings” of the Respondent **should** be set aside as they are unsupported by substantial evidence; but rather, to a large degree, by pure conjecture and legal error such as admitting prejudicial hearsay evidence and testimony.

Indeed, Respondent continues to state erroneous information as fact. Respondent states, for example, that witness testimony at the hearing (no cites provided) said the subject property was listed through the multiple listing service in October 2008. The subject property was not listed, however, until 2009 (Exhibit 1), a fact easily substantiated by even a cursory investigation; however, this error was used against Appellant in both the Notice of Charges and the Final Order in charging that she failed to notify and deposit funds in the trust account of her new BIC. Respondent also states “[t]he current case involves matters of fiduciary obligations and trust account misconduct. The Commission has consistently dealt with such misconduct through revocation of licensure....” Appellant never owed fiduciary duties to the Sellers. SC Code of Laws 40-57-30(3) defines a Broker in relevant part as “an individual who... (a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease or other disposition of real estate or the improvements thereon; (d) offers advisory services as a real estate consultant or counselor; (e) offers to act as an agent representing a principal in a real estate transaction.” SC 40-57-30(5) defines a “Client” as a “person with whom a licensee has established an agency relationship.” SC 40-57-135(D)(4)(a through l) then sets forth how an agency – and therefore a fiduciary relationship – is established. Since the Sellers relied on Andy Bowers, Broker-in-Charge of Hometown Realty, as their agent and the Purchasers, Riverpath Investors LLC, were three licensees representing themselves, “matters of fiduciary obligations” by definition do not apply in this case and accordingly cannot comprise “misconduct” to be “dealt with.”

Also and as stated in SC 40-57-137(A): “[a] real estate brokerage company that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting as set forth in this chapter. The following are permissible agency relationships a licensee may establish: (1) seller agency, (2) buyer agency, (3) disclosed dual agency, and (4) subagency.” Again, Appellant had no agency relationship with the Sellers. Finally, SC 40-57-137(L) states “[a] licensee who represents one party to a real estate transaction may provide assistance to other parties...by performing ministerial acts...not related to the real estate brokerage services being performed for a client. Performing ministerial acts does not create an agency relationship.” In R. p. 61, lines 2-4, Andy Bowers confirms Appellant was told “that if she had an offer that they wanted her to work it through me and through Mr. Bufkin.” In R. p.87, lines 19-25, the Chairman and Andy Bowers confirm Bowers was the sellers’ agent.

Appellant was in part trained with course materials promulgated by the Real Estate Commission. Exhibit 2 is an excerpt from the 2008 course that Appellant attended in 2010. Please note the Commission’s own explanation of SC 40-57-135(D): it cannot and does not apply to the case at hand.

Regarding “trust account misconduct,” Appellant should have notified the sellers of the placement of the \$30,000 earnest money in another bank account – a wiser choice that would have eliminated the

appearance of impropriety. Respondent cannot prove, however, how Appellant's actions intended to defraud or harm, or actually defrauded or harmed, the Sellers. Appellant and her licensee partners consulted real estate law prior to their decision: For example: SC 40-57-135(B)(1)(A) "a broker-in-charge..., when taking possession of funds **belonging to another...**"; SC 40-57-135(B)(4) "All monies received by a broker-in-charge **as agent for a principal** in a real estate transaction..."; SC 40-57-135(B)(8) "funds received by a licensee...**in which the licensee is engaged for his broker-in-charge...**"; SC 40-57-135(C)(6) "monies received in a **personal** rental transaction...**do not have to be deposited in the broker's trust account, unless the real property is managed by the broker's company.**" [Emphasis added]. Since the earnest money funds were owned by Appellant - who was self-represented in a personal transaction for the purchase of an unlisted property in which no agency relationship on behalf of a broker-in-charge had been established - she and her partners did not interpret retaining the earnest money funds in another account to be a clear violation of license law. In this regard, SC 40-57-30(16) defines a "Trust account" as "an escrow account or properly designated bank account established and maintained by a broker-in-charge or property manager-in-charge **to safeguard funds** belonging to parties to a real estate transaction...." [Emphasis added]. For reasons detailed in Appellant's Brief, Appellant and her partners - in addition to not interpreting license law to require a BIC's consent to enter into a personal transaction - did not trust the BIC to "safeguard" their funds.

Respondent claims admission of hearsay in the Hearing did not prejudice the Board because the Advice Counsel stated "just because we accept it, we're still not going to use hearsay...in making a decision." See R. p. 135, lines 14-18. Yet the Board was obviously tainted by the admission of the hearsay as it formed much of the "factual" basis for the Final Order. In *State v. Craig*, 267 S.C. 262, 227 S.E.2d 306 (1976) the Supreme Court stated: "[r]eversible error in the admission of testimony is dependent on the existence of **probable** prejudice to the accused." [Emphasis added]. Only one witness, Andy Bowers, had first-hand contact with Appellant; Bowers' testimony failed to substantiate many of the findings of fact in the Final Order. In regard to Appellant's failure to disclose in writing she was a member of the purchasing LLC in addition to her known role as agent, the agency attorney asked Bowers "[d]id she ever tell you or were you ever informed or do you have any knowledge of whether or not she was involved as an investor in this project?" He replied, "[i]n this contract, no." See R. p.59, lines 13-17. Bowers answered with this curious phrasing because he knew Appellant was concurrently engaged with a subset of the sellers in an offer to purchase **another** tract. In addition, these same sellers testified under oath in the related civil case that they were fully aware of Appellant's role as investor and buyer's agent in the other deal. Yet inexplicably, they were "unaware" of Appellant's similar role in this transaction, although Appellant handled both transactions in substantially the same manner, verbally disclosing her position as agent and as investor. Further, in R. p.79-80, Bowers states he **did** know of Appellant's position "probably August or September, maybe even October." Notwithstanding their agent's confirmed knowledge as early as August 2008, the sellers were more than willing to consummate the contract with Appellant as an investor and licensee as confirmed by their signatures on the extensions in late August and in late October.

Another finding of fact in the Final Order based on hearsay and not on first-hand testimony is "there was supposed to be approximately One Hundred, Eighty-Five Thousand Dollars (\$185,000) in the trust account." In R. p.65, lines 7-11 in which the agency attorney tries to lead witness Bowers: "So did you have conversations with her about not just the \$30,000 but all total, the \$185,000 in regards to this contract?" Bowers is truthful: "The \$30,000 initially put up by the contract was these two checks here." He also confirms Appellant's contention that \$185,000 was the amount that would have been required to consummate the final extension of the contract had this event ever occurred. See R. p. 67, lines 14-15 and lines 23-25, *et. al.* Respondent makes a Finding of Fact that "the contract was extended numerous times." Yet Bowers not only agrees that contract contingencies were never met (R. p. 73, lines 10-17) thereby rendering it void, he also agreed the contract would have been technically terminated had the purchasers not put up additional earnest money within the purported extensions. See R. p. 76, lines 17-20; R. p. 77, lines 18-21; R. p. 78, lines 2-4; and R. p. 80, lines 3-13.

Bowers also failed to provide evidence that Appellant had given "constant assurances" that additional earnest money deposits had been made. In the hearing, Bowers was asked if the checks totaling \$30,000 written by Appellant's partner were "the only documentation that was ever presented to you during the course of this entire deal with respect to an earnest money deposit?" He responded, "Right." See R. p.80, lines 3-8.

Respondent claims "[t]he Commission has consistently dealt with such misconduct through revocation of licensure," dismissing the wealth of cases cited in Appellant's Brief (others were omitted for brevity's sake) wherein far more severe trust account misconduct, i.e. with funds belonging to others, resulted in far more lenient sanctions. "An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised..." *Anonymous Physician v. LLR, No. 08-ALJ-11-0368-AP*. Respondent cites *Deese v. South Carolina State Bd. Of Dentistry*, *Timothy J. Barlowe v. LLR*, and *Victor Rivera v. LLR* as justification for the Commission's "death blow" to Appellant's career. Once again, however, the Respondent is operating from the erroneous conclusion that "the current case involves matters of fiduciary obligations." It is interesting to note that in the *Barlowe* decision, the case was remanded twice to the Agency due to defects: "Proceedings to suspend or revoke the license of a professional are serious matters...." "It is therefore imperative, given the magnitude of cases such as the one at hand, that the Commission's final order clearly and completely articulate the facts and rationale supporting its conclusion...." "Plainly, the conclusions of law by the Board fail to articulate a rationale or provide an analytical basis for their conclusions. They do not contain a specific discussion of how or why the conduct described in the order violates the cited code section. Moreover, their findings are particularly vague when one considers the lengthy discourse involved." Also, "the Commission's order is conclusory, is without explanation, and is, therefore, deficient." (See *Timothy J. Barlowe v. LLR, 02-ALJ-11-0490-AP*). Nevertheless, the 2nd Amended Final Order in this matter indicates the licensee demonstrated misconduct in **multiple transactions**, apparently making a habit of taking advantage of members of

the public lacking representation by their own agent, certainly not a parallel to the case at hand. Likewise, in *Rivera*, the licensee was repeatedly involved in misconduct spanning **multiple transactions**, again not comparable to Appellant's case, the only blemish in a long and distinguished career.

Respondent also claims that stating Appellant's license was "lapsed" was simply a "scrivener's error" and did not prejudice Appellant. However, Appellant had notified the Agency of the error prior to the Hearing, correct status was indicated in the unsigned Memorandum of Agreement, but was again set forth incorrectly in the Final Order. SC 40-57-110(G) sets forth the requirements to maintain inactive status, including a prescribed timetable and fees. Appellant followed these steps and had even registered with the Commission her completion of continuing education hours that would have been required had Appellant's license been active. In contrast, SC 40-57-110(I) and (J) describe a "lapsed" license. Insinuating Appellant had allowed her license to lapse (in both Notice of Charges) implied a lack of care, and could have only hurt Appellant's attempts to display concern for her career.

Respondent next contends "[n]owhere in the specific finding of fact does the Commission state that licensees are required to obtain consent from their BIC..." However, this Finding of Fact is the foundation on which many Conclusions of Law and the attendant sanctions rest:

Conclusion of Law 2: "violated SC Code 40-1-110(c)...failure to notify her BIC...."

Conclusion of Law 3: "violated SC Code 40-1-110(f)...failure to notify her BIC...."

Conclusion of Law 4: "violated SC Code 40-1-110(g)...failure to notify her BIC...."

Conclusion of Law 5: "violated SC Code 40-1-110(k)...failure to notify her BIC...."

Conclusion of Law 9: "violated SC Code 40-57-137(K)...failure to notify her BIC...."

Conclusion of Law 10: "violated SC Code 40-57-145(A)(1)...failure to notify her BIC...."

Conclusion of Law 11: "violated SC Code 40-57-145(A)(4)...failure to notify her BIC...."

Conclusion of Law 13: "violated SC Code 40-57-145(A)(20)...failure to notify her BIC...."

A plain reading of the Final Order clearly indicates "failure to notify her BIC" was indeed a critical "violation." Appellant remains unaware of such a requirement in license law. And since it is a common practice for licensees to enter into personal transactions for unlisted properties without involving their BIC, it is unduly harsh to revoke Appellant's license for this "offense" without an opportunity for education for Appellant and the licensee community.

Respondent then argues the Record contains "substantial evidence" to support the Commission's finding of fact that Appellant presented copies of two checks "to give the appearance that the money had been placed into the appropriate trust account." Appellant disagreed with the intent (R. p. 181, lines 4-18) and acknowledged the outcome, i.e. the sellers assumed the funds had been deposited

into Asset's trust account, was not only a careless oversight but also a costly and **unprecedented** mistake in judgment. However, the funds (Appellant's own funds) were NEVER missing or misappropriated and were housed in a bank account untouched until the contract expired. This action did not harm the public or the sellers who were not contractually due the funds. The funds were available for ultimate disposition by a court under disputed earnest money statutes. Technically, when the check copies were presented: (a) the checks were not due to be deposited until within 48 hours of final ratification of the contract; and (b) Appellant was unaware the checks could not be covered by their maker, one of Appellant's partners. Respondent argues that Appellant "cannot now assert her ownership interest [of the earnest money], although not disclosed to the parties involved in the subject transaction, to protect herself from the discipline imposed by the Commission." Yet corporate purchasers are not required to disclose the source of earnest money funds. Further, there remains the question about the requirement for licensees to involve their BIC in personal transactions. Given the cloudiness of this particular area of license law, clarification and education would be far more appropriate than license revocation.

Respondent next implies that Appellant violated license law and her license was revoked because her actions "gave the appearance of" representing her BIC, although there existed no such representation. In the absence of substantiated intent or actual evidence of an action, "appearance of" an event is not the same as the actual event. In license law, a "client" is a person with whom a licensee has established an agency relationship. By inference, without an agency relationship there is no representation by a BIC. Since Appellant and her partners were all self-represented licensees, there was no legal representation by the BIC.

Respondent continues to demonstrate confusion between the various disclosure components in license law. Referring to 40-57-135(D) Respondent states: "[t]his section provides in clear and unambiguous language that no licensee either directly or indirectly may buy for his own account or for a corporation or any other business in which he holds an interest or for a close relative, real estate *listed with him* or real estate *for which he has been approached by the seller... to act as agent*, without first making his true position clearly known." [Emphasis added]. Appellant is well aware of this statute which clearly refers to a potentially fraudulent situation in which a licensee could be in a fiduciary or implied agency position of trust and reliance while acting contrary to the interests of the seller/client. In the case at hand, the sellers were represented by their own agent and attorney so this statute cannot apply and thus no attendant sanctions can be fairly placed upon Appellant. The citation from R. p. 178, lines 4-11 clearly calls for a different disclosure requirement than SC 40-57-135(D). In this fictitious example, the Chairman, a self-represented licensee, and Appellant (as a licensee) would each be required to disclose their interests in a transaction in which the Chairman wishes to purchase Appellant's unlisted property. SC 40-57-135(D) does not apply here, however, as the Chairman – as purchaser – is not the listing agent and was never approached by the Seller to list the property. Respondent further claims Appellant admitted during the Hearing that she "failed to disclose that she was a real estate licensee." Since Appellant had been engaged in several previous transactions with the same sellers in her real estate career, had signed the Contract of Sale in this matter as "Selling Agent," and was recognized by the sellers throughout the Hearing as

a real estate licensee, this cannot be true. Further, in R. p. 176, lines 24-25 and continuing on p. 177, lines 1-2, a member of the Board asked Appellant "[d]id you signed an agency disclosure form telling the seller that you were representing yourselves?" Appellant answered in the negative because prescribed use of the agency form in question had been discontinued for a number of years.

Respondent then argues that Appellant "knowingly gave [the sellers] false or misleading information about the buyer's ability to perform the terms of the transaction." Yet, the very purpose of contract contingencies is to express the possibility the deal may not close due to unforeseen circumstances. Appellant's belief, at ratification of the contract, was performance would occur **should** the two major contingencies be satisfied.

Respondent next argues, erroneously, that Appellant never raised an objection to the Notice of Charges. Appellant repeatedly asked for clarification of some of the issues raised as well as the missing Exhibits to the Notice of Charges, which were finally delivered 9 days prior to the Hearing. Respondent claims the Notice of Charges "clearly states the statues (sic) that Appellant violated, as well as clearly laying out the acts that Appellant committed in violation of these statutes." Respondent states Appellant was "extremely familiar" with the transaction. However, neither Appellant nor her attorney, based upon a plain reading of the essentially vague Notice of Charges, were prepared for several lines of questioning in the Hearing. "The mere restatement of the applicable regulatory statute, with an appended reference to the "conduct described herein," does not make the wrongdoing self-evident." *Timothy J. Barlowe* No. 02-ALJ-11-0490-AP. For example, two key matters were conspicuously absent from the Notice of Charges but were introduced in the Hearing: Appellant's "failure to disclose the nature of her relationship" and misleading sellers as to the "buyer's ability to perform." Exhibit 3, a letter from Appellant's attorney dated January 20, 2011 (also an exhibit to Appellant's Brief) clearly indicates Appellant questioned the Notice of Charges and disputed the "facts." Further, Appellant had been led to believe if the civil case settled, a Consent Order could be worked out in lieu of the hearing. Since the Memorandum of Agreement drafted by LLR - basically just a reformatted Notice of Charges - was rife with speculation and untruths, and failed to consider the settlement, Appellant's arguments and proffers of exculpatory evidence, Appellant refused to sign it and the hearing was held shortly thereafter.

CONCLUSION

In conclusion and considering Appellant's filings as a whole, Appellant strongly believes her additional evidence should be admitted as material and necessary to a complete understanding of the case at bar, and that the Commission's decision be reversed in favor of a more equitable punishment in line with Appellant's actual actions, not those based on speculation and/or confusion of the applicable law. Furthermore, our legal system is based on precedent and consistency. In her brief, Appellant noted many cases where similar or more egregious behavior was met with far less sanctions than permanent revocation. Respondent cites only two cases to the contrary, both involving a history of poor behavior. Appellant, however, does not share such a history of non-compliance; rather, she has practiced real estate unblemished for over 12 years. Accordingly, Appellant's Final Order should be reversed and a more equitable punishment levied.

Shelby Korsaido

Lots and Acreage

4/13/2010 11:34 A.M.

MLS#: 238830

No Photo Available

Status: Active Listing Price: \$7,071,190
 Area: 14 Rural NW Rich Co & NE Lex Original Price: \$7,071,190
 Co - Chapin
 Class: Lots and Acreage Type: Acreage\$/Acre: \$24,300

Address: 0 WASH LEVER ROAD
 Subdivision: NONE Elementary: Lake Murray (Lex5)
 City: Little Mountain Intermd:
 Zip: 29075 Middle: Chapin
 County: Richland High: Chapin
 Parcel ID#: 02900-01-13 District: Lexington/Richland Five

Acres: 288.62
 # of Lots Remaining:

Lot Size:
 Zoning: RU
 Road: 5400
 Frontage:
 Water: 3400
 Frontage:

Directions:
 Hwy 176 (Broad River Rd) toward Peak. Right on Wash Lever Road.

Lease: None
 Sales Options:
 Sales Includes:
 Mobile Allowed:

Structures:
 Products:
 Documents: Survey
 Restrictions: None

Topography: Part Wood, Rolling
 Vegetation: Brush, Timber
 Rights Reserved: None
 Miscellaneous:

Water: None
 Sewer: None
 Gas: None
 Electric: Available

Improvements:
 Fencing:
 Soil: Clay
 Other Util: Telephone

Location:
 Water Front Type: River
 Road Surface: Paved
 Road Type: State

Prop Disc/Exempt: N/Y

Miscellaneous:

Roll Back Taxes:

Deed Book:

Foreclosed:

Plat Book:

Remarks: Excellent Development Opportunity in Chapin School District. Only 5 Miles from Proposed new Schools. Approx. 3400 ft. of frontage on Broad River & over 1 mile of frontage on Wateree Creek & Wash Lever Road.

Agent Remarks: Preliminary Approval for Multiple Lots for Well & Septic.

Available Financing:

Cash, Conventional

Assn/Regime Fee Per:

Showing: Sign
 Owners Names: Pinner et al
 Listing Agent: Andy Bowers
 Co-List Agent:
 Listing Office: Hometown Realty
 Office Phone: 803-276-9700
 Office Fax: 803-276-4178

Possession: Closing
 Owners Phone: 803-276-9700
 Agent Phone: 276-9700
 Agent Fax:
 Agent Cell: 803-924-3538
 Co-List Phone:
 Co-List Cell:

Listing Date: 2 / 17 / 2009
 Expiration Date:
 DOM: 420
 Comp SB: 2.5 VC: N List Type: ERTS
 Agent E-mail: andyb@backroads.net

Information Herein Deemed Reliable, but Not Guaranteed. © 2010 by CMLS 4/13/2010 11:34:15 AM

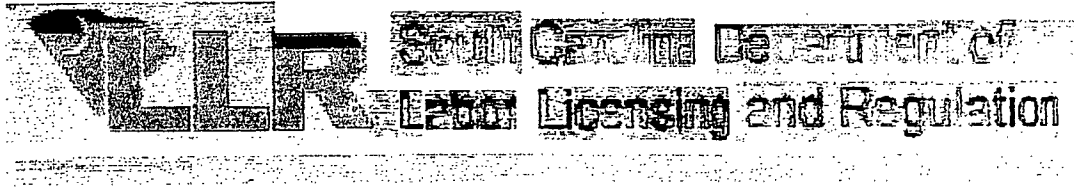
**South Carolina
Real Estate Commission**

Core Course 2008-2010

**“Top Ten Ways
To Be Disciplined”**

Exhibit 2

**Copyright 2008
All Rights Reserved**



Welcome to the South Carolina Real Estate Commission's mandatory core course. It is our hope that the content of this course will provide an in-depth review of license law along with a defined focus on the most common license law

Through this update, two outcomes can be achieved:

The licensee becomes more familiar with license law and utilizes the law to determine parameters for specific behaviors.

The consumer is better served by a more knowledgeable licensee, resulting in fewer complaints to the Commission.

The course length is four hours, including breaks. In order to receive credit for this course to use for license renewal, the attendee is required to remain in the training room for the entire time, with the exception of the scheduled breaks. In addition, the attendee will be required to participate in discussions, group activities and individual exercises that are included in the course. Failure to follow these rules may result in denial of the course completion certificate.

We hope you enjoy the update class and continue to upgrade your skills through other educational opportunities, whether for continuing education credit or professional development. As always, the staff of the South Carolina Real Estate Commission is available to take your questions or comments.

7. Acting in a Dual Capacity as Agent and Undisclosed Principal

A licensee who acts in the dual capacity of agent and undisclosed principal in a real estate transaction is in violation of license law.

No licensee, either directly or indirectly, may buy for his/her own account or for a corporation or any other business in which he/she holds an interest, or for a close relative, any real estate listed with him/her without first making his/her true position clearly known in writing to all parties involved. In addition, no licensee, either directly or indirectly, may buy real estate for which he/she has been approached by the seller or prospective buyer to act as agent without first making his/her true position clearly known in writing to all parties involved.

It is required that an agent forego buying property that is listed with his/her company without having full disclosure of the agent's true position in writing. The seller and agent should also agree in writing that the seller is no longer responsible for the agent's fee. The SC Supreme Court stated:

When selling to himself, a real estate broker fails to satisfy his fiduciary duty to disclose all material facts to the principal if the broker fails to secure an agreement from the seller acknowledging both his change in position along with the seller's right to refuse the commission payment.

When a licensee is buying an in-house listing, true position means full disclosure of the licensee's intentions and plans for the property. It does not merely mean that the purchaser is a South Carolina licensee. Courts have also stated:

When selling to himself, a licensee must meet the extremely high standards of his fiduciary obligation as well as carry the burden of proof to show full disclosure of his position to the principal.

In a situation where the agent is on both sides of a transaction, the broker can only meet these responsibilities by obtaining an agreement of at least the same formality as the initial agreement creating the agency relationship. To earn a commission a real estate agent must fulfill all of his or her fiduciary duties. Breaching fiduciary duties can create liability for a Broker.

Upon request of the department, the licensee shall provide evidence of having made this disclosure.

Locate the reference in license law regarding the method required for disclosing the fact that the buyer or seller is a licensed agent.

40-57-135(D)



Attorneys at Law

REPLY TO
THOMAS R. LYDON
DIRECT DIAL 803-227-2292
tlydon@mgclaw.com
COLUMBIA

January 20, 2011

Via Electronic Mail and U.S. Mail
Paula S. Magargle, Esquire
South Carolina Department of LLR
Post Office Box 11329
Columbia, SC 29211

Re: *Vanessa K. Patrick*
License #:REL 22479

Dear Paula:

This letter is to follow-up on our telephone conversations regarding this matter. As we discussed, the civil lawsuit filed by the Pimmers has been settled. A copy of the Settlement Agreement and Mutual Release is enclosed. As you can see, Ms. Patrick contributed only \$6,000.00 to the settlement. She felt very strongly that she could successfully defend the claims asserted against her at trial. However, the amount that she was asked to contribute was significantly less than the attorney's fees and expenses that she would have incurred in going to trial. Therefore, she felt like she had no choice other than to settle.

Now that the civil action has been resolved, we would like to explore the possibility of reaching an agreement with respect to the LLR proceedings. In order for us to evaluate whether this is possible, I thought it would be helpful for me to set forth our position on the allegations stated in the Notice of Charges.

The allegation concerning the property and the price is generally correct. However, the contract was not finalized until later on in March of 2008.

With regard to the second allegation, the contract form used was a LAND, LOTS AND ACREAGE CONTRACT OF SALE. The language on the top of the first page reads as follows: (Standard Form of The Greater Columbia Association of REALTORS. Rev. 01/02.) This form is available for use by the entire real estate industry. The form itself states that use of the form is universal and is not intended to identify the user. The Asset Realty label was merely a sticker affixed to a contract form and photocopied for convenience of use.

I am not aware of any statute or regulation that requires a licensee to notify his broker of intent to purchase a For Sale By Owner property (not listed in MLS and not offered for sale through a real estate brokerage) on his own behalf. To my knowledge, a licensee's BIC or office manager does not have to consent to or otherwise approve such a transaction. It is my

CHARLESTON | COLUMBIA | GREENVILLE | CHARLOTTE | RALEIGH | MYRTLE BEACH
1320 MAIN STREET, 10TH FLOOR | Post Office Box 12519 | COLUMBIA, SC 29211 | 803-779-2300 PHONE | 803-748-0526 FAX
WWW.MGCLAW.COM

understanding that it is not unusual for licensees to buy or sell properties on their own behalf without the knowledge or consent of their BIC.

Regarding the initial earnest money deposit, it is true that the contract called for the initial deposit to be placed in Asset's escrow account. However, it is not correct that the check copies were presented "to give the appearance that the money had been placed into the appropriate trust account." First, at the time the offer was made, the parties expected that the funds would be deposited in Asset's escrow account, but South Carolina law does not require the checks to be actually deposited into an escrow account until after the offer is ratified and becomes a contract.

During the period of time between offer and contract, the maker and other members of the partnership decided not to deposit the funds into Asset Realty's escrow account for several reasons. First, the purchasers were purchasing the property on their behalf and the property was not listed in MLS. Therefore, they did not have to run the sale through Asset Realty. Second, the purchasers' research of the applicable law indicated that funds "belonging to others" are required to be placed into escrow. These funds did not "belong to others." Finally, as the funds were earmarked from an earning asset, and there would be significant period of time between contract and closing, it did not make economic sense to put the funds in a non-interest bearing account.

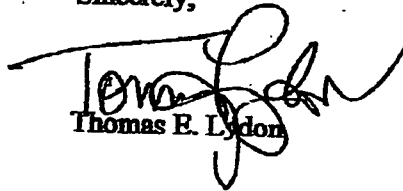
With regard to the continued negotiations, the parties did not continue negotiations for several months following the initial signing of the contract. The contract stood on its own until problems started occurring with due diligence and it became apparent that a contract extension would be necessary. The contract was not extended several times. To the contrary, the purchasers believed in September of 2008 that the contract had expired and that the property was no longer under contract. Thereafter, the purchasers learned that the sellers were still willing to honor the terms of the contract, so communications between the purchasers and the sellers' agent resumed. However, the purchasers were not able to come up with the additional earnest money required by the sellers, so the contract was not extended through December 31, 2008, as had been requested by the purchasers. Finally, at the time Respondent transferred her license to Acquire Real Estate, the contract had expired and no trust funds existed.

In summary, the failure to deposit the initial earnest money into the Asset Realty escrow account was poor judgment, since the contract called for the funds to be held at Asset and the photocopies of the first earnest money checks indicated they were payable to Asset. The sellers should have been notified the funds were not to be held at Asset and the contract amended to reflect the change.

Paula S. Magargle, Esquire
January 20, 2011
Page 3

Once you have had an opportunity to review this information, please let me know if you have any questions or need anything else. As we have discussed, we are very interested in trying to resolve this matter.

Sincerely,



Thomas E. Lydon

South Carolina
Department of Labor, Licensing and Regulation



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4300
FAX: (803) 896-4471
www.llronline.com

Nikki Haley
Governor

Division of Legal Services
Office of General Counsel

Catherine B. Templeton
Director

August 1, 2011

Honorable Ralph K. Anderson, III
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

**RE: Vanessa Patrick vs. South Carolina Department of Labor, Licensing and
Regulation, Real Estate Commission
Docket No.: 11-ALJ-11-0168-AP**

Judge Anderson:

Please accept this letter in lieu of a second Motion to Conform Brief to Rule 37(B), or in the Alternative Strike to Appellant's Response to Respondent's Brief filed by Appellant on July 28, 2011 and received by this office on July 29, 2011. Respondent renews its motion that Appellant be required to removing all facts and exhibits in the Appellant's Response to Respondent's Brief that do not appear in the Record on Appeal, and to further require Appellant to conform the Response to the requirements of Rule 37(B) of the Administrative Law Court Rules of Procedure.

Therefore, if a formal Motion is required or if I may be of further assistance, please do not hesitate to let me know. By copy of this letter, I am serving Ms. Patrick with a copy of this request. Your consideration in this matter is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read 'Lil Ann Gray'.
Lil Ann Gray
Assistant General Counsel

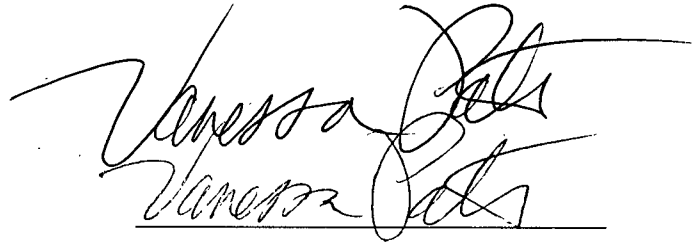
LAG/

cc: Vanessa Patrick (via regular mail)

CERTIFICATE OF APPELLANT

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, appellant certifies that this record on appeal contains all material proposed to be included by any of the parties and not any other material.

Appellant further certifies that this record on appeal complies with the Order of the Supreme Court of South Carolina entitled *Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings*, 375 S.C. 56, 650 S.E.2d 462 (August 13, 2007).

A handwritten signature in black ink, appearing to read 'Vanessa Patrick', written over a horizontal line.

Vanessa Patrick

1187 Kiblers Bridge Road

Prosperity, South Carolina 29127

(803)521-3614

Pro Se Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 11-ALJ-11-0168-AP

Vanessa Patrick,

Appellant,

v.

South Carolina Department of Labor,
Licensing and Regulation, State Real Estate
Commission,

Respondent.

PROOF OF SERVICE

I certify that I have filed the Record on Appeal and served a copy thereof on the person hereafter named, by depositing same in an envelope in the United States Mail, postage prepaid.

Melina Mann
SC Dept. of LLR
PO Box 11329
Columbia, SC 29211

June 8, 2012



Vanessa Patrick
1187 Kiblers Bridge Road
Prosperity, South Carolina 29127
(803) 521-3614
Pro Se Appellant

RECEIVED

JUN 11 2012

SC Court of Appeals