

Regulated Activities Outside the Brokerage

In this case, an agent performs regulated activities outside of her brokerage firm. Real estate licensees must not perform regulated activities outside of their brokerage firm.

As brokers, it is important to make sure your agents know not to perform regulated activities outside of the brokerage. In this case study, take note of how her broker acted when he learned of the agent's actions. By taking immediate action he was able to avoid separate liability for failure to supervise.

THE SITUATION:

In February 2020, the Department of Professional and Occupation Regulation received a written complaint from Martina Wiley regarding real estate salesperson, Janet Kraus.

In March 2008, Ms. Kraus was issued a real estate salesperson license. In July 2013, Ms. Kraus' license was activated with Really Real Realty, Inc. Between December 2017 and October 2018, Ms. Kraus' moved her license between three different firms. In October 2018, her license was activated with River Realty, Inc. In October 2018, her license was dropped from River Realty, Inc. and activated with Best Home Realty, Inc. In March 2020, Best Home Realty, Inc. returned her license to the Department.

THE INVESTIGATION:

Investigators learned that on January 15, 2017, Ms. Wiley, as owner, entered into a Property Management Agreement with "Janet Kraus, Property Management" by Ms. Kraus, as agent, to manage two of her multi-unit properties located in Sussex, Virginia. At the time, one property had three of its four units rented, and the other had two of its four units rented. Ms. Kraus told investigators that she became friends with Ms. Wiley and her family after she sold her and her mother several other properties over the years. Ms. Wiley had another company managing the properties, but things were not working out with them, and she was looking for someone else to manage the properties. Ms. Kraus told Ms. Wiley that she could manage the rental properties.

Under the terms of the Property Management Agreement provided to investigators, Ms. Kraus was to perform the following:

1. Supervise collection of rents and other charges due to the owner;
2. Provide monthly statements;
3. Advertise the properties for lease;
4. Provide a year-end statement and 1099;
5. Perform periodic inspections;
6. Arrange and supervise maintenance and repairs;
7. Negotiate and enter into leases;
8. Hire independent contractors and employees; and
9. Make mortgage, property tax, and insurance payments.

There was a monthly management fee of 10% of the collected rents.

In October 2017, Ms. Kraus and Ms. Wiley opened a joint checking and savings account at Best Bank for the deposit of security deposits and rents and to pay expenses for both properties.

Investigators learned that between January 2017 and August 2019, there were approximately six different tenants between the four units at one property, and eight different tenants at the other. In their review of the monthly management spreadsheets and bank statements for 2017, investigators learned that Ms. Kraus received payment in the amount of approximately \$7,100 as management fees. In March 2017, Ms. Kraus received \$1,000 for management of the properties directly from Ms. Wiley and listed the payment the monthly management statement as "Back Management Fees." In their review of the monthly management spreadsheets and bank statements for 2018, investigators learned that Ms. Kraus received payment in the amount of approximately \$6,200 as management fees.

In September 2019, Ms. Wiley terminated Ms. Kraus's management of her properties.

Ms. Kraus told investigators that she does not have copies of any of the leases that were entered into while she was managing the properties. She stated that the computer she used to store the leases crashed and she was unable to recover any of the files. Ms. Kraus further stated that she disposed of the computer about a year ago. Ms. Kraus did state that she believed Ms. Wiley may have taken the physical copies of the leases from her possession at some point. Ms. Wiley told investigators that she did not have copies of any leases. From her recollection, Ms. Kraus believed that rent amounts for the units were approximately \$575 to \$600 per month.

Investigators also learned that the tenants generally paid security deposits and rent via money order made payable to Ms. Kraus. The rents and security deposits collected were used to make repairs to the properties. Ms. Kraus stated that Ms. Wiley told her that she would repay any security deposits from a separate account. According to Ms. Kraus, at Ms. Wiley's request, she used their joint bank account to pay personal bills for Ms. Wiley.

Ms. Kraus also told investigators that four or five of the tenants at the properties did not pay security deposits because Ms. Wiley needed tenants for the properties quickly and Ms. Wiley was aware that the tenants did not pay security deposits. She also stated that she evicted several tenants for failure to pay rent and therefore were not entitled to a return of their security deposits. However, Ms. Kraus stated that she did return security deposits to two tenants. She further indicated that no security deposits needed to be turned over to Ms. Wiley at the end of her management.

Ms. Kraus further stated that she did not realize that security deposits were to be held in a brokerage escrow account. She stated that she provided monthly spreadsheets of monies collected and paid out to Ms. Wiley via spreadsheet, and she did not have an accounting system. Ms. Kraus reported that she did not provide Ms. Wiley with 1099s at the end of each year, but that all rental proceeds for Ms. Wiley were included on the monthly accounting statements. Ms. Wiley told investigators that she did not receive any monthly accounting statements from Ms. Kraus.

The principal broker at River Realty Inc., Ms. Laura Anker, met with investigators. Ms. Anker was Ms. Kraus's broker at the time the Ms. Kraus began managing Ms. Wiley's property. She stated that she was not aware that Ms. Kraus was managing Ms. Wiley's properties. Ms. Anker said that Ms. Kraus would have been managing those properties outside of River Realty Inc.'s brokerage. She stated that she never heard of "Janet Kraus, Property Management."

The principal broker at Best Home Realty, Inc., Ricardo Grespo, also met with investigators. Mr. Grespo was Ms. Kraus's broker at the time the complaint was filed. He stated that Ms. Kraus was a resale agent for Best Home Realty, Inc. from October 2018 through March 2020. Mr. Grespo reported that Ms. Kraus did not perform property management for Best Home Realty Inc. and that she never reported that she was managing Ms. Wiley's properties. According to Mr. Grespo, he was not aware that Ms. Kraus was managing Ms. Wiley's properties until he was notified of the complaint by the Department. He stated that during a March 8, 2020, meeting regarding the complaint Ms. Kraus admitted to managing Ms. Wiley's properties. Mr. Grespo then terminated Ms. Kraus for managing properties outside of Best Home Realty Inc.'s brokerage. He stated that if Ms. Kraus had notified Best Home Realty, Inc. that she was managing these properties, he would have required her to take property management classes.

Ms. Kraus admitted that she does not have a property management business, however she believed that because she was a licensed real estate agent, she was allowed to manage properties and she was not aware that she could not manage properties outside of the brokerage firm. Ms. Kraus stated that none of the brokers at any of the firms she worked for told her that she could not manage properties outside the brokerage firm. Ms. Kraus said that she did not notify the brokers that she was managing the properties. She indicated that she did not manage any other properties.

THE RESULT:

The Board determined that Ms. Kraus acted outside of her brokerage firm when she performed regulated activities without the knowledge and consent of her broker. It further determined that she accepted a commission, fee, or other valuable consideration, as a real estate salesperson for real estate services from someone other than her principal broker. The Board issued a fine of \$2,700, placed the Ms. Kraus on probation for two years, and required her to complete three classroom hours of Board-approved continuing education pertaining to Ethics and Standards of Conduct.