



## **OUTDATED REPRESENTATION**

In this case, an agent failed to get an updated signed buyer brokerage agreement with the purchaser in what was supposed to be a dual agency transaction. Virginia requires that all agency agreements be in writing. Agents in your offices must ensure these agreements are signed and in writing prior to beginning their representation, and ensure that they regularly audit these agreements if the relationship is ongoing.

### **THE SITUATION:**

On December 3, 2004, Mr. Daniel Kirk received his Real Estate salesperson license. In February 2018, he became affiliated with Regional Real Estate, Inc. On June 6, 2020, the Board received an email from Mr. Anthony Lopez, a member of the public and former client of Mr. Kirk's, regarding Mr. Kirk.

### **THE INVESTIGATION:**

In February 2020, Erica May, as Seller, entered into an Exclusive Right to Sell Listing Agreement with Regional Real Estate, Inc. as the Listing Firm, and Mr. Kirk as the listing agent to sell her house located in Arlington, Virginia that commenced on February 10, 2020, and expired on July 31, 2020.

On February 27, 2020, Ms. May and Mr. Lopez entered into a residential sales contract for the purchase of Ms. May's home. Regional Real Estate, Inc. was both the listing and selling firm, with Mr. Kirk representing both parties in the transaction. On the same day, Ms. May and Mr. Lopez also signed a Disclosure of Dual Agency or Dual Representation in a Residential Real Estate Transaction Disclosure for the sale of the subject property. The disclosure indicated that Mr. Kirk represented both the Buyer and the Seller.

On August 16, 2019, Mr. Lopez entered into an Exclusive Right to Represent Buyer Agreement with Regional Real Estate, Inc. as the brokerage firm and Mr. Kirk as the Buyer's Agent. This agreement commenced on August 16, 2019 and expired on February 28, 2020.

Mr. Kirk told investigators that he was "not able to find" an active brokerage agreement signed by Mr. Lopez in his records. Mr. Kirk explained that in his rush to produce all of the documents for the transaction and have them signed, a brokerage agreement with Mr. Lopez "may have been overlooked."

Mr. Lopez told investigators that he did not receive nor sign a brokerage agreement around the time that he entered into the contract to purchase Ms. May's home.

On March 23, 2020, a Release of Sales Contract and Deposit were signed by Ms. May and Mr. Lopez terminating the contract.

#### **THE RESULT:**

The Board determined that Mr. Kirk entered into a brokerage relationship with Mr. Lopez to purchase property without a written brokerage agreement. The Board required Mr. Kirk to complete three hours of Board-approved continuing education pertaining to Real Estate Contracts and did not assess a monetary fine.

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