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August 2, 2021

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Management That Cares, LLC
Attn: Mr. Lade "Tom" Conlee
57 N. Somerville Street
Suite 101
Memphis, TN 38104

**RE: TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE V.
MANAGEMENT THAT CARES, LLC, APD Case No. 12.18-211549J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE REAL ESTATE COMMISSION

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE,**

Petitioner,

v.

MANAGEMENT THAT CARES, LLC,

Respondent.

APD Case No. 12.18-211549J

INITIAL ORDER

This matter was heard on June 29, 2021, in Nashville, Tennessee, by WebEx, before Mattielyn B. Williams, Administrative Judge, assigned by the Tennessee Secretary of State's Office's Administrative Procedures Division, to hear this matter on behalf of the Tennessee Real Estate Commission ("the Commission").

Anna D. Matlock, Associate General Counsel for the Tennessee Department of Commerce and Insurance, Division of Regulatory Boards ("State"), represented the Department in this matter. Mr. Tom L. Conlee appeared on behalf of Respondent, Management that Cares, LLC a/k/a Management that Cares, Inc. a/k/a MTC Management, LLC ("Respondent"), having waived the right to legal counsel.

Mr. Conlee reported that Management That Cares is no longer a corporation.

The State filed its Proposed Findings of Fact and Conclusions of Law on July 1, 2021.

The Respondent's Proposed Findings of Fact and Conclusions of Law were due on July 6, 2021. When Respondent's Proposed Order (Findings of Fact and Conclusions of Law) was not filed by July 13, 2021, the Undersigned emailed Respondent to see whether additional time was needed. As of July 30, 2021, Respondent has neither filed its Proposed Order nor responded to the Undersigned's inquiry.

Therefore, the record in this matter is deemed complete, as of July 30, 2021, without the benefit of Respondent's Proposed Order.

This matter is now ripe for consideration.

PARTIES

1. The Tennessee Department of Commerce and Insurance, Division of Regulatory Boards, is the lawful agent authorized to bring this action on behalf of the Tennessee Real Estate Commission (“the Commission”).

2. Respondent, **Management that Cares, LLC a/k/a Management that Cares, Inc. a/k/a MTC Management, LLC**, is engaged in real estate activities and does not have an active real estate firm license with the Commission. Respondent’s last known address is 57 N. Somerville Street, Suite 101, Memphis, Tennessee 38104.

FINDINGS OF FACT

1. The Department of Commerce and Insurance, Division of Regulatory Boards (“State”) is the lawful agent through which the *Tennessee Real Estate License Broker Act of 1973* (“the Act”), is enforced and the State is authorized to bring this action.

2. On April 13, 2021, the State filed the Notice of Hearing and Charges in this matter.

3. On or about April 18, 2021, the State served Respondent the Notice of Hearing and Charges via USPS certified mail, return receipt number 7020 2450 0000 4537 6076, and regular USPS mailing.

4. The Notice of Hearing and Charges alleged Respondent practiced real estate without an active real estate broker license or real estate firm license.

5. On April 28, 2021, Judge Williams entered a Scheduling Order in this matter to set a pre-hearing conference with the parties for Friday, May 14, 2021 at 2:00 p.m. CDT via telephone conference.

6. Counsel for the State attended the pre-hearing conference with Judge Williams on Friday, May 14, 2021 at 2:00 p.m. CDT via telephone conference. Neither Respondent nor counsel for the Respondent attended.

7. Counsel for the State and Judge Williams agreed at the pre-hearing conference to conduct the contested case hearing via Cisco WebEx Video Conference on Tuesday, June 29, 2021 at 9:30 a.m. CDT.

8. On May 14, 2021, the State filed a Notice of Hearing Date notifying the Administrative Procedures Division and Respondent of the contested case hearing date decided upon during the pre-hearing conference of, Tuesday, June 29, 2021 at 9:30 a.m. CDT via Cisco WebEx Video Conference.

9. On May 14, 2021, the State sent a Cisco WebEx Video Conference invitation to both Judge Williams and Respondent for the contested case hearing date.

10. Respondent was, licensed with the Commission, as a real estate firm (license number 244948). Respondent's firm license expired on or about October 2, 2016.

11. On or about October 31, 2019, the Commission received a complaint alleging Respondent's unlicensed activity. The complaint alleged Respondent is operating unlicensed and that the broker, affiliate broker, and firm licenses associated with Respondent were all expired.

12. The complaint further alleged, Respondent had and advertised active real estate property listings on Zumper, Facebook Marketplace, and Respondent's website (<https://managementthatcares.com>). The complaint provided screenshots of three (3) listings with Respondent's information attached.

13. Respondent answered the complaint through their principal broker, Tom Conlee (license number 21755).

14. Mr. Conlee stated Respondent had not renewed their license and needed to do so immediately. Mr. Conlee also stated "... we have been in non-stop business since our last renewal, without any prior negative license related issues, it is our desire to do whatever is necessary to correct this oversight immediately, and get the licenses renewed."

15. Since on or about October 2, 2016, to date, Respondent has operated without a license.

16. On or about November 17, 2020, this matter was sent out for investigation and assigned to Investigator John McClain.

17. On or about November 20, 2020 through November 24, 2020, Mr. McClain gathered and screenshotted eighteen (18) different real estate property vacancy advertisements on Respondent's website (<https://www.managementthatcares.com>). During the investigation, Mr. McClain found

information about Respondent and their business in Respondent's "About Us," "For Owners," and "For Tenants" website sections on (<https://www.managementthatcares.com>).

18. Respondent marketed the real estate properties on their website in Tennessee. Respondent was not the owner of any of the real estate properties advertised on Respondent's website.

19. During this investigation, Mr. Conlee provided Mr. McClain with a business card that listed him as "Broker/Partner of MTC Management That Cares."

20. As of the date of the hearing, neither Respondent nor Mr. Conlee hold licenses in good standing with the Commission.

21. During the hearing, the Respondent admitted to the above-referenced Findings of Fact.

22. It is **DETERMINED** that Respondent has engaged in the marketing, sale, and purchase of real property in Tennessee.

23. It is **DETERMINED** that Respondent was engaged in unlicensed activity at the time the Complaint was filed and during the State's investigation, which included at least eighteen (18) different electronic real estate property vacancy advertisements from November 20, 2020 through November 24, 2020.

24. It is **NOTED** that Respondent did not submit any proof on whether the amount of civil penalty imposed would be a substantial economic deterrent to the violations.

APPLICABLE LAW

TENN. CODE ANN. § 62-13-102 states, in relevant part:

(4)(A) "Broker" means any person who, for a fee, commission, finders fee or any other valuable consideration or with the intent or expectation of receiving a fee, commission, finders fee or any other valuable consideration from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements on the real estate or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction or who advertises or holds out as engaged in any of the foregoing;

(4)(B) "Broker" also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part of the real estate, in lots or parcels or other

disposition of the real estate. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for that purpose or for referral of information concerning the real estate to brokers, or both;

TENN. CODE ANN. § 62-13-103 states:

- (a) Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs, any single act defined in § 62-13-102, whether as a part of a transaction, or as an entire transaction, is deemed a broker, affiliate broker or time-share salesperson within the meaning of this chapter.
- (b) The commission of a single such act by a person required to be licensed under this chapter and not so licensed constitutes a violation thereof.

TENN. CODE ANN. § 62-13-301 states:

It is unlawful for any person, directly or indirectly, to engage in or conduct, to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a real estate broker, affiliate broker, time-share salesperson or acquisition agent, as defined in § 62-13-102, within this state, without first obtaining a license as broker, affiliate broker, time-share salesperson or acquisition agent, as provided in this chapter, unless exempted from obtaining a license under § 62-13-104. No person shall be permitted to hold, at the same time, an active time-share salesperson license and an active acquisition agent license.

TENN. CODE ANN. § 62-13-309 states, in relevant part:

(a)(1)(A) Each office shall have a real estate firm license, a principal broker and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.

TENN. COMP R. & REGS. 1260-02-.32, states, in relevant part:

- (1) The Commission may, in a lawful proceeding against any person required to be licensed by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

Violation	Penalty
Any Commission Rule or Order	\$50----1000

- (2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-13-102	\$1000
T.C.A. § 62-13-103	\$1000
T.C.A. § 62-13-105	\$1000

T.C.A. § 62-13-109	\$1000
T.C.A. § 62-13-110	\$1000
T.C.A. § 62-13-301	\$1000
T.C.A. § 62-13-312	\$1000

- (3) Each day of a continued violation may constitute a separate violation.
- (4) In determining the amount of a civil penalty, the Commission may consider such factors as the following:
 - (a) whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and
 - (e) the interest of the public.

TENN. CODE ANN. § 56-1-308(A) states:

- (A) With respect to any person required to be licensed, permitted, or authorized by any board, commission, or agency attached to the division of regulatory boards, each respective board, commission, or agency may assess a civil penalty against the person in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule, or order pertaining to the board, commission, or agency. Each day of continued violation constitutes a separate violation.

TENN. CODE ANN. § 56-1-311(a) states:

- (a) Notwithstanding any contrary law, the division of regulatory boards or any board, commission or agency attached to the division of regulatory boards may assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and in which sanctions of any kind are imposed on any person required to be licensed, permitted registered or otherwise authorized by the division or respective board, commission or agency. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges and any other persons involved in the investigation, prosecution and hearing of the action.

TENN. COMP R. & REGS. 0780-5-11-.01(1) states:

- (1) The Division of Regulatory Boards (“Division”) or any board, commission or agency attached thereto is authorized to assess the actual and reasonable costs of the investigation, prosecution and hearing of any disciplinary action held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Tenn. Code Ann. Title 4, Chapter 5, Part 3 in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Division or any board, commission or agency attached thereto.

CONCLUSIONS OF LAW

1. Respondent was properly served with the Notice of Hearing and Charges filed, on or about April 13, 2021.

2. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, per TENN. CODE ANN. § 62-13-103(a), that Respondent "...directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act defined in § 62-13-102, whether as part of a transaction or as an entire transaction is deemed a broker..."

3. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, per TENN. CODE ANN. § 62-13-301, that Respondent "directly or indirectly, [to] engage[d] in or conduct, to advertise or claim to be engaging in or conducting the business, or acting in the capacity as a real estate broker...as defined in § 62-13-102, within this state, without first obtaining a license as a broker...unless exempted from obtaining a license under § 62-13-104..."

4. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, that Respondent is not exempt from the real estate licensing laws of the Commission as provided in TENN. CODE ANN. § 62-13-104.

5. It is **CONCLUDED** that the State met its burden of proof, by a preponderance of the evidence, that Respondent failed to satisfy the requirements outlined in TENN. CODE ANN. § 62-13-309(a)(1)(A) which provides "Each office shall have a real estate firm license, a principal broker, and a fixed location..."

6. It is **CONCLUDED** that the State has met its burden of proof, by a preponderance of the evidence, that Respondent engaged in or conducted, advertised, or claimed to be engaging in or conducting business or acting in the capacity of a real estate firm without obtaining a license and in violation TENN. CODE ANN. §§ 62-13-102, 62-13-103, 62-13-301, and 62-13-309, on eighteen (18) occasions.

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Respondent's acts and conduct as described in the Findings of Fact and Conclusions of Law, constitute violations of the Act and subject Respondent to assessment of a civil penalty in accordance with TENN. COMP R. & REGS 1260-02-.32(2), in an amount of One Thousand Dollars (\$1,000.00) per each separate violation of TENN. CODE ANN. §§ 62-13-103 and 62-13-312.

2. This results in a civil penalty of **EIGHTEEN THOUSAND DOLLARS (\$18,000.00)**, due to be paid within ninety (90) days of the entry of this Order becoming a Final Order.

3. Respondent's firm license (license number 224948) is hereby **REVOKED** until the requirements of this Order are met, and any other outstanding Orders, judgments, or any other like matters with the Department and the Commission are satisfied;

4. Respondent shall immediately **CEASE** and **DESIST** from all activities governed under the Act or overseen by the Commission, until and unless licensed; and

5. Respondent is assessed all costs associated with bringing this action, including prosecutorial, investigatory, and hearing costs, not to exceed Ten Thousand Dollars (\$10,000).

6. At the conclusion of this matter, the State will file and serve Respondent with its Itemized Bill of Costs. The Itemized Bill of Costs is due to be paid within ninety (90) days of receipt.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **2nd day of August, 2021**.


MATTIELYN B. WILLIAMS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **2nd day of August, 2021**.


STEPHANIE SHACKELFORD, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE REAL ESTATE COMMISSION (COMMISSION)**, called an Initial Order, was entered on **August 2, 2021**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **August 17, 2021**. A new 15 day period for the filing of an appeal to the **COMMISSION** (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal, which must be **received** by APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the **COMMISSION** by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the **COMMISSION**, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **August 17, 2021**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The COMMISSION decides to Review the Initial Order:** In addition, the **COMMISSION** may give written notice of the intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the **COMMISSION** renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **August 9, 2021**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
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