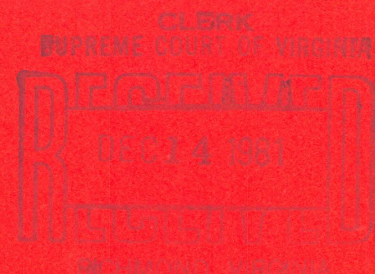


226 VA 264



VIRGINIA
IN THE SUPREME COURT
AT RICHMOND

VIRGINIA REAL ESTATE COMMISSION,

Appellant,

v.

No.

DORSEY BIAS, Broker
T/A Cavalier Realty Company,

81-0884

Appellee.

APPENDIX

Marshall Coleman
Attorney General
101 North 8th Street
5th Floor
Richmond, Virginia 23219

Susan R. Stevick
Assistant Attorney General
2 South Ninth Street
Richmond, Virginia 23219

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January 28, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dorsey V. Bias
Cavalier Realty Company
Reservoir Road, Route 1
Charlottesville, Virginia 22901

NOTICE OF HEARING

Dear Mr. Bias:

Pursuant to and in accordance with Sections 9-6.14:12, 54-1.28.7, 54-1.36 and 54-1.37, Code of Virginia (1950), as amended, and Sections 8.1, 8.2, 8.8 and 8.9 Regulations of the Virginia Real Estate Commission (Commission), you are hereby notified to appear before the Commission at 10:00 a.m. on March 6, 1980 in the Municipal Building (Basement Meeting Room), 7th and Main Streets, Downtown Mall, Charlottesville, Virginia to answer the following allegations:

Dorsey V. Bias is currently licensed as a real estate broker (number 08617) in Virginia and is president of Cavalier Realty Company, Reservoir Road, Charlottesville, Virginia.

During the second week of August, 1977, John S. Bias, broker, of Cavalier Realty Company showed Thomas G. Wetset (Wetsel) a 115 acre tract of land in the Slate River Magisterial District in Buckingham County called Payne's Mill Farm. On or about September 15, 1977 Wetsel called John S. Bias and told him to prepare a contract for him and his wife, Jane, to offer to purchase Payne's Mill Farm for \$60,000.

On September 20, 1977, Wetsel submitted a written contract to purchase Payne's Mill Farm to Cavalier Realty Company along with a negotiable \$500 note as an earnest money deposit.

By letter dated September 21, 1977 John S. Bias wrote the Wetsels a letter acknowledging receipt of their offer.

Mr. Dorsey V. Bias
Page 2
January 28, 1980

On or about September 22, 1977 Dorsey V. Bias submitted an offer to purchase Payne's Mill Farm for himself for \$50,000 which offer was unacceptable to the owner, Mrs. Stella Tolley Davis. On or about September 24, 1977 Dorsey V. Bias made an offer of \$53,500 to Mrs. Davis, which offer was accepted.

On or about September 27, 1977 Dorsey V. Bias told Wetsel that his offer of September 20, 1977 was rejected and returned his contract offer. At no time between September 21 and September 27, 1977 did Dorsey V. Bias present the Wetsels' offer to Mrs. Davis.

Based on the foregoing allegations the Commission charges you with having violated the following former regulation:

POR 9-200. Investigations by Commission; grounds for suspension or revocation of license. --The Commission may upon its own motion and shall upon the verified complaint in writing of any person, provided such complaint, or such complaint together with evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case, investigate the actions of any real estate broker or real estate salesman, or any person who assumes to act in either capacity within this State, and shall have the power to suspend or to revoke any license issued under the provisions of Chapter 18, Title 54, or Rules and Regulations of the Commission, at any time when the license has by false or fraudulent representation obtained a license, or when the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

- (18) Failure of a broker or salesman to promptly tender to the seller every written offer to purchase obtained on the property involved and upon obtaining a proper acceptance of the offer to purchase, to make prompt delivery of true executed copies of same, signed by the seller and purchaser, to both purchaser and seller; all brokers and salesmen shall make certain that all of the terms of conditions of the real estate transaction are included in such offer to purchase.

The above former regulation now reads as follows:

8.2 Grounds for suspension, revocation or denial of renewal. --The Commission has the power to suspend, revoke or fail to renew any license issued under the provisions of Chapter 18, Title 54, and the Rules and Regulations of the Commission, at any time after hearing when the licensee has been found to be guilty of:

Mr. Dorsey V. Bias
Page 3
January 28, 1980

- (19) Failure of a broker or salesman to promptly tender to the seller every written offer to purchase obtained on the property involved and upon obtaining a proper acceptance of the offer to purchase, to make prompt deliver of true executed copies of same, signed by the seller and purchaser, to both purchaser and seller; all brokers and salesman shall make certain that all of the terms and conditions of the real estate transaction are included in such offer to purchase.

The hearing officer designated below will preside at the hearing. You will be afforded an opportunity to be heard in person or by counsel in reference thereto. If you desire any witnesses to appear in your behalf, notify the undersigned at the address shown hereon, giving the names and addresses of the witnesses at least 20 days prior to the date of the hearing and subpoenas will be issued.

If you intend to retain legal counsel, you should do so immediately, so that counsel will have ample opportunity to prepare his case. You should also send the enclosures to your counsel. Please advise the undersigned of counsel's name and address.

This agency will schedule the services of a court reporter to record the hearing.

It is the policy of this agency to begin hearings at the time specified in the Notice of Hearing.

It is not the policy of this agency to grant a continuance in these matters.

Very truly yours,

David W. Seitz
Assistant Director - Real Estate

DMS/ck

Enclosures: 1. Administrative Process Act
2. Virginia Code s 54-1.28.7
3. Regulations of Virginia Real Estate Commission
4. Former Regulations of Virginia Real Estate Commission
5. Agency Rules of Practice

cc: Susan R. Stevick, Assistant Attorney General
Sylvia Clute, Esquire, Hearing Officer
Nathan Matthews, Investigator

1 VIRGINIA: IN THE VIRGINIA REAL ESTATE COMMISSION

2
3
4 VIRGINIA REAL ESTATE COMMISSION

Petitioner

5
6
7 v.

8
9
10 DORSEY V. BIAS

11 t/a CAVALIER REALTY COMPANY

Respondent

12
13
14 APPEARANCES:

15 Ms. Susan R. Stevick
16 Assistant Attorney General
17 Department of Commerce
18 2 South Ninth Street
19 Richmond, Virginia 23219
20 Attorney for Petitioner

Mr. Ralph E. Main, Jr.
Attorney at Law
416 East Jefferson Street
Charlottesville, Virginia
Attorney for Respondent

I N D E X

Witnesses for Petitioner Direct Cross Redirect Recross

Thomas Wetzel	14	22		
John Bias	55			
Nathan Matthews	97	98	102	

Witnesses for Respondent

Dorsey Bias	104	145	185	
John Bias	190			

EXHIBITS

Petitioner's Exhibits Number Received at Page

Contract	1	15
Handwritten letter	2	15
Copy of Promissory note	3	17
Letter	4	17
Contract	5	19
Deed	6	
List of notes	7	56
List of events(notecard)	8	61
Sworn statement	9	153

Respondent's Exhibits

Blank form of contract	1	31
Envelope and note	2	35
Letter and note	3	36
Note	4	116
Contract	5	118
Contract	6	119
Page from calendar	7	122
MLS change sheet	8	129
Fly sheet on property	9	207
Fly sheet from MLS	10	208

March 6, 1980
10:00 a.m.

MRS. CLUTE: At this time I would like to call this hearing to order. The date is March 6, 1980 and we're beginning the hearing at approximately fifteen minutes after 10:00 a.m. The case to be heard today is that of Virginia Real Estate Commission versus Dorsey V. Bias. The hearing is being held in the municipal building 7th and Main, Charlottesville, Virginia. Present today on behalf of the respondent is the respondent, Mr. Dorsey V. Bias and his attorney, Ralph Main. Present for the Real Estate Commission are the five real estate commissioners, Charles R. Foxx, Edwin Hall, Helen A. Kent, Peyton Klopfenstein, George C. Walker, Jr. and their counsel Susan R. Stevick. Also present from - also present is David Seitz, Assistant Director of the Department of Commerce and I am the hearing officer Sylvia Clute.

The first matter to be taken up is a motion on the part of the respondent's attorney to exclude the witnesses. So I would ask at this time all witnesses who are not a party to the case to find somewhere to stay outside the room where you will be easily accessible when we want to call you as a witness. So I would ask that you leave the room at this time.

MS. STEVICK: May I suggest that you swear them in en masse?

MRS. CLUTE: Okay, all right.

*MOTION
TO
DISMISS*

2

1 All witnesses who were to testify in the hearing were
2 duly sworn by the hearing officer at this time and sequestered.

3
4 MRS. CLUTE: Mr. Main, what's the first item you'd like
5 taken up?

6 MR. MAIN: The first item was exclusion of witnesses
7 which you've already taken care of. The second item was the
8 presentation of the motion which I handed you right there and
9 I've given a copy to Ms. Stevick.

*MOTION
TO
DISMISS*

10 MRS. CLUTE: All right.

11 MR. MAIN: I don't want to argue the motion....

12 MRS. CLUTE: Ms. Stevick do you have any objection to
13 the motion being presented at this time?

14 MS. STEVICK: I have no objection to it being presented
15 no.

16 MRS. CLUTE: All right. I do have some questions regarding
17 your motion....

18 MR. MAIN: Certainly.

19 MRS. CLUTE: ...that I would like to ask you before I
20 rule on it.

21 MS. STEVICK: Do you want to ask your questions before
22 I address it?

23 MRS. CLUTE: Okay, yes, you go ahead and address it
24 please.

25 MS. STEVICK: Well I'll - just as to the first two which

1 sort of go together, that the respondent has no duty to the
2 prospective purchaser and therefore that he has no standing to
3 complain. I think this is clearly contrary to the enabling
4 legislation which gives the commission the right to pass such
5 regulations as are necessary to protect the public in general
6 and clearly the buyer, prospective buyer, in real estate trans-
7 action has some rights even though he may not be the principal
8 of the broker involved and so I would refute that he has no
9 standing to complain and that no duty is owed him. As to number
10 three the respondent has already attempted to enjoin this hearing
11 based in part on the theory of laches. The injunction has been
12 denied. I understand an appeal may be taken but I don't think
13 that that's, given those circumstances that that's something/the for
14 hearing officer to determine. And as to rule 10B I would disagree
15 with him in that the rules are set up so that he does have an
16 opportunity to be heard. He does have the opportunity to appeal
17 to the circuit court if the ruling is against him and I think that's
18 adequate due process protection. I'm not sure that this is the
19 time or the place to challenge the validity of the regulation per
20 se. I don't think really the hearing officer has the authority
21 to pass on the validity of the regulation. I think that's some-
22 thing that a circuit court or the supreme court would have to do.

23 MRS. CLUTE: All right, Mr. Main, do you have anything
24 you'd like to respond to?

25 MR. MAIN: Rule 10B of the rules of practice are the rules

1 by which you conduct these proceedings and rule 10B clearly pro-
2 hibits the filing of any sort of - as what we know at law as a
3 motion to dismiss whether it be by form of a demurrer or a motion
4 to strike. I feel that if the law were such that the claim or
5 the complaint were not one that was recognized under the laws of
6 the Commonwealth then it would be appropriate for this body, for
7 you as the hearing officer to dismiss the proceeding if that
8 became evident to you either at the beginning of the proceeding
9 or during the course of it and that's the reason I made that
10 because you don't have the power to do that and I think that's a
11 denial of my client's right to get this thing knocked out at the
12 earliest stage possible. The only way he can challenge that is
13 to undergo the hearing, then lose, then appeal to the circuit
14 court. I think that imposes too great of a burden on my client.
15 That's the same rule that / would prevent you from granting this
16 motion.

17 As to points one and two, these are not directed either
18 towards the enabling legislation in general or the specific
19 statute which allows the Real Estate Commission or the Department
20 of Commerce to set up regulations. However, the Virginia Supreme
21 Court has not to this point nor has the legislature recognized
22 the right of the prospective purchaser of real estate entertaining
23 the kind of complaint that was made back in I guess early 1978
24 that
25 and/has eventually resulted in this proceeding and as Ms. Stevick
mentioned, item number three, those are the same matters that were

*Motion
overruled*

5

1 brought up in the motion for injunction which was heard by Judge
2 pickford last week and which as she said was overruled and the
3 reason I want to get those on the record is just to go ahead and
4 complete the record in the event that this should ever go any further
5 than this hearing.

6 MS.. CLUTE: Okay Mr. Main I will overrule your motion.
7 All right any other matters to be taken up before we begin taking
8 evidence?

9 MR. MAIN: I have just one more matter. One of the
10 things that has been a source of concern to me in this proceeding
11 and I mentioned it during our injunction hearing last week was
12 the apparent delay on the part of the Commission in acting after
13 the investigation of this matter was complete, a period of over
14 one year elapsed from the time the investigator rendered his
15 opinion as to what the results of the investigation were up until
16 the time that the complaint was filed in the Commission, the formal
17 notice was sent out advising this hearing. I think it would be
18 appropriate and I don't think it would be exceeding your authority
19 to allow me to at least take some evidence on that point to see
20 if I can determine why, why would I consider it to be a totally
21 unnecessary and unjustifiable delay in getting the proceeding going.

22 MS.. CLUTE: Mr. Main you've already had a hearing in
23 Circuit Court on that issue?

24 MR. MAIN: No.

25 MS. STEVICK: I believe he has....that was discussed at

1 great length with the Judge as to why the delay and I don't know
2 that it needs to be rehashed either.

3 MR. MAIN: There was no evidence taken on that.

4 MS. CLUTE: What was the substance of the hearing that
5 you had on the injunction? On what basis did you move for an
6 injunction?

7 MR. MAIN: Primarily - primarily the doctrine of laches.
8 We sought to - we alleged and quite frankly the Judge agreed that
9 probably the doctrine of laches with which you are familiar I
10 guess, would probably apply to an agency proceeding but under the
11 statute of limitations as such on the time within which the
12 Commission can act and that was the principal focus of our hearing.
13 The Judge ruled that it may well apply. Unfortunately the evidence
14 that was offered did not support the elements of laches.

15 MS. CLUTE: What you're asking to present evidence on
16 today is exactly that question is it not?

17 MR. MAIN: I guess in a related manner, yes, it's
18 essentially the same. Of course I didn't present any evidence on
19 it then other than my client because I didn't have any of these
20 other people here, didn't even know who they were and they're
21 here today and I thought while they're here it would be a nice
22 time to get that on the record.

23 MS. CLUTE: Why didn't you know who they were?

24 MR. MAIN: Well, Mr. Dennis is the one that wrote the
25 letter. He's not even with the Commission anymore.

1 MS. STEVICK: Technically he still is but he doesn't
2 work full time.

3 MR. MAIN: Yes, I understood from you last time that
4 he was.

5 MS. STEVICK: He's semi-retired.

6 MR. SEITZ: He's on sick leave.

7 MR. MAIN: Sick leave?

8 MR. SEITZ: Pending disability retirement.

9 MS. CLUTE: Didn't you have access to the full file?

10 MR. MAIN: Well this notice came out on the 28th, we
11 filed the injunction which was heard last week, didn't really
12 have enough time to get set up for a full fledged hearing. In
13 fact one Judge could/have even heard the thing until sometime
14 next week. The Judge that did hear it, he gave me about an hour
15 to hear it on the day we heard it which is about what it took.
16 I don't think he would have conducted a full hearing on the thing
17 even if I had the witnesses there. I don't know, honestly don't
18 know.

19 MS. STEVICK: I would like to say I don't believe that
20 there was ever a motion to the Commission to continue the matter.

21 MR. MAIN: Well, that's because in the letter it said
22 that continuances are frowned upon and I didn't....

23 MS. STEVICK: Well....

24 MR. MAIN: But the letter says that.

25 MS. STEVICK: Yes, but nonetheless we don't normally

1 have injunction proceedings involved either so I think given the
2 circumstances it might have been certainly worth your while to
3 at least ask for a continuance. I will back track as to what
4 I said earlier. We did not take evidence on the question of why
5 there was a delay. We did discuss it with the Judge. There were
6 no witnesses there other than Mr. Bias obviously who isn't in
7 any position to comment on what's going on with the Commission.
8 But it was a matter that was brought out.

9 MS. CLUTE: Mr. Main my concern is that if there's
10 already been a hearing in Circuit Court and the Judge has ruled
11 on the issue, then I don't think I'm in a position to make a
12 ruling on the issue. So if you take the evidence today I'm not
13 going to overrule the Circuit Court Judge. I mean, I can assure
14 you now. So for what purpose would you use that evidence?

15 MR. MAIN: Primarily in support - it would be a proffer
16 of evidence in support of one of the allegations made in that
17 motion that you've already overruled. That would be the purpose
18 of it. The Judge did not rule that the defense did not exist.
19 He merely ruled that on that day there was not sufficient enough
20 evidence presented to him to apply it. I don't think that would
21 foreclose you from allowing me to take additional evidence on it
22 in support of the motion which I filed.

23 MS. STEVICK: I would think that would be appropriate,
24 certainly it would be appropriate pursuant to an appeal from the
25 injunction or denial of the injunction.

1 MS. CLUTE: Well, that's my question. If there were
2 an appeal from the injunction if it's going to be exclusively
3 on this record, then I would be inclined to allow the evidence to
4 be taken. What I'm trying to think is is there any other opportunity
5 that he would have knowing who the witnesses are, the time and
6 everything else to present this evidence before the Circuit
7 Court.

8 MR. MAIN: Well the only way I can do that is by appealing
9 this - appealing your decision here if it's an unfavorable decision.
10 That's the only other opportunity I'll have to get this into the
11 Circuit Court. The other proceeding is, except for an appeal to
12 the Virginia Supreme Court, no longer an on going proceeding.

13 MS. CLUTE: All right.

14 MR. MAIN: Unless I can develop evidence here today
15 which would allow me to go back and file with the Circuit Judge
16 a motion to reconsider.

17 MS. CLUTE: Mr. Main this proceeding is not guided by
18 the same strict rules of evidence as a Court proceeding so I'm
19 going to allow you to take that evidence. I don't know that you're
20 going to be able to use it but I'm going to allow you to take it.

21 MR. MAIN: And it may be that I won't, you know, I've
22 never met Mr. Seitz or had the chance to talk to him and the
23 official record that I saw consisted of what Ms. Stevick had in
24 her file the day we were in Judge Pickford's chambers.

25 MS. CLUTE: All right, well if there's evidence to be

1 presented I guess this is as good an opportunity as any and
2 whether or not you can use it I guess will depend on what follows
3 after today.

4 MS. STEVICK: I'd like to enter an objection based in
5 part on the fact that we've had no notice that this was an issue
6 that was going to be raised and I think that obviously puts us
7 in an unfavorable position.

8 MS. CLUTE: Okay, the problem with that is that you
9 didn't object to the entering of his motion.

10 MS. STEVICK: Yes but there's nothing in the motion to
11 indicate that he wanted to take evidence on the issue of why
12 there was a delay in the Department.

13 MS. CLUTE: That's true.

14 MR. MAIN: All I want to do is make a proffer, that's
15 all I'm offering to do is make a proffer. Under the rules you
16 can't grant my motion, I know that. But I think it's necessary
17 to get that motion in the record and I don't think it's improper
18 for you to at least allow a proffer of evidence on what the
19 evidence would be if you were able to consider that motion.

20 MS. CLUTE: That's right but by the same token the other
21 party should have the same opportunities to present evidence and
22 they have not had notice that that was the case.

23 MR. MAIN: I do know that the investigator is here. Mr.
24 Seitz is here. The director....

25 MS. STEVICK: I'm not sure Mr. Seitz was in any position...

1 MR. SEITZ: If I can make a statement, I was with
2 the Attorney General's office at the time and I represented
3 twenty three different boards and I wasn't familiar with the
4 internal workings of all, eminently with all twenty three of
5 them so I don't know exactly what or why....

6 MR. MAIN: Well somebody is here with a record, with
7 the Commission's record.

8 MS. STEVICK: I'm here with the investigative file,
9 yes.

10 MR. MAIN: Okay, well that's part of the Commission's
11 record and I think Mr. Seitz could at least get that in evidence
12 through his position and Mr. Matthews is here, he's the investiga-
13 tor. He's the one I think went around and took the various state-
14 ments from the various people and I guess by your procedure
15 ultimately is the one that reported to Mr. Dennis, from my under-
16 standing.

17 MS. STEVICK: Well he would have reported to his immediate
18 supervisor who was Mr. Stempson who would have transferred the
19 information to Mr. Dennis.

20 MR. MAIN: If you're amenable to going ahead and just
21 introducing the records of the Commission, the only other witness
22 that would be involved in this case would be Mr. Matthews himself
23 who's already here as a witness. So I don't think it's going to
24 take an undue amount of....

25 MS. CLUTE: Mr. Matthews wouldn't have anything to do

1 with when this hearing - when the notice of the hearing went out
2 would he, so he wouldn't - I mean he conducted the investigation
3 but - so who's here that would have any information regarding
4 that?

5 MS. STEVICK: I guess Mr. Seitz if anybody knows any-
6 thing but as he said he wasn't really in any position of authority
7 at that time. He was their legal counsel but he wasn't in the
8 administrative position.

9 MS. CLUTE: Okay, I'm going to go along and allow him
10 to ask whatever questions he wants on that particular and reserve
11 the right to you if you want later on to introduce any evidence
12 or whatever, you know, to do that but I'm going to go ahead and
13 let him. It seems to me that if there's an opportunity to get
14 the evidence on as expeditiously as possible I want to do that.
15 So we'll go ahead and do that.

16 MR. MAIN: I'd be happy to do that after the hearing -
17 after the rest of the hearing is completed so that the witnesses
18 who aren't involved can go on.

19 MS. CLUTE: All right, all right, let's do that. Okay,
20 are both parties ready to proceed with the evidence in the case?

21 MS. STEVICK: Yes.

22 MS. CLUTE: Okay. Let's see, Ms. Stevick...

23 MS. STEVICK: Oh, before we proceed I'd like to ask that
24 we stipulate that Mr. Bias is a licensee for jurisdictional pur-
25 poses.

1 MS. CLUTE: Dorsey V. Bias is the licensee.

2 MS. STEVICK: Yes.

3 MS. CLUTE: All right, fine.

4 MS. STEVICK: Would you like us to make opening state-
5 ments or just go ahead....

6 MS. CLUTE: If you - whichever you prefer. If you
7 would like to make an opening statement that's fine.

8 MS. STEVICK: I'll keep it very brief. Basically I
9 think the numbers are here and it pretty much speaks for itself.
10 It is alleged that Thomas Wetzel on September 20, I believe, yes,
11 1977 submitted an offer to John Bias, real estate salesman with
12 Dorsey Bias' firm, that the offer was never tendered to the
13 seller and that subsequently Mr. Bias bought the property for
14 himself and that in failing to tender the offer he was in violation
15 of the then existing regulation PR9-200-18, which makes it grounds
16 for suspension or revocation when a broker or salesman fails to
17 promptly tender every written offer to purchase obtained on
18 property involved.

19 MS. CLUTE: All right, Mr. Main?

20 MR. MAIN: Very briefly, the evidence that we would
21 offer will show that at the time this written came to the attention
22 of Mr. Dorsey V. Bias, the property was no longer on the market
23 for sale.

24 MS. CLUTE: All right, Ms. Stevick will you proceed?

25 MS. STEVICK: I'd like to call Mr. Wetzel.

1 THOMAS WETZEL having been previously sworn testified
2 as follows:

3 DIRECT EXAMINATION

4 By: Ms. Stevick

5 Q Would you state your name for the record please?

6 A My name is Thomas Wetzel.

7 Q And you are the complainant in this matter, is that
8 correct?

9 A Yes ma'am.

10 Q I show you a document and ask you if you recognize
11 it?

12 A Yes ma'am, that's the original contract that John
13 Bias prepared for me on the date given above in his office.

14 Q And that date is September 20, 1977, is that correct?

15 A Yes ma'am.

16 Q Would you explain please the circumstances that
17 surrounded your making this offer?

18 A Basically in about the second week in August I
19 visited the Payne's Mill Farm with John Bias and later I had taken
20 my wife there and I had taken my family, my mother and father,
21 they came later and we talked it over and at that time we felt
22 that the price was too high and then John Bias called me up and
23 told me that Mr. Davis had died and that his widow was coming
24 down and there may be some - there could be a change in the price.
25 So I said okay and I waited and then I telephoned him later and

1 asked him what had he learned when the widow had come down. He
2 told me he wasn't at liberty to discuss it. He told me that if
3 I was interested in the farm that the thing for me to do was to
4 make an offer and he would present it and get a response. So I
5 did that. I called him up about September 15th on the telephone
6 and told him to prepare a document for - stating that I was willing
7 to pay \$60,000 for the Payne's Mill. At that time I had a class
8 later in the week and I was going to go into the class with my
9 wife and we picked up the document at his office. When I went
10 into his office John hadn't written the contract yet and he wrote
11 the contract there in his office and gave it to me. Then I
12 later on with my wife discussed it and put it in his mailbox
13 that evening (20th) and then later the next day which would be September
14 21st he sent me a letter stating that he had received my contract.

15 Q Let me show you a copy of a letter and ask if that's
16 the one you're referring to?

17 A Yes it is.

18 MS. CLUTE: Ms. Stevick did you want this first one
19 to be entered as your exhibit number one?

20 Q Please. And this is exhibit number two.

21 MR. MAIN: I have no objection to either one.
22

23 Petitioner's Exhibits numbers 1 and 2 were entered into
24 evidence at this time.
25

1 Q Would you read for the record....

2 A Okay.

3 Q ...what the letter says?

4 A It says, "Tom, here's your copy. I'll let you know
5 as soon as I hear something. Be talking with you soon, John."

6 Q And that's dated September 21, 1977?

7 A Right.

8 Q Okay. What did - what copies are referred to?

9 A They refer to the copy of the contract and copy of
10 the note.

11 Q They were included with the letter, is that correct?

12 A Right, yeah.

13 Q What transpired subsequent to the 21st then?

14 A Well I waited about three or four days and called
15 up and I can't remember at this time who I spoke to but I was
16 told that the contract had been rejected so - and then I waited a
17 couple more days and told them that I wanted to pick up the con-
18 tract and then I drove in and picked up the contract and they
19 gave me the contract and then later on I think when John was on
20 vacation he - they sent another note and returned the copy of
21 my note that he had.

22 MS. CLUTE: Mr. Wetzel what note are you referring to?

23 A Well there's two notes, there's two copies of the
24 notes. He gave me a copy....

25 Q It's a promissory note that he made in lieu of the

1 down payment. I did have a xerox of that if you would like to
2 see it.

3 MR. MAIN: Have you got a copy of it?

4 Q In the file. I don't have an extra here. I wasn't
5 planning on introducing it but that is....

6 MR. MAIN: That's my only copy. I would agree if we
7 could send one on later to you, this is the only copy I've got.

8 MS. CLUTE: I would like to look at it.

9 A Here's the first one...and this is the copy...and
10 here's the letter that he wrote on October 3rd with the second
11 promissory note and it's written void on the front.

12 Q Okay, we can introduce these. You might as well
13 go ahead, it may clarify matters.

14 MS. CLUTE: This will be your Board's exhibit number
15 three?

16 Q Three and four which is a letter from John Bias
17 indicating that he's returning the note, the note marked void
18 in this case.

19 MS. CLUTE: Mr. Main, any objection?

20 MR. MAIN: No, could I have my copy back if she's going
21 to use that other one? Thank you.

22
23 Petitioner's Exhibit three and four were so marked by
24 the hearing officer at this time.
25

OBJECTION
TO EVIDENCE
TAKING PLACE
SUBMISSION
OF K.

A Okay, later on I read an ad in the paper that described a group of houses and some land that sounded like I would be interested in in the paper and the Bias - Cavalier Realty agency had it and I called up John and he told me that - he laughed and told me that was the same piece of land and that Mrs. Davis was thinking about selling just one half of it, that part of the land that was on the other side of the road.

Q When you say later on, approximately when?

A I can only - it was probably in October, okay. So I then - he fixed - John typed up another contract for me....

MR. MAIN: If I may just interrupt here. I'm not sure what relevance the events after the submission of his contract would have to whether or not the offer was promptly tendered.

Q I'm going to...

MR. MAIN: I mean if he wants to testify that he later on - that in fact it was not I think that's okay but I don't know if anything else is relevant.

A I'd like to state that on the subsequent contracts it was still represented that the owner was Polly Davis.

MS. CLUTE: In any event I overrule his objection so if you would continue.

A Okay. In the subsequent contracts, in the one for \$35,000 it's dated October 25th and again the seller is stated as Polly Davis and I submitted this contract to John and he again told me it was rejected. So I took the contract back again and

1 made some changes and wrote in \$38,000 as another offer and again
2 the seller remained the same Polly Davis and again the contract
3 was rejected.

4 Q I guess we might as well introduce that.

5 MS. CLUTE: Do you have any objection?

6 MR. MAIN: The same reason I just objected that she's
7 already overruled.

8 A Okay, the only other thing that I think is important
9 is that later on I was - and I don't know how much later that was.
10 I'll see if I can find it.

11 MS. CLUTE: Mr. Wetzel if I could interrupt, who typed
12 up this contract?

13 A I wish I could remember precisely. I think it was
14 John but I'm not absolutely certain.

15 MS. CLUTE: Was it someone in Cavalier Realty?

16 A Yes ma'am. It was typed in the office while I
17 waited. It was prepared for me in the office. But now the
18 second time I did make the changes myself and then sent it back
19 to him.

20
21 Petitioner's Exhibit number 5 was so marked by the
22 hearing officer at this time.

23
24 A Okay, and then - I don't have a copy of that contract.
25 Later on I submitted another contract for \$40,000. I was then

1 going to try to buy the Payne's Mill Farm, not all the farm but
2 just the house and the land on one side. While I was there
3 visiting in Buckingham County I went to the courthouse to find
4 out what had been paid for the farm and when I left the courthouse
5 I then found out the price that Mr. Bias had paid for the farm
6 and after I found out the price that Mr. Bias had paid for the
7 farm I then called up Mrs. Davis and asked her....

8 Q Let me interrupt you. What was the price?

9 A The price was \$53,500. Here's a copy of the deed.

10 Q Do you have any objection to the introduction of
11 that?

12 MR. MAIN: No.

13
14 Petitioner's Exhibit number 6 was so marked by the
15 Hearing Officer at this time.

16
17 [A I then called up Mrs. Davis and asked her on the
18 phone if she had ever received any offers from me and she told
19 me over the phone that no she had not received - she never received
20 any offers whatsoever on the Payne's Mill Farm and she had sold
21 it she said later on early in the year to Mr. Davis....]

22 Q Mr. Bias.

23 A Mr. Bias.

24 MR. FOXX: Which Mr. Bias?

25 A Dorsey Bias. She also stated that there were some

1 renegotiations with the contract and that it was not - the contract
2 was originally - Mr. Bias called up on the phone to give her the
3 offer price and over the phone they agreed on the offer price and
4 later the contract was sent to her with the date of the phone
5 conversation. But that wasn't necessarily the date that she signed
6 the contract and also I think there was - it came out in one of
7 the other hearings that we were at that there was.....

8 MR. MAIN: I would object to anything that came out any-
9 where else unless he wants to testify that he either saw it or
10 you know, something he said about somebody else.

11 MS. CLUTE: Okay, how did you acquire the knowledge?

12 A I heard Mr. Bias say it.

13 MS. CLUTE: All right, I overrule the objection.

14 A Mr. Bias stated that there was a renegotiation of
15 the contract for a different price. I don't remember the exact
16 particulars but there was reason that it had to be refigured.

17 Q What was the original asking price, the one that you
18 said you considered too high?

19 A I think at one time it had \$195,000 on the farm, at
20 one time, the original brochure I saw, and I believe, I'm not
21 absolutely certain that it was then later reduced to either
22 \$100,000 or \$95,000. I think it was \$95,000. It was on a
23 brochure.

24 Q So as best you can recall when you looked at it
25 initially...

1 A It was \$195,000.

2 Q \$195,000.

3 A But I think at the time it was told that this, you
4 know, seemed a bit too high and I could make an offer and that -
5 if I'd like to.

6 Q I don't have any further questions.

7 MS. CLUTE: Mr. Main?

9 CROSS EXAMINATION

10 By: Mr. Main

11 Q Mr. Wetzel can you recall when you were first
12 what
13 advised of/the listing price was, the \$95,000?

14 A No I can't. All I can remember is that it was
15 before - it was probably when my parents came down to look at
16 it, the asking price was \$95,000. I'm pretty certain. That
17 would be - to the best of my knowledge that would be say, August
18 the 3rd.

19 Q Okay, of '77?

20 A Right. No - yeah. The third week in August I meant
21 to say.

22 Q Okay. Of 1977?

23 A Right.

24 Q Approximately how many times did you look at the
25 property do you recall?

A I looked at the - approximately I would just - I

1 looked at it at least three times and I guess about six because
2 there was several times when I would go to the property to walk
3 on it and just look at it. That's at the first offer. But I
4 had also gone and looked at it afterwards, before each of the
5 second and third offers. So that might be a total of eight times.

6 Q During the time you were looking at the property
7 and during the time you were trying to negotiate its purchase did
8 you deal exclusively with John Bias?

9 A Well, I was dealing - I dealt with John Bias but
10 I did meet Mr. Bias in the office in between contracts.

11 Q At the time of the first contract did you deal with
12 anybody else other than John Bias?

13 A No I did not. To the best of my knowledge I only
14 dealt with John Bias.

15 MS. CLUTE: Excuse me, I didn't understand either what
16 the question or the answer was. You said did you deal only with
17 Mr. Bias and you said yes on the first contract. Did you deal
18 with someone else later?

19 A Well, see, when I went to pick up these contracts
20 later and when I would sometimes - it was a lot of times I visited
21 the office and on at least two of those occasions I met Mr. Bias
22 and we sat down and talked.

23 MS. CLUTE: But on other occasions you met someone else?

24 A Right, I would meet either John or once or twice I
25 met John's brother.

1 Q I guess we probably should use first names. Dorsey
2 Bias is the owner of the company. His sons, John and James Bias
3 both work as I guess brokers or salesmen with this company so I
4 guess maybe we ought to start using Dorsey and John to get every-
5 body's name straight here.

6 MS. CLUTE: Right.

7 Q That might help a little. Did John Bias call you or
8 did he call Mrs. Wetzel to tell her about Dr. Davis' death?

9 A I cannot be absolutely certain. I just - I know that
10 I received - I think he left a message with my wife. He might
11 have told my wife and then I called back and asked. I'm not
12 absolutely certain but that could be possible.

13 Q The offer of \$60,000 was an offer you came up with
14 yourself, is that correct?

15 A Yes sir. John by no means suggested any price.

16 Q Okay. And when you came up with this offer of
17 \$60,000 it was knowing that the previous listing had been \$95,000?

18 A Yes sir. My father looked at it and we were trying
19 to judge it as what it would be worth to us as far as the value.

20 Q Did John give you any ideas, suggestions, or animate
21 the
22 to you in any way that would be an acceptable offer, /\$60,000 offer?

23 A John was very explicit. He would say simply he
24 would convey the offer. He at no time said whether it would be
25 acceptable or unacceptable offer. All he'd say - and he explained
his job and that was to take my offer and convey it to the owner

1 and he would say - he'd allow her - I'd say he was perfectly clear
2 on that. He didn't make any comment one way or the other.

3 Q Did you try to get him to make a comment or suggest...

4 A I'm sure I would like to have somebody there with
5 the seller's advice but he did not in any way do that.

6 Q Now how much land were you offering to buy with that
7 first contract?

8 A Well, on the first contract it was stated in Mr.
9 Bias' brochure, there was 125 acres more or less. Also on the
10 bottom of the original brochure it was stated that there was a
11 lien of \$10,000 I believe so as far as the actual acreage, I've
12 bought land before and when they say more or less they usually
13 mean more or less, it just hasn't been surveyed in a good while.

14 Q Okay. Prior to the time that you submitted this
15 offer of \$60,000 did it ever come to your attention that there
16 may in fact have not been 125 acres that was going to be able
17 to be sold?

18 A Well when it says 125 acres more or less I realized
19 that it would be more or less.

20 Not

21 Q /in the sense that there was more or less acreage
22 because there wasn't a survey but because there was somebody else
23 that was going to buy part of it?

24 A That wasn't represented to me in that fashion. All
25 that was on the bottom of the contract was a - stating that there
was a mortgage for \$10,000.

1 Q The listing agreement you mean?

2 A Yes sir. Do you have a copy of that?

3 Q Now as I understand what you said earlier, you called
4 John and told him you wanted to make an offer for the particular
5 property?

6 A Yes sir, around about September 15th. It was early
7 in the week, probably a Tuesday and I believe I went in on a
8 Friday.

9 Q How soon after he advised you of Dr. Davis' death
10 did you go into his office?

11 A All I know is I called him on - I called him on
12 September 15th. As far as when Dr. Davis died or he didn't die
13 I don't have any knowledge. I don't know when he died.

14 Q Did John tell you when he called you when he had
15 died?

16 A No. He just said that he had died.

17 Q You're pretty sure you went to his office on the
18 15th of September?

19 A I did not go in the office...

20 Q Called him, excuse me, called him.

21 A I called him. That's early in the week, it might
22 have been the 16th but it ^{was} two or three days before I went in.

23 Q Okay.

24 A Because I was going into town later on and I thought
25 it would just be more convenient.

1 Q Now on the 20th did both you and Mrs. Wetzel go into
2 John's office?

3 A No we did not. I went and picked up the contract
4 and then - in fact we just picked up the contract and then I had
5 class and after class we stopped at a resturant and talked about
6 it and we decided that this was acceptable to us and we both
7 signed it and I put it/Cavalier Realty's mailbox in front of the
8 Cavalier Realty's residence.

9 Q Let me ask you this now. How long did you and John
10 spend drawing up this document which you've introduced I guess
11 it's exhibit number one, the September 20th contract?

12 A We were in his office and he drew it up at that
13 time.

14 Q What time of the day was this that he did this?

15 A Just a guess, it would be sometime between 4:00 and
16 5:00, it had to be after school. I probably got there about
17 4:00 or thereabouts.

18 Q And you spent about an hour with John? Is that
19 right?

20 A I don't - whatever it takes to draw it up, about
21 30 minutes.

22 MS. CLUTE: May I interrupt here and ask one question?

23 Q Yes ma'am.

24 MS. CLUTE: When you went in on that Friday did you know
25 at that time that Mr. Davis had died?

Check if original
contract
AGENTS
RETURNED.
INITIAL
DVB
PARTICIPATION.

1 A Yes.

2 MS. CLUTE: Okay.

3 Q What did you tell John when you left his office with
4 the contract?

5 A I told him I'd get it back to him, I'd get my wife
6 to sign it. In fact John told me that if my wife signed it it
7 would be okay for me just to put it in the mailbox out in front.

8 Q All right now, did you tell John that you would
9 definitely bring it back or did you tell him that I'm going to
10 discuss it with my wife and....

11 A I told him I had to discuss it with my wife. It
12 wasn't definite...

13 Q So when you left his office he didn't know if you
14 were going to come back with the contract or not?

15 A Not absolutely certain, no.

16 Q During the time that you were in the office there
17 talking to John did Dorsey Bias in any way participate in the
18 discussion?

19 A I don't remember. He might have been, I'm not
20 absolutely certain, he might have been sitting in the office but
21 I don't really remember any active participation.

22 Q Okay, now the mailbox to which you referred is
23 located where?

24 A It's at the end of the drive in front of Dorsey
25 Bias' residence and across from Dorsey Bias' residence is the

this
K
dropped
off.

1 Cavalier Realty Office.

2 Q Okay, it's a small little two story building in
3 which he has the office?

4 A Right, right.

5 Q That's your recollection?

6 A Right.

7 Q And the mailbox is up on the state road at the end
8 of the driveway, is that right?

9 A Yeah.

10 Q How much distance would you estimate there would be
11 between the mailbox and the house?

12 A Um, maybe five times the length of this room.

13 Q Okay, just roughly.

14 A Right.

15 [Q About what time did you drop the contract back off
16 in the mailbox?

17 A This is a guess, I think between - sometime between
18 10:00 and 11:00 because I had to have my class and I think my
19 class was over either at 9:00 or 9:30.]

20 Q Ten or 11:00 that night?

21 A Right.

22 Q Did you drive down the driveway to see if...

23 A No.

24 Q ...the office was open or did you leave it in the
25 mailbox?

1 A I just left it in the mailbox. I looked down the
2 driveway and didn't see any lights I didn't even go to the office.

3 Q Did he give you a - excuse me just a minute. This
4 is a blank one but is this the type of thing that John gave you
5 to take home to show....

6 A Right.

7 Q You had it filled out of course but is that the type
8 of thing?

9 A Right.

10 Q Now when you brought it back by his mailbox that
11 night, of course it had been filled in and signed by you and your
12 wife, did you enclose it in an envelope or did you just slip it
13 in like this?

14 A I'm sure I enclosed it with a note in an envelope.

15 Q With a note and an envelope?

16 A Right.

17 Q You mean the little....

18 A Promissory note.

19 Q Promissory note?

20 A Right.

21 Q Had John also given you that?

22 A Right. He had written that up for me.

23 Q Okay, and you had these both in an envelope?

24 A To the best of my knowledge.

25 Q Do you recall if anything was written on the outside

1 of the envelope?

2 A No I don't. I'm sure I would have put probably
3 John Bias...

4 Q John Bias...

5 A But I can't be absolutely certain. I don't have the
6 envelope.

7 Q Okay. And you didn't...

8 A I didn't have a stamp on it or anything.

9 Q You didn't leave a letter or anything with it did
10 you?

11 A No.

12 Q Okay. I would just like to introduce this for
13 informational purposes. This is just the type of form contract
14 that was used at the time.

15
16 Respondent's Exhibit number 1 was so marked by the
17 Hearing Officer at this time.

18
19 Q Did you keep a copy - there are four copies on this,
20 an original....

21 A I didn't know that. That was my first contract and
22 he - that's what he sent me later.

23 Q You didn't keep any of these copies?

24 A No, no.

25 Q When he sent you a copy of the contract later did he

1 send you a photocopy from a photocopy machine or one of the
2 colored copies?

3 A I'm almost certain he sent me a colored copy.

4 Q Okay, can you remember which color?

5 A Well, see, I met with the other real estate agency
6 and I gave my originals to them. If they have the originals we
7 could find out what color it is.

8 Q When you and John were talking early that afternoon
9 did you communicate to him that you were in a big hurry to find
10 out or that you needed to know right away or that it was an
11 urgent matter?

12 A Urgent - I don't know of any reason to delay in
13 telling you that you've received a contract.

14 Q I'm not asking that. My question is did you tell
15 John Bias that afternoon that this was urgent and you needed to
16 know right away, you were in a big hurry?

17 A No, I didn't. I might have asked him and he said -
18 I think he told me that you would have to call up and speak to
19 him. In fact I'd asked John later on, I said John what did Mrs.
20 Davis say when she rejected my contract, I mean did she give any
21 indication she wanted more or less money or anything like that
22 and John told me at that time that he did not contact Mrs. Davis,
23 that Dorsey Bias had been the one who had dealt with the Davis'
24 in the past and that his father did transfer the contract.

25 Q All right now, did you call John either that night

1 or the next day to ask him if he had received the contract?

2 A No, I didn't. I had no reason to...

3 Q You felt confident that you left it in the mailbox?

4 A He told me to leave it in the mailbox.

5 Q Now one of the exhibits which has already been
6 introduced into evidence, I don't know which one it was, it was
7 a letter dated September 21, 1977 written on - hand written on
8 which
Cavalier Realty stationary and signed by John, /is John Bias....

9 MS. CLUTE: That's exhibit number 2?

10 Q Number 2, okay. Do you recall when you received
11 this letter?

12 A When we were at the other - when we were at the
13 other meeting I had the envelope with the post mark on it. Do
14 you people have the documents I gave you?

15 Q You don't have it anymore yourself do you Mr.
16 Wetzel?

17 A I gave it to the other real estate people. I gave
18 them all my original copies, and the envelope is in there because
19 that came up last time and they have a copy of it.

20 Q Well if you don't have it can you recall of your
21 own knowledge?

22 A No I cannot.

23 Q When you received it?

24 A No I cannot. I can just - I can't.

25 Q Where were you living at the time he sent this to you?

DATE: 10/1/77
COURT REPORTER: K. M. M. M.

1 A I was living in Scottsville, Virginia.

2 Q Okay, with the local mail it would have probably
3 taken one or two days at the most?

4 A It would seem to me that it would come on a Monday
5 but I just don't recall.

6 Q Now from the 20th of September of 1977 which is the
7 day on which you went to John's office until the 25th which was
8 a Saturday, did you hear anything from John at all about this
9 contract or anything else?

10 A I can't remember exactly but I think in my mind I
11 usually would wait about three or four days then I'd call up
12 thinking that that's a reasonable time.

13 Q During that time frame I just mentioned, from the
14 20th of September until the 25th - excuse me...

15 A Okay...here's the envelope that it came in. Here's
16 the original contract and the date of it is September 22, so it
17 must have come on Saturday and here - let's see...here's the...

18 Q This thing is postmarked here as September 22, is
19 that right?

20 A Here's a copy of their uh...

21 Q I would like to introduce this.

22 A Listings, their listings, Cavalier Realty listings.
23 Now as far as these changes in the-written in white, they were
24 not on any copy that I saw.

25 Q Is that your copy?

1 A No. It is not my copy and I don't know where that
2 came from.

3 Q Okay, but this is the envelope in which you received
4 John Bias'....

5 A Yes.

6 Q I'd like to introduce that if I could please. It's
7 got the original.

8 A Here's the original - the original note, September
9 20th, the one he voided with the date on that too if that's
10 important. And here's the original letter if you want the
11 original.

12 MS. STEVICK: Do you - Ms. Clute do you have any strong
13 feelings about having the original in the record? Copies are
14 agreeable to me.

15 MS. CLUTE: Not unless anyone raised any objection.

16 Q I don't.

17 MS. CLUTE: I don't for purposes of what I have although
18 I would like to have it available.

19 Q I'd rather go ahead and have the original if it's
20 available. I don't have any need to have it in my possession.

21 MS. CLUTE: I've already marked this respondent's
22 Exhibit number 2.

23
24 Respondent's Exhibit number 2 was so marked by the
25 Hearing Officer at this time.

1 MS. CLUTE: And it has the original of your exhibit
2 number 2 in it.

3 MS. STEVICK: Okay.

4 Q And here's the original letter dated October 3 in
5 which the note was returned. I'd like to go ahead and get that
6 in.

7
8 Respondent's Exhibit number 3 was so marked by the
9 Hearing Officer at this time.

10
11 MS. CLUTE: This is Respondent's Exhibit number 3?
12 Do you have any objection?

13 MS. STEVICK: No.

14 Q And this is the original note. This is your writing
15 on the envelope isn't it?

16 A Yeah, that was much later, that was after....

17 Q All right, let me give this back to you then.

18 MS. CLUTE: Now Mr. Main does this go with your exhibit
19 number 3?

20 Q Yes ma'am. He testified earlier that he - that John
21 Bias wrote him a letter and I thought you had introduced that into
22 evidence?

23 MS. STEVICK: Yes, a copy of it.

24 Q Well I'm just going ahead and giving you the original.

25 MS. CLUTE: Okay.

Q So in - where I last broke off, so between the 20th and the 25th of September there was no communication of your recollection between John to you or you to John?

A I'm not certain, I'm not certain but it would seem like that I would have called before the 25th but I'm not certain.

Q Now, when did you first learn that your offer had not been accepted?

A It had been rejected? Once again I can't be absolutely certain on that but I would just guess that I waited four days and we'll say September the 24th and I called and asked what was the....

Q September 24th was a Saturday, do you remember being called on a Saturday?

A As far as when I absolutely found out about it, I would just guess it was three or four days later when I asked.

Q Three or four days after the 24th or three or four days after the 20th?

A After the 20th.

Q But you can't remember who you called?

A I can't remember who I spoke to.

Q Do you remember what they told you?

A They told me my offer had been rejected. I remember that phrase very well.

Q Did they tell you - did they tell you anything else?

A No, and even when I asked I didn't get anything else.

1 Q Did you ask?

2 A Of course I asked....

3 Q What did you ask?

4 A I asked what did she say, did she give any hint and
5 was
6 that/when - maybe when he told me that he did not talk to her
7 that it was Dorsey Bias that was communicating with the owner.

8 Q So you did speak to John on the 24th then? It was
9 John that you spoke to?

10 A I'm not absolutely certain of that.

11 Q Was it Dorsey Bias that you spoke to?

12 A I can't be certain of that either. All I know is
13 I called up the office and they told me that the offer had been
14 rejected.

15 Q Did you ask - did you deal with anybody else in
16 the connection with the purchase of that farm other than John
17 Bias up to that point?

18 A No.

19 Q So you would naturally ask for John wouldn't you?

20 A I would have asked for John if he had been there.

21 MS. CLUTE: May I ask one question on that? Would it
22 have been either Dorsey or John Bias?

23 A Right, Dorsey or John. Except one time I went to
24 the office and John's brother gave me a slip of paper. Now it
25 could have been the contract. In other words, after I learned
that the offer had been rejected I went to the office and no one

1 was there except John's brother and he gave me the contract,
2 because I know I met John's brother once.

3 MS. CLUTE: So it would have been one of the three
4 Bias men. I mean it wasn't the receptionist or secretary?

5 A No.

6 Q To your knowledge there was no secretary or reception-
7 ist out there was there? The times you've ever been out there
8 have you ever seen one?

9 A I don't think I've seen one.

10 Q But whoever you talked to was unable to give you
11 any reason at all...

12 A No.

13 Q ...for as you say the rejection of your offer?

14 A Simply it was rejected.

15 Q Now as I understood you a few moments ago you said
16 that you then called John up and said you were going to come by
17 and pick up the contract?

18 A Well I called up the office.

19 Q Well do you remember who you spoke to when you called
20 the office?

21 A No I don't.

22 Q Was this the same conversation?

23 A No it was a later conversation.

24 Q Or a subsequent conversation?

25 A Subsequent.

1 Q Do you remember how long after the 24th phone call
2 it was?

3 A I had a little while to think about it and once again
4 I'll just guess three or four days, probably two or three days
5 ^{that} and decided/I didn't want to leave the signed contract in the
6 office, that I would like the signed contract if the offer had
7 been rejected, and that's why I went to pick up the contract.

8 Q Now in your initial complaint which was filed with
9 the Real Estate Commission you say that on or about September
10 27th your contract was returned to you by Dorsey Bias, is that
11 correct?

12 A Uh, what it was is that I had talked to Dorsey Bias
13 later and he had explained to me....

14 Q Later - later after the 24th or later when?

15 A See, I didn't know that these conversations would
16 be that important until eight months later and then I had to go
17 and
18 back and try to remember who I had talked to/who I hadn't talked
19 to and I had made quite a few number of trips to the Bias real
20 estate agency and all I know, and I wish I could be more precise,
21 is that I had sat down with Dorsey Bias on at least two occasions
22 before I found out the price that it was offered and talked with
23 him and to talk with him at length and basically - they'd say
24 a lot of things I wasn't able...

25 Q Let me just - what I'm trying to get at is on the
26 27th of September did you go by Cavalier Realty office here in

1 Charlottesville and pick up your contract?

2 A To the best of my knowledge that's right.

3 Q And did you pick it up from Dorsey Bias?

4 A To the best of my knowledge.

5 Q At the time - at the time you picked it up from
6 Dorsey Bias what if anything did he say to you about your contract?

7 A The first time I met him he just handed it to me.

8 Q There was no conversation?

9 A Almost none.

10 Q I mean you let him know who you were?

11 A Right, he gave me the contract.

12 Q He gave you the contract and you drove off. When did
13 you next hear or talk - hear from or talk to John Bias?

14 A The only thing I didn't - after I got the contract
15 he sent me - he sent me the contract....

16 Q That was the October 3rd letter?

17 A Right. That was probably the last time I heard from
18 him.

19 Q After you got that October 3rd letter from John Bias
20 did you call John up and inquire of John why Mrs. Davis had not
21 accepted your offer or why it had been rejected?

22 A It's possible, I mean, like I said I can't be certain.

23 Q You can't be certain.

24 A I know I discussed it with him and I know that Dorsey
25 Bias discussed me - sat in the office at least on two occasions

1 and told me that he was involved with the widow and that he
2 didn't know what was going to happen with this - to this farm.
3 He was - it may be - he said that he might buy it himself but
4 at this point he didn't know.

5 Q All right now you were dealing with this property
6 from sometime in August up through sometime in January '78, is
7 that correct? So that conversation with Dorsey Bias could have
8 taken place anytime over that almost four month period?

9 A It most probably took place after the first offer,
10 the first offer....

11 Q After the \$60,000 offer?

12 A Right.

13 Q Would it have taken place after you submitted the
14 second offer, this October 25th offer? .

15 A It would have taken place sometime during the second
16 or third offer.

17 Q Okay.

18 MS. CLUTE: Excuse me, which conversation is that you're
19 referring to?

20 A One time I went in, probably, like I said I visited
21 the office pretty many times and Dorsey Bias was there and he -
22 we just sat down and talked about the Payne's Mill Farm and how
23 it was - that Mr. Davis had died and she was having problems and
24 he didn't really know what was going to happen to the Payne's
25 Mill Farm, that it might end up that he was going to buy the farm

1 himself.

2 MS. CLUTE: Mr. Dorsey Bias said he might buy it himself?

3 A Right.

4 [Q On your - let me ask you before I ask you this. When
5 did you learn who Mrs. Davis was, when did you find out that she
6 was not a resident of the Commonwealth?

7 A Uh, this is difficult. I believe that Mr. Davis -
8 I mean Mr. Bias, Dorsey Bias had told me that she had a son who
9 was doing something in surgery at the University of Virginia, a
10 son or a son in law. So when I found out about the Buckingham -
11 that's when I found out exactly where she lived. But I always
12 knew that they had to call her up and that she wasn't in the
13 state to transfer - to get the contracts across.

14 Q You knew she wasn't available locally?

15 A Right.

16 Q You knew that contact would have to be made with her
17 out of town?

18 A Right, only phone calls.

19 Q But you didn't know where?

20 A Not precisely.]

21 Q When did you find out that she was a resident of
22 New York?

23 A Well I found out where she precisely lived when I
24 called up her either son in law or son and asked if he had a
25 number and he gave me a number and that's when I called her up.

1 Q This was back in January after you picked up this
2 deed in the clerk's office down in Buckingham?

3 A Right.

4 Q Now the second offer you submitted was on a contract,
5 a typewritten contract dated October 25th, 1977 which has been
6 introduced here and at that point you offered \$35,000 for 20
7 acres of the Payne's Mill Farm, that was just the house tract,
8 the piece on which the house was located?

9 A Yes.

10 Q Did you discuss this contract with John before
11 preparing it?

12 A I'm sure I did.

13 Q Did John prepare it to the best of your recollection?

14 A Yes, to the best of my recollection, someone in the
15 office typed it up, whether it was John specifically I don't
16 remember.

17 Q At the time this contract was prepared what discussion
18 if any was there about what had happened to the rest of the land,
19 the remaining 120 - excuse me, 100 acres?

20 A Well it was brought up that there was this lien on
21 it, that there was a lien, to the best of my recollection it was
22 \$10,000 and that they didn't know what was going to happen. It may
23 be that - and Dorsey himself told me this, it may be that the
24 woman who the money was owing to could - would take some land
25 instead of paying the money, okay? And that she was going to

1 reserve the right to pick almost any spot, any ten acres or what-
2 ever number of acres that she was taking in the tract. So there
3 was some question, in other words it was sort of - there was some
4 question about what was going to happen to the other half because
5 of this lien.

6 Q But that was the conversation you said you had with
7 Dorsey Bias?

8 A Right.

9 Q As opposed to John?

10 A Right, because he had more of the exact knowledge
11 than John did.

12 Q Okay, you started out with \$35,000 and that has been
13 scratched through and replaced by \$38,000 and initialed by you?

14 A Right.

15 Q Why was that done?

16 A When I called up John and asked once again what/Mrs. had
17 Davis said about the contract and he said it had been rejected
18 and I said well - I thought again and decided - called up again
19 and told him that I would like to make another offer at that
20 time, an offer of \$38,000. So he told me that there's no reason -
21 all I had to do was scratch through the price and put the \$38,000
22 in and that would be sufficient. So then I took that contract to
23 him.

24 Q Now when did you get a response to the scratched out
25 contract, the \$38,000 one?

1 A Once again, to the best of my knowledge it was two
2 or three days later and once again the offer had been rejected.

3 Q Did you submit a subsequent offer on the same property?

4 A I did. I don't have a copy of that contract but it
5 was much later, as you said, in January sometime. Now I think -
6 what was that offer for, \$40,000 or \$44,000, I don't remember.

7 Q I don't know.

8 A Well it was around \$40,000, I think.

9 Q Okay, now whom did you submit that offer?

10 A Well at that time when I was drawing up that contract
11 I remember very clearly that Mr. Dorsey Bias was in the room with
12 us and we drew it up together.

13 Q Who was listed as the seller on the contract? Do
14 you recall?

15 A I'm sorry, I don't have a copy of it.

16 Q Do you recall whether it was Mrs. Davis or Mr. Bias?

17 A I think at that time it was Mr. Bias.

18 Q At that time you knew that....

19 A Right.

20 Q ...he owned...

21 A Right.

22 Q ...or had some sort of ownership to that property?

23 A Right. And that's when I wanted to look it up and
24 see what he paid for it.

25 Q Now in your - in your complaint which you filed with

1 the Commission you referred to the Payne's Mill Farm as being a
2 tract of land consisting of 115 acres as opposed to 125 acres.
3 Now how do you explain - how do you explain the acreage differential
4 between what you put on your contract and what you put in the
5 complaint?

6 A That was done - I don't know.

7 Q Did you prepare the complaint?

8 A I helped prepare it, my brother prepared it, my
9 lawyer.

10 Q He's a lawyer in Winchester isn't he?

11 A Yes, he is.

12 Q He prepared the complaint for you?

13 A Right.

14 Q And he prepared it on the basis of information which
15 you gave him I gather?

16 A Right. He also - he called up Mrs. Davis also and
17 spoke with her.

18 Q Both of you called up Mrs....

19 A Right.

20 Q Now subsequent to - subsequent to the January dis-
21 covery that something had gone wrong you also filed a lawsuit
22 against
23 here in Albemarle County / Mr. Bias too didn't you?

24 A Right, yes.

25 Q And in that suit you also suggested it was 115 acres,
is that correct?

1 A Right.

2 MS. CLUTE: Excuse me, may I go back to one other
3 question? Your January offer of \$40,000 to \$42,000 that was for
4 how many acres of land?

5 A I think it was 20 more or less. I don't have a copy
6 of the contract.

7 Q Which offer was this?

8 MS. CLUTE: The January '78 offer.

9 A The January, the later offer.

10 MS. CLUTE: Did that include the house?

11 A Yes, it included the house, it was more or less.

12 Q If we go by your - either your lawsuit or complaint,
13 an
14 whichever we go by, 115 acres, if in fact this was/115 acre tract
15 or that was all that you could have purchased, would the purchase -
16 would the offer had been the same?

17 A Are you saying that the 115 acres is the same as
18 the 125 acres more or less?

19 Q Yeah, when you submitted the September 20th contract
20 if that had been instead of 125 acres, 115 acres would the purchase
21 price or the offer had been the same, \$60,000?

22 A As far as my knowledge is with the exception - it
23 was brought out in the real estate agent that there was this lien
24 on the bottom of the contract that was later, and this is not exact
25 knowledge, it was later satisfied by the giving of a certain
acreage of land. I think it was 10 acres of land. It was a

1 lien of \$10,000 on my contract.

2 Q That 's something you didn't know...

3 A When I gave the \$60,000 I was given exactly what's
4 written in that contract.

5 Q For 125 acres?

6 A One hundred twenty five acres more or less.

7 Q Okay, if that had been 115 acres your offer would
8 not have been \$60,000?

9 MS. STEVICK: I'm going to object. Mr. Main already
10 has asked that question for one thing, besides which....

11 Q I haven't been answered yet.

12 MS. STEVICK: Well, he has stated that he made an offer
13 for 125 and it was \$60,000 and you're asking him to decide now
14 what he might have done under different circumstances. The listing
15 was for 125 acres and that's what he made his offer on.

16 Q But his complaint and his lawsuit both say 115 acres.

17 MS. STEVICK: Right, there has been testimony from him
18 that there was a lien on the property and it was satisfied by the
19 giving or selling of 10 acres.

20 MS. CLUTE: Mr. Main I don't see that it's relevant to
21 the issue before us today.

22 Q Are you asking me not to pursue that line anymore?

23 MS. CLUTE: Well I don't see that it's relevant. I mean
24 he seems - if he wants to answer it I don't mind but it doesn't
25 seem to be relevant, just taking time needlessly.

1 Q It's a very simple question. I mean all it requires
2 is a yes or no answer and I still haven't gotten it yet.

3 A Well I won't give you a yes or no answer. I'll give
4 you an answer. I wasn't aware that I had the opportunity of
5 trading 10 acres of the land for a \$10,000 lien and I also thought
6 when I bought the land that whatever lien was on the property
7 would be paid by the seller.

8 MS. CLUTE: All right.

9 A I mean that's....

10 Q Did you know this was a deed of trust lien everybody
11 was talking about? You've bought property before this haven't
12 you?

13 A I've bought property but I'm in no ways an expert.
14 In fact one of my problems now is I put my faith in the realtor.

15 Q Did you think this was ^a mortgage or deed of trust
16 type lien?

17 A What I thought this was was that when someone buys
18 a piece of property everybody borrows money and if I'm willing to
19 pay the seller \$53,000 or whatever amount of money, any liens
20 that he has against the property he pays for, that that covers
21 it, that's my understanding, it may not be exact. But that's my
22 best understanding. That is someone - I can assume the loan or
23 he pays for it. I don't assume his obligations, the seller's
24 obligations against the land.

25 Q Now, let me ask you this question. Did either Dorsey

1 Bias or John Bias ever tell you that your offer had indeed in fact
2 been communicated to the owner of the property?

3 A They - well it wasn't a question - it wasn't a
4 question I thought I had to ask. When someone tells me that an
5 offer is rejected I assume that it has been communicated.

6 Q You assumed that it had been communicated?

7 A Yes sir I did.

8 Q Without any further questions.

9 A I also asked what did she say and also I was led
10 to believe that it was a telephone conversation that had taken
11 that
12 place. I had no knowledge/when the telephone conversation took
13 place that the offer wasn't discussed.

14 Q What was said to you that led you to believe that
15 there was a telephone conversation?

16 A John would say that his father would have to call
17 and that she had called up.

18 Q Okay, you knew in advance of the submission of this
19 September 20th offer that John would have to get his father to
20 go ahead and approach the seller is that correct or not correct?

21 A Now whether John chose to get his father to approach
22 the seller is more or less John's business.

23 Q I'm asking you did he tell you that he was going to
24 do that?

25 A He told me that's how he was going to proceed.

Q I don't have any other questions. I would ask that

1 he be kept available.

2 MS. STEVICK: I don't think I have any other questions.

3 MS. CLUTE: Let me just be sure that I understand one
4 thing. Okay is it your testimony that the only people you ever
5 dealt with regarding this land transaction would be one of the
6 three Bias men, there was no one else from the office, so there
7 was not information going through anyone else?

8 A No, it was only the three Bias men. In fact I didn't
9 talk to James which was John's brother - I didn't pass more than
10 five words. I just met him one day and he was the only one in
11 the office and he gave me a piece of paper. Now what exact piece
12 of paper that was I don't know. I talked with Mr. Bias, Dorsey
13 Bias but I never got too much pertinent information from him.

14 MS. CLUTE: You primarily dealt with John Bias?

15 A Yes.

16 MS. CLUTE: What did you receive in this....

17 A I received a copy of the promissory note and a copy
18 of the contract.

19 MS. CLUTE: Is this a copy of the promissory note?

20 A Right.

21 MS. CLUTE: And a copy of the contract is not included
22 here but that was the other copy that was there?

23 A Right.

24 MS. CLUTE: All right, your next witness?

25 MR. FOXX: It would help me to know if there were any

1 provisions for disposition of the \$10,000 included in your offer
2 to purchase?

3 A No sir.

4 MS. FOXX: There's language in there that deals with
5 encumbrances on the property, printed language....

6 A No, the only place that I saw that there was a
7 mortgage on - for \$10,000 is on a listing similiar to this one
8 but is not this one and down on the bottom it's got mortgages.
9 It had a mortgage of \$10,000. I thought a mortgage was something
10 that, that you could maybe assume if you needed it for a better
11 interest rate.

12 MR. FOXX: When you made your offer to purchase it for
13 \$60,000...

14 A Right.

15 MR. FOXX: Or \$40,000...

16 A Right.

17 MR. FOXX: In that printed contract it deals with any
18 encumbrances.....

19 A No.

20 MR. FOXX: ...on the property?

21 A No.

22 MR. FOXX: Usually it has printed language in there
23 and I was wondering if there were any provisions.

24 A No.

25 MR. MAIN: Wait a minute, I don't understand. You say

1 usually in the listing form there's language....

2 MR. FOXX: Usually when you're - in the contract form
3 which is the same as what you refer to as an offer.

4 A You can see....

5 MR. FOXX: There's usually language in there that
6 relates to any encumbrances on the property.

7 MR. MAIN: I understand now, okay. That's in there.

8 A Yeah. That's the original contract. It wasn't
9 written in extra.

10 MS. STEVICK: I have no further questions.

11 MS. CLUTE: Thank you Mr. Wetzel.

12 MS. STEVICK: I would like to call John Bias and stip-
13 ulate that we're calling him as an adverse witness.

14 MR. MAIN: I think she's going to have to establish
15 he's an adverse witness before she calls him as one. He's not
16 the respondent in this proceeding. I think she needs to show his
17 hostility or adversity before she calls him as such. Since he's
18 not the respondent.

19 MS. STEVICK: No, he's not the respondent but he is
20 the son and business associate of the respondent and I think it
21 would be fairly evident that if his sympathies were anywhere they
22 would be with the respondent rather than with the Commission.

23 MR. MAIN: I think that would have to come out in her
24 questioning of him as opposed to her statement of what she thinks
25 the case is.

1 MS. CLUTE: Right, it may not be a problem. All right.

2
3 JOHN BIAS having been previously sworn testified as
4 follows:

5 DIRECT EXAMINATION

6 By: Ms. Stevick

7 Q Would you state your name for the record please?

8 A John Bias.

9 Q And you are an employee of Cavalier Realty?

10 A Yes ma'am.

11 Q Are you a salesman or a broker?

12 A I have a broker's license.

13 Q Okay. You were the agent involved in Mr. Wetzel's
14 contract dated September 20, 1977, is that correct?

15 A Yes ma'am.

16 Q Do you remember when you received that?

17 A No I don't.

18 Q Let me show you a letter....

19 MS. CLUTE: I'd rather you use the original since it's
20 available.

21 Q ...and ask you if you recognize it?

22 A I don't remember writing it but that's my letter.

23 Q Okay. I'd also like to show you a copy of some -
24 well let me show you a copy and ask you if you can identify it?

25 A Right, that's the card I gave to the gentleman from

1 the Real Estate Commission when I first talked to him.

2 Q These are notes you keep on your transactions, is
3 that correct?

4 A Correct.

5 Q I'd like to introduce that as whatever exhibit.

6
7 Petitioner's Exhibit number 7 was so marked by the
8 Hearing Officer at this time.

9
10 Q I'd like to draw your attention to the item for
11 9/21.

12 MR. MAIN: I'd like to have a little more of a founda-
13 tion on this thing before she starts questioning him from it.

14 MS. CLUTE: What is this, this is a list of transactions?

15 Q No, this is a list of notes he has kept regarding
16 the transactions.

17 MR. MAIN: I think he needs to lay the foundation for
18 exactly what this shows.

19 Q All right, would you explain please what this card
20 is and how you use it in your transactions?

21 A It's just a three by five index card and usually
22 when I'm dealing with somebody I just put their name, address,
23 telephone number on it and anything at the time that seems perti-
24 nent to me I record it on the back of the card.

25 Q And this one refers to Tom and Jane Wetzel, is that

1 correct?

2 A Yes ma'am.

3 Q And are these notes involving the transaction in
4 question here?

5 A Right.

6 Q Now I want to draw your attention to the note for
7 9/21, "Will mail contract back".

8 A Right.

9 Q Do you remember making that?

10 A No.

11 Q Do you remember what you did with the offer when
12 you received it?

13 A I can't specifically remember, you know, what happened
14 at that time but my usual procedure for something of this sort
15 would be just to put it on my father's desk.

16 MS. CLUTE: Do you want to read this, what it says?
17 Do we have the same one here?

18 Q Yes, can you read your notations?

19 MS. CLUTE: What does it say, it says 8/22/77...

20 A He called on an ad in the Daily Progress concerning
21 the Davis property. I talked to him by telephone, it was Mr.
22 Wetzel I talked to.

23 Q Okay, what was your next note?

24 A I showed him the Davis property. He said his wife
25 would come down the second Thursday and the balance of that is

1 financial information regarding Mr. Wetzel, information he gave
2 me.

3 Q All right, is that 8/16 the next one?

4 A I talked to his grandmother by telephone and she
5 told me that he had moved to near Scottsville and talked to Tom
6 not
on the 17th and he said that he could/see the property Thursday.

7 Q He could see it Thursday?

8 A Could not.

9 Q Okay.

10 A Can't see. And let's see, I talked to him by telephone
11 the 19th, to Tom and at that time we decided to talk the first
12 part of September about another piece of property. Now on the
13 25th I showed the property to both Tom and Mrs. Wetzel. This is
14 a different piece of property. On the 15th I called Mrs. Wetzel
15 and told her that Dr. Davis had passed away and on the 21st I
16 have a notation, mailed contract back.

17 Q Would that be - that would be referring to the copy
18 of the contract?

19 A My guess is it would be the copy of the offer he
20 made. I usually just give them a copy of the offer and any notes
21 or anything.

22 Q Okay, would it be reasonable to assume that this
23 letter was written in conjunction with this note here?

24 A That's the only explanation I have. Yes ma'am.

25 Q Okay, will mail contract back, so it would be a copy

1 of the contract that you received?

2 A Right.

3 Q Okay. All right, and the next one?

4 A Uh...on 10/3 I sent him a letter and returned the
5 note. On the 25th Mr. and Mrs. Wetzel offered, I believe that's
6 \$35,000 for the house and 20 acres of the Davis property and then
7 on November the 3rd I talked to Tom by telephone and told him
8 that it was possible that the property could be purchased for
9 \$40,500 and on the 4th Tom told me that was too much and then on
10 December the 9th I talked - let me see - no, I showed - this is
11 another piece of property, to Mr. Wetzel.

12 Q All right, with reference to that 11/3 one, possible...

13 A Counter.

14 Q Counter of \$40,500 and he said that was too much,
15 was that referring to the house and 20 acres?

16 A Apparently - he called me back the next day.

17 Q Okay, the house and 20 acres?

18 A Yes ma'am.

19 Q Who owned this land at that time?

20 A Uh...at that time my father had a contract on the
21 property, I guess it would be the contract purchaser or something,
22 I think, I'm not sure of the exact dates of when things closed.

23 Q Okay.

24 MR. KLOPFENSTEIN: Excuse me, can we establish that date
25 again on what you were just asking?

1 Q This was November 3rd of 1977.

2 MR. KLOPFENSTEIN: And your response is your father
3 had a contract on the property?

4 A Right. I don't know whether it had closed or what
5 the exact status was of it right at that time.

6 MS. KLOPFENSTEIN: And that date again, I'm sorry.

7 Q November 3rd.

8 MS. CLUTE: November 3rd.

9 MS. KENT: Did you tell Mr. Wetzel this, that your father
10 had a contract on it?

11 A I didn't discuss it with Mr. Wetzel directly. Some-
12 time, I think it was probably about the time he made this offer
13 on the 25th of October. He and my father discussed/^{it}in the office.

14 Q All right and on 11/4 he said it was too much and
15 then, okay, the next one on January you showed him another property.
16 Then 11/3/78, what does that say?

17 A 1/3/78 Tom would be willing to rent...I talked to
18 him by telephone, he says he would be willing to rent...I think
19 that's supposed to be time requirement from offer....and then I
20 say give note to dad.

21 Q What property was he interested in renting, do you
22 recall?

23 A I believe that there was some discussion about him
24 renting the Payne's Mill property at that time.

25 Q And at that time your father did own it, is that

1 correct?

2 A Uh...

3 MR. MAIN: If I could volunteer, the transactions between
4 Mr. Bias and the owner closed on January the 6th of '78, that's
5 the date that the deed was recorded. Does that get to what you're
6 talking about?

7 MR. FOXX: What was....

8 MR. MAIN: Pradon?

9 MR. FOXX: ..date of his contract?

10 MR. MAIN: The 22nd day of September was the contract
11 that we will introduce into evidence when Mr. Bias' turn comes.

12
13 Petitioner's Exhibit number 8 was so marked by the
14 Hearing Officer at this time.

15
16 Q Let's go back to what you did with the offer when
17 you got it. I believe you said you didn't remember exactly but
18 your normal procedure was to give it to your father?

19 A Right. I dealt with Mr. Wetzel on at least three
20 different offers on that same piece of property and it's not
21 clear in my mind which thing happened with regard to which offer.

22 Q How many people are there in your office?

23 A At the present time?

24 Q No, at the time this transaction was going on?

25 A You know, I don't know, I would guess - I can give you

1 an estimate but I have no idea of the exact number, six or seven,
2 eight, something like that.

3 Q Is that....

4 A Licensees.

5 Q...licensees?

6 A Right.

7 Q I show you this and ask you to identify it or ask
8 you if you recognize it and can identify it?

9 A Yeah, I believe that, I'm not sure who we drew this
10 up for whether it was the Board or the Commission but it was just
11 my recollection of what had happened with regard to the initial
12 offer.

13 Q Okay, and in that you state - it's dated August 7, 1978
14 and you state I passed this offer without delay on to my father,
15 Dorsey Bias, who was the listing agent?

16 A Right.

17 Q So at that time...

18 MR. MAIN: Now before we get too far into this, I mean I
19 guess it would be appropriate for her to ask John Bias what he
20 did and didn't do with respect to this offer in terms of giving
21 it to his father but his father is introducing a document that he
22 made at a later date regarding the transaction. I think she needs
23 to establish that he didn't remember - he doesn't remember himself
24 what happened before she gets this document....

25 Q He's already testified that he doesn't remember

1 exactly but it was his general practice to give the offer to his
2 father and in August '78, at that time that was the best - to the
3 best of his recollection then that was what he had done.

4 A I don't believe that I specifically gave the offer
5 to him in person if that's what you're asking.

6 Q But at that time, in August '78 you had no recollection
7 that you had not? I mean this was the best you could recall that
8 that was what happened?

9 A Right, but I wasn't trying to indicate here I ^{don't} believe
10 that I....

11 Q No, I'm not saying - I'm just - my point is that it
12 was-your recollection then was that it had been promptly....

13 A Yes ma'am.

14 Q ...to your father.

15 A If you mean I conveyed to him that I gave it to him
16 in his hand, no.

17 Q Okay, that it was passed on either to him or a place
18 where he would expect to find it.

19 MS. CLUTE: Okay now what did you do with the paper
20 when you got the contract?

21 A Uh, you mean the contract itself?

22 MS. CLUTE: Yeah.

23 A Uh, well I don't remember...

24 MR. MAIN: My objection to that continues. I just don't
25 think it's appropriate. I mean he's testified he can remember of

1 his own recollection what happened. He remembers that he passed
2 the contract to his father and I don't understand the function
3 of this document. Are you using this to support what he says
4 or are you using this to impeach what he says. I don't quite
5 understand the purpose of the document.

6 Q I believe he has testified that he remembers. He's
7 testified, as I understand, that he doesn't remember today exactly
8 what happened.

9 A That's correct.

10 MR. MAIN: So you're using this to refresh his memory.

11 Q I'm using that to establish that at that time which
12 was in somewhat closer proximity to the event that that was the
13 best of his recollection that he had in fact followed his normal
14 procedure which was to promptly pass matters on appropriately.

15 MS. CLUTE: I'd like to ask a few question regarding that.
16 When did you get the contract?

17 A I don't remember now exactly when I got it.

18 MS. CLUTE: Who gets your contracts out of the mailboxes
19 as a matter of practice?

20 A There's no one that's selected by the office to bring
21 the mail in, just whoever happens to be out there and brings it
22 in.

23 MS. CLUTE: Would it be any of the seven people who
24 work in your office?

25 A It could be.

1 MS. CLUTE: Okay, at this point in time what was the
2 routine, whoever came by the box brought the contracts into the
3 office and then how were they opened and given to whomever they
4 belonged to?

5 A Um, I don't think there was a set routine. It would
6 be unusual to have a contract delivered that way.

7 MS. CLUTE: It was unusual?

8 A To have - just to have somebody put it in the mail-
9 box. I didn't recall until the Board hearing that that was how
10 it was delivered.

11 MS. CLUTE: Do you recall asking Mr. Wetzel to deliver
12 it that way?

13 A No ma'am.

14 MS. CLUTE: Thank you.

15 Q You have the notation here, this record, this exhibit
16 number 7, was this record made contemporaneously with when the
17 events occurred?

18 A Yes ma'am.

19 Q So this is not a reconstruction. You have here will
20 mail the contract back and you said that probably relates to the
21 letter that you wrote on September 21st?

22 A Right.

23 Q Did you have any reason to believe, based upon these
24 that you did not have the contract when you wrote this letter on
25 September 21st?

1 A No.

2 Q So it is your belief that you did have it when you
3 wrote it on September 21st?

4 A Well, I just don't know.

5 Q What other copies would you be mailing to Mr. Wetzel?

6 A Well to the best of my belief that's what I mailed
7 to him.

8 Q Okay, ^{to} so/the best of your knowledge you had the
9 contract then on September 21st?

10 A Right.

11 Q Okay, you had it on September 21st. Okay, do you
12 recall how it came into your possession? Did you find it laying
13 on your desk?

14 A No ma'am.

15 Q You don't....

16 A I don't recall.

17 Q And do you recall what you did with it other than
18 mail a copy of it to Mr. Wetzel? What do you recall about what...

19 A I don't recall specifically what took place at that
20 time.

21 Q What was your general practice?

22 A My feeling is that if I had gotten the contract on
23 the 21st I would have promptly put it on my father's desk.

24 Q Who was the listing agent?

25 A My father.

1 Q Your father. What....

2 MR. MAIN: Have you passed on the one - I objected to
3 its introduction.

4 MS. CLUTE: Yes, I'm going to overrule your objection.

5 Q The purpose of that was for the Board of Realtors,
6 is that what you said?

7 A Well I said I wasn't quite sure whether it was for
8 the Realtors or the Real Estate Commission, one or the other I
9 believe.

10 MS. CLUTE: All right, but it was prepared as a part
11 of this investigation?

12 A Yes ma'am.

13 MS. CLUTE: All right. I've entered it as Board's
14 Exhibit number 8.

15 Q Do you recall when you next talked to Mr. Wetzel
16 after having received the....

17 A The only real recollections I have are things that -
18 are things that were on that card or something, a document or
19 something that came about later.

20 Q So you don't recall whether or not - whether or not
21 you spoke to him again that week?

22 A No.

23 Q Do you remember any subsequent conversation in which
24 you discussed with him this offer, why it had been rejected, when
25 it had been rejected and things of that nature?

1 A I don't believe I had any conversations to that
2 effect.

3 Q You never talked to Mr. Wetzel again about this
4 particular offer?

5 A No.

6 Q To the best of your recollection?

7 A Right. It wasn't - I wasn't astounded by the fact
8 that the thing was rejected, you know, at that price.

9 Q Do you remember ever talking to your father about
10 why it had been rejected?

11 A Uh...I don't guess I really discussed it with him
12 in that respect because I don't know at exactly what point but
13 I guess fairly soon after I came back from vacation I must have
14 been aware that he had bought the property.

15 Q When were you on vacation?

16 A In my notes I think I say from the 25th of September
17 to the 2nd of August.

18 MR. MAIN: October you mean.

19 A October.

20 Q October what?

21 A Second.

22 Q Okay, would it have been your normal procedure for
23 you to discuss subsequent events regarding a contract with the
24 purchaser even though you weren't the listing agent, but you
25 were the one who received - maybe I didn't state that very well.

1 In this case you weren't the listing agent but you were the person
2 who drew ^{up} /the offer and had dealt with the purchaser, prospective
3 purchaser. Would it have been your normal course of operation
4 for you to discuss any subsequent events or whatever or would you
5 have left that to the listing agent?

6 A Well he wouldn't have contacted the purchaser. Our
7 policy is that I would have dealt with Mr. Wetzel and he would
8 have dealt with Mrs. Davis and we wouldn't have any contact with
9 each other, the clients.

10 Q Okay, so if Mr. Wetzel wanted information presumably
11 you would have been the one he should have talked to, or would
12 have talked to?

13 A Yes ma'am.

14 Q In this particular case you never spoke to Mrs.
15 Davis?

16 A No.

17 Q Okay, I don't think I have anything further.

18 MR. MAIN: I was planning on calling Mr. Bias back for
19 my side of the case. I could put him on now or I can wait until
20 then.

21 MS. CLUTE: You can wait until then. I have another
22 question. Okay, you testified that the best - to the best of your
23 knowledge you had the contract as of September 21st and somehow
24 that was left for your father. Do you recall any discussions of
25 this contract with your father between September 21 or from the

1 time you got it until September 25th when you left on vacation?

2 A I don't recall any specifics but I believe when I
3 went on - well I know that I left him a list of things to do
4 when I was on vacation, things that I had pending and I'm sure
5 this was on there and we must have discussed it at that time.

6 MS. CLUTE: Okay, do you recall conveying information
7 to Mr. Wetzel that this contract had been rejected?

8 A I don't believe I discussed that with him. I think
9 when I came back from vacation that my father told me that the
10 contract wasn't accepted and he had talked to Mr. Wetzel and so
11 I just returned Mr. Wetzel's note to him in a letter.

12 MS. CLUTE: So to the best of your knowledge it was your
13 father who-based upon the information you have, it would have
14 been your father who informed Mr. Wetzel the contract had been
15 rejected?

16 A Yes ma'am.

17 MS. CLUTE: Okay. When you had this discussion with
18 your father did he tell you why it was rejected?

19 A I don't recall, he might have, because sometime
20 shortly thereafter I mean, I'm sure I learned that he was - had the
21 property under contract.

22 MS. CLUTE: Okay, you testified that you were not as-
23 offer
24 tounded that Mr. Wetzel's \$60,000/was rejected. When did you
25 learn that your father had a contract on it?

A Well that was the question I just answered, sometime

1 after I got back, I think, but I don't recall when.

2 MS. CLUTE: At some point in time did it come to your
3 attention what his offer was?

4 A Yes ma'am, I'm sure it did.

5 MS. CLUTE: And when did you become aware of that?

6 A I don't recall.

7 MS. CLUTE: Did the amount surprise you?

8 A I guess it would yeah.

9 MS. CLUTE: Did you discuss with your father the fact
10 that this offer was less than that of Mr. Wetzel?

11 A No, because I think it was more involved than that.
12 There was something about the other tract of land.

13 MR. DORSEY BIAS: It hasn't come out yet.

14 MS. MAIN: I don't guess I understood the question.
15 Something about him being astounded by the difference in the
16 offers?

17 MS. CLUTE: I mean did - you said at some point in time
18 it came to your attention that your father had purchased it and
19 the price that he purchased it for, did you and your father discuss
20 the terms of his purchase?

21 A I would assume we did. I have no idea at what time
22 though, the fact that I knew that he had the property under
23 contract.

24 MS. CLUTE: Well I mean did you raise any question in
25 your mind that there had been an offer for more and your father

1 was purchasing it for less?

2 A I'm not sure...

3 MS. CLUTE: Did you ever discuss that with your father?

4 A I'm not sure when I realized all these things but
5 my understanding was that that isn't the case. In effect the
6 offer was actually for more than Mr. Wetzel's offer because of
7 the other tract of land. If you haven't brought this out I don't
8 know if it makes any sense at this point.

9 MS. CLUTE: Oh, I see, so the - what you're saying is
10 the \$60,000 for the 125 acre tract of land and the \$53,000 or
11 whatever it was was for 115, okay. All right. Did you ever
12 discuss with your father what he wanted to use this land for, for
13 what purpose he purchased it?

14 MR. MAIN: I don't understand the relevance, you're
15 the Hearing Officer of course, I don't understand the relevance
16 of this line of inquiry.

17 MS. CLUTE: Well, you know I'm just interested in what
18 was transpiring at this particular point in time and I think that
19 it's relevant in that respect. What conversations were going
20 on regarding this particular piece of land and for what purposes
21 it was being acquired.

22 MR. MAIN: I just want to note my objection.

23 A I don't remember having discussed that with him.
24 I mean I might have but I don't recall.

25 MS. CLUTE: You don't recall. Did it at some point in

1 time come to your attention what it was?

2 A What what was?

3 MS. CLUTE: What your father intended to use the land
4 for?

5 A I don't know that he has a particular purpose for
6 it now.

7 MS. CLUTE: All right I don't have any further questions.
8 Does anyone else have any question?

9 MR. KLOPFENSTEIN: I do.

10 MR. MAYNE: I'm going to recall him when Mr. Dorsey
11 Bias' case comes on, I'm going to recall him.

12 MR. KLOPFENSTEIN: I have some questions.

13 MS. CLUTE: All right.

14 MR. KLOPFENSTEIN: Mr. Bias are you married with a
15 family?

16 A Yes sir.

17 MR. KLOPFENSTEIN: And you live apart from your father
18 and mother?

19 A Yes sir.

20 MR. KLOPFENSTEIN: Is your position as an agent with
21 Cavalier Realty Company your only source of income?

22 A Yes sir.

23 MR. KLOPFENSTEIN: Do you understand the term or what
24 does the term back up contract mean to you?

25 A It means that a contract subject to prior contract

1 being voided.

2 MR. KLOPFENSTEIN: Did you make any attempt to pursue
3 this with Mr. Wetzel to submit such a back up contract?

4 A No.

5 MR. KLOPFENSTEIN: If his contract had been accepted
6 how much money would that have meant to you individually as an
7 agent approximately?

8 A Uh, well let's see, the contract would have been for
9 \$60,000. At that time our split would have given me \$3,000.

10 MR. KLOPFENSTEIN: \$3,000?

11 A Because he had listed the property.

12 MR. KLOPFENSTEIN: And you made no attempts to try to
13 hold some type of a contract on that?

14 A Well I wouldn't have seen any reason why if the
15 property could be sold that it wouldn't have been sold to my father.
16 You know, I didn't see it as a shaky financial...

17 MR. KLOPFENSTEIN: Yeah but your couple was the fact
18 that if someone within your office, whether it was your father
19 or your brother or one of the other agents had submitted a contract
20 for virtually the same price or even maybe less that that was
21 literally doing you out of \$3,000 income, that was a comfortable
22 feeling to you in that type of a situation?

23 A No, I obviously was disappointed that my contract
24 wasn't accepted but I don't follow - I don't think your whole
25 premise is correct. I don't believe that it was for a less or a

1 smaller amount, the offer was for a smaller amount.

(2 MR. KLOPFENSTEIN: Well Mr. Bias the reason I'm pursuing
3 the question is I - for someone to - I'm sorry I have a problem
4 with the vocabulary, I hate to use the term cavalier, but a
5 cavalier attitude with the \$3,000 commission, that - being in the
6 business myself that strikes me as very unusual that your lack
7 of memory of any of these events or any pursuing in trying to
8 make a sale that's the reason I'm pursuing this line of questioning.

9 A Well I tried to explain to you that I remember, you
10 know, meeting with him in my office and this sort of thing with
11 Mr. and Mrs. Wetzel but I don't recall with respect to which of
12 the three offers that, you know, I met with them on a given occasion.

(13 MR. KLOPFENSTEIN: But it didn't occur to you to en-
14 courage him to write up a back up contract in case the other one
15 didn't go to settlement?

16 A The only reason for taking my time to get a back up
17 contract would have been that I had some reason to believe that the
18 initial contract might not be accepted.

19 MR. KLOPFENSTEIN: No, we're talking about a back up con-
20 tract, would be to a contract that had already been accepted.

21 A Right.

22 MR. KLOPFENSTEIN: That's my definition at least of a
23 back up contract. So the other contract is already accepted but
24 then you get a back up.

(25 A Right, well let me explain my reason for getting a

1 back up contract on any piece of property would be that there was
2 some reason to believe that the initial contract was shaky for
3 some reason. If I felt like the initial contract, that there was
4 no problem with it then I wouldn't see any reason to get a back
5 up contract on it.

6 MR. KLOPFENSTEIN: Even though you had a purchaser who
7 was very anxious to purchase the property?

8 A I would probably be inclined to find him something
9 else that he could buy.

10 MR. KLOPFENSTEIN: I would agree with that premise.
11 That concludes my questions.

12 MR. HALL: Mr. Bias was it your normal procedure within
13 your office whenever your father was the listing agent for you to
14 submit any offers that you had from a prospective purchaser to
15 your father and he in turn would submit that offer to the seller?

16 A Yes sir.

17 MR. HALL: Okay, to your knowledge was the offer ever
18 at any time submitted to Mrs. Davis, the Wetzel offer I might add?

19 A Um, I have no idea.]

20 MRS. KENT: That was my question. Were you aware that
21 your offer was never submitted to Mrs. Davis?

22 A Well I don't know at what point I became aware of
23 that.

24 MR. HALL: Now wait a minute, I asked you were you
25 aware - are you saying that it was never submitted?

1 A No, you asked me if....rephrase your question.

2 MR. HALL: I just said to your knowledge was the offer
3 ever submitted, the Wetzel offer....

4 A Right.

5 MR. HALL: ...ever submitted to Mrs. Davis?

6 A And I said yes. I don't know, at that point I guess
7 is what I'm trying to say.

8 MR. HALL: Okay...

9 A But now apparently it wasn't based on what's happen-
10 ed.

11 MS. CLUTE: Did you ever ask your father if he submitted
12 it?

13 A I don't recall having asked him.

14 MS. CLUTE: Would you have an obligation as the agent
15 to find out if the contract had been submitted?

16 A Well apparently she accepted what turned out to be
17 a higher offer. It's hard for me to explain this because you
18 haven't brought out the basis for the - for my father's offer.
19 you're asking me questions based on the premise that his offer
20 was less than Mr. Wetzel's and I don't believe that was the case.

21 MR. HALL: Not at all, not at all. I just want to know
22 if it was ever submitted.

23 A You're asking why I was - wasn't concerned about
24 whether it had been submitted.

25 MR. MAIN: The question is when did you find out and

1 how that it had not been submitted, is that the question? Am
2 I stating that or not, you tell me.

3 MR. HALL: If in fact he found out.

4 MS. CLUTE: I'm asking did you ever ask your father if
5 it had been submitted?

6 A No, I don't recall specifically asking that.

7 MR. WALKER: What did you tell Mr. Wetzel, what was
8 your answer to him?

9 A I didn't specifically discuss this with him. When
10 I got back I was told that the offer was unacceptable and my
11 father had talked to Mr. Wetzel. That's when I wrote the note -
12 or wrote the letter and returned his note.

13 MR. WALKER: But didn't he make several offers, different
14 offers, and what was your answer to Mr. Wetzel on those?

15 A Answer with regard to what sir?

16 MR. WALKER: The offer was still in limbo, or was it
17 rejected or accepted or?

18 MR. MAIN: Which offer are we talking about?

19 MR. WALKER: I'm talking about any of them.

20 A When I came back from vacation I was told that the
21 first offer hadn't been accepted and that my father had told Mr.
22 Wetzel that so at that point....

23 MR. WALKER: Were you told that the offer was submitted
24 to Mrs. Davis?

25 A No, I don't recall it being discussed other than the

1 fact that the offer wasn't accepted.

2 MS. CLUTE: On this offer that you got, 10/25 offered
3 \$35,000 for the house and 20 acres. When you got that offer
4 what did you do with it?

5 A I passed it on to my father I guess.

6 MS. CLUTE: At that time did you know your father had a
7 contract on the land?

8 A I think so at this date.

9 MS. CLUTE: And who - did you inform Mr. Wetzel that
10 that one was rejected?

11 A Uh, may I look at the card to see exactly what....

12 MS. CLUTE: Yes.

13 A Apparently I did but I don't....he must have made
14 the offer on the 25th of October and then according to the note
15 here I talked to him on the 3rd of November and told him that
16 there was a possibility that I could get a counter of \$40,500
17 on the property.

18 MS. CLUTE: Do you recall who prepared this contract?

19 A May I see it?

20 MS. CLUTE: Yes.

21 A Uh, I don't remember who actually wrote it out.

22 MS. CLUTE: Do you recall receiving it?

23 A Now if you're asking me if I recall specifically
24 the thing coming into the office and when it came in, no I don't
25 remember.

1 MS. CLUTE: Well not specifically but do you remember
2 receiving the contract?

3 A Yeah, there was a second contract.

4 MS. CLUTE: Okay, you've got a note here that there
5 was a \$35,000 offer for the house and 20 acres.

6 A Right.

7 MS. CLUTE: Okay, did you discuss with Mr. Wetzel at
8 the time that your father had a contract on the land?

9 A I don't recall specifically discussing that myself
10 because I know that at sometime and I think it was when he came
11 in possibly to draw up this offer on the 25th of October that he
12 was told by my father that he was purchasing the property.

13 MS. CLUTE: Mr. Wetzel was told by your father that he
14 was purchasing it?

15 A Yes ma'am.

16 MS. CLUTE: How did you acquire that knowledge?

17 A I was in the office when it was discussed.

18 MS. CLUTE: Okay, you heard him discuss it.

19 MS. KLOPFENSTEIN: Excuse me, was this before or after
20 the date of this contract, I'm sorry, I'm trying to get the chronology.

21 A I don't recall exactly when it happened. I think it
22 was sometime in that time period. I think it must have been when
23 he came in to draw this one up. I remember they came in together
24 and it was discussed at that time.

25 MS. CLUTE: Do you recall any discussions with your father

1 how this offer would relate to his and how that might be worked
2 out or?

3 A I don't remember discussing it with him. I knew that
4 there might be a problem because of the fact that it was in an
5 estate and that the 10 acre tract that we haven't discussed yet,
6 we didn't know where it was going to be cut out of the property
7 apparently.

8 MS. CLUTE: When did you take this offer?

9 A My father had advertised it I think for sale, the
10 house and 20 acres.

11 MS. CLUTE: I see, but he had a contract at this time
12 for the house and 20 acres?

13 A He had the original contract that he had with Mrs.
14 Davis I guess on the whole tract of land.

15 MS. CLUTE: So would it be correct to say at this time
16 that the decision to sell the house and 20 acres would have been
17 your father's and not Mrs. Davis?

18 A At that point I don't know for sure because I know
19 that he had a contract on the property and that she wouldn't been
20 in the position by herself without my father to - I don't guess
21 she could sell the house and 20 acres.

22 MS. CLUTE: To your knowledge was this contract ever
23 discussed - or ever conveyed to Mrs. Davis?

24 A I don't guess so, I don't know. I have no idea.

25 MRS. KENT: May I ask a question? You said your father

1 had advertised this property. Did he advertise that he owned it
2 or was he leaving the impression that Mrs. Davis still owned it?

3 A I shouldn't have said that he advertised it because
4 I don't remember. I just remember from the hearing that Mr. Wetzel
5 said that he called me with regard to the property from an adver-
6 tisement and I assume that was the case.

7 MRS. KENT: You assumed that your father advertised it
8 that he owned it - no, he didn't....

9 A Well it wouldn't have been specifically spelled out
10 in the ad in any case.

11 MRS. KENT: So he was advertising - he was not showing
12 that it was his property or that he had an interest in it?

13 A No ma'am. There wouldn't have been any reason to
14 put that in the paper.

15 MR. FOXX: I just want to be clear on the offers and
16 the purchase by your father, what acreage and did both offers
17 include the house. Let's take the \$60,000 offer, did that include
18 the house and 125 acres?

19 A Yes sir.

20 MR. FOXX: All right. And then the \$53,500 purchase
21 by your father. Did that include the house and how many acres?

22 A Uh, 115 I believe.

23 MR. FOXX: Are there some extenuating circumstances
24 then that would make a \$465 offer more attractive than a \$480 offer?
25 Are there some other extenuating circumstances?

1 A Well by the time you add the real estate commissions
2 in there and the price...

3 MR. FOXX: ...the commission is 10% on \$60,000 is still
4 more attractive to the seller.

5 A My understanding is based on what notes my father had
6 that - can I say this - I don't know, that the price essentially
7 boiled down to \$76,000 something like that.

8 MR. MAIN: Yeah, he's going to testify to that. If you
9 want me to I can explain about this acreage, what happened on
10 the acreage. Do you want to hear that now or would you rather
11 wait, I can tell you. It might help, I don't know.

12 MR. KLOPFENSTEIN: I think it should be part of the
13 record of testimony if we're going to get involved...

14 MS. CLUTE: Okay, we'll wait, we'll get to that.

15 MR. MAIN: Fine, fine.

16 MR. KLOPFENSTEIN: But I do have another question if
17 you don't mind. Mr. Bias I'd just like to admit that I'm amazed -
18 are you telling us now that you don't remember whether or not
19 the property was advertised or not and yet you say that the man
20 called you on an ad? Is your memory failing you about the advertis-
21 ing on this property?

22 A I wasn't advertising the property myself, my father
23 was the listing agent.

24 MR. KLOPFENSTEIN: But aren't you there getting calls
25 at the office from people who are calling on it? You're not aware

1 of what advertising is taking place?

2 A At the time I would have been aware of what advertis-
3 ing was taking place.

4 MR. KLOPFENSTEIN: But you don't recall any advertising
5 on the house and 20 acres in October I believe?

6 A I know that it was advertised but I don't know
7 specifically when.

8 MR. KLOPFENSTEIN: You know that 20 acres plus the
9 house was advertised?

10 A I believe so, yes.

11 MR. KLOPFENSTEIN: And it was advertised as just an
12 open ad for somebody to call in that did not indicate that your
13 father owned the property or had inevitable interest in the
14 property in the advertising nor were you advised to tell people
15 that when they called in on the ad?

16 A I don't recall how the ad was phrased.

17 MR. KLOPFENSTEIN: I'm not asking you how the ad was
18 phrased as a total part of the question. If you were aware that
19 your father or anyone else, any other licensee owned a piece of
20 property that was working with your firm and the firm was advertis-
21 ing that property you don't as a normal course of events tell a
22 caller, a possible purchaser particularly when they're submitting
23 a contract that there is a licensee that has an interest in that
24 property?

25 A Prior to submitting an offer they would be made aware

1 of that fact.

2 MR. KLOPFENSTEIN: Was Mr. Wetzel made aware of that
3 fact when he signed that contract with the seller being listed
4 as the Davis'?

5 A I believe so. I told you earlier that I thought that
6 sometime prior to the 25th that I remember him discussing it
7 with the Wetzels, the fact that he was purchasing the property.

8 MR. KLOPFENSTEIN: But it's not in that contract in any
9 way, shape nor form that your father or any other licensee in your
10 firm had an interest in that property when that contract was
11 drawn, is that correct?

12 A At the time I drew the contract I wasn't sure how
13 the property would be sold. I knew that it hadn't closed and I
14 thought there was a chance that Mrs. Davis might actually end up
15 selling that property.

16 MR. KLOPFENSTEIN: Which means then the other contract
17 would have been voided and Mr. Wetzel could have bought the whole
18 thing now?

19 A I assumed that would be up to my father and Mrs.
20 Davis.

21 MS. STEVICK: Did you not testify earlier that you didn't
22 take a back up contract because you had no reason to believe that
23 the first contract wouldn't be accepted?

24 A That's right.

25 MS. STEVICK: Aren't you now saying that a month or so

1 later there was a question in your mind as to whether or not that
2 contract would ever go to closing?

3 MR. MAIN: I don't think that's what he's saying at all.
4 You're talking about two different contracts. We're talking about
5 the first contract for \$60,000 on 125 acres, he's talking about
6 the subsequent contract on the 20 acres and house.

7 A Mr. Main....

8 MS. STEVICK: We're still talking about the same tract
9 of land.

10 MR. MAIN: I understand that. I assume that's what
11 you're talking about.

12 MR. KLOPFENSTEIN: No sir, that's what I was trying to
13 answer. You asked me about my question. My question was whenever
14 Mr. Bias just now responded that he thought Mrs. Davis might be
15 able to sell the property then my original question on back up
16 contracts is very valid now because if she could then sell part
17 of the property and his father not being involved in that sale at
18 all that means that the contract that his father had would have
19 to have been renegotiated.

20 MR. MAIN: I don't know if it's been established though
21 that Mrs. Davis could sell the property at that point in time.

22 A Let me explain my thinking on that. It seems like
23 that's the important thing. I don't know. Uh, I knew my father
24 was trying to help Mrs. Davis with this and I just thought that
25 there's a possibility he might work it out that way, that he

1 might not want to buy the whole thing. If I had put his name on
2 the contract it would have been more difficult, more complicated
3 from the standpoint of having to get Mrs. - Mr. and Mrs. Wetzel
4 to come back in order to redo the contract before I could send it
5 up to Mrs. Davis.

6 MR. KLOPFENSTEIN: Mr. Bias, Mrs. Davis couldn't sign
7 that contract unless there was a revision in there that it was a
8 back up contract in case the contract with your father fell
9 through, you would have the Davis' sign this contract and sell a
10 piece of property twice?

11 A Well I wouldn't have talked with the Davis' at all.
12 That would have gone through my father.

13 MS. CLUTE: Let me just clarify one thing here. If in
14 fact your father had a binding contract on this and you did testify
15 earlier that as far as you knew there was no reason to believe
16 that that contract would not go to closing....

17 A Yes ma'am.

18 MS. CLUTE: That being a fact your father's name should
19 have been indicated on this contract, is that correct?

20 A If he was going to sell it to her yes ma'am.

21 MS. CLUTE: But I mean when this contract was drawn on
22 October 25th, your father having a contract on this piece of land,
23 his name should have been indicated on this contract along with
24 Mrs. Davis, would that be correct?

25 A I would think so, yes.

1 MS. CLUTE: All right. Do you have any reason to
2 believe that this contract was not prepared in your office?

3 A No, you know, it may have been.

4 MS. CLUTE: All right, I don't have any further questions.
5 Is there anyone else?

6 MR. MAIJ: I'm going to recall him.

7 MS. CLUTE: All right. Thank you Mr. Bias, if you'd
8 wait outdoors please.

9 MS. STEVICK: I call Nathan Matthews.

10
11 NATHAN MATTHEWS having been previously sworn testified
12 as follows:

13 DIRECT EXAMINATION

14 By: Ms. Stevick

15 Q Would you state your name for the record please?

16 A My name is E. Nathan Matthews, Investigator with the
17 Department of Commerce.

18 Q Were you the Investigator on this particular case,
19 Wetzel v. Bias?

20 A Yes I was.

21 Q In the course of your investigation did you have
22 occasion to interview Mrs. Davis the seller?

23 A Yes I did.

24 Q Would you relate what information she provided to
25 you regarding receipt of an offer from the Wetzels?

1 A I don't know.

2 Q Is your report normally given to the Commission to
3 let them take the action?

4 A I don't believe that's procedure.

5 Q Okay, what was procedure at the time you took the
6 report?

7 A Okay....

8 Q After you got the information from Mrs. Davis and
9 after you recorded it in your notes....

10 A I submitted my report to my chief.

11 Q Okay, that's what I'm trying to find out. Who was
12 your chief at that time?

13 A William D. Stensen.

14 Q And who would have prepared the report?

15 A I prepared the report...

16 Q And it went to him.

17 A ...and it goes to him in handwritten form. He would
18 use it and then it goes to the secretary for typing.

19 Q And then it's submitted from there to?

20 A It goes to Mr. Seitz.

21 Q Okay. He was the head of the Real Estate part of
22 the Commission?

23 A Right.

24 Q Would your handwritten notes be with the original
25 file with Mr. Seitz or the Real Estate Commission?

1 A My handwritten notes would not go to Mr. Seitz but
2 they are on file.

3 Q Where are they on file?

4 A At my department.

5 Q Are they filed under this particular investigation,
6 do you label these investigations?

7 A They are filed with my notes on all my cases.

8 Q I see. These things can be readily gotten to?

9 A Yes sir.

10 Q Did you ask Mrs. Davis if she was unhappy about the
11 price she got for the land?

12 A We talked about the price. She said that of course
13 she was unhappy about the first offer she received....

14 Q From Mr. Bias?

15 A From Mr. Bias and that he made a second offer that
16 she accepted.]

17 Q Did you ask her if she had or intended to file a
18 complaint?

19 A Did I ask her if she....

20 Q If she had filed or intended to file a complaint
21 against Mr. Bias?

22 A Well, she indicated substantially that she was not
23 interested in filing a complaint.

24 Q Did you ask her whether she was happy with the amount
25 of money she had received from the entire 125 acre transaction?

1 A Well she indicated to me that the money she received
2 was substantial, that she wanted to get rid of the land as soon as
3 possible.

4 Q Did she indicate there were problems in selling her
5 husband's estate, her late husband's estate at the time you called
6 her or not?

7 A Well she said something about there was 10 acres of
8 the land that was set aside for Mrs. Raffbone.

9 Q Did she tell you who Mrs. Raffbone was?

10 A She said that Mrs. Raffbone was a friend of her
11 husband's, associate of her husband or something that her husband
12 made a deal with before he passed away.

13 Q So that would have been prior to the time that this
14 matter with the Wetzels came up, is that correct?

15 A Uh, yeah.

16 Q And it involved 10 acres of the subject property?

17 A Ten acres, right.

18 Q Did she indicate what price her husband and Mrs.
19 Raffbone had discussed?

20 A Uh...I don't know whether she said anything about what
21 the price discussed between her husband, anyway she was given
22 \$15,000 for the 10 acres.

23 Q Did she indicate to you whether or not Mr. Bias
24 knew about this 10 acre sale to Mrs. Raffbone?

25 A Yes she did. She said that Mr. Bias had drew up the

*MAILING
OF CONTRACTS.*

1 contract.

2 Q Did she say she had received that contract at the
3 same time...

4 A She said she received both contracts.

5 Q And did she say anything by way of complaint against
6 the way Mr. Bias had handled the transaction?

7 A No, she didn't.

8 Q That's all I have for right now.

9
10 REDIRECT EXAMINATION

11 By: Ms. Stevick.

12 Q Let me ask you a couple of quick questions. You
13 indicated that she had told you she was unhappy with the original
14 offer and that it had been renegotiated, is that correct?

15 A Right.

16 Q Did she indicate the dates and prices of those
17 particular offers?

18 [A Okay, uh, she said she received a telephone call
19 in
20 from Dorsey Bias on September 22, 1977/which Bias offered to
21 purchase the Payne's Mill Farm and Mrs. Davis indicated that this
22 was the first time that Dorsey Bias had approached her about buying
23 the farm and Bias sent two contracts by mail that were dated
24 September the 22nd, the date of the phone call. One to her and
25 the other contract, the Raffbone contract for 10 acres.]

Q Did she indicate to you what the price was on the

1 contract for the property?

2 A Okay, the contract...\$50,000.

3 Q Did she indicate to you on what date the subsequent
4 contract or the revised contract was made?

5 A No, I don't know whether she was sure - I don't think
6 she was sure of that. She said that she contacted Dorsey Bias
7 and requested more money on the contract and he agreed to raise
8 his offer from \$50,000 to \$53,500.

9 Q That's all I have, thank you.

10 MR. MAIN: I have no questions at this time.

11 MS. CLUTE: We would like to keep you available as a
12 witness so if you would wait out of the room.

13 MS. STEVICK: I have no further witnesses.

14 MS. CLUTE: Okay, would you all like to break for a
15 short time to go to lunch before you put your case on?

16 MR. MAIN: It doesn't make any difference to me.

17 MS. CLUTE: How long will it take for your evidence,
18 do you have any idea?

19
20 A lunch break was taken at this time from 12:15 to 1:15p.m.

21
22 MS. CLUTE: All right, are you ready to proceed?

23 MR. MAIN: Yes. Before we start proceeding I want to
24 call to everybody's attention that I've drawn a not to scale
25 diagram of the subject property on the blackboard and I will

1 introduce into evidence a listing which has a map on it more or
2 less has that same configuration and I will at various points
3 be referring to that diagram. It's not to scale. Mr. Bias
4 will be my first witness.

5
6 DORSEY BIAS having been previously sworn testified as
7 follows:

8 DIRECT EXAMINATION

9 By: Mr. Main

10 Q Mr. Bias are you Dorsey V. Bias against whom this
11 proceeding is brought today?

12 A Yes sir, I am.

13 Q And is the name of your company Cavalier Realty
14 Company?

15 A That is correct.

16 Q Is that a proprietorship, a partnership or a corpora-
17 tion?

18 A Proprietorship.

19 Q And how long have you traded under the name of
20 Cavalier Realty Company?

21 A Oh, since 1964.

22 Q And how long have you been licensed by the state of
23 Virginia to conduct real estate business?

24 A 1962 or 1963.

25 Q Since 1962 or 1963 have you been continuously in

1 business?

2 A Since 1963, yes.

3 Q Prior to establishing your own company did you work
4 with any other firm?

5 A I worked for about a year with McMurray Realty
6 Company.

7 Q In Charlottesville?

8 A Yes sir.

9 Q At the time these events occurred, September of 1977,
10 how many agents or salesmen did you have in your firm?

11 A There was probably six or seven at that time.

12 Q And of the six or seven agents that you had were two
13 of them your sons, John and James?

14 A Yes they were.

15 Q Who were the principal agents of the firm?

16 A Well actually my two sons and myself were the prin-
17 cipal ones there.

18 Q Now the other four or five agents, what sort of
19 activity did they conduct through your office?

20 A They - one handled rentals and the others were semi.

21 Q Other than you and your sons were there any other
22 full time personnel in the office?

23 A No.

24 Q During the time that these events occurred did your
25 office have a receptionist or a secretary of any sort?

1 A No.

2 Q Okay, again back during the time that these events
3 occurred who was responsible for answering the phone and picking
4 up the mail and handling the day to day business of the company?

5 A I did most of it myself.

6 Q Now within your - is your office located in fact on
7 your home property?

8 A Yes sir.

9 Q In a separate building?

10 A Yes sir.

11 Q And in that office does each of your principal agents,
12 that is John, James and yourself have his own compartment, desk or
13 office space?

14 A Yes sir.

15 Q In addition to having an office space do you all
16 have some sort of central facility for picking up and delivering
17 mail and messages?

18 A Yes sir.

19 Q Within the office?

20 A We do.

21 Q What sort of facility did you have back in 1977?

22 A We have a little box up on the wall where each party's
23 name is on it. Something that's pertinent to him would be placed
24 in it.

25 Q So if you checked the mailbox and found something

1 related to either John or James you would take it out and unless
2 they were there put it in their box or place it on their desk?

3 A Put it in their box.

4 Q Now in connection with the property here when did
5 you first come into contact with the property known as Payne's
6 Mill Farm down in Buckingham County, Virginia?

7 A In 1972.

8 Q And how did you - what did you do in 1972 regarding
9 this property?

10 A Well, I got a listing on the property by the original
11 owner.

12 Q What was her name?

13 A Annie Payne White.

14 Q And did you sell the property?

15 A I did.

16 Q To whom did you sell it?

17 A Dr. John Davis, and Mrs. Davis.

18 Q His wife, Polly Davis?

19 A Polly Davis.

20 Q Prior to the time that you sold the property to the
21 Davis' had you known them?

22 A No sir I didn't.

23 Q In connection with the sale did Mrs. White, Annie
24 White, finance all of the purchase price to the Davis'?

25 A She did.

1 Q From 1972 until approximately 1976 what contact did
2 you have with the property and Dr. Davis in particular?

3 A Well to start with many times I was there - excuse
4 me - Dr. Davis only used the property for weekends and holidays
5 or sometimes for a short vacation because he lived in New York.
6 So when he'd come down he would normally call me and say come down
7 and let's talk a while or let's have a sandwich or something.

8 Q What did he use the property for?

9 A A retreat.

10 Q Did Mrs. Davis come down with him?

11 A Not all the time, sometimes.

12 Q In 1976 did you have occasion to list this property
13 for sale for Dr. Davis?

14 A Yes sir I did.

15 Q And do you remember the price for which you listed
16 it for sale?

17 A The original price was \$195,000.

18 Q Okay, who selected that price?

19 A Pardon?

20 Q Who selected the price of \$195,000?

21 A Dr. Davis.

22 Q Do you have any idea how he arrived at that price?

23 A Talking to some friends of his out of New York. They
24 thought it was worth it.

25 Q Was that price based on any recommendation of yours?

1 A No sir.

2 Q But you nevertheless went ahead and listed the
3 property?

4 A I did.

5 Q So the time you listed the property in 1976 up until
6 1977 did you show the property?

7 A Yes sir I did.

8 Q How frequently did you show it?

9 A Oh, well, it was shown maybe by myself I would say
10 five times.

11 Q Okay, other than the Wetzel contract which we have
12 here in today's hearing were any other contracts ever taken on
13 that property by you or any agent in your office that you're
14 aware of?

15 A No sir.

16 Q All right, now, during the period after you listed it
17 after 1976 and up until the time of Dr. Davis' death was there
18 any change in the listing value of the property?

19 A Yes sir there was.

20 Q What was that change?

21 A Sometime - I believe it was early '77 Dr. Davis
22 wanted to lower the price to \$95,000.

23 Q And did you lower the price?

24 A Yes sir we did.

25 Q Was that the price at which the property was

1 advertised through the regular advertising medium that you use?

2 A Yes sir.

3 Q Now in September of 1977 did you have occasion to
4 meet with Dr. Davis down on the property?

5 A Yes sir, early September.

6 Q All right, describe if you will for the Hearing
7 Examiner what happened during that meeting?

8 A Dr. Davis called me and told me he was down there
9 on the farm and he needed to talk to me. I don't recall the
10 exact date this occurred but I went down there and he was telling
11 me that he had had a stroke and he couldn't see real well and he
12 physically was in bad shape and he was concerned over the property
13 there because at that time I discovered that his mortgage was
14 about twenty some thousand dollars on the property yet and he
15 was afraid that if something were to happen to him and he didn't
16 know what to do with the property.

17 Q Now at that time was there any discussion about a
18 lady by the name of Mrs. Raffbone?

19 A Yes sir, there was.

20 Q Now who is Mrs. Raffbone?

21 A Mrs. Raffbone is a lady in New York, in fact she's a
22 sister to Beasel Raffbone and that was one of his clients.

23 Q One of his patients?

24 A Yeah, patient.

25 Q Okay now did Dr. Davis and you discuss any land

1 transaction that was taking place between he and Mrs. Raffbone?

2 A Yes sir we did.

3 Q All right, what was said?

4 A What had happened, Mrs. Raffbone had loaned him
5 \$5,000 thereabout and he couldn't pay it back to her so he was
6 trying to sell her a piece of his farm to square the debt away.

7 Q Okay, how much of the farm had he agreed to sell
8 her?

9 A He was going to sell her 10 acres.

10 Q Had that 10 acres been picked out yet?

11 A No sir, it hadn't been.

12 Q To your knowledge was there any written contract
13 between he and Mrs. Raffbone respecting the sale of this 10 acres?

14 A No sir there wasn't.

15 Q Were you given any idea as to how this 10 acres would
16 be selected?

17 A No, we discussed it there though and he was talking
18 about going into the back of the property on a road behind the
19 lake and actually it's behind the 10 acres now back on the other
20 side over there.

21 Q Now you're referring to the drawing on the....

22 A Board.

23 Q Bulletin board. Now is that an accurate description
24 of the general layout of the property?

25 A Yes sir it is.

1 Q I realize it's not to scale but does that picture
2 the property being separated by state route 679?

3 A It is correct.

4 Q And the house on the right hand side and the remain-
5 ing acreage on the left hand side?

6 A Correct.

7 Q All right, I guess - were there any improvements on
8 the left hand side?

9 A Only open fields and a lake.

10 Q Nothing else?

11 A Nothing else.

12 Q Now on the bottom there's 10 acres marked off. That
13 was done subsequent to this discussion with Dr. Davis was it not?

14 A Yes sir, after he passed away it was done.

15 Q At the time you were talking to him that 10 acres
16 was part of the whole parcel?

17 A Yes sir.

18 Q What action if any did he ask you to take regarding
19 Mrs. Raffbone at that time?

20 A None.

21 Q Was Mrs. Davis a party to that discussion or not?

22 A No sir, she wasn't there.

23 Q Okay, now as a result of that meeting did you and Dr.
24 Davis arrive at a new listing price for the property?

25 A Well the \$95,000 for the whole piece and he said he

1 would sell the house on the right hand side of the road for some
2 established figure. We just never listed it as such.

3 Q Well, so at the time though that the conversation
4 took place you still had a valid listing on the property for
5 \$95,000?

6 A Yes sir.

7 Q Okay now, was there any other discussion about the
8 property on that occasion early in September when you met with
9 Dr. Davis other than what you've already described?

10 A Those were the main points I've described.

11 Q Now did Dr. Davis thereafter die?

12 A Yes sir, I received notification somewhere around the
13 15th or 16th of the month through my son that Dr. Davis had passed
14 away.

15 Q And from whom did he obtain that information?

16 A Uh, from Dr. Davis' son in Charlottesville here.

17 Q He works at the University Hospital?

18 A Yes sir.

19 Q Prior to - or after the meeting you had with Dr.
20 Davis on the property and prior to the time that he died had there
21 been any contracts received on the property?

22 A No sir.

23 Q Had you heard anything from him regarding Mrs. Raffbone
24 and her 10 acres?

25 A No.

Tou
Davis &
Raffbone
9/17/77

1 Q Now was Dr. Davis buried here in Charlottesville?

2 A He was, yes sir.

3 Q Do you recall when the funeral was?

4 A On the 17th day of September.

5 Q Now the day after the 17th of September the 18th,
6 did you have occasion to meet with Mrs. Davis, Mrs. Polly Davis?

7 A Yes sir.

8 Q And where did you meet with her?

9 A At her stepson's home, Dr. Davis.

10 Q In Charlottesville?

11 A Yes sir.

12 Q All right, and did you all drive down to the property
13 that day?

14 A Yeah, she and her stepdaughter went along. We went
15 down to the property.

16 Q Okay, describe if you would what happened when you
17 went down to the property?

18 A We drove from Charlottesville, we started at 9:00
19 in the morning and got there on the property and looked it over
20 and there was a few things that she wanted to take back with her
21 and we were discussing about the situation as to what was going
22 to take place because she was financially in distress. She said
23 that all that Dr. Davis had was right there in the house. So she
24 wanted to know what she could do about it. So at that time we
25 discussed the situation with Mrs. Raffbone, asked her if she knew

1 about it and she said she did, she was aware of it but she didn't
2 know too much about it.

3 Q Did she know Mrs. Raffbone or had she ever met her?

4 A To my knowledge she hadn't met her.

5 Q What discussion was there about Mrs. Raffbone?

6 A Well, she knew the reason for the \$5,000 loan to
7 Dr. Davis and so forth.

8 Q Well did she know that Mrs. Raffbone had agreed to
9 purchase 10 acres for \$15,000?

10 A Yes sir she did.

11 MS. CLUTE: Wait a minute. There was no basis for that
12 question laid. Where did that come from? Did you say there was
13 some type of an offer made?

14 Q I said did she know about Mrs. Raffbone's I guess I
15 said agreement, offer to purchase 10 acres for \$15,000?

16 MS. CLUTE: You never established that such an offer was
17 made.

18 Q Excuse me, was Mrs. Davis aware to your knowledge
19 that Mrs. Raffbone was interested in buying 10 acres of that land
20 for \$15,000?

21 A She indicated she did.

22 Q At that time?

23 A Yes.

24 Q September 18th?

25 A Right.

1 Q Okay. Did she mention anything about that to you?
2 I mean what in particular did she say about it?

3 A She wanted to know what she could do about it? How
4 to go about - how to proceed on the situation.

5 Q Did she ask you to draw up a contract at that time?

6 A No sir she didn't.

7 MS. CLUTE: I want to back up a little bit.

8 Q Sure.

9 MS. CLUTE: On the preliminary questions I don't mind
10 the leading questions but when we get to....

11 Q Nobody objected.

12 MS. CLUTE: ...this point I think...anyway I want to
13 ask him was there some type of agreement between Mrs. Raffbone
14 and someone else that came to your attention?

15 A No ma'am. It was Dr. Davis and Mrs. Raffbone.

16 MS. CLUTE: Entered into an agreement?

17 A Just a verbal thing. There was no written agreement
18 or anything.

19 MS. CLUTE: Well how did you find out about it?

20 A He told me about it.

21 MS. CLUTE: Okay, he told you that Mrs. Raffbone had
22 made an offer to purchase....

23 A No offer, no ma'am. He was trying to sell her 10
24 acres. See, she had loaned him some money and he was trying to
25 sell 10 acres to her to get the debt squared away.

1 MS. CLUTE: All right. What - did he offer it to her
2 for some price?

3 A Yes, it was \$15,000.

4 MS. CLUTE: And he told you that....

5 A Yes ma'am.

6 MS. CLUTE: That he had offered to sell 10 acres to
7 her for \$15,000?

8 A Yes ma'am.

9 MS. CLUTE: Okay, so you knew during his lifetime because
10 he told you that offer was outstanding. Had Mrs. Raffbone accept-
11 ed his offer?

12 A No ma'am.

13 MS. CLUTE: Okay. So then after - at the time of his
14 death are you aware that any contract had been entered between
15 Mrs. Raffbone and him?

16 A No ma'am.

17 MS. CLUTE: Okay, so then the day after his death - or
18 after his funeral you were talking to Mrs. Davis and what did
19 the discussion consist of with Mrs. Davis regarding that, Mrs.
20 Raffbone requiring....

21 A She said that Dr. Davis had mentioned this to her
22 that he owed Mrs. Raffbone \$5,000 and he was trying to sell her
23 a piece of land down there off the farm to get rid of the whole
24 debt.

25 MS. CLUTE: Okay, was Mrs. Davis aware of any price

1 having been agreed upon?

2 A Well at that time we discussed that price, \$15,000
3 what he had told me and she seemed to be aware of it. We discussed
4 the \$15,000 backwards and forwards that day.

5 MS. CLUTE: Okay, and what was your - did you make a
6 recommendation regarding the \$15,000 price?

7 A Yes ma'am I did. I told her to - well she told me
8 at this time that she was willing to lower the price of the farm
9 down to \$75,000 and then I told her to - before this was firmed
10 up, to go back to New York and contact someone up there, or
11 contact Mrs. Raffbone and see if she would agree to buy that 10
12 acres for \$15,000 and we would proceed from that.

13 MS. CLUTE: How was the \$15,000 price arrived at?

14 A Dr. Davis was the first one who mentioned that when
15 he came down. He had offered to sell her 10 acres for \$15,000.

16 MS. CLUTE: Did the \$15,000 for 10 acres seem to be a
17 reasonable price to you?

18 A To me, no ma'am.

19 MS. CLUTE: It was not reasonable?

20 A It was over priced.

21 MS. CLUTE: Okay.

22 A Now remember also I'm speaking in terms of where he
23 wanted to cut it out.

24 MS. CLUTE: And where did he want to cut it out?

25 A In the back of the property, actually it's back behind

1 the lake up against the hill.

2 MS. CLUTE: Adjoining the lake, he wanted to take a
3 lake front....

4 A Not adjoining the lake, no ma'am. It's on a creek
5 that runs up from the lake. That's not according to scale.

6 MS. CLUTE: Okay.

7 A It was a piece way back in the corner of the property
8 and there was no right of way to it except there is a road up the
9 valley, but I wasn't aware at that time that that road could have
10 been used.

11 MS. CLUTE: You're saying that \$15,000 for that 10 acre
12 parcel of land up in the valley was not reasonable.

13 A No ma'am.

14 MS. CLUTE: Okay.

15 A It was excessive.

16 Q Is that all you have?

17 MS. CLUTE: Yes.

18 Q This transaction between you and Mrs. - excuse me
19 between Dr. Davis and Mrs. Raffbone was something Dr. Davis had
20 called to your attention, is that correct?

21 A Yes sir, that's correct.

22 Q Okay. But he never asked you to draw a contract on
23 that did he?

24 A No sir he didn't.

25 Q While you and Mrs. Davis were down there that day did

1 she enter into I guess a new or modified exclusive agreement
2 with you to sell her property?

3 A Yes sir she did.

4 Q And what was the new price?

5 A \$75,000.

6 Q And at what commission?

7 A Ten percent.

8 Q Okay, is this the original exclusive?

9 A Yes sir, this is the original.

10 Q What else did you want to say about it?

11 A Uh, we had agreed though that this was just standing
12 until she had talked with Mrs. Raffbone. If she talked to Mrs.
13 Raffbone this would be changed.

14 MS. STEVICK: Changed in what respect?

15 Q Well let me finish.

16 A In other words I wasn't supposed to put that out to
17 the Real Estate Board or anything.

18 MS. CLUTE: Okay, but this was \$75,000 for the 115 acres?

19 A One hundred and twenty five acres.

20 MS. CLUTE: This says 115 acres and improvements. So
21 this was excluding the 10 for Mrs. Raffbone?

22 A It would have been, yes ma'am, that's right.

23 MS. CLUTE: It says 115.

24 A It's for what is on there yes ma'am.

25 MS. CLUTE: Okay, so \$75,000 for the parcel excluding

1 the 10 acres for Mrs. Raffbone?

2 A It would have been, yes ma'am.

3 MS. CLUTE: All right. Do you want this marked as an
4 exhibit?

5 Q Yes.

6 MS. CLUTE: Okay. Let me figure out first, before you
7 proceed what exhibit number that would be. That would be Respondent's
8 Exhibit number 4.

9
10 Respondent's Exhibit number 4 was so marked by the
11 Hearing Officer at this time.

12
13 MS. CLUTE: All right, go ahead.

14 Q Other than what you've already described was there
15 any other conversation with Mrs. Davis about the sale of the farm
16 on that day, the 18th?

17 A None that I remember except she was supposed to go
18 back to New York and work from up there.

19 Q From the 18th...

20 MS. CLUTE: Excuse me before you go on, may I ask one
21 more question about this. How was the \$75,000 figure arrived at?

22 A She told me she wanted to reduce the price of the
23 farm and I think we together decided it would be worth somewhere
24 around \$75,000.

25 MS. CLUTE: So that price was arrived at with your....

*ORAL
AGREEMENT*

1 A Right there on the farm that day.

2 MS. CLUTE: Okay.

3 A We discussed it together.

4 MS. CLUTE: All right, I'm sorry, go ahead.

5 Q When did you next hear from Mrs. Davis?

6 A On September 26th about 9:00 in the morning, somewhere
7 around there.

8 Q What day?

9 A Twenty second day of September.

10 Q Okay, now who got in touch with whom?

11 [A She called me on the 22nd to tell me that she had
12 heard from Mrs. Raffbone or Mrs. Raffbone's attorney and Mrs.
13 Raffbone would take the 10 acres for \$15,000.

14 Q What other discussion did you have?

15 A She told me that she was in dire need of money and
16 she would like to sell the balance of it and I asked her if she
17 would take \$50,000 for the balance and she said she sure would
18 and then I told her that now I'm buying it myself and she said
19 that's fine and there's no question about the financing, therefore
20 that we could consider this a contract, she said by all means.
21 So I told her I would prepare the two contracts, the one on the
22 ten acres for Mrs. Raffbone and the one on the balance of it for
23 my own signature and forward those to her immediately. So I
24 did. I prepared the contracts, took them to the Post Office and
25 mailed them that morning.]

1 Q Okay now is this a copy of the contract that you
2 sent up regarding Mrs. Raffbone?

3 A Yes sir it is.

4 Q I'll go ahead and introduce that.

5 MS. CLUTE: All right. This will be Respondent's
6 Exhibit number 5.

7
8 Respondent's Exhibit number 5 was so marked by the
9 Hearing Officer at this time.

10
11 Q Now along with that contract did you mail up a
12 contract for \$50,000 offering to buy the property from Mrs. Davis,
13 the 115 acres?

14 A Yes sir I did.

15 Q Is this one of the original copies?

16 A It is a copy of one of the originals.

17 Q That was altered - this particular copy was altered
18 subsequent to the time you sent it is that correct?

19 A Yes sir.

20 Q But the original - as you sent it up it just had
21 \$50,000, it didn't have the handwriting on it?

22 A That's correct.

23 Q Have you seen this? Okay. We'll introduce this.

24 MS. CLUTE: Okay, this will be Respondent's Exhibit
25 number 6.

*known to
Wetzel
K.*

1 Respondent's Exhibit number 6 was so marked by the
2 Hearing Officer at this time.

3
4 Q Now at the time.....did you mail those two contracts
5 out together?

6 A I did, the same envelope.

7 Q And do you recall where you mailed them?

8 A Yes sir, it was the Post Office on 29 North in the
9 city of Charlottesville.

10 Q Is that the central Post Office?

11 A It is.

12 Q Now what other action with - well, let me ask you
13 this. [Prior to the morning of the 22nd when you talked to Mrs.
14 Davis on the telephone were you aware of this contract dated
15 September 20, 1977 from Thomas and Jane Wetzel?

16 A No sir, I was not.

17 Q Had you ever seen it?

18 A No sir I hadn't.

19 Q Had its existence ever been communicated to you in
20 any way?

21 A No sir. [In fact I didn't even know of the Wetzels at
22 that time.

23 Q Had you ever seen the Wetzels?

24 A Not to my knowledge had I seen them.

25 Q Did you know John had been working with the Wetzels

1 on the purchase of the property at that time?

2 A No sir I didn't.

3 Q When in fact did you first meet the Wetzels?

4 A Sometime after John went on vacation.

5 Q But prior to the 22nd you had never seen them before?

6 A No sir.

7 Q All right now after you sent the contracts up on the
8 morning of the 22nd were you in your office for the rest of that
9 day?

10 A No sir I was not.

11 Q Do you recall where you were?

12 A I came - I mailed the contracts, I came here to
13 Charlottesville, in fact I went down and talked to you about
14 this situation and also to talk to the banker about financing.
15 I had spoken to him before about it but I went down and this had
16 been firmed up and I indeed had the money.

17 Q Okay, now back in 1977....

18 A Excuse me then I went from here down to Buckingham
19 County to lay out the lines of the 10 acres to tell the surveyor
20 where to survey.

21 Q I was going to ask you - now when you called Mrs.
22 Davis did you discuss where the 10 acres was going to be?

23 A No sir.

24 Q Okay now in the contract you sent up it describes
25 the - who's got the exhibit? In the contract you sent to Mrs. Davis

1 it describes less 10 acres in northeast corner of boundary and
2 route 679. Now where did that information come from?

3 A That was my own doing.

4 Q On the scaled drawing we've got up here on the board
5 where would that be?

6 A It's where it's marked, that 10 acres up there.

7 Q Okay, down in that lower corner?

8 A Yes, it was giving her some road frontage.

9 Q All right. Now you say you and Mrs. Davis did or
10 did not discuss that?

11 A We did not discuss the location.

12 Q Did she ask about the location?

13 A She was talking about it but she didn't - in fact
14 Mrs. Davis knew little about the farm and she just didn't know
15 what to do about a thing like that, didn't know how to handle it.

16 Q Did she appear to care about the location?

17 A No sir, she didn't.

18 Q Now during the year of 1977 did you keep a calendar?

19 A I did.

20 Q And did you make entries on that calendar on a regular
21 basis?

22 A When something important came up, yes I would enter
23 it on the calendar.

24 Q Okay, now did you keep notes on your calendar of what
25 happened during the week of the 19th of September?

Locust
as K
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1 A Yes sir I did.

2 Q Okay now is this an accurate^{copy}/of what your original
3 notebook shows as to what happened during the week of the 19th
4 of September, the 19th through the 25th?

5 A Yes sir it is.

6 Q Okay. I'd like to introduce that. That's number 7
7 I think.

8 MS. CLUTE: All right, this will be Respondent's Exhibit
9 number 7.

10
11 Respondent's Exhibit number 7 was so marked by the
12 Hearing Officer at this time.

13
14 Q Now where does your calendar show you were on the
15 days of September 19th, 20th and 21st?

16 A I went to West Virginia.

17 Q For what purpose?

18 A To attend my uncle's funeral.

19 Q And where in West Virginia did you go?

20 A Huntington, West Virginia.

21 Q And what was your uncle's name?

22 A Willie Johnson.

23 Q And when did he pass on?

24 A Uh, I don't know the exact date but the funeral was
25 on Tuesday.

1 Q The 20th?

2 A Yes.

3 Q Okay, who else in your family went besides you?

4 A My wife.

5 Q Did John go?

6 A No sir he didn't.

7 Q Did James go?

8 A No sir.

9 Q Did any of the other realtors in your office go?

10 A No one.

11 [Q Now on the 22nd your calendar has an entry here that
12 entry
13 Mrs. Davis called, mailed contracts, now was that/made that week
14 or was that made later on?]

15 A It was made that morning when she called.

16 Q And it also says to Buckingham, is that the...

17 A That's correct.

18 Q ...trip you were just describing?

19 A Yes sir.

20 Q And you also went to Buckingham again on the 25th,

21 is that related to this particular transaction?

22 A Uh, I don't remember the 25th why I was there. I can
23 probably check it out and see but it might be - I had two pieces
24 of property there that lies together and I might have gone down
25 to check into that one for some reason.

~~Q Okay, later on that week did you receive any communicatio~~

1 from Mrs. Davis regarding the contracts?

2 A I did on the 24th. She called me again early in the
3 morning.

4 Q All right and what was said by Mrs. Davis and by you?

5 [A She told me that she had heard from - no, I'm sorry.
6 She had the contract back from Mrs. Raffbone and it had been signed
7 and then at that time we started discussing the contract that she
8 had for us buying her property and she said I would sure like to
9 have a little more money. And I said Mrs. Davis I've been very
10 liberal, what do you have in mind and she told me a price she'd
11 like to have and I said well let's just split it. I want to go
12 along with you. I know that you need help. So she said well
13 what do I do. I said just change the price there on the contract.
14 this is a gift to you remember, just change it on the contract
15 and mail the contract back to me.]

16 Q All right now what was the price that was eventually
17 arrived at?

18 A \$53,500.

19 Q Is that reflected on Exhibit number 7, the previous...

20 A In this contract?

21 Q The yellow copy over there.

22 A Yes, it's changed on the contract in her handwriting.

23 Q Now who changed that?

24 A She did.

25 Q Okay, then she sent it back to you?

1 A Yes sir she did.

2 Q Do you recall when you got the contract back in the
3 mail?

4 A No I don't but possibly within two to three days.

5 Q Now prior to the phone call on the morning of the 24th
6 had this contract or offer by Mr. Wetzel been called to your
7 attention in any way? Prior to Saturday the 25th?

8 A The first time the contract came to my attention
9 was when John was leaving on vacation. It was either late on
10 the afternoon of the 23rd or the morning of the 24th or it was
11 the afternoon of the 24th. He was standing in the parking lot
12 there and this came up and he was going on vacation and he had
13 six or eight things that I was supposed to take care of and that
14 was one of the things on there, that he had been trying to contact
15 the Wetzels and couldn't get them and if they came in - they were
16 supposed to come in two or three days later, I was supposed to
17 tell them the status of the contract.

18 Q Okay. Now that was on the 24th or 25th?

19 A Possibly the 24th, afternoon.

20 Q Now what did you tell - did you tell John anything at
21 that time about the status of the property?

22 A Only that I was trying to buy it.

23 Q Did you disclose to him any information about these
24 contracts - the contract dated September 22nd?

25 A I didn't get into any details with him about that.

1 until after he was back from vacation.

2 Q Did you tell him that there was a contract that you
3 had made?

4 A I told him I was buying it. I didn't mention any
5 contract or anything.

6 Q Did you mention anything else other than you were
7 buying it?

8 A No. And the reason I said that was because I knew
9 that we'd have a problem with this because it had to go into
10 litigation and this would go into his estate and I didn't know
11 when I could get it closed.

12 Q Why would it have to go into litigation?

13 A Uh...the family was all mixed up. He had some
14 children by another wife or two I'm not too sure and I didn't
15 know what was going to happen.

16 Q Okay. What did you think would happen?

17 A I thought it would take at least a year to get it
18 to close. I thought I could get it in a year.

19 Q Now back in Charlottesville back in 1977 had the local
20 Board of Realtors adopted a multiple listings service book?

21 A Yes they had by that time.

22 Q Had this property been placed in that listing book
23 previous to September of that year?

24 A Yes sir it had been.

25 Q All right. And what had the listing price been in that

1 book or the asking price shown in that book, do you recall?

2 A The original listing price was \$195,000.

3 Q It hadn't been changed to \$95,000 in the book?

4 A It hadn't been yes sir.

5 Q All right what procedure would have been followed with
6 regard to that book when you make a change in the status or
7 condition of the real estate?

8 A We just have to call in and give them the change
9 on what we call a change sheet.

10 Q And did you send that change sheet in or call it in?

11 A We call it in over the phone.

12 Q And who do you call it to?

13 A The Real Estate - MLS headquarters.

14 Q And what do they do with the information?

15 A They publish a change sheet once a day that comes in
16 to all the realtors.

17 Q And did you contact the MLS office about this par-
18 ticular property?

19 A I did.

20 Q Do you recall the day that you contacted them?

21 A No, I don't recall the exact date because this was
22 happening on a weekend and they are closed on Saturday and they
23 are also closed on Sunday. So I don't know when I contacted them
24 but as soon as I possibly could I called and told them it was
25 under contract.

1 Did you subsequently receive a change sheet from
2 them dated September 26th 1977 showing....

3 A Yes sir I did.

4 Q ...the property being under contract?

5 A Correct.

6 Q Is that what UC means, under contract?

7 A Yes.

8 Q Now which property is this?

9 A Right here, Buckingham County.

10 Q Next to the last property on the list?

11 A Right.

12 Q I would like to introduce that.

13 MS. CLUTE: And this was - you're saying this change
14 was dated September 26th?

15 A It was on that Monday morning.

16 Q So that's the date - do you know the day you called
17 it in?

18 A See, it could have been called in three days later -
19 previous to that. What happens, if you don't call it in before
20 11:00 in the morning it will go on the next day's list.

21 MS. CLUTE: So this is not a list you prepared, this is
22 something that Multiple Listings prepared?

23 A Multiple Listings prepares it. We call it in, they
24 prepare it.

25 MS. CLUTE: All right, I'm going to mark this Respondent's

1 Exhibit number....

2 Q Eight I think, eight or nine.

3 MS. CLUTE: Number eight.

4
5 Respondent's Exhibit number 8 was so marked by the
6 Hearing Officer at this time.

7
8 X Q And these things come out - these things are sent out -
9 are they sent out daily or what? How do they circulate these
10 things among the other realtors?

11 A They are put in the realtor's box at the headquarters
12 daily.

13 Q Are they mailed out to you?

14 A No, they're picked up.

15 Q I see.

16 A They are not picked up everyday.

17 Q Now is this something - all the local realtors have
18 a box at the

19 A They do yes sir.

20 Q ...realtor headquarters?

21 A MLS headquarters.

22 Q Okay, and this is where these things are stocked?

23 A Yes sir.

24 Q All right. Is it the practice of most realtors to

25 check with the Board office on a regular basis, a daily or a

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1 regular basis?

2 A I don't know for sure but we check pretty regularly
3 but not everyday.

4 Q Now prior to the 24th when she called you you hadn't
5 heard - you didn't know of the existence of this other contract?

6 A No sir I didn't.

7 [Q Now when your son John told you about the contract
8 before he left on vacation did you make any effort to contact
9 Mrs. Davis?

10 A No sir I didn't.

11 Q Why did you not make an effort?

12 A Because I considered I had obligated myself and the
13 contract was binding on both of us.

14 Q Even though you didn't have a signed contract back
15 from her?

16 A That's correct.

17 Q Was there any question in your mind about whether or
18 not she was going to change the contract?

19 A No sir there wasn't.]

20 Q Now after the 24th did you have occasion to either
21 see or meet with the Wetzels, Thomas Wetzel?

22 A Yes sir, he came to the office sometime about the
23 26th or the 27th of the month. I'm not too sure of the date.

24 Q Okay, did he call before he came by?

25 A No sir.

1 Q What was his purpose in coming by?

2 A He came out to check into his contract that he had
3 with John.

4 Q Did you meet with him?

5 A I did.

6 Q What did you all do, describe what happened at the
7 meeting?

8 A I just told him his contract wasn't accepted and John
9 would get with him after he came back off his vacation.

10 Q Did you ever tell him his contract had been rejected?

11 A No sir I didn't.

12 Q Now when you told him his contract was not accepted
13 did you say by whom it was not accepted?

14 A No sir.

15 Q Did you say why it was not accepted?

16 A No questions were asked.

17 Q Did he ask any questions?

18 A No sir.

19 Q All right after you met with him on that day what was
20 the next contact you had with Mr. Wetzel on this property?

21 A I saw him sometime later in the office. This was
22 really the first time I ever talked to the man and he came in to
23 make an offer on some property, maybe this same piece of property
24 or a piece of it. At that time I sat down and talked to him for
25 a few minutes.

1 Q When did you first tell John or the other realtors
2 in your office that the property was under contract?

3 A After John came back from vacation, because when
4 I came back from West Virginia we only had about a day. We were
5 both running in different directions and I had talked to him the
6 one time in the parking lot and gave him this information. Then
7 when he came back off of vacation with a suntan about the second
8 day of October, yeah October then it was under contract.

9 Q All right now subsequent to that time, subsequent to
10 the time John came back and you told him did you receive further
11 offers?

12 A No sir.

13 Q Did your office receive further offers from the Wetzels
14 on this property?

15 A No sir, none.

16 Q Well did you receive subsequent offers on any part
17 of the property from the Wetzels?

18 A Later on after John got back yes.

19 Q All right, that's what I said.

20 A I'm sorry.

21 Q On the 25th of October did you ever see this contract
22 dated the 25th of October, I don't know what exhibit number it is.
23 It's the contract dated October 25 on your stationery, your com-
24 pany stationery?

25 A I may have seen this but I knew John was working on

1 something and I told him that we might consider a price around
2 \$40,000 for the house on that side of the road over there.

3 Q Who is we?

4 A Myself.

5 Q Now do you know whether or not you ever told the
6 that
7 Wetzels / you had an interest in the property or if you were
involved with the property?

8 A Yes sir I did, in the office that day.

9 Q What did you tell the Wetzels?

10 A I told them I was buying it and I had obligated my-
11 self to Mrs. Davis.

12 Q Did you show them a contract?

13 A No sir I didn't.

14 Q Did they ask to see one?

15 A No sir.

16 Q Did they ask any questions at all?

17 A None that I remember. He was interested in the house
18 and 10 acres - 10 or 12 acres on the same side of the road.

19 Q Was that conversation before or after the time of this
20 contract dated October 25th.

21 A It was probably the same time. I didn't see this
22 prepared at that time but I expect it was the same time they were
23 in there.

24 Q Do you know whether or not this offer was ever com-
25 municated to Mrs. Davis?

1 A No sir, there was no reason for it to be.

2 Q Okay now did you type this up or did somebody else
3 type it?

4 A I didn't type it.

5 Q Did you know that this was the first time that Mrs.
6 Davis was still listed as the seller?

7 A I noticed that yes sir.

8 Q Okay, did you make any comment about that to anybody?

9 A I talked to John about it. I said well this can't
10 go forward as such because - it's got to stop right here.

11 Q Meaning what?

12 A In other words I would be the one to either turn a
13 contract down or sell it.

14 Q I see. When was your closing set on the other contract,
15 your contract with Mrs. Davis? Do you remember?

16 A I think it was late December.

17 Q Who selected the closing date? Do you recall?

18 A I don't recall.

19 Q Was that something that was on the contract when you
20 sent it up to her in New York or not?

21 A Yes, I probably did it. I don't remember.

22 Q Was there any discussion with her the day she called
23 down here on the 22nd about a closing date?

24 A No sir, I don't remember any closing date.
25 than

Q Now other/this offer dated October 25th were there any

1 other offers received from the Wetzels on this particular property?

2 A There was one other offer somewhere but I don't
3 know where the copy is or anything.

4 Q Do you recall the amount of that offer?

5 A Around \$40,000.

6 Q Well Mr. Wetzel's offer, after the one dated
7 September 20th directed to the land on the right hand side of
8 the road as we're facing it, the smaller tract of land with the
9 house on it?

10 A Yes sir. The house and almost 13 acres.

11 Q Did he ever make or discuss the possibility of buying
12 either the entire tract or the other side of the road?

13 A Not with me no sir.

14 Q Did John ever communicate to you the discussions he
15 had with Mr. Wetzel about that?

16 A No sir.

17 Q Now when did you in fact close on your contract, was
18 it about the time....

19 A Sometime around January the first I believe.

20 Q During the time that you were negotiating the October
21 25th - or excuse me, somebody in your office was negotiating the
22 October 25th contract and the other one that came in after that
23 from Mr. Wetzel did you ever have any other occasion to talk to
24 Mr. Wetzel about this property?

25 A No sir.

*Listing
S.F.W. Co
Procedures*

1 Q Did he ever inquire of you what had happened to the
2 other acreage?

3 A No sir.

4 Q Did you ever tell him?

5 A No sir. There were no questions about it. In our
6 office we're small and we try to handle our own business so we
7 don't get involved in other peoples contracts or negotiations
8 unless we're asked to.

9 Q Now your office was the listing agent for this par-
10 ticular property was it not?

11 A Yes sir it is.

12 Q Now - and the offer - all these offers from the Wetzels
13 were brought in by John Bias your son?

14 A They were, yes sir.

15 Q What was the procedure in your office at that time for
16 handling such offers?

17 A The procedure there is the party who lists the pro-
18 perty is the one who handles any contracts that come in with that
19 party.

20 Q So in other words with John - under the procedures
21 you had would John have called Mrs. Davis up to tell her he had
22 a contract on the property?

23 A No sir, he would have contacted me.

24 Q And then you would have contacted Mrs. Davis?

25 A Yes sir.

1 Q All right and the reverse of that, what contact if
2 any would you have had with the Wetzels?

3 A None, unless John came to me with a problem of some
4 sort.

5 Q He would handle the communications I gather with
6 the Wetzels?

7 A Yes sir.

8 Q Is that the procedure that had always been followed
9 in your office?

10 A That's our established procedure.

11 Q Is that the procedure that still continues?

12 A Yes sir.

13 Q At the time you called Mrs. Davis on the 22nd was
14 there any discussion about a commission?

15 A I didn't call her she called me.

16 Q Excuse me, she called you on the 22nd, was there any
17 discussion about the commission?

18 A That included no commission. It was the price to her,
19 net price to her.

20 Q \$50,000?

21 A Yes.

22 Q All right, what about the Raffbone contract?

23 A There was no commission on that, that was the net
24 to be paid to her, \$15,000.

25 Q Now of that \$15,000 had any of that already been paid?

1 A Yes, Dr. Davis told me \$5,000 had been paid.

2 Q And did Mrs. Davis go along with that transaction?

3 A Yes sir.

4 Q So actually when the closing took place on Mrs.
5 Raffbone's contract she only got \$10,000...

6 A That is correct.

7 Q ...out of that particular contract.

8 A Yes. I might explain one thing here too. This all
9 came up when she was here. But in as much as they owed about
10 twenty some thousand on the first mortgage she couldn't sell this
11 10 acres under the circumstances. We had to sell the whole piece
12 or nothing. That's why I stepped in to try to/loan her money
13 or buy the property.

14 MS. CLUTE: Would you please state that again?

15 A When she was here we discussed this possibility that
16 she could not sell the 10 acres and receive \$10,000 because she
17 couldn't clear the first mortgage which was twenty some thousand
18 dollars that she owed to Mrs. Payne. And I had contacted Mrs.
19 Payne and Mrs. Payne would not go along with somebody else assuming
20 the mortgage or extending it.

21 MS. CLUTE: So both sales would have to close at the same
22 time.

23 A Not at the same time but we'd have to clear the first
24 mortgage before we could sell it.

25 Q This was the purchase money mortgage that Mrs. White

1 held?

2 A Yes. Annie White.

3 Q On the morning of the 22nd after your discussion
4 with Mrs. Davis what in your mind was the status of that 125 acre
5 farm exactly?

6 A That I had bought it that morning.

7 MS. CLUTE: When was this?

8 Q On the morning of the 22nd.

9 A It was an agreement between we two that the farm was
10 sold. That was it.

11 Q Now how was the ultimate figure of \$53,500 arrived
12 at?

13 A On the 24th when she called back and she was - excuse
14 me, she was talking about that she was going to take this money
15 and do a little gambling and she would like to have a little
16 more and I said well what are you thinking about and she said I'd
17 like to get at least \$57,000 and I said well we'll split it because
18 I'm very generous you know. I had known your husband real well
19 and she said that would be great, what do I do.

20 Q Now at the time you offered her \$50,000 on the
21 22nd did you consider that a fair offer or not?

22 A I did for that property, because if you figure it
23 out she's getting quite a bit of money.

24 just
25 Q Well other than/the actual cash in hand, as far as
the value itself was concerned, the value of the property?

1 A Yeah, it's about what it was worth.

2 Q Now when did you first - when did you first learn
3 that Mr. Wetzel was concerned about the fact that his offer had
4 not been submitted to Mrs. Davis?

5 A Oh, this was months later. I don't remember, there are
6 some documents there on it.

7 Q Was it subsequent to the time that he - was it sub-
8 sequent to the time you closed on it?

9 A Oh yes.

10 MS. CLUTE: I'm sorry, what is your question, when....

11 Q My question, when did Mr. Bias learn that Mr. Wetzel
12 found out that his offer had not been submitted to Mrs. Davis.

13 MS. CLUTE: When did Mr. Bias find out....

14 Q When did Mr. Bias find out...

15 MS. CLUTE: ...that Mr. Wetzel found out....

16 Q When did Mr. Bias find out that Mr. Wetzel found out
17 that his offer had not been submitted.

18 A Had not been submitted?

19 Q To Mrs. Davis.

20 A I never did tell her.

21 Q I understand that but you found out later on that he
22 had found out that his offer wasn't submitted, is that correct?

23 A Oh he called me. They called my office, someone did
24 and they wanted to know where Mrs. Davis could be contacted.

25 Q Was that after the closing had taken place?

1 A Oh yes, months later.

2 Q Subsequent to the time that you closed on this property
3 did Mr. Wetzel initiate legal action against you in the Albemarle
4 County Circuit Court?

5 A Yes sir he did.

6 Q As the basis of that suit was he complaining of your
7 failure to tender his offer to Mrs. Davis?

8 A Yes sir.

9 Q Was that suit disposed of?

10 A Yes sir it was.

11 Q And what was the resolution of the suit?

12 A Thrown out of court.

13 Q Did he subsequently initiate an investigation against
14 you both by the local Board of Realtors and by the Commission?

15 A Yes sir.

16 Q And did the local Board have a hearing and an inves-
17 tigation on this matter?

18 A They had a hearing, yes sir.

19 Q All right and did the Virginia Real Estate Commission
20 do likewise?

21 A They did.

22 Q Okay and did an investigator come around and talk to
23 you?

24 A Yes sir.

25 Q Was it the fellow who earlier testified, Mr. Matthews?

1 A Mr. Matthews, yes sir. Well, there was two. Mr.
2 Matthews came out by himself one time and then he came back a
3 week or so later and there was another man along, an older man.

4 Q Do you remember his name?

5 A No I don't remember the name but Mr. Matthews just
6 told me a while ago what it was but I don't know the name.

7 Q Do you recall approximately when any of those events
8 took place?

9 A I don't remember the date, I've got it in the files
10 somewhere.

11 Q The day Mr. Matthews came by?

12 A I don't remember the time.

13 Q When he came by did he tell you that he had heard
14 from Mrs. Davis or had any communication with Mrs. Davis?

15 A No sir, I don't remember that he did. I don't think
16 he had called her at that time.

17 Q When did you find out that he had communicated with
18 Mrs. Davis?

19 A I didn't know until today.

20 Q Okay, had Mrs. Davis ever complained to you either in
21 letter form, writing form, lawsuit form or any other form about
22 what happened back in September of 1977?

23 A No sir, she was really happy.

24 Q What evidence - do you have any evidence that she was
25 satisfied with the way things had been handled?

1 A Yes sir, we have talked on the phone a time or two
2 since then and she mentioned about that the Wetzels had called
3 her and she said I told them and I hope they're happy because I'm
4 very happy with what took place. I think I satisfied them. I've
5 talked to her oh three or four times since then.

6 Q Did you receive a letter from the Commissioner on
7 January 22nd of last year, of '79, advising you of the status of
8 the investigation on this matter?

9 A Yes sir I did.

10 Q Is this a copy of the letter?

11 A That is.

12 MS. STEVICK: I'm not sure about the relevance of that.

13 Q This pertains to the investigation itself unless you
14 want to wait on that. Do you want to wait and put it on again?

15 MS. STEVICK: That is in part what the injunction hear-
16 ing was about, the fact that the matter had been closed at one
17 time and then reopened.

18 Q I'm going to get it in through Mr. Matthews.

19 MS. STEVICK: I don't think it has anything to do with
20 the issue at hand.

21 Q Mr. Bias what would have been your commission on
22 this property had it been sold to a third party Mr. Wetzel or
23 anybody else?

24 A It would have been 10% of the gross price.

25 Q Okay, so the price to Mrs. Davis on the Raffbone

1 contract was \$15,000 is that correct?

2 A Yes sir.

3 Q Your price was \$53,500?

4 A Correct.

5 Q A total of \$68,500?

6 A I didn't figure it out, something like that.

7 Q Now did your 10% commission would have then been
8 figured on that price, the price of \$68,500?

9 A Yes sir.

10 Q Now if you had submitted and she had accepted the
11 \$60,000 offer of Mr. and Mrs. Wetzel after deduction of your
12 commission what would she have gotten in hand for the property?

13 A Well it would have been \$64,000.

14 Q What complaint if any did you ever receive from your
15 son John about the fact that he didn't get a commission or he
16 wasn't able to make the sale, first, did you ever receive any?

17 A No sir.

18 Q Was there ever any discussion about that between you
19 and John?

20 A No sir.

21 Q At the time you agreed to buy the property from Mrs.
22 Davis and at all times thereafter were you completely able to go
23 ahead with the transaction?

24 A Yes sir I was.

25 Q Was there anything in your personal or financial

1 condition that would have prevented you from going through with
2 the transaction?

3 A No sir.

4 Q Go ahead and answer Mrs. Stevick's questions.

6 CROSS EXAMINATION

7 By: Ms. Stevick

8 Q Let me refer you again to your calendar. Were you
9 in the office on the 23rd? It's not clear to me.

10 A I must have gone to the office early in the morning
11 because I went from there to the bank to see Mr. Matthews and
12 came by to see Mr. Main.

13 Q You spoke earlier about having boxes that hold the
14 mail or whatever, do you make a habit of regularly checking yours?

15 A Let me explain something. In the office, if I'm out
16 and gone somewhere someone brings the mail in and puts it on my
17 desk and it's not opened unless it's something specifically for
18 them. So if something comes in it lays there until I come back.
19 And if I get the mail I usually take it and put it in their boxes
20 up where it is. They don't normally use those boxes by themselves
21 personally because they put it on my desk or something or in my
22 in basket.

23 Q Let me ask you, do you make a habit of checking your
24 in basket on a daily basis?

25 A If I'm there early in the morning yes, but if I come

when
E
was
not
there

1 in late at night I don't until the next morning.

2 Q Okay, but you were in early in the morning on the
3 22nd, 23rd, and 24th, is that right?

4 A Yes ma'am.

5 Q When somebody gets an offer as John did in this
6 instance who was not the listing officer and had to pass it on
7 what would you consider to be a reasonable time for it to get from
8 that person's desk to your desk?

9 A Well it wouldn't take very long because if I'm there
10 they just hand it to me, but if I wasn't there it might take until
11 the next day.

12 Q All right so then you would say under normal cir-
13 cumstances if John received it on the 21st you should have had
14 it on the 22nd?

15 A On the 22nd I don't remember that I went through the
16 distribution because when I went to the office and got the call
17 from Mrs. Davis I prepared the documents and immediately left.
18 I don't think I would take that until the next day, the 23rd.

19 Q All right so presumably you would have had it the
20 23rd?

21 A The 23rd or the 24th, yes.

22 Q All right, but probably the 23rd would you think under
23 normal circumstances.

24 A I don't even remember it until the 24th, that was
25 the day before he left on his vacation.

1 Q But it is conceivable you had it the 23rd?

2 MR. MAIN: That's speculation.

3 Q Well I'm asking what normally would happen. I mean
4 a lot of this is speculation. John doesn't seem to remember any-
5 thing that happened.

6 A It's possible. That was a long time ago.

7 Q Okay, on the 24th when you talked to Mrs. Davis,
8 that was date at which you - upon which you arrived at the figure
9 of \$53,500, is that correct?

10 A Yes ma'am.

11 Q And so in effect you had no binding contract until
12 that date or that was the contract....

13 A Well I obligated myself as far as I'm concerned, yes,
14 it was binding on me because....

15 Q All right but she had not signed it and returned it?

16 A No, she had not returned it.

17 Q Okay....

18 A But she obligated herself to me that she would sell
19 for that.

20 Q She claims otherwise but that's a different issue.
21 Let me....

22 A She claims otherwise?

23 Q Yes she does. Let me ask the question in a different
24 way. On the terms you finally agreed to, were agreed to on the
25 24th, is that correct?

1 A Yes ma'am.

2 Q Okay. So when you finally found out about Mr.
3 Wetzel's offer you didn't relay that to Mrs. Davis because
4 presumably you had already...

5 A It was after this, um hum.

6 Q Okay. The fact that the offer was dated four days
7 earlier and had been in your office four days didn't bother you
8 in the least?

9 A I don't know where it was. I didn't see it until
10 then.

11 Q Well it was dated September 20th?

12 A Well it could have been dated the 20th.

13 Q Well there's been evidence here that it appears to
14 have been in the office the 21st at least.

15 MR. MAIN: I don't understand your question.

16 Q The fact that the offer predated his offer by two
17 to four days, you didn't feel any obligation to let Mrs. Davis
18 know about it?

19 A Let me explain something. The mailbox he was talking
20 about is at the end of our driveway. Our mail comes about 4:30
21 to 5:00 in the afternoon or 5:30 in the afternoon.

22 Q Um hum.

23 A And sometimes when I'm out late at night and come in,
24 somebody might have picked that mail up and taken it in. So if
25 he put the contract in an envelope in that box and if/was it

1 addressed to the Cavalier Realty it could have been three days
2 later before I got a hold of it, it's possible because it was put
3 there on the 20th and laid there until the afternoon of the 21st
4 and put on my desk, I just don't know. It could have been the
5 23rd or the 24th.

6 Q But it was an offer that predated either of your
7 offers?

8 A His contract shows that but I didn't know about it.

9 Q Having seen his offer and observed it and it in fact
10 predated yours you felt no obligation to tell Mrs. Davis?

11 A I had already obligated myself to Mrs. Davis.

12 Q That wasn't my question. My question was that you
13 felt no obligation to tell...

14 A I felt no obligation.

15 Q All right, the \$75,000 price that you arrived at on
16 the 17th or 18th with Mrs. Davis, did you feel that that was a
17 reasonable price for the land?

18 A Well it was getting close in there somewhere. I
19 don't know the exact price for a piece of property it's always
20 a close figure but yes it was getting close to what it was worth.

21 Q But it was reasonable?

22 A Reasonable, yes. I was expecting an offer for a
23 little less down here than what it's priced.

24 Q 'So even allowing for the \$15,000 piece that was
25 taken out, \$60,000 would have been a reasonable price would you

1 say?

2 A I don't follow you.

3 Q Well the...

4 MS. CLUTE: The \$75,000 is for the 115.

5 Q One hundred and fifteen, okay.

6 MS. CLUTE: Um hum. So the \$75,000 - I take it your
7 testimony is that would be a reasonable price....

8 Q Well let me ask a question about that. When you
9 testified earlier you said something about you drew that up with
10 an eye to changing it depending on what Mrs. Raffbone decided.
11 Now what did you mean by that?

12 A Well we had talked about that, actually if she got
13 the \$15,000 she could lower this just a little bit. This was
14 discussed between us that date on there and I wasn't to publish
15 this until later on.

16 Q Okay. What did you mean when you said that - when
17 you and Mrs. Davis were discussing raising the price of the contract,
18 that this was a gift to her?

19 A When I talked to her on the 22nd, she called me the
20 22nd and when I told her I would give her \$50,000 for it, at that
21 time we went back and forth and we decided that this would be a
22 contract between us, it was binding between we two and on the 24th
23 when she called I reminded her of that and she said that's true,
24 I'm ready to sign. I said well I'm very generous, I'll split it
25 with you and she said that's great.

Handwritten: This is not a contract

Q But on the 22nd there was no signed contract?

A It was just - it was on the phone.

Q Right. She had not yet signed the contract?

A Right.

Q So in fact - in fact she was not obligated legally to accept the \$50,000.

A Legally she could have gotten out of it yes but morally, I'm sure, knowing Mrs. Davis she wouldn't have.

MR. MAIN: I think that's the very heart of the issue here, the fact, when she says legally obligated, true, a verbal contract for the purchase of land is not enforceable, that doesn't mean it's not valid it just means it's not enforceable.

Q But had she, when she received the contract decided not to sign it?

MR. MAIN: He couldn't have enforced the \$50,000 contract. That doesn't mean there wasn't one, he just couldn't have enforced it.

A Well she told me she was ready to sign the papers that morning when she called.

Q Well let me show you this and ask you if you recognize that?

MR. MAIN: We're going to object to the introduction of that.

A I know about this, yes.

MS. CLUTE: Will you hold up a minute until I find out

about it. Mr. Main is this document here prepared by you? These are questions that you drew up?

MR. MAIN: As part of the proceeding with the Charlottesville Albemarle Board of Realtors.

MS. CLUTE: Okay, and then Mrs. Davis signed it before a Notary. Okay, I will allow it to be admitted.

MR. MAIN: I just want to go on the record number one, she has failed to state a purpose for which she's trying to admit it, number one, and number two, if you are going to admit it in what sense is it going to be used?

MS. CLUTE: Well it's very relevant. I mean it's a signed statement. Of course we're not bound here by the strict rules of evidence. It's a sworn affidavit on the part of a very principle individual in this matter and it seems to me clearly relevant and admissible and I certainly want to have it for my consideration when I make the recommended decision.

MR. MAIN: I agree with that but the point being Mrs. Davis answered those questions at my request and not at the request of a Judge or a Court or a Hearing Officer. The purpose for getting those things answered was to submit it to another board not this board.

MS. CLUTE: All right, but it's her....

MR. MAIN: I don't even know how the Real Estate Commission frankly - I guess they got it from the local board. I didn't send it to them. It doesn't make any difference how they got it

1 but they do have it. My concern is the prejudicial effect of it.

2 Mrs. Davis is not here.

3 MS. CLUTE: But it is a sworn affidavit.

4 MR. MAIN: I'm not sure it's a sworn - well, depending
5 on how you define affidavit. Mrs. Davis did not give that document
6 or statement intending or planning for its use in this proceeding.

7 MS. STEVICK: Are you assuming her answers would be dif-
8 ferent?

9 MR. MAIN: I don't have any idea. I don't remember
10 anything I said....

11 MS. CLUTE: Your objection is noted but I'm going to
12 allow it to be admitted and this will be Respondent's Exhibit...

13 MR. MAIN: Petitioner's Exhibit.

14 MS. CLUTE: I'm sorry, you're right, I'm sorry, the
15 Board's Exhibit number 9.

16
17 Petitioner's Exhibit number 9 was so marked by the
18 Hearing Officer at this time.

19
20 Q (Ms. Stevick continuing) We were talking about whether
21 or not there was a binding offer as of September 22nd. I refer
22 you to question 20, 21 which says, "Did you accept his offer of
23 \$50,000 at that time?" That time being September 22nd. Question
24 13 indicates that we're talking about the telephone conversation
25 that morning. And her answer was, "No. I said I would think it

1 over." And in question 22 she said, "If so did you feel that you
2 had a binding agreement with Mr. Bias?", and again she answers,
3 "No." As you may recall Mr. Matthews testified this morning that
4 that was her testimony to him, was that there was no agreement prior
5 to the 24th. Now your testimony is to the contrary that you had
6 a binding agreement?

7 A Yes ma'am, with her on the 22nd.

8 Q Let me get back to the question I had about the gift.
9 In light of the fact that a week before she had been asking \$75,000
10 and you have testified that you considered that to be a reasonable
11 price, now you're saying that in giving her \$53,500 you're giving
12 her a gift?

13 A Not a gift but it was more than we had bargained for
14 on the 22nd.

15 Q But it was still an excellent deal for you?

16 A Sure, I wasn't getting hurt on that. I would like
17 to explain one other thing if I may. Do you see where the big
18 mark down is here?

19 Q Um hum.

20 A Before this took place I purchased 106 acres back in
21 there and it goes right by this property and back in there there's
22 a cabin and a lake and a lot of trails. And we often - Dr. Davis
23 and I often talked about putting these two pieces of property to-
24 gether. So I was interested in his property and he knew this all
25 along. This is why this all came about and that's why I don't

think it was a bad deal for me because I own the whole area in there.

Q I know it wasn't a bad deal for you.

MR. MAIN: The question is not whether it's a bad deal the question is whether he failed to properly tender an offer to the seller. The issue of whether it's a good deal, bad deal or a mediocre deal is.....

Q You have been raising a number of questions about whether or not it was a good offer.

MR. MAIN: No objection was made.

MS. CLUTE: Whether or not it was an advantageous price for Mr. Bias certainly is relevant in terms of whose interests were being considered. I think that's a legitimate line of questioning.

A May I answer that?

MR. MAIN: Wait a minute, answer the questions, whatever questions she asks.

A What was your question?

Q I don't know if there was a question pending.

MR. MAIN: Somebody had a question I thought, maybe it was you.

MS. CLUTE: No, I just stated that the issue of whether or not it was a favorable price is relevant, that's all. Continue.

Q I think my last question was to the effect that how was this a gift when in fact he was paying something a kin to two

1 thirds of the asking price of the week before.

2 MR. MAIN: I think his testimony was the excess over
3 \$50,000 was a gift, not the purchase price but the excess over
4 \$50,000, \$3,500.

5 Q Still he was paying substantially less than what she
6 had originally asked for and I don't know if it can be construed
7 as a gift exactly. Let me direct your attention to the contract
8 of October 25th. This has been discussed at some length. I would
9 like to ask again how is it that when you didn't own the property
10 or when you claimed to have a binding contract on the property
11 as of the 24th such that you were no longer interested in - or
12 obligated to tender offers received, how is it that a month later
13 you're taking offers in Mrs. Davis' name?

14 A I didn't prepare that offer.

15 Q How is it then that month John never found out that
16 you were no longer taking offers?

17 A I think John tried to explain to you that he didn't
18 know the exact status of what - who would sign the contract in
19 other words, whether I would back out of what I was doing and let
20 her sign the contract or what was going to happen. He just didn't
21 know. That's why he put her name on there. But I would not let
22 it go through like that.

23 Q You had a binding contract in your own name for a
24 month and you never bothered to tell your son whose also your
25 business associate who's out there taking offers on the property?

1 A Yes, he knew about it.

2 Q Then why did he take - I guess you don't know why...

3 MR. MAIN: That question is not for him. That question
4 is for John.

5 Q All right.

6 A I don't know.

7 MS. CLUTE: I would like to ask, where's the ad that
8 this came up as a result of. Does anyone have a copy of that here?

9 Q I don't remember the ad, there may have been one.
10 We run so many ads but I just cannot recall it.

11 MS. CLUTE: Do you recall listing the house and the
12 acreage on that side of the road?

13 A Later on yes, after this took place.

14 MS. CLUTE: Would it have been in October that you listed
15 it?

16 A I don't remember. I thought it was much later than
17 that, about the time he called us on it.

18 MS. CLUTE: Where would it have been listed. Was it in
19 Multiple Listings?

20 A Multiple Listings.

21 MS. CLUTE: Do you have anything on that?

22 MR. MAIN: I've got the one for 115 acres. Is that what
23 you're talking about?

24 A No, she's talking about....

25 Q The house....

1 MR. MAIN: I have the one for 115 acres.

2 A I might explain something now. We didn't know how
3 many acres were there and this was surveyed sometime later on so
4 have
5 I wouldn't/know how much is over there until probably November or
6 December just before we closed.

7 Q So is it your testimony you don't know whether or
8 not you advertised the property for sale in October of 1977?

9 A I do not remember advertising that property there.
10 I may have because I advertise a lot of properties.

11 Q But you may have listed it?

12 A I could have.

13 Q And that would have been your sole decision?

14 A Yes.

15 Q Did you list it at Mrs. Davis' direction?

16 A No ma'am.

17 Q So if you listed it for sale you listed it because
18 you had a purchase contract on it?

19 A Confirmed contract yes ma'am.

20 Q Okay, and would it have been in Multiple Listings?

21 A Not necessarily, but it could have been. See, this is
22 two years ago, if I can take a look at the book, I just don't
23 remember.

24 Q Okay. Is it your testimony that during the course of
25 the month, the month between the time you signed the contract and
the time that that contract, the second contract- or second offer

1 was received that word was never transmitted in the office that
2 it was no longer Mrs. Davis' and no longer to be listed....

3 A No, I didn't say that, I didn't say that.

4 Q Well what is your testimony?

5 A That he knew about it. I told him about it, that
6 I had a contract on it and it was off the market.

7 Q And they chose to ignore your instruction.

8 A What instructions?

9 Q Well if it's off the market one would think they
10 wouldn't be taking offers on it.

11 A I don't think that the Real Estate Board knew about
12 it. I think ~~probably~~ I told John that I would sell the house and
13 the acreage for a certain price.

14 Q Um hum.

15 A That's why he was doing that. I don't recall that
16 it was ever put in the books that - but it was later on put in
17 the real estate books.

18 Q Well if you told John that it was for sale, it was
19 for sale from you?

20 A Yes - we have....

21 Q Even though you didn't own it at that time?

22 A I owned it.

23 Q Didn't have title to it?

24 A I had a good ownership in it yes.

25 Q But you didn't have a contract - or you didn't have....

*Local
Hearings
Result*

1 A Yes I had a contract.

2 Q But you didn't have title to it.

3 A Uh, we own a lot of property around, at least I do
4 and in selling a property sometimes I do not put it in the Multiple
5 Listings books. I just - I list it as owner, and this may have
6 occurred in the same position I don't remember. It probably did.

7 Q What was the outcome of the hearing before the
8 Charlottesville....

9 MR. MAIN: I don't think that's relevant.

10 Q You raised the fact that there was a hearing.

11 MR. MAIN: I didn't raise it. You raised it when you
12 introduced that, it was on the front of it, that was your exhibit.

13 Q One of your questions to him was the outcome of the
14 case...

15 MR. MAIN: I asked him if other suits have been brought.

16 Q Yes.

17 MS. CLUTE: If she didn't ask it I would have because
18 you did raise the question and I did want to know what happened.

19 MR. MAIN: There was a copy of the decision made.

20 A What was the decision, I don't even know.

21 MR. MAIN: You all have a copy of the decision don't
22 you?

23 MR. KLOPFENSTEIN: I'm confused here. Was the question
24 to him what was the outcome of the decision and he doesn't know,
25 is that his testimony?

1 A It's here, they've got it.

2 Q I have a copy.

3 MR. MAIN: If you've got the original document that
4 speaks for the results of the decision.

5 Q All right.

6 MR. KLOPFENSTEIN: I'm sorry, excuse me. I'm confused.
7 I'd like to have the question rephrased so I can understand what
8 it was. I really don't understand.

9 Q My question was what was the outcome of the hearing
10 before the Charlottesville Albemarle Board.

11 MR. KLOPFENSTEIN: And what was the respondent's answer?

12 A I don't know it word for word because it is quite
13 lengthy.

14 Q All right shall we introduce that and let it speak
15 for itself?

16 MR. MAIN: I think you're going to anyway and I think
17 you're going to take it anyway aren't you?

18 MS. CLUTE: Yes I am.

19 Q For the record it shows that the Board found that
20 did not
21 Mr. Bias/fully protect and promote the interest of his client and
22 did not fulfil his obligation to treat fairly all the parties of
23 the transaction and did not submit all offers on a specified
24 property to the owner for his decision and did not disclose fully
25 and specifically to all affected parties contemplated and present
interest in the subject property.

1 MS. CLUTE: Are you going to submit a copy of that as
2 an exhibit?

3 Q Yes, I didn't bring any Xerox....

4 MR. MAIN: I'm going to ask her to put her entire file
5 in the record.

6 MS. CLUTE: Oh, okay.

7 MR. MAIN: It would make more sense coming in through
8 there.

9 MS. CLUTE: All right.

10 MR. MAIN: Not as my exhibit but it will come in as
11 part of the record. That's my reason for objecting. I don't
12 think this commission's decision should be determined by the
13 decision....

14 MS. CLUTE: You're absolutely correct.
15 either

16 MR. MAIN: ...by/a judicial body or another hearing
body.

17 MS. CLUTE: That's correct.

18 Q I don't have any further questions at the moment.

19 MS. CLUTE: Okay, I have a number I would like to ask.
20 Do you want to redirect?

21 MR. MAIN: I've just got a couple. You go ahead, it
22 doesn't make any difference to me.

23 MS. CLUTE: All right, well let me go ahead then you
24 might want to redirect to something that I raise. What was the
25 purchase price of this parcel of land, 125 acres, when Dr. Davis

1 bought it?

2 A Somewhere in the vicinity of \$55,000, it was 1972
3 in July. It runs in my mind it might have been \$55,500.

4 MS. CLUTE: And that was in what year?

5 A 1972.

6 MS. CLUTE: '72, okay.

7 A On July the ninth.

8 MS. CLUTE: What kind of a doctor was Dr. Davis?

9 A Medical.

10 MS. CLUTE: And you referred to step children. Was
11 he married to this particular Mrs. Davis in 1972?

12 A Yes ma'am he was.

13 MS. CLUTE: Okay, what type of a - how would you describe
14 Mrs. Davis? Did she work outside the home?

15 A I think, if I remember right she might be an interior
16 decorator but she doesn't have a legal mind, she's just so so.

17 MS. CLUTE: Uh...

18 MR. MAIN: What do you mean?

19 A Well she's a society type woman....

20 MS. STEVICK: I'm sorry what was the answer?

21 A If you try and pin her down on something she doesn't
22 understand it.

23 MS. CLUTE: All right. Would you describe her as an
24 individual having business acumen?

25 A No ma'am.

EXPLANIS
SIGNATURE OF
ANSWER TO
QUESTIONNAIRE.

1 MS. CLUTE: Had Dr. Davis been ill for a long period
2 of time before his death?

3 A Not too long. He was getting quite old. He was
4 old
about 82 or 87 years/. He was quite older than she was.

5 MS. CLUTE: How old is Mrs. Davis would you estimate?

6 A Estimate? I'd say probably 64, 65, something like
7 that. I hope she doesn't hear about that.

8 MS. CLUTE: I believe it was your testimony that you
9 selected which 10 acres were to go to....

10 A Yes ma'am.

11 MS. CLUTE: All right now regarding the events between
12 the 22nd and the 24th of September, all right, you had been to
13 a family funeral, returned to the office the morning of the 22nd,
14 I believe?

15 A Yes ma'am.

16 MS. CLUTE: All right, your son testified that to the
17 best of his knowledge he did have that contract on the 21st and
18 that he made it available to you in your pigeon hole or wherever
19 he routinely did it on the 21st. And I believe you testified that
20 you don't recall receiving it on the 21st?

21 A No ma'am, I don't.

22 MS. CLUTE: Then he testified that he went on vacation
23 on the 25th and you testified that before he left either on the
24 23rd or the 24th he informed you of the fact that this contract
25 did exist?

When
DUB found
out about
K.

1 A Yes ma'am.

2 MS. CLUTE: Okay, when he informed you of the fact it
3 did exist did you go find it?

4 A He gave it to me.

5 MS. CLUTE: He gave it to you?

6 A It was attached to those papers that he had.

7 MS. CLUTE: What papers did he have?

8 A He prepared a little note or memorandum stating all
9 these things to be done while he was gone. It was contracts
10 pending and so forth and I was supposed to take care of those as
11 they came in while he was on vacation.

12 MS. CLUTE: Okay, so it was hand delivered to you to
13 the best of your knowledge. You son hand delivered it to you?

14 A To the best of my knowledge it was with that group
15 of papers he gave me that day.

16 MS. CLUTE: And that day was either the 23rd or the 24th?

17 A The 24th I believe in the afternoon.

18 MS. CLUTE: Okay.

19 A He was packing to leave - I'm not even sure where they
20 were going now - the next morning when this was given to me. I
21 think it was probably on the afternoon of the 24th.

22 MS. CLUTE: Did you ask him why he didn't give it to you
23 before then?

24 A I didn't think anything about it at that time. I
25 had been gone. He gave me a whole stack of papers that he had put

1 together.

2 MS. CLUTE: Okay. Now you indicate - let's see, on
3 the 24th, okay, that was a Saturday?

4 A The 24th, yes ma'am, was Saturday.

5 MS. CLUTE: Okay do you recall where you were located
6 when he handed you those papers?

7 A In the parking lot there in front of the office.

8 MS. CLUTE: You were at the office at the time?

9 A Yeah, I was coming in and he was getting ready to
10 leave and we met there in the parking lot, and we got together
11 and talked about these things.

12 MS. CLUTE: Okay, and what time of day was it?

13 A It was probably around 4:30 or 5:00.

14 MS. CLUTE: What time of day was it when you spoke with
15 Mrs. Davis?

16 A Early in the morning. Each time I talked to her was
17 about 8:45 or 9:00, maybe 9:15, somewhere in that bracket.

18 MS. CLUTE: So on the 24th you had just renegotiated
19 your contract with her and then in the afternoon you became aware
20 of the Wetzel contract?

21 A Yes ma'am.

22 MS. CLUTE: When you talked to her on the 24th you said
23 on the 22nd you'd entered this agreement where you were going to
24 purchase it for \$50,000?

25 A Yes ma'am.

1 MS. CLUTE: And it was your testimony that you had a
2 binding contract on the 22nd?

3 A I obligated myself and told her I would definitely
4 purchase that property from her, and she agreed that she would
5 sell it to me.

6 MS. CLUTE: When you discussed with her on the 24th
7 did you tell her that you thought she had a moral obligation....

8 A Yes, we talked about that. She said she would go
9 along but she said oh, I'd like to have a little more and I said
10 well what are you thinking about and she said \$57,000 and I said
11 well let's split it. But she indicated that she was ready to
12 sign for the \$50,000 at that time.

13 MS. CLUTE: Okay, when you became aware of the - well
14 first of all I want to be clear on something. Are you aware of
15 the Statute of Frauds?

16 A I don't think I am, no.

17 MR. MAIN: That's a fairly hefty legal question.

18 MS. CLUTE: Well for someone who is a real estate
19 broker I would think it would be elementary. Are you aware that
20 you don't have a legal contract for the purchase of land until
21 you have it in writing?

22 A Yes, I'm aware of that.

23 MR. MAIN: I disagree with your question. Are you aware
24 that you don't have an enforceable contract until you have it in
25 writing, not a legal contract.

1 MS. CLUTE: Are you aware that an oral contract for the
2 purchase of land is not binding?

3 A Yes, I am aware of that.

4 MR. MAIN: I object to your question again, not enforce-
5 able in court as opposed to binding.

6 MS. CLUTE: Anyway, you realize that an oral contract
7 for the purchase of land is not....

8 A I know there can be a problem.

9 MS. CLUTE: Okay, there can be a problem. In other
10 words either party can get out of it and there's no penalty is
11 that correct?

12 A I don't know.

13 MS. CLUTE: You don't know? And you've been in the
14 real estate business for how long?

15 A Since 1963.

16 MS. CLUTE: And that's not something....

17 A I had no reason to try that one in court.

18 MS. CLUTE: It's not a matter of trying it in court but
19 I mean when someone says they want to purchase land don't you say
20 you'd better put it in writing or you don't have a binding con-
21 tract.

22 A Right, you can't enforce it.

23 MS. CLUTE: That's right. All right, so at the point
24 when you became aware of Mr. Wetzel's contract there was not an
25 enforceable contract on that land with anyone was that correct?

1 A No. she told me she had signed the contract and it
2 would be mailed right then, that morning before this took place.
3 See, in the early morning of the 24th is when she was supposed
4 to have gotten that contract signed and in the mail to me. In
5 the afternoon of the 24th is when I knew that Wetzel's contract
6 was in existence. It was too late.

7 MS. CLUTE: It was too late.

8 A Yeah.

9 MS. CLUTE: Well first you have to have delivery of
10 a written contract, not only signing but it has to also be
11 delivered, until there's delivery...

12 A She told me she was mailing it that morning.

13 MR. MAIN: Vis a vis, who does there have to be delivered?

14 MS. CLUTE: There has to be - well it has to be - it has
15 to be delivered...

16 MR. MAIN: I think there needs to be some evidence that
17 Mrs. Davis didn't sign the contract on the 24th before you can
18 say that. I don't think it's fair to conclude that until he
19 actually received it in the mail that that was not the case. I
20 mean that seems to be a fairly heavy assumption. Well, she told
21 him and it's undisputed, I haven't seen any evidence to the con-
22 trary that she did not sign and send him a contract on the 24th
23 of September.

24 MS. CLUTE: Where's her affidavit?

25 MR. FOXX: May I ask a quick question in the interim?

1 MS. CLUTE: Yes, um hum.

2 MR. FOXX: When did you get the signed contract in your
3 hands?

4 A I don't know. I'm just assuming it was probably
5 around the 26th because it takes about two days out of New York.
6 I don't remember the exact time. I just don't remember.

7 MR. MAIN: Question 32.

8 A But I had it very quickly and gave it to Mr. Main.

9 MS. CLUTE: Okay, it has been your testimony that even
10 when the purchase price - when your commission came out she would
11 nonetheless, had the Wetzel contract been the one that she
12 accepted, she would have been \$500 better off, isn't that correct?

13 A No ma'am.

14 MS. CLUTE: The \$60,000 minus six is fifty four and
15 you paid \$53,500. So she would have had an additional \$500?

16 A Well, \$53,500 plus the \$15,000.

17 MS. CLUTE: Well the 10 acres you weren't purchasing...

18 A It was all tied into one transaction though.

19 MR. MAIN: Mr. Wetzel's offer was for 125 acres for
20 \$60,000. His offer was for 115 acres at \$50,000 and in addition
21 there was another contract for \$15,000 for 10 acres.

22 MS. CLUTE: All right. Okay.

23 MR. MAIN: Is that what you were getting at?

24 MS. CLUTE: Yes, yes, that's right.

25 A She was getting considerably more than that actually.

1 overall, if you take the commission and add it to that.

2 MS. CLUTE: But to your knowledge no one ever explored
3 the possibility with Mr. Wetzel whether or not he would agree to
4 pay more than that?

5 A No ma'am, not that I know of. I didn't do any
6 dealings with Mr. Wetzel. We just talked that one time.

7 MS. CLUTE: Well under these circumstances, you know, I
8 mean, did you consider there was any obligation to explore that
9 possibility or have someone explore it?

10 A Not personally myself.

11 MS. CLUTE: Did you ask that your son explore the
12 possibility?

13 A No I didn't.

14 MS. CLUTE: When you saw Mrs. Davis the day following
15 her husband's funeral what was her demeanor on that day? What
16 did she show - did she appear to be emotionally disturbed?

17 A She was in distress, upset because she was talking
18 about financing and so forth and she said everything that Dr.
19 Davis had that she had was in the farm down there, and she had
20 to do something.

21 MS. CLUTE: Okay. No further questions.

22 MS. STEVICK: I have one quick question before the
23 Commission. This policy you have in your office of only the listing
24 agent talking to the seller, is that a policy you yourself es-
25 tablished?

1 A Yes ma'am.

2 MS. STEVICK: Thank you.

3 MS. KENT: May I ask a question?

4 MS. CLUTE: Yes.

5 MR. MAIN: Do you want....

6 MS. CLUTE: I think if everyone asks theirs then you
7 want to redirect....

8 MR. MAIN: Fine.

9 MS. CLUTE: All right, go ahead.

10 ✂ MS. KENT: Was this question of Mrs. Raffbone holding
11 this mortgage ever relayed to Mr. Wetzel, was there ever mention
12 of any fact that there might be 10 acres taken off?

13 A No ma'am. It wasn't Mrs. Raffbone holding the mort-
14 gage. No one knew about this transaction until after John came
15 back off of vacation because I didn't explain it to anybody. It
16 was up in the air all the time. When Mrs. Davis and I discussed
17 it on the morning of the 18th, I didn't say a word to anybody
18 about it until later on because I didn't know what was going to
19 happen. I knew that she needed money. I also knew that Mrs.
20 Payne was the one that pushed the mortgage that she had of
21 twenty some thousand dollars. She wanted her money out of it.
22 She was getting a little edgy because of that and this was never
23 mentioned to anybody until later on.

24 MS. KENT: Well how can you feel that you had a binding
25 contract when in effect Mrs. Davis raised the price and you

1 renegotiated?

2 A Morally on the 22nd, I'm the type of man if I give
3 my word to somebody it's the word and I told her that I will
4 definitely buy your property if this is what you want and she
5 said that's what I want and then I said to her, you understand
6 that you obligate yourself and I obligate myself to you, that this
7 would be a contract and if so I'll take it off the market and
8 she said fine. So I took it off the market.

9 MS. KENT: Well I understand that there were 115 acres
10 involved and then later apparently you advertised the house and
11 13 acres for \$40,000 or in the \$40,000 range. You paid \$53,500
12 for this property and you were reserving approximately 102 acres
13 for \$13,500. Do you think you were fair to your client?

14 A This is a matter of figures here. The value of the
15 property is across the road up here because there's 13 buildings
16 over there, has been brought out. There's an old mill house and
17 so forth and that's where the value is. Not in the vacant land
18 on the other side.

19 MS. KENT: Adjoining your own property that has a lake
20 on it?

21 A Yes ma'am, right.

22 MS. KENT: Thank you.

23 MS. CLUTE: Wait, I don't understand. You said that
24 you didn't convey to your son that you had a binding contract until
25 he came back from vacation but you just testified that you had a

1 binding contract both on the 22nd and then again on the morning
2 of the...

3 A I didn't tell my son about it. I saw no reason.

4 MS. STEVICK: He came to you with an offer on that
5 property?

6 A This was on - the offer that he had was on the
7 24th or thereabouts.

8 MS. STEVICK: I know but if you already had a binding
9 contract why didn't you tell him right there on the spot?

10 A I mentioned I was buying the property. He was in a
11 hurry and I don't know whether he remembers about it but I told
12 him I had obligated myself to Mrs. Davis and I had to unravel this
13 thing, it would take a little time before I could get it closed
14 but I was buying the property.

15 MS. STEVICK: So you told him you were buying the prop-
16 erty then....

17 A I don't believe the words were used but the property
18 was off the market and I had obligated myself to Mrs. Davis to
19 help get it unraveled. I don't know how I explained it to him
20 because he was in a hurry to go. We just talked for maybe three
21 minutes.

22 MS. CLUTE: All right, do you have a question?

23 MR. HALL: The listing agreement dated 18 September '77.

24 A Yes sir.

25 MR. HALL: Did you consider that to be a binding listing

1 agreement between you and the seller?

2 A It was binding but there's also a provision between
3 us that this would also depend on the 10 acres being accepted by
4 Mrs. Raffbone. If that was accepted then she said she would lower
5 this a little bit more.

6 MR. HALL: This was binding in order that John or any-
7 one in your office including yourself could in fact offer the
8 property for sale?

9 A Yes, sure.

10 MR. HALL: Next question, there have been several times
11 and correct me if I'm wrong, but you made the statement that
12 upon the morning of the 22nd when you verbally agreed over the
13 phone that you felt you had met all obligations, was that correct?

14 A What she wanted, yes.

15 MR. HALL: Of all parties?

16 A Yes.

17 MR. HALL: All right, are you familiar with rule 18 of
18 the Commission that says, "Failure of a broker or salesman to
19 properly tender the seller every written offer to purchase"?

20 A I had no written offer at that time, the 22nd. There
21 was none in existence as far as I knew.

22 MR. HALL: But did you tender it when you found out it
23 was in existence?

24 A Then I - then I owned the property. I had the owner-
25 ship in it.

1 MR. HALL: And your agency no longer applied at that
2 time?

3 A Well now this was before I made the contract...

4 MR. HALL: You considered when you made a contract with
5 her verbally it automatically terminated this agreement is that
6 correct?

7 A That was the agreement between we two, yes. I con-
8 sidered it terminated.

9 MR. HALL: You considered it terminated.

10 A Yeah, sure.

11 MR. HALL: That's all.

12 MR. KLOPFENSTEIN: I have some questions.

13 MS. CLUTE: All right.

14 MR. KLOPFENSTEIN: Some of my questions have previously
15 been touched on. Mr. Bias you testified that you told Mr. Wetzel
16 when he came in and talked to either your son or somebody about
17 his contract, you testified that you said the contract was not
18 accepted.

19 A His contract was not accepted, yeah.

20 MR. KLOPFENSTEIN: Why did you use that terminology?

21 A Well I....

22 MR. KLOPFENSTEIN: When it had never been presented?

23 A I was the one - it should have come to me. I'm the
24 one that had ownership at that time. Mrs. Davis couldn't have
25 sold it.

1 MR. KLOPFENSTEIN: Mr. Bias, you told Mr. Wetzel, I
2 don't want to be argumentative with you but you testified that you
3 told Mr. Wetzel that his contract was not accepted.

4 A Yes, that's true.

5 MR. KLOPFENSTEIN: You didn't tell him by you.

6 A Should I have told him by me?

7 MR. KLOPFENSTEIN: Don't you think that the average
8 person would assume that you had presented the contract to the
9 owner of the property if you used the terminology, his contract
10 was not accepted? Now you testified that's that what you told
11 him.

12 A I don't know the exact words I used but I implied to
13 him it wasn't accepted. I don't remember how it was worded. It's
14 been a long time ago.

15 MR. KLOPFENSTEIN: You don't think with that language
16 that you would hope that he would get the implication that you had
17 presented the contract?

18 A No. Mr. Wetzel was a client of my son and I did not
19 want to get involved too deeply with him and I told him - I
20 remember telling him that....

21 MR. KLOPFENSTEIN: Your son had given you all these
22 things to do, you were acting as his surrogate I presume since
23 he was gone.

24 A Well I told him that the contract that he had wasn't
25 accepted and John would get with him when he came back.

1 MR. KLOPFENSTEIN: Well, we'll pass that by.

2 A Okay.

3 MR. KLOPFENSTEIN: What does the term back up contract
4 mean to you?

5 A You know, back up, I know what it means, but down
6 here it's very seldom ever used. We're in a different location
7 than you're in and a back up here just doesn't happen very often.

8 MR. KLOPFENSTEIN: Let me ask you this. If someone
9 else had had the offer on the property that had been accepted
10 either by telephone, even if you had had the contract back in
11 your office from Mrs. Davis, but it had not been your contract
12 but someone totally different and someone totally different from
13 Mr. Wetzel came in and said draw up a contract for \$80,000 for
14 you
that property would/have presented that to Mrs. Davis?

15 A I would have drawn it up but I think that I would
16 have been the one to decide where it went to.

17 MR. KLOPFENSTEIN: You would have made that decision...

18 A Down here yes.

19 MR. KLOPFENSTEIN: Even though you only had equitable
20 interest in the property. You were not the title owner. The title
21 had not changed and you would take that upon yourself...

22 A I don't know any other reason I should give it to
23 Mrs. Davis. I don't know any law anywhere or anything else that
24 says I must....

25 MR. KLOPFENSTEIN: I suggest you read the Real Estate

1 Manual as a licensed broker.

2 A I have.

3 MR. KLOPFENSTEIN: All right sir. Now on this October
4 contract for the - I'll scratch that, I was going to ask you the
5 same question about the advertising. You already testified you
6 don't remember any advertising in October for the 12 acres or
7 20 acres and the house or whatever.

8 A I don't remember, 13 acres.

9 MR. KLOPFENSTEIN: All right, that question was taken
10 care of. You also testified that you buy and sell a lot of
11 property and when you sell it you just simply sell it listed as
12 owner. Are you saying that you are running ads for property that
13 you own that you don't identify yourself as a real estate broker,
14 is that your testimony?

15 A No sir. If I were to run an ad on a piece of paper
16 piece of property that I'm selling myself I put in there broker
17 owned.

18 MR. KLOPFENSTEIN: That's in all your advertising in
19 which....

20 A Not in all of it, oh no.

21 MR. KLOPFENSTEIN: ...you're selling your own property?

22 A No sir, if that ad is placed in the MLS book then I
23 would not normally put in there it's being sold by the owner.

24 MR. KLOPFENSTEIN: You would not?

25 A No.

1 MR. KLOPFENSTEIN: So that the other agents who cooperate
2 with you would not be able to advise their prospective purchasers
3 that the owner is a licensee?

4 A I don't know of any provision whereby I have to.

5 MR. KLOPFENSTEIN: You do not?

6 A No sir.

7 MR. KLOPFENSTEIN: You are not aware of that?

8 A No sir I'm not.

9 MR. KLOPFENSTEIN: And you use the terminology too late
10 whenever you say that you could have theoretically seen the con-
11 tract on the 23rd or the 24th of September and you did not have
12 a signed ratified delivered copy of the contract on the sale of
13 the property and you consider that a contract at that time would
14 still be too late to be considered?

15 A Well at that time I considered it my obligation to
16 decide who it would go to.

17 MR. KLOPFENSTEIN: You could make the unilateral decision..

18 A I saw no reason I should call Mrs. Davis and get her
19 upset. She had what she was after.

20 MR. KLOPFENSTEIN: All right, I'm finished.

21 MR. FOXX: I have a couple. The only concern I have
22 is the consuming lack of concern on the part of John Bias about
23 the loss of his standing commission on what looked like a sale.
24 It seems like he showed no concern from the testimony, is that
25 normal?

1 A Yes it is because John and I have property together
2 and we work - or at least sometimes we'll sell our own property
3 and don't even charge a commission. I can see his point. It was
4 a normal feeling I'm sure.

5 MR. FOXX: You mentioned the Payne mortgage of \$20,000
6 and you implied of course that your purchase would make it con-
7 venient to handle that encumbrance.

8 A What it was, Mrs. Payne had a twenty some thousand
9 dollar mortgage in the property and I did not know at that time
10 how much it was but she insisted that she must be paid off.

11 MR. FOXX: Now that's what I want to get at.

12 A Yeah.

13 MR. FOXX: Have you seen the deed of trust that was
14 against it?

15 A Mr. Main here handled it.

16 MR. FOXX: Why did she have to be paid off?

17 A I called her myself personally and she said I want
18 my money. I talked to my brother about it and...

19 MR. FOXX: That was her reaction but can somebody tell
20 me why? Was there an acceleration clause, due on sale clause or
21 something in there?

22 MR. MAIN: There was a purchase money deed of trust
23 against the property, put on the property at the time Dr. Davis
24 purchased it.

25 MR. FOXX: All right. ~~What were~~ the terms in time?

1 MR. KLOPFENSTEIN: Was it in default? Was it called?

2 MR. MAIN: I don't know if it was in default or not.

3 Sir, I don't know if it was in default at the time....

4 MR. FOXX: He's testified it had to be paid or she...

5 MR. MAIN: It had to be paid in order to clear title
6 to the property. That's all I know about it. I don't know what
7 the - I wasn't involved in it.

8 MR. FOXX: Someone else could not assume it?

9 MR. MAIN: I don't know if it was assumable. When I
10 saw the deed of trust it was during the title examination of the
11 property and in order to clear title to the property it had to
12 be paid off and it was paid off by Mrs. Davis' attorney.

13 MR. FOXX: Let me ask you this. Do you know positively
14 that it could not be assumed in accordance with....

15 A No I don't, but what I asked her was this, that - if
16 Mrs. Davis sold her the 10 acres like for \$51,000 would she release
17 it and she said no, I want my money, all of it.

18 MR. MAIN: I could get you, do you want a copy of....

19 I can get you a copy of the deed of trust if you want it.

20 MR. FOXX: I'll tell you what I would like to inquire
21 about and that's the original copies of your calendar that you refer-
22 red to for activity, the original, and also the MLS change sheet
23 that you referred to. I think we're dealing with photocopies.
24 At any time was the investigator or....

25 A Well here's the original here.

1 MR. FOXX: That's the original of what you have photo-
2 copies...

3 A Yes, and....

4 MR. MAIN: There's a copy...

5 A This is a copy of it, it's right out of the book.

6 MR. FOXX: That's all I have.

7 MR. WALKER: I've got one question. Mr. Bias John
8 testified that he got a contract September the 21st...September
9 20th...anyhow, did he put it somewhere to you, your slot or
10 somewhere and you didn't get it until September 24th?

11 A Well he doesn't know where he put it because ...

12 MR. WALKER: That's besides the point, okay, anyhow
13 the offer was in your office somewhere for three days or four
14 days and it was not submitted to the owner. Knowing now, you
15 knowing now that that offer was in your office somewhere for three
16 or four days do you feel like you were neglectful in not submitting
17 in
18 this offer, neglectful/not representing your client properly?
19 Knowing now, I mean you testified you didn't know it was there
20 for three or four days.

21 A No, because I obligated myself on the 22nd, the morning
22 of the 22nd, specifically and my obligation is just like it's
23 written or anything else. I intend to comply with it and abide
24 by it. So I see no reason that I should...

25 MR. WALKER: You don't feel like anything was done
neglectful about not submitting this offer?

1 A No, because she was getting more money the way it
2 was.

3 MR..WALKER: You never know, this man could have come
4 up a higher price than that but you didn't give him a chance.
5 That's all.

6 MR. HALL: One last question. When you answered one
7 of Mr. Klopfenstein's questions about too late, did you make the
8 statement that she had what she wanted at that time?

9 A Well...

10 MR. HALL: When you said that it was too late to present
11 the second offer or the Wetzel offer, not the second offer, excuse
12 me, and then you said it was too late because she had what she
13 wanted...

14 A What I was trying to talk about was on the morning
15 of the 22nd I talked to her and we had agreed to buy and sell at
16 that time.

17 MR. HALL: You did say though that she had what she
18 wanted, did you not?

19 A Well that morning that's what she told me she would
20 take and she was happy with it.

21 MR. HALL: Okay, and at that time my only other question
22 to you is what about what Mr. Wetzel wanted. Did you not consider
23 him a member of the public also?

24 A I didn't know this until later on though.

25 MR. HALL: But when you found out about it she had what

she wanted so you didn't consider what he wanted....

A Well it was less than what we had agreed to and I considered the contract.

MR. HALL: He was given no opportunity - okay.

MS. CLUTE: All right, redirect?

REDIRECT EXAMINATION

By: Mr. Main

Q Mr. Bias on the morning of the 24th, a Friday morning did you go down to the Virginia National Bank and talk to one Jerry Matthews?

A On the 24th?

Q Yes sir.

MS. CLUTE: That was a Saturday.

Q Excuse me, the 23rd, not the 24th.

A Oh the 23rd, yeah.

Q And is he employed by Virginia National Bank?

A Yes sir he is.

Q In what capacity?

A He's a vice president.

Q What does he do there, what does he do down there?

A Loans.

Q Okay, now did you discuss with him a loan on this particular transaction?

A Yes sir I did.

1 Q At the time you went down there to discuss that with
2 him had you seen or were you aware in any way of the Wetzel offer?

3 A No sir.

4 Q But this was subsequent to the phone call on the 22nd?

5 A Yes sir.

6 Q With Mrs. Davis, is that correct?

7 A Yes sir.

8 Q Now a few minutes ago the affidavit or the question-
9 naire that Mrs. Davis was sent and answered and returned was
10 introduced into evidence. In that she says that it was her feeling
11 that you didn't have an agreement on the 22nd. Based on your
12 recollection of events that occurred is she correct or not?

13 A No actually she told me that she considered it to
14 be a binding thing on her part and she would comply with it. We
15 discussed it at length on the phone and so that's where we left
16 it.

17 Q Well in the course of your business do you advertise
18 properties for sale in the local newspapers?

19 A Yes sir I do.

20 Q Now in those advertisements do you ever list the
21 name of the owner?

22 A No sir we don't.

23 Q Do you ever list the names of other people who may
24 have submitted contracts on them?

25 A No sir.

1 Q What information do you put in one of those advertise-
2 ments in the newspaper?

3 A Just general information about the property itself,
4 sometimes the price, not all the time the price is in there.

5 Q And who is the reader instructed to get in touch with
6 after reading this advertisement?

7 A Usually one of the agents and also the company phone
8 number is in there too.

9 Q Does the logo of Cavalier Realty appear in there or
10 not?

11 A Cavalier Realty will appear or logo, one of the two.

12 Q With one advertisement?

13 A Yes, it's according to how many ads are in there at
14 a time.

15 Q Do you read these ads that appear in the newspaper
16 yourself?

17 A Not all the time.

18 Q Well when you do read them do you see where owners
19 names are listed?

20 A No sir. Oh, I read those ads but I haven't seen any
21 owners names listed.

22 Q Now on the 24th when John gave you the stack of
23 papers of pending business he had before he departed on his vacation
24 did you sit down and discuss each paper with him?

25 A No sir we didn't. Just briefly he said this is what

1 it is and I said well it's understandable and I can take care of
2 it.

3 Q And that's the last contact you had with John until
4 he got back from his vacation?

5 A That's correct, yes.

6 Q Now on the morning of the 24th did Mrs. Davis tell
7 you that she had signed the contract which she was sending back?

8 A She implied that she had signed the contract already.
9 I've signed it and am sending it back to you. I don't know whether
10 she had or not.

11 Q But is that what she told you?

12 A She told me she had signed the contract and was
13 ready to mail it.

14 Q Did you have any reason to disbelieve her?

15 A No sir, I didn't.

16 Q Now in your practice over the last - well, almost 20
17 years I guess, since 1962, after a property is put under contract
18 is it normal practice to continue after it's under contract to
19 submit offers to a seller?

20 A No sir, not after it's under contract.

21 Q Now in the listing agreement, do you ever submit offers
22 to a seller after it's under contract?

23 A No sir.

24 Q The term back up contract has been used this after-
25 noon. What does that mean to you, back up contract?

1 A Well it means to me if you have a contract on a
2 piece of property, I think this might be correct, that you have
3 some doubt as to whether it's-it's going to be closed or not you
4 might ask for a back up contract in case if it fell through
5 then the back up contract would step in and be in line.

6 Q In your practice situations in this area would you
7 use a back up contract in any situation?

8 A I have never used one down here. I suppose there
9 may have been some used though but I don't use them.

10 Q Now is this listing agreement that is your exhibit
11 number 4, is that a listing agreement that you generate there at
12 your own office?

13 A Yes sir it is.

14 Q Is that one that's in widespread use or was in
15 widespread use at the time or is that your particular form?

16 A No sir, this is our particular one.

17 Q Okay. Now...

18 A It's a standard form that comes out of the company.

19 Q Does this listing agreement provide for a price or
20 whatever other acceptable offer that the seller accepts?

21 A Yes sir.

22 Q And is that noted here on the face of it?

23 A Yes sir.

24 Q That's all I have.

25 MS. CLUTE: Does anyone have any further questions? Okay.

1 Q John Bias.

2 MS. CLUTE: All right, will you call Mr. Bias please?

3
4 JOHN BIAS having been previously sworn testified as
5 follows:

6 DIRECT EXAMINATION

7 By: Mr. Main

8 Q On the sheet, I guess of your index card or library
9 card or whatever on the Wetzels, do you recall that?

10 A Yes.

11 Q Well does that contain a listing of everything that
12 happened with regard to the Wetzels in this transaction?

13 A No, at the time if I thought something was pertinent
14 I wrote it down.

15 Q So there are other things that would have happened
16 that aren't listed here, is that correct?

17 A Quite a few things.

18 Q What procedure do you yourself follow at your office
19 regarding taking stuff out of the mailbox or getting stuff from
20 the mailbox back to the office?

21 A I don't think we have a set procedure.

22 Q Well what time - what time - back in 1977 what time
23 did the mail usually get to the house?

24 A Late in the afternoon.

25 Q What's late?

1 A Oh, 4:00, 4:30, something like that.

2 Q And when would it have normally been checked?

3 A After that sometime.

4 Q Okay, now, sometime after 5:00, around 4:30 or 5:00?

5 A Yeah, right.

6 Q All right, when would be the next time usually that
7 someone would check that mailbox?

8 A Well you're asking that like there was some set
9 sequence we went through in checking the mailbox and there really
10 wasn't any.

11 If
12 Q /the mail came at 4:30 in the afternoon would you be
13 down there checking it at 8:00 in the morning to see if the mail
14 had come?

15 A No.

16 Q Okay, so the next logical time would be sometime after
17 the regularly scheduled mail delivery the next afternoon?

18 A It would be brought in sometime that afternoon.

19 Q Okay. Now is the procedure in your office as you
20 described in your earlier testimony that when property is sold in
21 the same office the selling agent tenders the contract to the list-
22 ing agent who in turn deals with his client and if there's a res-
23 ponse you deal with your own clients?

24 A That's right.

25 Q That's a summary of what it is?

A Yes.

1 Q Is that something that's always been followed in your
2 office?

3 A Yes.

4 Q Okay. Does it still continue to be followed in
5 your office?

6 A Yes sir.

7 Q Do you recall where you went on vacation that year?

8 A I'm pretty sure I went to San Francisco that year.

9 Q Okay, were you married at the time?

10 A Yes.

11 Q You went with your wife?

12 A Yes.

13 Q Do you recall when you left? The day you left?

14 A Uh...

15 Q Do you have records that would indicate when you left?

16 A I'm pretty sure I left on the 24th or the 25th. I
17 don't recall exactly which day it was.

18 MS. CLUTE; Do you recall the day of the week?

19 A No.

20 Q Was it on a weekend or during the weekdays?

21 A Well the 25th was a Sunday, I think it was.

22 Q Did you fly or did you drive out there?

23 A Flew.

24 Q Okay, where did you fly from?

25 A Baltimore.

1 Q So you had to drive to Baltimore to catch a plane.

2 A Uh...generally, my wife had friends in the northern
3 Virginia area and we had a tendency to drive up, you know, like the
4 night before and then just leave the car there and they would take
5 us to the airport and fly out.

6 Q When you gave your father the information of the
7 pending business that you had in your office there before you left
8 do you recall whether there was any discussion about any particular
9 items of that business?

10 A No, I don't recall what discussion occurred at that
11 time.

12 Q Was there some memorandum made, I mean a note, either
13 a typewritten note or a written statement of what was in the
14 package of information?

15 A Yes.

16 Q Okay, and you attempted to locate that memorandum?

17 A Yes, I couldn't find it.

18 Q Were you able to locate it?

19 A No.

20 MS. CLUTE: Excuse me, you say you did give your father
21 a package of information?

22 A I never thought of it as being a package, it was
23 probably just a note and maybe whatever was relevant to that with
24 it.

25 MS. CLUTE: And when did you give this to him?

1 A Sometime prior to when I went on vacation, probably
2 a day or so before.

3 MS. CLUTE: Were there any contracts in your packet?

4 A Uh, I don't recall what was in it. I don't think that
5 Mr. Wetzel's contract would have been in that particular packet.
6 I think it would have already been on his desk.

7 MS. CLUTE: To the best of your knowledge Mr. Wetzel's
8 contract was not given to him when you had this....

9 A At that time?

10 MS. CLUTE: ...discussion before leaving on vacation?

11 A I don't think so.

12 Q But reference to the contract was on the memorandum
13 you were giving him?

14 A Yeah, anything at that time that I had that would have
15 been current would have been on there.

16 Q Did you ever tell Mr. Wetzel that his contract had
17 either been rejected or not accepted, you personally tell - ever
18 tell him that?

19 A I don't believe so at any time.

20 Q Does your father have other business interests other
21 than the real estate business?

22 A Yes.

23 Q Do you and your father normally discuss the other
24 business?

25 A Only the things that we might be involved in together.

1 Q Okay, but unless you're involved in it together with
2 him there's usually not that much exchange of information?

3 A No.

4 Q About the business is there?

5 A No.

6 Q Now, you had gotten had this deal with Mr. Wetzel
7 gone through a \$3,000, as you indicate, a \$3,000 real estate
8 commission, is that correct?

9 A Yes sir.

10 Q And it did not disturb you that you did not get that
11 commission, is that correct?

12 A Well I don't know what my mental attitude was at that
13 particular time.

14 Q Is this the first commission you've lost?

15 A No.

16 Q Do you and your dad engage in business activities
17 together?

18 A Yes.

19 Q Okay, prior to the time you came into the business
20 had you worked anywhere else?

21 A Yes.

22 Q What else had you done?

23 A Mainly probably I had sold automatic typing systems
24 in the Washington, D. C. area.

25 Q Okay. And then you moved back home?

1 A Right.

2 Q And your father brought you on in the firm?

3 A Right.

4 Q Have you always sold real estate with your father?

5 A That's correct.

6 Q Okay. Now what is your procedure if you have one
7 for obtaining a back up contract on a property which has already
8 been put under contract - let me rephrase that. After you know a
9 property has been put under contract do you normally go out and
10 solicit back up contracts?

11 A The only time I would do that is if I thought there
12 was some reason that the property - that the original contract
13 wasn't going to be - wasn't going to go through. It would have
14 to be pretty strong reason too.

15 Q All right you put the property under contract, have
16 there been occasions when additional offers have still continued
17 to come in from other people?

18 A On a particular piece of property?

19 Q When another realtor for example...

20 A I'm sure it has but I just can't think of an instance
21 right now where it's happened.

22 Q After a property is put under contract would it be
23 a normal procedure to continue to give offers to a seller?

24 A After it's under contract?

25 Q Yes.

1 A No.

2 Q Now who handles the - at this time who handled the
3 advertising responsibilities in the office?

4 A My father.

5 Q All right, did you participate in any of the newspaper
6 advertising, either by way of preparation of the ad or the copy
7 before it went out?

8 A No, anything that had to do with something that I
9 personally was responsible for, if it was my listing, you know, I
10 keep a list of when those things are advertised.

11 Q Do you read the advertisements in the paper?

12 A Yes.

13 Q Do they normally list the owner of the property?

14 A No.

15 Q What do they normally contain, information?

16 A A description of the property, possibly the price,
17 who to contact with regard to it.

18 Q Now if it was being listed - if it was a property
19 your firm had for sale or listed would you put on there, contact
20 owner and give the owners name and phone number?

21 A Oh no, absolutely not.

22 Q You'd have your own phone, either your name or some-
23 body else and the firm's name and phone number?

24 A That's right.

25 Q When do you recall the first time that the Wetzels

1 found out if you know, when your father had some sort of interest
2 in that particular property, the Payne's Mill property?

3 A It's too difficult for me to specifically remember
4 when things happened but I know that he came into the office one
5 time and I think it was the time of the second offer and my
6 father at that time explained to him that he was - had the pro-
7 perty under contract.

8 Q Okay, this would have been the October - the offer
9 of October 25th?

10 A That's right.

11 Q Of '77. That's all I have of John on this particular
12 issue. I want to use him again for the thing for the real estate.

13 MS. CLUTE: Do you have any cross examination?

14 MS. STEVICK: No, I don't think so.

15 MR. KLOPFENSTEIN: On the October the 25th contract I
16 believe you testified earlier that Mr. Wetzel called you on an
17 advertisement that was run by the company and you had laughed and
18 told him it was the same piece of property or part of the same
19 piece of property?

20 A Did I testify to that or did Mr. Wetzel?

21 MR. KLOPFENSTEIN: I thought that you did, maybe not.

22 A Well he testified to that at the hearing and I think
23 I said later on that that was the case. He testified to that at
24 the hearing. I don't remember exactly.

25 MR. KLOPFENSTEIN: All right, well let me just ask you

1 then, let's not worry about who testified about what. His con-
2 tract out of October the 25th for a portion of this property
3 was that precipitated by an ad that was running through your company?

4 A I don't remember why exactly that came about.

5 MR. KLOPFENSTEIN: You don't remember whether you called
6 him or he called you?

7 A No.

8 MR. KLOPFENSTEIN: You have no recollection of any of
9 the details of that contract of October the 25th which either you
10 had it typed up by someone in the office or you typed it up for
11 his signature and you don't remember any of the details of that?

12 A Well, I remember, you know, times that we were in the
13 office and working out contracts and this sort of thing but I
14 don't recall which contract we were working on at that time, be-
15 cause there were three different offers and it's all - in my mind
16 I can't remember which was on a particular offer.

17 MR. KLOPFENSTEIN: All right, well on the October the
18 25th offer, that contract was typed in your office relating to
19 a portion of the subject property at which time the seller was
20 listed as Mrs. Davis still, does that refresh your memory on what
21 contract I'm talking about.

22 A I know which one you're talking about, yes sir.

23 MR. KLOPFENSTEIN: Okay and did you give instructions
24 on how that contract was to be typed or did you type it up yourself?

25 A More than likely I typed it myself.

1 MR. KLOPFENSTEIN: And at that time you say you don't
2 remember whether or not there was any advertising or any promo-
3 tion at all on the part of the property at that time?

4 A No, I don't specifically remember. I know that
5 along about that time it was advertised I believe, but I don't
6 have any recollection specifically on what was happening right
7 then.

8 MR. KLOPFENSTEIN: Well what instructions had you had
9 on once it was advertised who the seller would be?

10 A I don't know that we specifically discussed that but
11 I was aware that my father had it under contract.

12 MR. KLOPFENSTEIN: But if you were going to prepare a
13 contract wouldn't you need to know to whom the contract would go
14 as the seller? I'm concerned...

15 A Yes sir.

16 MR. KLOPFENSTEIN: ...about the office procedure and
17 your being an agent there and not knowing whose name to put on
18 the contract. The contract specifically calls for names of pur-
19 chaser and seller?

20 A Right. I knew that then my father had the property
21 under contract.

22 MR. KLOPFENSTEIN: But at the time that it was advertised
23 and I understand even put into Multiple Listings where other agents
24 would bring in contracts at that time who was - whose name was
25 supposed to be on the contract as the seller?

would
1 A Well I should have put down I/guess that - my father's
2 name as the contract purchaser and I explained earlier why.

3 MR. KLOPFENSTEIN: I'm not talking about the October
4 25th contract. I'm talking about once it's advertised now, let's
5 get away from the October 25th contract, once it's advertised by
6 your firm and put in Multiple Listings you would not know, your
7 office would not be able to tell a casual agent that would come
8 in whose name to put on the contract as the seller?

9 A The listing would include, I would assume, include
10 the name of the seller.

11 MR. KLOPFENSTEIN: And the listing that went into Multiple
12 Listings at that time, do you recall whose name was on that listing?

13 A No sure, I'm sure....

14 MR. KLOPFENSTEIN: And you don't recall if you had had
15 someone that was interested in the property, or if you had wanted
16 to call the Wetzels again to see if he was still interested in it
17 you wouldn't recall to whom you would direct the contract for sale?

18 A I think that I have to make an involved answer to
19 that.

20 MR. KLOPFENSTEIN: Okay.

21 A Do you want me to?

22 MR. KLOPFENSTEIN: No, that's all right.

23 MR. MAIN: I think he ought to be able to answer it.

24 MR. KLOPFENSTEIN: Okay.

25 MR. MAIN: I feel like he ought to be able to answer the

1 question.

2 MR. KLOPFENSTEIN: Go ahead.

3 MR. DORSEY BIAS: I might be able to square it away.

4 MR. KLOPFENSTEIN: No, I didn't ask you the question
5 sir.

6 A I knew that my father had the property under contract
7 and I knew that he was trying to help Mrs. Davis out and at that
8 time I just wasn't sure how he would want to handle it, whether
9 he would want to actually sell the property or just not worry
10 about his contract and let Mrs. Davis sell the property. That was
11 my thinking when I wrote the contract. I just wasn't sure whose
12 name to put down on that basis.

13 MR. KLOPFENSTEIN: My question was after - long after
14 the October the 25th contract whose name would you have put on it
15 once it got in Multiple Listings?

16 A Well my feeling is probably I should have put Dorsey
17 Bias as contract purchaser.

18 MR. KLOPFENSTEIN: Would you have felt any obligation
19 at that time to tell the prospective purchaser that a licensee
20 had an equitable interest in it?

21 A Yes sir I would.

22 MR. KLOPFENSTEIN: But you didn't feel it was appropriate
23 on October the 25th?

24 A Well I said earlier I believe that that was the time
25 that my father explained to Mr. Wetzel that he had an interest in

1 the property.

2 MR. KLOPFENSTEIN: Your father had not explained to you
3 before October the 25th that he had an interest in it?

4 A No, I was aware of it at that time.

5 MR. KLOPFENSTEIN: But you did not tell Mr. Wetzel of
6 the October the 25th contract signing it, even though you were
7 aware of it at the time?

8 A Well my father just told him.

9 MR. KLOPFENSTEIN: Did you tell Mr. Wetzel on October the
10 25th that his contract was not accepted?

11 A On October the 25th?

12 MR. KLOPFENSTEIN: Um hum.

13 A Which - you mean the October the 25th contract?

14 MR. KLOPFENSTEIN: The October the 25th contract. Did
15 you use the terminology his contract was not accepted?

16 A You're talking about the \$35,000 offer. I don't
17 think it was - there was anything decided at that time. My car
18 has some reference to that doesn't it?

19 MR. MAIN: Which date?

20 MR. KLOPFENSTEIN: October the 25th.

21 MR. MAIN: I can't read it.

22 A Maybe I can decipher it. My notation says that on
23 the 25th of October - what was the date on the contract, was that
24 the 25th?

25 MR. KLOPFENSTEIN: I understand it's the 25th.

1 A That he did make the offer for \$35,000 for the house
2 and 20 acres and I talked to him by telephone the 3rd of Novem-
3 ber and told him at that time that it was possible that I could
4 get a counter of \$40,500 on his offer.

5 MR. KLOPFENSTEIN: Did you tell him from whom the counter
6 would come? Or who do you think the counter would have come from
7 at that time?

8 A I don't recall whether we discussed it or not
9 specifically.

10 MR. KLOPFENSTEIN: But who would you have assumed the
11 counter would come from at that time?

12 A My father.

13 MR. KLOPFENSTEIN: And it would be a normal case in
14 your procedure to call the purchaser and say that you could
15 probably get it, you wouldn't ask for a counter offer from the
16 seller to take to the purchaser?

17 A Generally I would but if the - if that was what I
18 was given to go back with that's what I would do.

19 MR. KLOPFENSTEIN: Now do you own property in your own
20 right that you buy and sell or do you - and do you have property
21 in joint ownership with your father that you buy and sell?

22 A Yes sir.

23 MR. KLOPFENSTEIN: And are these sometimes put into
24 Multiple Listings?

25 A Yes sir.

1 MR. KLOPFENSTEIN: But at that time I understand then
2 that there was nothing in the Multiple Listings agreement to let
3 the other brokers know that there is a licensee that has an
4 equitable interest or fee interest in the property?

5 A If it was through a corporation I don't think we
6 indicate do we?

7 MR. KLOPFENSTEIN: Well I'm asking the question to you
8 sir. I just wish you would....

9 A No sir I don't believe there was any....

10 MR. KLOPFENSTEIN: ...answer the question. You have
11 been asking frankly for some prompting.

12 A If it's listed - if the property is under our cor-
13 poration we put down the name of the owner, the corporation.

14 MR. KLOPFENSTEIN: And you don't tell anyone that you
15 are the corporation?

16 A I do when I show the property.

17 MR. KLOPFENSTEIN: No further questions.

18 MR. HALL: You were asked by legal counsel earlier if
19 you solicited contracts on property that was already under con-
20 tract, your statement was no, is that correct?

21 A Not in general.

22 MR. HALL: Okay, you used the word solicited and my
23 question is if an offer were unsolicited, in other words if an
24 agent in your office who was aware that the property was for sale
25 in fact
or if/the property had or was in Multiple Listing if an agent

1 brought in a contract to you as an office practice, not as an
2 individual but as an office practice would you too not present
3 that contract?

4 A You're telling me now that the property is under
5 contract and another contract after it's already under contract,
6 another contract was brought in...

7 MR. HALL: Um hum.

8 A That's not a back up contract, but it's another
9 offer, would I present that also?

10 MR. HALL: Would you present it to the seller as an
11 office policy?

12 A I don't know that its ever come up. I suppose I
13 would indicate that there was an offer but I don't know that I
14 would necessarily present it. I would tell him it was under
15 contract. I have never had anybody force an offer on me after
16 the property is under contract. He would go back and if he was
17 still interested and write it as a back up contract.

18 MR. HALL: Okay, thank you.

19 MS. CLUTE: Any further questions? Okay.

20 MR. MAIN: John, is this a copy of the fly sheet that
21 you all handled, your firm had on the Payne's Mill Farm?

22 A Yes sir.

23 MR. MAIN: In October of '76?

24 A Right.

25 MR. MAIN: And does that fly sheet contain the necessary

1 geographical information about that property, where it is located
2 and the size and what not?

3 A Right.

4 MR. MAIN: I would like to enter that in evidence.

5 MS. CLUTE: Let's see, that will be Respondent's Exhibit
6 9.

7
8 Respondent's Exhibit number 9 was so marked by the
9 Hearing Officer at this time.

10
11 MR. MAIN: All right, John I've just given you another
12 document. What is that?

13 A It's a copy of the fly sheet from the Multiple
14 Listing.

15 MR. MAIN: Okay, is that the information you send to be
16 put in the Multiple Listing?

17 A Yes.

18 MR. MAIN: Who provides those forms?

19 A The Board office, Real Estate Board.

20 MR. MAIN: Is there any place on that form where you
21 indicate any other interest in the property other than owner?

22 A No.

23 MR. MAIN: Owner and realtor?

24 A No.

25 MR. MAIN: And you all fill these forms out at the office

1 and send them in to the Multiple Listing?

2 A That is correct.

3 MR. MAIN: And then they in turn incorporate these
4 things into books which are made available to all the realtors?

5 A Right.

6 MR. MAIN: I would like to go ahead and get that in.

7
8 Respondent's Exhibit number 10 was so marked by the
9 Hearing Officer at this time.

10
11 do
12 MR. MAIN: Now John/you know at the time of this October
13 25th contract that the Wetzels prepared or was prepared and signed
14 by the Wetzels, do you know of your own knowledge at that time
15 who would have drawn and signed the deed to convey title to the
16 property? Would it have been Mrs. Davis or your father?

17 A If he bought the property, Mr. Wetzel's offer at that
18 time, if it was going to go through my father it would have to
19 be based upon my father being the contract purchaser and then my
20 father would have to close on the property and then the deed
21 would come through him.

22 MR. MAIN: So it would have gone from Mrs. Davis to
23 your father and then back to the Wetzels?

24 A Right.

25 MR. MAIN: Had that contract been submitted to Mrs.
Davis.

1 A Which contract?

2 MR. MAIN: October 25th.

3 A Oh, if I had written it as contract purchaser that
4 would be the way it would be done but I didn't write it that way.

5 MR. MAIN: Now do you recall after you got back from
6 vacation do you recall anybody else inquiring of you as to the
7 sale of this property, any other agents or people, agents or
8 public at large?

9 A No.

10 MR. MAIN: Do you know whether or not...

11 A I'm not sure, I just don't recall.

12 MR. MAIN: This is just based on what you know. Do you
13 know whether or not that property was shown by any other agent
14 in your office to anybody after you got back from vacation?

15 A I don't recall.

16 MR. MAIN: Do you know whether or not your office
17 received anymore purchase offers from anybody on the property
18 after you got back from vacation other than these couple from the
19 Wetzels?

20 A I don't have knowledge of anything like that but
21 I might not have remembered.

22 MR. MAIN: Well, to your knowledge?

23 A No.

24 MR. MAIN: Now do you know if this property after you
25 got back from vacation, whether the house and this 20 acres ever

1 got into Multiple Listing?

2 A I don't recall it.

3 MR. MAIN: Did you ever put it in Multiple Listing?

4 A No.

5 MR. MAIN: Do you know if your father did or not?

6 A No, I don't remember.

7 MR. MAIN: That's all I have.

8 MS. CLUTE: Any further questions? Anymore witnesses?

9 Okay is that the extent of the evidence?

10 MS. STEVICK: As far as I know.

11 MR. MAIN: I have additional evidence but it's unrelated.

12 MS. CLUTE: Okay, right, but on the matter at hand.

13 This concludes the evidence on the issue of the matter of Virginia
14 Realty Commission versus Dorsey V. Bias. The matter will be taken
15 under advisement. I will write a recommended opinion and the
16 final decision will be issued by the Virginia Real Estate Commis-
17 sion.

18 MS. STEVICK: Do you want argument, oral or written?

19 MS. CLUTE: I would suggest if we are going to have
20 argument I prefer they be written given the hour and the fact
21 that we still have some other stuff to go into.

22 MR. MAIN: I want the other stuff - of course all that's
23 proffer but I want to make it part of the record. You've overruled
24 my motion, but I want it proffered.

25 MS. CLUTE: Right but the evidence on the issue of the

discuss who represent

1 allegation , we've heard all that. Do you want to make short
2 closing statements?

3 MR. MAIN: You said you want them in writing?

4 MS. CLUTE: I said given the hour and the fact that we
5 have other evidence and whatever I would suggest that if you're
6 going to make closing arguments you make them in writing.

7 MR. MAIN: After the transcript has been produced.

8 MS. CLUTE: I don't agree with that unnecessarily. It
9 seems to me very clear from the evidence that that's been presented
10 that Mr. Bias was presented with an opportunity of an individual
11 who was not capable of representing her interests actively and
12 he seized upon that to promote his own and my recommended opinion
13 will be that - found that he has violated the regulation 18.2
14 section 19. Closing argument isn't going to change that and it
15 seems to me that the record is very clear. That will be my
16 recommended opinion and so if we take a short break and then we
17 will come back and you will be permitted to present - ask what-
18 ever witnesses you want regarding the question that you wanted
19 to put in.

20 MR. MAIN: If you are going to arrive at your decision
21 today, are you going to state the reasons for it or is that just
22 going to be your opinion?

23 MS. CLUTE: The evidence to me is clear that there has
24 been a violation of this particular section of the regulation
25 and my recommended opinion will be that he was found in violation

1 of that, and I will write a recommended opinion stating that which
2 will outline the reasons in detail.

3 MR. MAIN: Okay, I mean, if you're going to state that,
4 I mean, that leaves me at a - I can't address your reasons unless
5 I know what they are now. If your opinion came out first ...

6 MS. CLUTE: You will have the opportunity to have
7 my opinion and an opportunity to appeal that and address it in
8 whatever form you want. I don't want you all to go back and labor
9 over writing written opinions when the evidence to me is very
10 clear so I can tell you that that will be the recommended opinion.

11 MR. MAIN: I don't know, that may be irregular or
12 regular procedure, I would object to the procedure but I mean
13 I'm not going to have closing arguments if you don't want them.

14 MS. CLUTE: No, you're welcome...

15 MR. MAIN: What I mean, you've already said what your
16 decision is going to be so I don't - it would be foolish for me
17 to sit here and try to give an argument on it.

18 MS. CLUTE: Okay, well Mr. Main if I thought that there
19 would be any possibility that closing arguments would have made
20 a difference but since there seems to be some question about
21 whether or not we would have them, there's no need to proceed with
22 that. It seems to me that the evidence is very clear. Okay, then
23 we will take a short break and then reconvene.

24 All right, the hearing regarding the Virginia Real Estate
25 Commission versus Dorsey V. Bias is going to be reopened for the

1 purposes of counsel for Mr. Bias making a closing statement and
2 if in closing statement counsel brings to light any information
3 which makes it appear that my initial analysis of the evidence
4 is incorrect then I will so state and change my recommended
5 opinion. Mr. Main I'm going to let you make a closing statement.

6 MR. MAIN: Very briefly, I do not know what the basis
7 or the foundation of your decision is therefore it would/difficult
8 for me to address myself to any particular point, since I don't
9 know what it is that you may or may not be interested in and I
10 don't want to belabor all the issues that have come up today. I
11 will say that I do not believe that the duty to tender an offer
12 here which has allegedly been violated and which you found I guess
13 has been violated arises under the laws of this Commonwealth.
14 Whether it's right or wrong is another question, whether it's
15 lawful or unlawful is I think what a lot of this is all about.
16 I don't think that the conduct of Cavalier Realty, particularly
17 Dorsey Bias, violates any law and to the extent that this regulation
18 departs or does not reflect the common law of the Commonwealth.
19 I don't think he's committed any violation, nor does this regulation
20 nor any case interpreting this regulation define what the word
21 promptly means. Of course that's a decision that has to/made on
22 the facts of each case. Of course in this particular case I
23 have seen no evidence offered by the Commission which is the offer-
24 ing party that the offer was not promptly tendered to Mrs. Davis.
25 We're talking about basically Mr. Bias being out of town during

1 the time that the offer actually came into the office and by the
2 time he received notice of the offer he had already negotiated
3 with Mrs. Davis for the purchase of this property. There's been
4 no evidence offered by the Commission that a lapse of one day,
5 two days, three days or ten days is or is not the accepted practice
6 either by the Commission or by the realtors in this area and I
7 think it's incumbent upon the Commission to show the time frame
8 within which this thing should be handled. Furthermore I do
9 not think that - I don't believe that the evidence that was offered
10 by the Commission shows any neglect or improper activity on the
11 part of John Bias. Of course he's not the responding party here
12 but certainly much of what went on involved him and of course
13 anything he did wrong would be probably imputed to Mr. Bias who
14 is the broker in charge. I don't think there's any evidence that
15 Mr. John Bias acted in any way improperly in his handling of
16 this transaction. In short as a matter of law I think Mr. Bias
17 was justified in believing that on the morning of the 22nd he had
18 a valid offer to purchase this property. I grant that he could
19 not have gone to court that day and enforced it nor could he have
20 gone any day and enforced it, nor, if the statute runs on a
21 promissory note could he go into court and enforce that although
22 it would be still a valid obligation on the part of the maker,
23 just not enforceable in a court of law and therefore meaningless.
24 The activities in which he engaged after receiving the telephone
25 call I think are consistent with what he says happened. On the

1 day that he says this happened two contracts were typed and mailed
2 to New York. On the 24th, excuse me, the 23rd, Friday the 23rd
3 he went down to see his banker about negotiating a loan for the
4 purchase of this property. All of these things are consistent
5 with his statement to you and to this Commission that he believed
6 and justifiably so, had reason to believe that he had a valid
7 offer on this property, something that, like I said although not
8 enforceable in court, it was binding as between he and Mrs.
9 Davis because of their course of dealings with each other. I
10 think it's most interesting to note that at no time since September
11 of 1977, although these things were brought to Mrs. Davis'
12 attention I think in January or December of that year, has Mrs.
13 Davis ever in any way complained either about the conduct of
14 Mr. Bias, about the failure of the transmission of the offer,
15 about the purchase price she got, about the way the thing was
16 handled by Cavalier Realty. And for that reason I ask that this
17 thing be - obviously you have made a decision but I think the
18 thing ought not to be carried any further than that.

19 MS. CLUTE: I think Mr. Main you haven't put a different-
20 you haven't drawn anything to my attention that would cause me
21 to change. It seems to me the evidence is very clear of the
22 violation of the regulation. Okay, so with that we will close
23 the hearing on the issue of the Virginia Real Estate Commission
24 versus Dorsey V. Bias as regards the evidence relating to the
25 violation. Now Mr. Main has asked for the opportunity to question

1 some witnesses regarding the issue of laches and I've stated that
2 I would allow him to do that, for whatever purpose it might serve.

3 MR. MAIN: Mr. Matthews.

4
5 MR. MATTHEWS having been previously sworn testified
6 as follows:

7 DIRECT EXAMINATION

8 By: Mr. Main

9 MS. CLUTE: The first question Mr. Main I'd really like
10 for you to ask him is does he have any knowledge regarding this.

11 Q Mr. Matthews do you have any personal knowledge
12 of why - why this particular petition or the petition filed by
13 the Commission on January 28th, can you account personally for the
14 lapse of time from the 22nd of January of 1979 when your superior
15 notified the complaining party, Mr. Wetzel that there had been a
16 violation and then the, almost one year later, the notice of a
17 hearing that went out on this matter, do you have any knowledge
18 as to why that happened?

19 A As to why?

20 Q Yes.

21 A No sir.

22 Q After January 22nd did you conduct any further in-
23 vestigation in this particular matter?

24 A Yes I did.

25 Q Okay, and what was the nature of that investigation?

1 A A memorandum from William W. Dennis.

2 Q Okay, and who is he?

3 A He was the assistant director - deputy director of
4 real estate.

5 Q And did he direct you to do a follow up investigation?

6 A He asked me to do further investigation.

7 Q Okay, and did you do so?

8 A Yes I did.

9 Q Did you contact Mr. John Bias or Dorsey Bias after
10 he asked you to do a follow up?

11 A No I didn't.

12 Q Who did you contact?

13 A I contacted Mr. Roger H. B. Davis and attorney J.
14 U. Wetzel.

15 Q And was the attorney J. U. Wetzel the attorney for
16 the complaining witness, Mr. Thomas Wetzel?

17 A Yes he was.

18 Q Did you contact anybody who would have said anything
19 for the respondent? You didn't contact the respondent did you?

20 A No I didn't.

21 Q Did you contact me?

22 A No I didn't.

23 Q Did you know I was a counsel at the time?

24 A Yes I did.

25 Q How did you obtain that information?

1 A I had talked to you...

2 Q Prior to the 22nd.

3 A I had talked to you when I first got the complaint.

4 MS. CLUTE: Excuse me Mr. Main....

5 Q Prior to the 22nd...

6 MS. CLUTE: We could be here for a long time just talking
7 about all types of things, but the issue you want to discuss is
8 whether or not - the reason for the delay.

9 Q Um hum.

10 MS. CLUTE: And I don't see that what you're covering
11 right now relates to the reason for the delay, I mean, what he
12 investigated is totally another question.

13 Q Well let me ask, are the records that you are reading
14 out of now records which are also part of the Commission records
15 in this case?

16 A Yes it is, memorandum report.

17 Q Do you have a file on all the activity that you were
18 engaged in on this particular case?

19 A I have the report.

20 Q Okay, you have a file with notes and any other
21 addenda that you made?

22 A I have my pencil written notes regarding this report.

23 Q I would simply ask if it is agreeable that he supply
24 to you with copies to me all of his notes and records on this
25 entire investigation.

1 A Now the pencil written notes that I have on this is
2 going to be the same as the report.

3 MS. CLUTE: Do you want those admitted as your evidence?

4 Q I want it admitted as evidence.

5 MS. CLUTE: You already said you were going to admit
6 the record as evidence but you never did do that.

7 Q I told you I was going to do it at this point in
8 time. If you remember.

9 MS. STEVICK: If the investigative report is there, it
10 seems to me that's the last word on what his investigation
11 included and revealed. I don't know that his pencil notes will...

12 Q Your investigative report, does it accurately reflect
13 your penciled notes?

14 A This is what I would testify on in any proceeding.

15 Q That will be fine, if that's your statement fine.
16 And I assume, without calling Mr. Seitz as a witness that you will
17 provide me with all the other documents that the Real Estate
18 Commission has on this particular investigation?

19 MS. STEVICK: I understood that what you wanted and what
20 I am certainly willing to supply is the investigative file which
21 includes Mr. Matthews report and that would include some corres-
22 pondence. It would have the notice of hearing...

23 Q Would it include her office memorandum as to what
24 happened when and by whom and who initiated what?

25 MS. STEVICK: It might have some, I don't know.

1 MS. CLUTE: Mr. Main that file should have been available
2 to you anytime upon your request. Have you ever requested it
3 before right now?

4 MR. MAIN: No.

5 MS. CLUTE: Well why didn't you? It seems to me that
6 that would have been a logical place to begin preparing for the
7 hearing today.

8 MR. MAIN: That's an issue that you're not able to
9 consider.

10 MS. CLUTE: Right, but it seems to me that, you know,
11 the request you're making is very untimely.

12 MR. MAIN: Are you denying my request?

13 MS. CLUTE: No, she's willing to make it available to you.

14 MS. STEVICK: Well under the freedom of information act
15 once the file is closed it is a matter of public record. Anybody
16 can walk in off the street and look at it so I don't know...

17 MR. MAIN: Of course it's not closed....

18 MS. STEVICK: No, but what I'm saying though is there
19 will be a point in time when anybody can look at it so I don't
20 see that the department would have any serious objections to
21 making it available.

22 MS. CLUTE: If he pays the copying charges he will be
23 given a copy?

24 MS. STEVICK: Yes.

25 MS. CLUTE: All right.

1 MR. MAIN: That's all.

2 MS. CLUTE: Okay, Mr. Matthews thank you. Do you
3 have some more?

4 MR. MAIN: No.

5 MS. CLUTE: That was the only person you wanted to
6 question? All right, that ends the proceeding today.

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1 STATE OF VIRGINIA AT LARGE:

2 I, Sarah W. R. Lane, Notary Public in and for the
3 State of Virginia at Large having been so duly commissioned
4 and qualified do certify that the foregoing hearing was duly
5 taken by me at the time and place specified in the caption
6 hereof, said witnesses having been first duly sworn.

7 I do further certify that said hearing was correctly
8 taken by me by mechanical methods and the same was accurately
9 written out in full and transcribed into the English language
10 and that said hearing is a true, accurate, and correct record
11 of the testimony by said witnesses.

12 I further certify that I am neither attorney nor
13 counsel for or related to or employed by any of the parties
14 to the action in which this hearing was taken and further
15 that I am not a relative or employee of any attorney or
16 counsel employed by the parties hereto or financially interested
17 in this action.

18 My Commission expires September 11, 1982.

19 Given under my hand and seal this 21st day of March
20 1980.

21
22 _____
Notary Public
23
24
25



EXHIBIT 1
REAL ESTATE SALES CONTRACT
CAVALIER REALTY COMPANY
Charlottesville, Virginia



This contract of sales made this 20TH day of SEPTEMBER, 1977
between THOMAS G. AND JANE M. WETSEL (hereinafter called Buyer)
and TOLLY E. DAVIS (hereinafter called Seller)
and JOHN BLAS (hereinafter called Agent)

WITNESSETH: That for and in consideration of the sum of FIVE HUNDRED
00 Dollars (\$ 500.00) by cash/note in hand paid, receipt
of which is hereby acknowledged by the Broker, the Buyer agrees to buy and the Seller agrees
to sell for the sum of SIXTY THOUSAND Dollars
(\$60,000.00) all that certain piece, parcel or lot of land described as follows,
to-wit 135 ACRES MORE OR LESS AND ALL IMPROVEMENTS ON
STATE ROUTE 779, BUCKINGHAM CO.

The purchase price to be paid as follows: BUYER TO OBTAIN FINANCIAL
FROM LENDING INSTITUTION BY PAYING UP TO THE
COMPLETE INTEREST RATE.

This contract is subject to the following: (1) SELLER TO PROVIDE CERTIFICATE
FROM REPUTABLE EXTERMINATOR THAT PROPERTY/HOUSE IS FREE
OF WOOD DESTROYING INSECTS AND TO CORRECT ANY DAMAGE
FOUND. (2) LISTING SHEET IS PART OF CONTRACT.

The Seller agrees to convey the above property with a general warranty deed with the
usual covenants of title, same to be prepared at Seller's expense.

Risk of loss to said property by fire, windstorm, accident or other casualty shall be borne by
seller until settlement.

All taxes, interest, insurance, rents, FHA and other escrow deposits, if any, shall be pro-
rated and adjusted to date of settlement.

Settlement shall be made on or before NOVEMBER 20, 1977, or as soon thereafter
as title can be examined and papers prepared, allowing a reasonable time to correct any defects
reported by the title examiners.

It is understood that title is to be free and clear of all liens and indebtedness of every kind
except those mentioned above.

It is understood that the property is to be conveyed subject to applicable restrictive coven-
ants and easements of record.

Seller agrees to pay to Agent for his services the usual commission.

WITNESS the following signatures and seals:

Thomas G. Wetzel (SEAL) _____ (SEAL)
Buyer Seller
Jane M. Wetzel (SEAL) _____ (SEAL)
Buyer Seller

23,112

EXHIBIT 3

Cavalier Realty Company



AREA CODE 804
877 3186



RESERVOIR ROAD, ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

TOWN
COUNTRY
SUBURBAN PROPERTIES

Sep. 21, 1977

Tom,

Here are your copies. I'll let
you know as soon as I hear
something.

Be talking with you soon.

CHAMBERLAINVILLE, VA., SEP 20 1977 DUE 10 DAYS AFTER

SIGNED CONTRACT WITH DAVIS AFTER DATE. FOR VALUE RECEIVED WE PROMISE TO
PAY TO THE ORDER OF CAVALIER REALTY CO. \$500.00
FIVE - HUNDRED 00/100 DOLLARS

NEGOTIABLE AND PAYABLE WITHOUT OFFSET AT THE NATIONAL BANK AND TRUST CO., CHARLOTTESVILLE, OR ANY OF ITS OFFICES IN THE STATE OF VIRGINIA.

The makers and endorsers of this note do each hereby waive the presentment of and demand for payment of said note, and also waive protest, notice of protest, and notice of dishonor and non-payment thereof; and do hereby expressly agree that should the holder of this note give notice of presentment, demand for payment, protest, notice of dishonor and non-payment thereof, that the giving of such notice shall not affect the validity of the above waiver; but said waiver shall be as valid and binding as if such notice had not been given. The said makers and endorsers do also hereby waive the benefit of their homestead exemption as to this obligation, and further agree to pay an attorney's fee of eighteen (18) per cent of the amount of this note for collection in case payment shall not be made at maturity.

Address Rt 1 Box 333 Scottsville, Va. SIGNATURE: Thomas A. Winters (SEAL)

No. SIGNATURE: Gene M. Winters (SEAL)

INTEREST	CURTAILMENT RECD.	OFFICER	RATE	FOR BANK USE ONLY	CLASS	ORIGINAL DATE	N - R	ORIGINAL AMOUNT
\$								

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Cavalier Realty Company



AREA CODE 804
977-3716



RESERVOIR ROAD, ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

TOWN
COUNTRY
SUBURBAN PROPERTY

October 3, 1977

Mr. and Mrs. Tom Wetsel
Route 1, Box 38B
Scottsville, VA 24590

Dear Tom and Jane:

Please find enclosed the note you signed. I thought you might want it for your records.

I am sorry I was out of town when you dropped by. I hope to see you again soon.

Sincerely,

John Bias
John Bias

3

CHARLOTTESVILLE VA. SEP 20 1977 DUE 10 DAYS

SIGNED CONTRACT WITH DAVIS AFTER DATE, FOR VALUE RECEIVED WE PROMISE

PAY TO THE ORDER OF CAVALIER REALTY CO. \$500.00

FIVE - HUNDRED 00/100 DOLL

NEGOTIABLE AND PAYABLE WITHOUT OFFSET AT THE NATIONAL BANK AND TRUST CO., CHARLOTTESVILLE, OR ANY OF ITS OFFICES IN THE STATE OF VIRGINIA

The makers and endorsers of this note do each hereby waive the presentment of and demand for payment of said note, and also waive notice of protest, and notice of dishonor and non-payment thereof; and do hereby expressly agree that should the holder of this note give notice of presentment, demand for payment, protest, notice of dishonor and non-payment thereof, that the giving of such notice shall not affect the validity of the above waiver, but said waiver shall be as valid and binding as if such notice had not been given. The said makers and endorsers do also hereby waive the benefit of their homestead exemption as to this obligation, and further agree to pay an attorney's fee of eighteen (18) per cent of the amount of this note for collection in case payment shall not be made at maturity.

ADDRESS Rt 1 Box 38B Scottsville, Va. SIGNATURE: *Thomas A. Wetsel*

NO. SIGNATURE: *Sam M. Wetsel*

INTEREST	CURTAINMENT RECD.	OFFICER	RATE	FOR BANK USE ONLY	CLASS	ORIGINAL DATE	N-R	ORIGINAL AMOUNT
\$								

BA'S EXHIBIT #1 d.c.

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#3



REAL ESTATE SALES CONTRACT
CAVALIER REALTY COMPANY
 Charlottesville, Virginia

This contract of sales made this 25th day of October, 1977
 between Thomas G. & Jane M. Wetsel (hereinafter called Buyer)
 and Tolly E. Davis (hereinafter called Seller)
 and John S. Bias (hereinafter called Agent)

WITNESSETH: That for and in consideration of the sum of Five Hundred

Dollars (\$500.00) by cash/note in hand paid, receipt of which is hereby acknowledged by the Broker, the Buyer agrees to buy and the Seller agrees to sell for the sum of Thirty Five Thousand Thirty Eight Thousand Dollars

7.12 (\$38,000 38,000) all that certain piece, parcel or lot of land described as follows, to-wit: 20 acres, more or less, to be sold by the boundary, with dwelling, and improvements thereon, situated on the East Northeast side of State Route 699 in Buckingham County, Va. This is a portion of the Paynes Mill Farm owned by Dr. John Davis (deceased) which was about 125 acres. *134*

The purchase price to be paid as follows: Buyer to obtain financing from a lending institution by paying up to the competitive interest rate. All cash at closing.

This contract is subject to the following: Seller to provide certificate from an exterminator that house is free of wood destroying insects. Machinery to be included in price Tractor, plow, disk, bushog, rotary plow, and lawn mower. *135*
Seller reserves electrical right of way to south side of road 699, for balance of property.

The Seller agrees to convey the above property with a general warranty deed with the usual covenants of title, same to be prepared at Seller's expense.

Risk of loss to said property by fire, windstorm, accident or other casualty shall be borne by seller until settlement.

All taxes, interest, insurance, rents, FHA and other escrow deposits, if any, shall be prorated and adjusted to date of settlement.

Settlement shall be made on or before December 25, 1977, or as soon thereafter as title can be examined and papers prepared, allowing a reasonable time to correct any defects reported by the title examiners.

It is understood that title is to be free and clear of all liens and indebtedness of every kind except those mentioned above.

It is understood that the property is to be conveyed subject to applicable restrictive covenants and easements of record.

Seller agrees to pay to Agent for his services the usual commission.

WITNESS the following signatures and seals:

<u>Thomas G. Wetsel</u>	(SEAL)	_____	(SEAL)
Buyer		Seller	
<u>Jane M. Wetsel</u>	(SEAL)	_____	(SEAL)
Buyer		Seller	

Receipt of Deposit Acknowledged
 Agent, CAVALIER REALTY COMPANY

300 107 464

THIS DEED, made this 5th day of December 1977, by and between Stella Tolly E. Davis, widow, party of the first part and Dorsey V. Bias and Imogene S. Bias, husband and wife, parties of the second part;

W I T N E S S E T H

That for and in consideration of the sum of Fifty-Three Thousand, Five Hundred Dollars (\$53,500.00) cash in hand, the receipt of which is hereby acknowledged, the party of the first part does hereby Grant, Bargain, Sell and Convey to Dorsey V. Bias and Imogene S. Bias, husband and wife, as tenants by the entireties with full right of survivorship as at common law, and not as tenants in common, with GENERAL WARRANTY OF TITLE and the usual English Covenants of Title all that certain lot or parcel of land situated in the Slate River Magisterial District of Buckingham County, Virginia, containing 115 acres, more or less, described by plat recorded in the Clerk's Office of the Circuit Court of said County in Deed Book 18, Page 275. This land lies on both sides of State Route 679 and on both sides of Little Georges Creek, and is subject to an easement to Virginia Telephone and Telegraph Company recorded in Deed Book 71, Page 239; to an easement to Appalachian Electric Company recorded in Deed Book 50, page 413; and to a boundary line agreement recorded in Deed Book 67, page 63. The tract hereby conveyed is all the remainder of a 125 tract conveyed to John Staige Davis and Stella Tolly E. Davis, as tenants by the entirety by deed of Annie P. White dated July 25, 1972 and recorded in the Clerk's Office of the Circuit Court of Buckingham County, Virginia in Deed Book 87, Page 652, less ten acres conveyed to Caroline Rathbone.

John Staige Davis died the 11th day of September 1977.

Witness the following signature and seal.

B's Exhibit # 6 D.C.

230 Stella Tolly E. Davis

BOOK 107 PG 465

STATE OF NEW YORK
COUNTY OF

NEW YORK

The foregoing instrument was acknowledged before me on the
9 day of DECEMBER 1977 by Stella
Tolly E. Davis.

Given under my hand this 9 day Dec 1977
My commission expires 3/30/79.

Matthew S. DeLano
Notary Public

Notary Public
Qualified in New York County
Commission Expires March 30, 1979

VERIFIED in the Clerk's Office of the Circuit Court of Buckingham County, 1-6 1978,
The foregoing deed was this day presented in said office and thereupon together with the certificates
thereto annexed, admitted to record at 4:10p M. S. 53.50 tax imposed by Sec. 50-54 (b) paid.

ATTEST: MALCOLM BOOKER, JR. CLERK
BY: Brenda L. Pitlor DEP. CLERK

Wetzel, Tom & Jane

~~485~~ 7016 - b. 830

Walton (O) 977-5615

(C) 386-384

Rt. 1, Box 388, Scottsville, VA 24590

8/1/77 (C) DP: Dues (W/V) (M.W.)

11 SHOWED Dues to Tom. Wife has 2nd floor.

3rd floor. 1000 sq ft. 600 sq ft. 400 sq ft. 200 sq ft. 100 sq ft.

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

8/2/77 (C) DP: Dues (W/V) (M.W.)

Wetzel offer to purchase the tract.

August 2, 1978: Mr. Wetzel telephoned and discussed our ad on the Fynes Hill tract. I passed the property to Mr. Wetzel.

September 15, 1978: I telephoned and talked to Mrs. Wetzel. I told her Dr. Davis had passed away. I suggested that, because the status of the property had changed, it might be a good time to make an offer.

Sometime prior to September 25 I obtained an offer from Mr. and Mrs. Wetzel for purchase of the 125 acre Fynes Hill tract. I passed this offer without delay on to my father, Dorsey Biss, who was the listing agent.

September 25: I left on vacation.

October 2: I returned from vacation.

October 3: I called Mr. Wetzel's wife back to him.

John Biss
Sept 21, 1978
August 7, 1978

RALPH E. MAIN, JR.
ATTORNEY AT LAW
403 PARK STREET
CHARLOTTESVILLE, VIRGINIA 22901
(804) 977-4742

January 8, 1979

Roger HB Davis, Jr., Chairman
Professional Standards Committee
Charlottesville-Albemarle Board of Realtors
P.O. Box 5384
Charlottesville, Virginia 22903

Re: Wetsel v. Bias

Dear Roger:

I enclose herewith the questionnaire which I mailed to Mrs. Davis and to which she responded. Her answers are written in in blue ink and were sworn to by her in New York.

I would request that you circulate this questionnaire among the members of the panel who heard the Bias case. After reading the answers to the questionnaire, I am satisfied that Dorsey Bias served his client well. I hope that you and your colleagues feel the same way and if you do, I think some modification of your previous decision would be in order.

Please let me know the results of the rehearing as soon as possible.

Also, I have asked this question before, but have yet to receive an answer. That is, how do I go about obtaining a copy or a transcript of the evidence that was offered at the hearing? In the event that Dorsey Bias elects to appeal the decision, a transcript of what took place would be necessary.

Looking forward to hearing from you soon, I am

Very truly yours,


Ralph E. Main, Jr.

REMjr/plm
File #453
Enc.

Bd's Exhibit # 9 D.C.

234

QUESTIONNAIRE TO MRS. JOHN S. DAVIS

1. Prior to September 1977, how long had you known Dorsey Bias?

Since the summer of 1972

2. How did you come to know Mr. Bias?

I believe he had handled the sale of property in Buckingham to Dr. Davis's son, Dr. John S. Davis IV - & we asked him to look for property for us

3. Prior to September 1977, did you and your late husband own Payne's Mill Farm in Buckingham County, Virginia?

We bought it on July 31st 1972

4. How long had you and your late husband owned Payne's Mill Farm?

Until I sold it on January 6th 1978

5. When did you and your late husband decide to list the Farm for sale?

This was done directly between Dr. Davis & Mr. Bias - The date on the prospectus I have is October 1976

6. Why was Dorsey Bias selected to handle the sale of Payne's Mill Farm?

Because he was familiar with the farm & the area

7. Prior to September 1977, did you know that Dorsey Bias owned a tract of land adjoining Payne's Mill Farm?

Yes

8. Prior to September 1977, were you acquainted with a Mrs. Rathbone of New York City?

I have never met Mrs. Rathbone, although I have spoken to her on the phone several times. She had been a patient at my husband's for some time

9. Did you know that your late husband owed Mrs. Rathbone \$5,000.00?

Mrs. Rathbone gave Dr. Davis \$5,000.00 as a deposit towards the purchase of 10 acres of the Payne's Mill property for which she agreed to pay \$5,000.00. This was a verbal agreement - There was no contract signed at that time.

10. Prior to September 1977, had your late-husband agreed to sell Mrs. Rathbone a 10 acre tract off of the Payne's Mill Farm property?

Discussed in #9

11. If so, what was the price and what were the terms of the sale?

\$15,000.00 - a no "terms" that I know of

12. If so, when was the sale supposed to take place?

Whenever she was ready

13. On September 18, 1977, after your husband's funeral, did you drive Dorsey Bias to Payne's Mill Farm?

Mr. Bias drove me, as I did not have a car

14. While at Payne's Mill Farm did Dorsey Bias express interest in purchasing the Farm? Please relate the substance of this conversation.

No he did not

15. Was the sale of 10 acres to Mrs. Rathbone discussed at that time? Please relate the substance of this conversation.

Mr. Bias was previously aware of Mrs. Rathbone's intention - I believe I had heard from her then & knew that she wanted to go ahead.

16. Did you reduce the listing price for the Farm to \$75,000.00? What was the basis of the \$75,000.00 figure?

Yes - I asked Mr. Bias what would be a realistic price & that was his answer

17. While at the Farm, was there any discussion about obtaining a release of the 10 acres proposed to be sold to Mrs. Rathbone from the Annie White mortgage? No - Mr. Bias said it would

not prejudice the sale of the remaining 115 acres as to the mortgage. I do not understand the question -

18. On the morning of September 22, 1977, did you telephone Dorsey Bias?

I believe he telephoned me -

19. If so, did you inform Mr. Bias that Mrs. Rathbone had agreed to purchase acres from Payne's Mill Farm for \$15,000.00?

I may have told him then or on the 12th - I don't remember exactly when she phoned me

20. If so, did Dorsey Bias offer to purchase the balance of Payne's Mill Farm for \$50,000.00.

Yes

21. Did you accept his offer of \$50,000.00 at that time?

No I said I would think it over

22. If so, did you feel that you had a binding agreement with Mr. Bias?

No

23. Was there any question in your mind about the legality or validity of the agreement to sell the balance of the Farm to Mr. Bias?

No

24. Did Dorsey Bias agree during the telephone conversation to prepare and forward to you contracts for the Rathbone purchase and for his purchase?

Yes

25. When did you receive those contracts?

~~on Sept 24th~~ I don't remember exactly - probably Sept 24th

26. What did you do with the Rathbone contract when you received it?

Mailed it to Mr. Schmitz as she had directed me

27. In the morning of September 24, 1977, did you telephone Dorsey Bias?

I'm not positive of the date, but it was about then

28. During that telephone conversation, did you advise him that the Rathbone contract had been signed?

I don't remember exactly when it was signed - It could have been then, but I don't know. I told him.

29. Did you tell Dorsey Bias that you had signed the contract with him.

No

30. Did you state to Dorsey Bias that you would like to get more money for the property?

Yes

31. Did you and Mr. Bias then agree upon a price of \$53,500.00 for Payne's Mill Farm?

Yes

32. Did you state to Mr. Bias that you would make the appropriate change in the written contract sent to you?

Yes & then I would sign it -

33. Do you know approximately when the sale of Payne's Mill Farm to Dorsey Bias closed? When?

January 6th 1978

34. From the time that you telephoned Dorsey Bias on September 24, 1977 until the sale of the Farm closed, what contact did you have with Dorsey Bias about the Farm?

We talked on the phone several times I believe, probably about when the closing could take place

35. If such contacts were in fact made, please state when the contacts took place and what was discussed during such contacts.

See above

36. Were you satisfied with the services rendered by Dorsey Bias in connection with the listing and sale of Payne's Mill Farm?

Yes

37. Were you satisfied with the prices paid by Mrs. Rathbone and Dorsey Bias for their respective interests in Payne's Mill Farm?

Yes

38. Did a Thomas Wetsel contact you after the sale of Payne's Mill Farm to Dorsey Bias?

Yes

39. How long after the sale was made did he contact you and what did he say to you?

I don't remember when he called me -- he told me that he had made an offer and asked me if I was aware of it

40. Did Mr. Wetsel state what he was willing to pay for the property? Did you understand his offer to include the 10 acres you wished to sell to Mrs. Rathbone? \$60,000.00 - Yes I understand

it was for the whole 125 acres

41. What was your reply to Mr. Wetsel?

that the property was already sold & I had no interest in stirring up any trouble

42. In response to Mr. Wetsel's call, did you contact Dorsey Bias? If so, when did you contact him and what was the substance of any conversation between you and Mr. Bias?

No

43. The gross price received by you for the entire Farm was \$68,500.00. Adding 10% commission to this, the effective purchase price would have been \$76,111.00 in order to yield the \$68,500.00 actual gross price. The Wetsels were offering \$60,000.00 for the entire tract including the Rathbone acreage. After payment of a 10% commission of \$6,000.00, you would have received gross proceeds of \$54,000.00 on the Wetsel contract. Do you understand these computations?

Yes

44. If so, do you understand that you would have more cash in hand as a result of dealing with Mr. Bias than Mr. Wetsel?

Yes

Mrs. John S. Davis

MRS. JOHN S. DAVIS

The foregoing Questionnaire was subscribed and sworn to before me, a Notary Public in and for the State of New York, this 27th day of DECEMBER, 1978, by Mrs. John S. Davis.

My Commission Expires:

Notary Public
State of New York
Commission Expires 12/31/79

Notary Public



REAL ESTATE SALES CONTRACT
CAVALIER REALTY COMPANY
Charlottesville, Virginia



This contract of sales made this _____ day of _____, 19____
between _____ (hereinafter called Buyer)
and _____ (hereinafter called Seller)
and _____ (hereinafter called Agent)

WITNESSETH: That for and in consideration of the sum of _____
Dollars (\$_____) by cash/note in hand paid, receipt
of which is hereby acknowledged by the Broker, the Buyer agrees to buy and the Seller agrees
to sell for the sum of _____ Dollars
(\$_____) all that certain piece, parcel or lot of land described as follows,
to-wit: _____

The purchase price to be paid as follows: _____

This contract is subject to the following: _____

The Seller agrees to convey the above property with a general warranty deed with the
usual covenants of title, same to be prepared at Seller's expense.

Risk of loss to said property by fire, windstorm, accident or other casualty shall be borne by
seller until settlement.

All taxes, interest, insurance, rents, FHA and other escrow deposits, if any, shall be pro-
rated and adjusted to date of settlement.

Settlement shall be made on or before _____, 19____, or as soon thereafter
as title can be examined and papers prepared, allowing a reasonable time to correct any defects
reported by the title examiners.

It is understood that title is to be free and clear of all liens and indebtedness of every kind
except those mentioned above.

It is understood that the property is to be conveyed subject to applicable restrictive coven-
ants and easements of record.

Seller agrees to pay to Agent for his services the usual commission.

WITNESS the following signatures and seals:

_____ (SEAL)	_____ (SEAL)
Buyer	Seller
_____ (SEAL)	_____ (SEAL)
Buyer	Seller

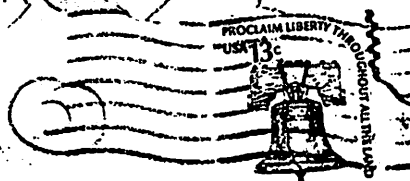
Receipt of Deposit Acknowledged
Agent, CAVALIER REALTY COMPANY

RESPONDENT'S EX. #1 D.C.

240

COMPANY

LAKEVIEW ROAD, ROUTE 1
SCOTTSVILLE, VIRGINIA 22901



#3

Mr. and Mrs. Thomas G. Wetsel

Route 1, Box 38B

Scottsville, VA 24590



our

11th
Airborne Division
11th Airborne Division

ENT'S EX # 2 D.C.

Cavalier Realty Company



AREA CODE 804
977-3796



RESERVOIR ROAD, ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

TOWN
COUNTRY
SUBURBAN PROPERTIES

Sep. 21, 1977

Tom,

Here are your copies. I'll let
you know as soon as I hear
something.

Be talking with you soon.

CHARLOTTESVILLE VA. SEP 20 1977 DUE 10 DAYS AFTER

SIGNED CONTRACT WITH DAVIS AFTER DATE, FOR VALUE RECEIVED WE PROMISE TO
PAY TO THE ORDER OF CAVALIER REALTY CO. \$500.00
FIVE - HUNDRED 00/100 DOLLARS

NEGOTIABLE AND PAYABLE WITHOUT OFFSET AT THE NATIONAL BANK AND TRUST CO., CHARLOTTESVILLE, OR ANY OF ITS OFFICES IN THE STATE OF VIRGINIA.

The makers and endorsers of this note do each hereby waive the presentment of and demand for payment of said note, and also waive protest, notice of protest, and notice of dishonor and non-payment thereof; and do hereby expressly agree that should the holder of this note give notice of presentment, demand for payment, protest, notice of dishonor and non-payment thereof, that the giving of such notice shall not affect the validity of the above waiver; but said waiver shall be as valid and binding as if such notice had not been given. The said makers and endorsers do also hereby waive the benefit of their homestead exemption as to this obligation, and further agree to pay an attorney's fee of eighteen (18) per cent of the amount of this note for collection in case payment shall not be made at maturity.

ADDRESS Rt 1 Box 333 Scottsville, Va.

SIGNATURE: Thomas A. Wether (SEAL)

No.

SIGNATURE: Jane M. Wether (SEAL)

INTEREST	GUARANTEE RECD.	OFFICER	RATE	FOR BANK USE ONLY	CLASS	ORIGINAL DATE	N - R	ORIGINAL AMOUNT
\$					242			

114
Cavalier Realty Company



REALTOR

AREA CODE 804
977-3796



RESERVOIR ROAD, ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

TOWN
COUNTRY
SUBURBAN PROPERTIES

October 3, 1977

Mr. and Mrs. Tom Wetsel
Route 1, Box 38B
Scottsville, VA 24590

Dear Tom and Jane:

Please find enclosed the note you signed. I thought you might want it for your records.

I am sorry I was out of town when you dropped by. I hope to see you again soon.

Sincerely,

John Bias

j

RESPONDENT'S EX. #3 Q.C.

243

EXCLUSIVE LISTING AUTHORIZATION

Date: 18 Sept 77

The Real Estate Office listed below is hereby given the exclusive right to sell my property at Rt 679, Bucklehorn Co VA - 115 Acres Improv for 12 months from date at the regular commission rate of 10 for (price) \$ 75,000 & Furniture (or at a greater or lower price, if I accept it).

The professional service and expense of advertising and showing the property shall be borne by the Real Estate Office. In consideration thereof, they shall be entitled to the commission if the property is sold within the said period, by whomsoever sold, and after termination of this period, if sold to a purchaser originally obtained by them.

Signed for
Real Estate Office

Tom E. Davis

Signed, Owner

Exh #1
10-3-78

TO 120 E 81st.
N.Y. City, N.Y. 10028



CAVALIER REALTY CO.

RESERVOIR ROAD ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

Phone: 977-3796

0 628-4440 (212) \$19,784
H 249-2681 (212)
988 3891 (212)

RESPONDENT'S EX #4 J.C.



REAL ESTATE SALES CONTRACT
CAVALIER REALTY COMPANY
Charlottesville, Virginia



This contract of sales made this 22 day of September, 1977
between Caroline Rathbone (hereinafter called Buyer)
and Tolly E. Davis (hereinafter called Seller)
and Dorsey V. Bias (hereinafter called Agent)

WITNESSETH: That for and in consideration of the sum of Five Thousand and Five
Hundred Dollars (\$5,500) by cash/note in hand paid, receipt
of which is hereby acknowledged by the Broker, the Buyer agrees to buy and the Seller agrees
to sell for the sum of Fifteen Thousand Dollars
(\$15,000) all that certain piece, parcel or lot of land described as follows,
to-wit: 10 acres to be cut out of Southeast corner of that tract of the Paynes
Mill farm on Route 679, Buckingham County, Virginia. Tract to run for about
400 feet along State Route 679 and to a depth to secure the 10 acres.

The purchase price to be paid as follows: \$5,500.00 paid in advance. Balance of
\$9,500.00 cash at closing.

This contract is subject to the following: To be surveyed after contract has been
executed and returned to Agent, this will be coordinated by same.

The Seller agrees to convey the above property with a general warranty deed with the
usual covenants of title, same to be prepared at Seller's expense.

Risk of loss to said property by fire, windstorm, accident or other casualty shall be borne by
seller until settlement.

All taxes, interest, insurance, rents, FHA and other escrow deposits, if any, shall be pro-
rated and adjusted to date of settlement.

Settlement shall be made on or before Soon as possible, 1977, or as soon thereafter
as title can be examined and papers prepared, allowing a reasonable time to correct any defects
reported by the title examiners.

It is understood that title is to be free and clear of all liens and indebtedness of every kind
except those mentioned above.

It is understood that the property is to be conveyed subject to applicable restrictive coven-
ants and easements of record.

Seller agrees to pay to Agent for his services the usual commission. NONE.

WITNESS the following signatures and seals:

x Caroline Rathbone (SEAL) Tolly E. Davis (SEAL)
Buyer Seller
____ (SEAL) _____ (SEAL)
Buyer Seller

Receipt of Deposit Acknowledged
Agent, CAVALIER REALTY COMPANY



REAL ESTATE SALES CONTRACT
CAVALIER REALTY COMPANY
Charlottesville, Virginia



31

This contract of sales made this 22 day of September, 1977
between Dorsey V. and Imogene B. Dias (hereinafter called Buyer)
and Tolly E. Davis (hereinafter called Seller)
and D. V. Dias (hereinafter called Agent)

WITNESSETH: That for and in consideration of the sum of 500.00
Dollars (\$ 500.00) by cash/note in hand paid, receipt
of which is hereby acknowledged by the Broker, the Buyer agrees to buy and the Seller agrees
to sell for the sum of Five Hundred Dollars
(\$ 500.00 - \$2,500.00) all that certain piece, parcel or lot of land described as follows,
to-wit: 115 acres (less 10 acres in north east corner of boundary and Rt 619)
more or less, with all improvements thereon and appurtenance thereto belonging,
and all personal items in house and on property, except such items as clothing,
personal pictures and such. Buckingham County, Va.

The purchase price to be paid as follows: Cash at closing

This contract is subject to the following:

The Seller agrees to convey the above property with a general warranty deed with the
usual covenants of title, same to be prepared at Seller's expense.

Risk of loss to said property by fire, windstorm, accident or other casualty shall be borne by
seller until settlement.

All taxes, interest, insurance, rents, FHA and other escrow deposits, if any, shall be pro-
rated and adjusted to date of settlement.

Settlement shall be made on or before 20 December, 1977, or as soon thereafter
as title can be examined and papers prepared, allowing a reasonable time to correct any defects
reported by the title examiners.

It is understood that title is to be free and clear of all liens and indebtedness of every kind
except those mentioned above.

It is understood that the property is to be conveyed subject to applicable restrictive coven-
ants and easements of record.

Seller agrees to pay to Agent for his services the usual commission.

WITNESS the following signatures and seals:

Dorsey V. Dias (SEAL) Tolly E. Davis (SEAL)
Buyer Seller
D. V. Dias (SEAL) Tolly E. Davis (SEAL)
Buyer Seller

Receipt of Deposit Acknowledged
Agent, CAVALIER REALTY COMPANY

1977 SEPTEMBER 1977
S M T W T F S
4 5 6 7 8 9 10
11 12 13 14 15 16 17
18 19 20 21 22 23 24
25 26 27 28 29 30

WEEKLY
ACGLANCE

from: **SEPTEMBER 19**

Monday, September 19 262

from: **SEPTEMBER 22**

Thursday, September 22 265

1977 OCTOBER 1977
S M T W T F S
2 3 4 5 6 7 8
9 10 11 12 13 14 15
16 17 18 19 20 21 22
23 24 25 26 27 28 29

WEEKLY
ACGLANCE

MONDAY

9 AM	PM
9	1
10	2
11	3
12	4
EVENING	

9 AM	YOM KIPPUR	PM
9		1
10	1100 Docks Call	2
11	10-mailed Contacts	3
12	to be	4
	11 Buckenja	
EVENING		

TUESDAY

9 AM	PM
9	1
10	2
11	3
12	4
EVENING	

9 AM	PM
9	1
10	2
11	3
12	4
EVENING	

WEDNESDAY

9 AM	PM
9	1
10	2
11	3
12	4
EVENING	

9 AM	PM
9	1
10	2
11	3
12	4
EVENING	

Clip for Current Week

RESPONDENTS EX #7 D.C.

THURSDAY

FRIDAY

SATURDAY

SUNDAY

CHARLOTTESVILLE - ALBEMARLE BOARD OF REALTORS

September 26, 1977

Date

#

Property	Owner	Price	Office	MLS	Sec.	Changes
Rt 151 Afton 413 Berwick Court Rt 2, Afton	Floyd Winkler Woodard	63,000 72,900 89,900	F/Matacia RE III F/Matacia	2692 1598	5 5	ON Tues 9/27 (11-2) Refreshments OH-NE Tues 9/27 (10-12) OH Tues 9/27 (11-2)
Rt 676 43 Woodlake Drive 1428 Forest Ridge Rd.	Graves Beverly Bernhard	14,000 31,000 41,900	M M & Co. Piedmont RE III			NE 2.63 Acres NE Phone tenant 973-8751 then LB NE Sign and L/B
Rt 666 Earlysville 1416 & 1418 Ricky Rd. Ryd Tavern	Shifflett Purcell Liberty Land	45,900 49,950ea 7,500	RE III P. McGavock Canning	1126	14	NE Split foyer and 2 acres call 973-8677 NE Lot #11 IC
Warren Ferry 602 Montrose Ave Mechums River	Taylor Gibson House	12,500 15,750 18,000	RE III Clarke Clover	1811 2431 1918	12 1 1	Reduced to \$8,000 excellent listing Now co-exclusive with Cropp South side of Rt 682--three acres
						Reduced to \$16,000/turn left at Crafters Gallery onto 787 and Rt 682 is first road on right.
Rt 708, Ivy 1129 Locust Avenue 1304 Chesapeake	Howard Pritchett Gilliam	18,500 19,800 22,900	M M & Co. C. Stowe Bexrode	1639 2705 2452	1 1 1	IC Back on Market/ vacant with LB Vacant/No electricity/please show & bring
Amicus Rd. & new U.S. 33 Standardsville =1 Four Seasons Drive	Roberts Village Bdrs.	33,500 33,900	R. Wheeler RE III	2322 2553	15 1	IC IC
312 Valley Rd Extd. Rt 620 near Woodridge 1704 Cherry Avenue	Valley Rd. Pshp Beck Shifflett	39,500 39,700 40,900	MacIn/AlbPr C & Suburb RE III	2335 2554	5 1	IC by Alb. Prop./=308 & 310 still availab Back on Market
1223 Cherry Avenue Rt 4, Box 243 Rt 620	Evans Varner Palmer	43,000 43,500 44,400	C. Stowe RE III C & Subr	2704 2605 2534	1 1 2	Off the market until Spring/still an Exclus IC IC
Lake Saponi 2319 Highland Avenue Rt 821 Albemarle County	Bishop Dudley Morris	47,500 57,500 62,000	M M & Co. Cropp/May Cavalier	1352 2707 1234	5 1 1	IC reduced to \$49,950 reduced to \$56,000
Rt 629 Nelson County Rt 679 Buckingham 250 West	SLC Davis Compton	91,700 95,000 148,000	Cavalier Cavalier C & Suburb	1703 9516 1360	17 18 1	No longer our Exclusive U/C Price increased to \$151,000/Also =1972/Sec
NEXT BOARD OF REALTORS BREAKFAST IS OCTOBER 4, 1977 AT RAMADA INN AT 8:30 A.M.						
FOR RESERVATIONS CALL CALEB STOWE'S OFFICE BEFORE FRIDAY SEPTEMBER 30, 1977 AT NOON.						

Cavalier Realty Company

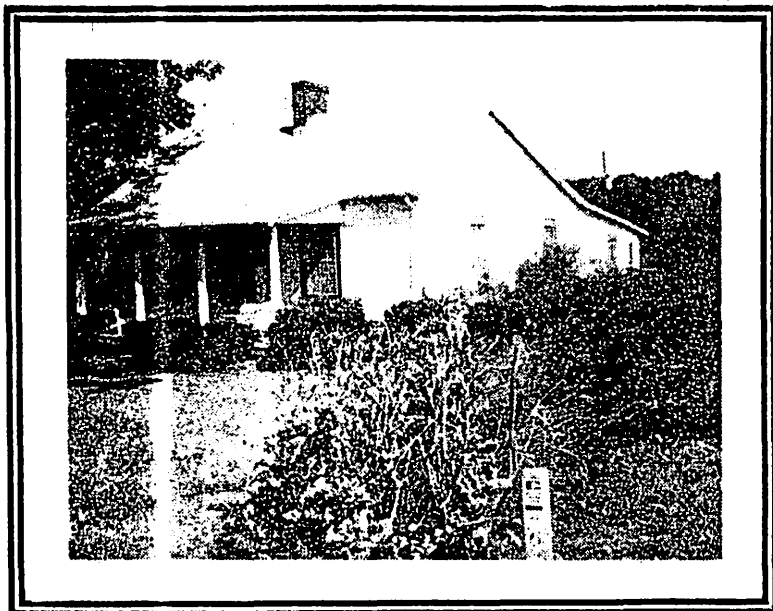


AREA CODE 804
296-1666
877-3796

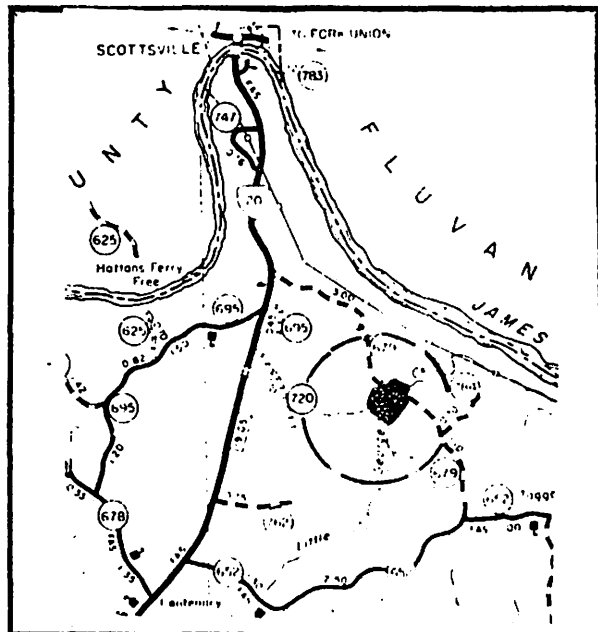
RESERVOIR ROAD, ROUTE 1
CHARLOTTESVILLE, VIRGINIA 22901

AREA BUCKINGHAM CO.

PRICE \$195,000
ACREAGE 125
JSE Farm for Retirement
HOUSE Yes
SIGN UP NO



DWELLING



Route Map

DATE October 1976

PROPERTY ADDRESS Paynes Mill, State Route 779, Buckingham County, Va. PHONE					
ROAD FRONTAGE Long on both sides		MAIN HOUSE			
TOTAL ACREAGE	125	FIRST	BASEM.	ADDITIONAL IMPROVEMENTS Aluminum siding with	
CROPPABLE	30	LIVING RM.	W/FP	storm doors. Master bed room	
PASTURE	same	DINING RM.	Area	with fire place. Old well on back	
WOODLAND	90	BEDROOMS	Three	porch and new drilled well on	
TOPOGRAPHY	Roll.	BATHS	One	lawn. Barn, crib, shed, one sm-	
SOILS	Rich	KITCHEN	Equip.	oke house, two chicken houses,	
CARRYING CAP	20	PORCHES	Two	old mill house, garage and out house.	
WATER SOURCE	Str.	FAMILY		Fencing - Fenced and crossed fenced.	
IMPROVEMENTS	HEAT Oil Hot Air	STYLE Bungalow		PERSONAL PROP. All personal property and equip-	
Lake	5	AIR COND.	CONSTRUCTION Fr.	ment is included in price. SEE BACK FOR	
Loblol-		WATER Two wells	AGE Unk.	PARTIAL LIST.	
lies	4.5	SEWER Septic			

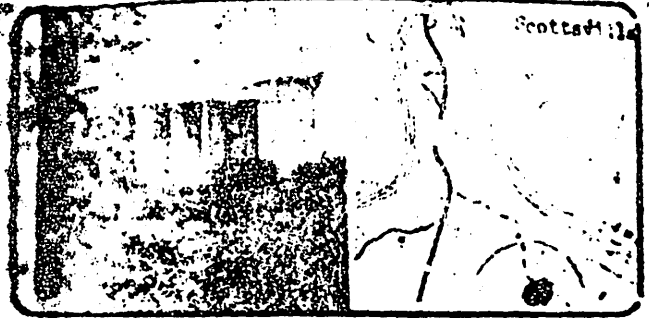
REMARKS: Cash at closing. Home is in good condition. Five acre lake with rustic dam and mill house. 4 1/2 acres of loblollies. Nice fields for cultivation. Real farm for retirement.
DIRECTIONS: From Charlottesville go south on State Route 20 to about 2.7 miles south of Scottsville, turn left onto Route 679 and go 2.1 miles - see lake to right and complex of buildings to left.

TERMS Cash.		RATE 7%	
MORTGAGE \$15,000.00 Approx.		AS OF	
OWNER DAVIS, John S. and Tolly E.		PAYMENT	
HOW SHOW Call Agency		PHONE 977-3796	
TAX MAP NO.	PLAT NO.	POSS. DATE Upon closing	
LEGAL DESC.		AGENT Bixs, D. V.	PHONE 296-1666
NAME "PAYNES MILL"	ACREAGE 125	TAXES \$175.00 Est.	ZONING Agriculture
		DATE 27-10-76	PRICE \$195,000.00

THIS INFORMATION, THOUGH BELIEVED ACCURATE, IS NOT GUARANTEED

RESPONDENTS AT A.O.

249



Scottsville

DATE February 1977		PRICE \$ 95,000
79, Buckingham County		PHONE
Two sides MAIN HOUSE		IMPRVMTS
125	Liv. Rm W/FP	Tenant
90	Din. Room Area	Guest
8479	Bedrm Three	
90	Bath One	Post. Upon closing
	Kit. Equipped	Taxes \$175.00
	Porches Two	Zone Agriculture
	Farm. Rm	Tax Map
	Heat Oil RA	Plat
	A/C	Fence Yes
	Water Two Wells	Personel All in house
	Sewer Septic	and on farm
S. John S. & Tolly E.		
Retirement Farm, 5 Ac. Lake. 5 Ac. Loblollies.		
Barn, numerous outbuildings. Garage.		
From Scottsville go south on Rt. 20 2.7 miles		
to Rt. 679 for 2.1 miles. Both sides of road.		
Mortgage \$15,000 As Of		Pymt.
Secondary financing.		Rate
Realty.		Agent D. B. Phone 977-3796
Open House 10:00 to 12:00 Noon To Show Call Agency		

March 12, 1980

RE: Virginia Real Estate Commission
v.
Dorsey V. Bias

Hearing Conducted March 6, 1980
Municipal Building
Seventh & Main
Charlottesville, Virginia

Hearing Officer: Sylvia Clute

RECOMMENDED DECISION

NATURE OF PROCEEDING

To determine if the respondent, Dorsey V. Bias violated
Section 8.2(19) of the Virginia Real Estate Commission regulations.

EVIDENCE PRESENTED

A certain parcel of land consisting of approximately 125 acres
on State Route 679 in Buckingham County, Virginia known as the
Paynes Mill Farm was sold to Dr. John Davis and his wife Tolly
Davis in 1972 for approximately \$50,000.00 to \$55,000.00. The
respondent, Mr. Dorsey Bias, had been the listing agent for that
sale.

Dr. Davis used this property as a retreat, and occasionally when
there would invite the respondent to visit him.

In 1976, the property was listed for sale by Dr. and Mrs. Davis
for \$195,000.00 through the respondent. Between 1976-1977 the
property was shown approximately 5 times but no offer was received
prior to the two offers which are the basis of this hearing. At
some later date the listing price was reduced to \$95,000.00.

In September, 1977 Dr. Davis informed the respondent that he had had a stroke. A \$20,000.00 mortgage on the property remained to be paid. Dr. Davis mentioned that a Mrs. Rothbone, one of his patients, had loaned him \$5,000.00 which he couldn't repay and he wanted to sell her 10 acres of Paynes Mill Farm to settle this debt, but no final terms had been agreed upon.

On or about September 11, 1977, Dr. Davis died. He was buried in Virginia on September 17, 1977. On September 18, 1977, the respondent met with Mrs. Davis. At that time Mrs. Davis indicated to the respondent that she was financially in distress. All of her husband's possessions were in the house located on the land in question. Mrs. Rothbone had agreed to purchase 10 acres of the land for a total price of \$15,000.00. Mrs. Davis was anxious to sell the remaining 115 acres so that the \$20,000.00 mortgage could be paid and clear title conveyed to Mrs. Rothbone and because she needed funds.

On September 18, 1977, Mrs. Davis signed an exclusive listing authorization with Cavalier Realty Co., the proprietorship of the respondent, listing 115 acres for sale for \$75,000.00. (See Respondent's Exhibit No. 4) The respondent testified that this price was arrived at after consultation between he and Mrs. Davis and he believed it to be in the range of a reasonable price for the property.

On September 20, 1977, a contract offer signed by Thomas G. Wetzel and Jane M. Wetzel for the purchase of 125 acres, more or less, from Tolly E. Davis was left in the mail box at Cavalier

Realty subsequent to several discussions regarding the same between Mr. Wetzel and John Bias.

John Bias, son of the respondent and one of the principal agents for Cavalier Realty Co., testified that to the best of his recollection, he had this contract in his possession on ~~September~~ September 21, 1977, and on that date returned a copy of it to Mr. Wetzel with a cover letter of that date. (See Board Exhibit No. 2) He testified that he put the Wetzel contract on the respondent's desk on that date.

The respondent was out of town from September 19, 1977, until September 21, 1977. On the morning of Thursday, September 22, 1977, he went to his office. He testified that Mrs. Davis called him that morning, however, a sworn statement signed by Mrs. Davis states that she believes he called her on that date. (See Board Exhibit No. 9, page 2, question 18)

The respondent testified that on September 22, 1977, Mrs. Davis said she was in dire need. He asked her if she would accept \$50,000.00 for the 115 acres and she agreed. On that date he prepared a contract to this effect, as well as a contract for Mrs. Rothbone to purchase 10 acres for \$15,000.00. The respondent agreed to waive his commission on both contracts. The respondent testified that at the time he made this offer to Mrs. Davis he was not aware of the Wetzel offer.

The respondent first testified that he learned of the Westzel offer from his son John on either the 23rd or 24th of September, when he and his son discussed several matters that were pending

before his son left for vacation on September 24th or 25th. He later testified that he definitely learned of it in the late afternoon of September 24th at which time his son gave him the Wetzel contract. John Bias, however, testified that he was certain that he did not give his father the contract when this discussion took place because he had put it on his father's desk prior to that.

The respondent testified that he was in his office on the mornings of September 22, 23 and 24 but he didn't find the Wetzel contract on any of those occasions.

On September 24, 1977, Mrs. Davis called the respondent. At that time she indicated that she wanted more for the property than \$50,000.00. She and the respondent then agreed upon the price of \$53,500.00 which the respondent testified was very generous on his part because he believed Mrs. Davis was bound by the oral agreement to sell it for \$50,000.00, although he knew this agreement was not enforceable. The respondent received this signed written contract from Mrs. Davis approximately three days later.

After becoming aware of the Wetzel offer, the respondent decided not to convey it to Mrs. Davis because he felt she would not want to change her contract with him. He testified that she was very happy and got what she wanted. The respondent testified that Mrs. Davis, a woman of about 65, had no business acumen, no knowledge regarding legal matters and was in a distraught condition due to her husband's death.

Mr. Wetzel was informed that his contract had not been accepted three or four days after he submitted it, but he couldn't recall who conveyed this information to him.

Mr. Wetzel testified that he read an ad in the paper in October, 1977 indicating some land was for sale. As a result he called John Bias to inquire regarding it and was informed that this was a portion of the same land he had made the offer on before. He went to the Cavalier Realty Co., where a contract for 20 acres of Payne's Hill Farm and the house for the purchase price \$35,000.00 was prepared, dated October 25, 1977, between Mr. Wetzel and his wife as Tolly E. Davis. (See Board Exhibit No. 5) John Bias testified that his father informed Mr. Wetzel of his interest in the property at this time, but Mr. Wetzel testified that at some point around this time the respondent told him only that he might buy it himself. This offer was later increased to \$38,000.00.

The respondent testified that these offers were never conveyed to Mrs. Davis because he then owned the equitable interest in the land. Mr. Wetzel was later informed that these offers had been rejected.

The respondent acquired title to the 115 acre parcel in question on January 6, 1978.

In January 1978, Mr. Wetzel again made an offer on the 20 acres and the house for between \$40,000.00 and \$42,000.00. At that time he learned that the respondent had purchased the property.

FINDINGS OF FACT

1. The professional services of the respondent as a license real estate broker were contracted for by Tolly E. Davis regarding the sale of Paynes Mill farm.

2. An offer to purchase 125 acres from Tolly E. Davis for \$60,000.00 was made by Thomas G. Wetzel and Jane M. Wetzel on September 20, 1977.

3. Said offer was received by John Bias, an agent of Cavalier Realty Co., on September 21, 1977.

4. The respondent reasonably should have known of the Wetzel offer on September 22, 1977.

5. The respondent did know of the Wetzel offer by September 24, 1977.

6. The Wetzel offer was never conveyed to the seller, and a higher offer from the Wetzels was never sought.

7. On September 22, 1977, the respondent offered to purchase 115 acres of the land in question for \$50,000.00.

8. On September 24, 1977, the seller orally agreed to sell 115 acres to the respondent for \$53,500.00 and signed a written contract to that effect on or about September 24, 1977, which was received by the respondent several days later.

9. On or about October 25, 1977, Mr. and Mrs. Wetzel made an offer on 20 acres of the Paynes Mill Farm and the improvements thereon for \$35,000.00, which was later increased to \$38,000.00.

10. Mr. and Mrs. Wetzel were lead to believe that the Paynes Mill Farm was still owned by Tolly E. Davis as of October 25, 1977.

11. The October offers from Mr. and Mrs. Wetzel were never conveyed to Mrs. Davis.

12. The repondent represented his personal interests to the detriment of the seller, who had secured his professional services, and to the detriment of the prospective buyers.

DECISION

The respondent violated section 8.2(19) of the Virginia
Real Estate Commission (formerly POR 9-200).

Respectfully submitted,


SYLVIA CLUTE, Hearing Officer

BEFORE THE VIRGINIA REAL ESTATE COMMISSION
IN CHARLOTTESVILLE, VIRGINIA
HEARING OFFICER SYLVIA CLUTE

VIRGINIA REAL ESTATE COMMISSION

Complainant

v.

DORSEY V. BIAS, BROKER

Respondent

OPINION AND ORDER NO. 79-80-3

CASE NO. 7522

This matter was properly matured for hearing by the Virginia Real Estate Commission under one complaint and in accordance with §§9-6.14:12, 54-1.28.7, 54-1.36 and 54-1.37, Code of Virginia (1950), as amended and Sections 8.1, 8.2, 8.8 and 8.9, Regulations of the Virginia Real Estate Commission, notice having been given by certified mail to all interested parties prior to the date of the hearing held at 10:00 a.m. in the Municipal Building, 7th and Main Streets, Downtown Hall, Charlottesville, Virginia on May 6, 1980 with Hearing Officer Sylvia Clute presiding.

The Respondent, Dorsey V. Bias, represented by Ralph E. Main, Jr., Esquire, appeared in person.

The Virginia Real Estate Commission adopts the following report of the Hearing Officer, Sylvia Clute.

FINDINGS OF FACT

1. The professional services of the respondent as a licensed real estate broker were contracted for by Tolly E. Davis regarding the sale of Paynes Mill farm.
2. An offer to purchase 125 acres from Tolly E. Davis for \$60,000.00 was made by Thomas G. Wetzel and Jane M. Wetzel on September 20, 1977.
3. Said offer was received by John Bias, an agent of Cavalier Realty Co., on September 21, 1977.
4. The respondent reasonably should have known of the Wetzel offer on September 22, 1977.

5. The respondent did know of the Wetzel offer by September 24, 1977.

6. The Wetzel offer was never conveyed to the seller, and a higher offer from the Wetzels was never sought.

7. On September 22, 1977, the respondent offered to purchase 115 acres of the land in question for \$50,000.00.

8. On September 24, 1977, the seller orally agreed to sell 115 acres to the respondent for \$53,500.00 and signed a written contract to that effect on or about September 24, 1977, which was received by the respondent several days later.

9. On or about October 24, 1977, Mr. and Mrs. Wetzel made an offer on 20 acres of the Paynes Mill Farm and the improvements thereon for \$35,000.00, which was later increased to \$38,000.00.

10. Mr. and Mrs. Wetzel were led to believe that the Paynes Mill Farm was still owned by Tolly E. Davis as of October 25, 1977.

11. The October offers from Mr. and Mrs. Wetzel were never conveyed to Mrs. Davis.

12. The respondent represented his personal interests to the detriment of the seller, who had secured his professional services, and to the detriment of the prospective buyers.

DECISION

The respondent violated section 8.2(19) of the Virginia Real Estate Commission Regulations (formerly POR 9-200).

SANCTION

In accordance with the foregoing findings and conclusion, the Commission orders as of the 28th day of April, 1980 the real estate broker license number 8617, of Dorsey V. Bias is suspended for a period of one (1) year, and Dorsey V. Bias is ordered to remit a monetary penalty of \$1,000.00 to the Commission pursuant to §54-1.22 of the Code.

This Opinion and Order is entered this 18th day of April,
1980.

Helen A. Kent
Helen A. Kent, Chairman

Charles R. Foxx
Charles R. Foxx

Edwin C. Hall
Edwin C. Hall

Peyton Klopfenstein
Peyton Klopfenstein

George C. Walker, Jr.
George C. Walker, Jr.

COPY TESTE:

David W. Seitz
David W. Seitz
Assistant Director - Real Estate

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

DORSEY V. BIAS, Broker,
t/a Cavalier Realty Company,
Complainant

v.

BILL OF COMPLAINT
Chancery No. _____

VIRGINIA REAL ESTATE COMMISSION
Serve: Ruth J. Herrink, Director
2 South Ninth Street
Richmond, Virginia,
Respondent

To The Honorable Judge Of The Above-Styled Court:

Comes now Complainant, Dorsey V. Bias, Broker, t/a Cavalier Realty Company, hereinafter known as Bias, and for this his bill of complaint against Respondent, Virginia Real Estate Commission, hereinafter known as VREC, respectfully represents unto this Honorable Court as follows:

1. That Bias is a licensed real estate broker (license #08617) who maintains an office and a principal place of business in Albemarle County, Virginia.

2. That on March 6, 1980 VREC conducted a hearing to determine if Bias violated Section 8.2 (19) of VREC's Regulations. The hearing was held as a result of a complaint filed against Bias by one Thomas G. Wetsel involving an incident which occurred in September, 1977. A copy of the hearing notice, dated January 28, 1980, is attached to and made a part of this bill of complaint.

3. That by order of VREC entered April 18, 1980 in the case of Virginia Real Estate Commission v. Dorsey V. Bias, Broker (Case No. 7522), a copy of which order is hereto attached, Bias was found to have violated Section 8.2 (19) of VREC's Regulations and as a result of such violation Bias' broker's license was suspended for one year and Bias was directed to pay a fine of \$1,000.00.

RAULPH I. MAIN, JR.
ATTORNEY AT LAW
CHARLOTTE, N.C. VIRGINIA

Handwritten: No need

4. That Bias is aggrieved by the action of VREC as evidenced by said order of April 18, 1980. Bias desires a court review of such action pursuant to the provisions of Sections 9-6.14:16 and 9-6.14:17 of the Code of Virginia, 1950, as amended for the reasons hereinafter set forth.

5. That the conduct of VREC in initiating the hearing on March 6, 1980 resulting in the suspension of Bias' license was arbitrary and capricious, constituted an abuse of VREC's power, and denied Bias due process of law for the following reasons:

Handwritten: Admitted

a. That on or about March 24, 1978 a complaint was filed with VREC against Bias alleging that Bias violated one of VREC's regulations on or about September, 1977. VREC investigated the allegation and on January 22, 1979 notified the complaining party that the evidence did not support a violation of the regulations. A copy of this notice was sent to Bias. The complaining party expressed dissatisfaction with the finding and VREC, without notice to Bias, reopened its investigation. On January 28, 1980 VREC notified Bias that it would hold a formal hearing on the allegations made against him on March 6, 1980, which hearing resulted in the order of which Bias now seeks a review.

Handwritten: deny

b. That the "new evidence" used by VREC to justify reopening its investigation consisted of information already in the possession VREC in its investigative files.

Handwritten: deny

c. That the passage of time from the close of the investigation (January 22, 1979) until the issuance of the hearing notice (January 28, 1980), and until the hearing (March 6, 1980) is per se unreasonable.

Handwritten: deny

d. That the absence of a "statute of limitations" defining the period within which VREC must act allows VREC to define the limits of its own power. At a minimum the doctrine of

RALPH I. MAIN, JR.
ATTORNEY AT LAW
CHARLOTTE, N.C. VIRGINIA

laches should apply to VREC's exercise of power. Application of the doctrine of laches in this case would bar VREC from proceeding against Bias.

e. That the manner in which VREC reopened its investigation without notice to Bias was unfair because it deprived Bias of the opportunity to further develop his own case and because Bias had no occasion to take action to close the investigation.

f. That the conduct of VREC in reopening the investigation against Bias and proceeding to a formal hearing did not comport with the "fairness" standard of due process.

6. That the VREC Regulation allegedly violated by Bias (Section 8.2 (19)) does not reflect the law of this Commonwealth respecting the duty owed by a broker to a prospective purchaser of property. VREC therefore abused its power for charging and prosecuting Bias for violation of such a regulation.

7. That the Agency Rules of Practice governing the March 6, 1980 hearing against Bias are illegal and improper and violate the process of law because:

a. Rule 10(b) prohibits the filing of any motion to strike or dismiss or the filing of a demurrer. A party can thus be subjected to a hearing even though the regulation allegedly violated is itself unlawful or even though VREC does not produce sufficient evidence to establish a prima facie case. In the present case Bias made a motion to dismiss which was denied. Rule 10(b) deprived Bias the opportunity of even making a motion to strike.

b. The practical effect of such Rules is to place upon persons like Bias charged with violations of regulations the burden of proving that they did not violate the regulations. Such

Rules are unlawful because the sanctions which VREC has the authority to impose are penal in nature.

c. Rule 16(c) does not lawfully require the hearing officer to follow the rules of evidence as developed in the common and statutory law of this Commonwealth. During the course of the hearing against Bias the hearing officer admitted evidence that was irrelevant, immaterial, improper and highly prejudicial to Bias. Introduction of such evidence deprived Bias of a fair hearing and denied him due process of law.

d. Allowing VREC Commissioners to participate in the hearing created confusion over the issues to be resolved and prejudiced Bias' case.

e. Announcement by the hearing officer of a decision at the hearing prior to argument, whether or not allowed by the Rules, is unfair and arbitrary.

8. That several of the findings of fact set forth in the order hereto attached lack substantial evidentiary support. Other findings are immaterial to the case against Bias.

a. VREC offered no evidence to substantiate Fact 4.

b. Facts 7 and 8 lack substantial evidentiary support.

c. Facts 9, 10 and 11 are irrelevant to the complaint contained in the notice of hearing served upon Bias.

d. Fact 12 is without support in law. The only party entitled to make a complaint against Bias is seller, and seller has never made such a complaint.

e. VREC offered no evidence as to what constitutes a "prompt" submission of an offer under Section 8.2 (19) of its Regulations.

RALPH J. MAHN, JR.
ATTORNEY AT LAW
CHARLOTTE, N.C. VIRGINIA

9. That the record of the proceeding against Bias discloses that he did not receive a fair hearing and that he was denied due process of law.

10. That the findings and decisions against Bias as contained in the attached order are without foundation in law and in fact.

11. That the statutes, rules and regulations under which VREC acted in its proceeding against Bias are too broad in scope, are not calculated to give alleged violators a fair hearing, and have the cumulative effect of depriving Bias of a fair hearing.

Wherefore Complainant prays that the order of Respondent entered on April 18, 1980 be set aside; that Respondent be barred from further proceeding against Complainant; that the order of Respondent aforesaid be stayed or enjoined pending review of the actions of Respondents by this Court; and that Complainant have such other and further relief as the nature of his case may require and which to equity may seem meet. And your Complainant will ever pray, etc.

Dorsey V. Bias
DORSEY V. BIAS, Broker,
t/a Cavalier Realty Company

Ralph E. Main, Jr., p.q.
416 East Jefferson Street
Charlottesville, Virginia 22901

RALPH E. MAIN, JR.
ATTORNEY AT LAW
CHARLOTTESVILLE, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE

DORSEY V. BIAS,

Complainant,

v.

VIRGINIA REAL ESTATE COMMISSION,

Respondent.

In Chancery

No. _____

ANSWER

Now comes the Virginia Real Estate Commission, by counsel,
and for answer to the Bill of Complaint does state:

1. Respondent admits the allegation of paragraph 1.
2. Respondent denies the allegations of paragraphs 6,
8, 9, 10 and 11.
3. As to paragraph 2, Respondent admits the allegation of
the first sentence and states that the Notice of Hearing
speaks for itself.
4. As to paragraph 3, Respondent states the order cited
speaks for itself.
5. Respondent states no response is required to the
allegations of paragraph 4.
6. Respondent admits the allegations of paragraph 5 a.
Respondent denies the allegations of paragraphs 5b through
5f, inclusive. Respondent states further that the issues of
laches and lack of a "statute of limitations" were raised
before this Court pursuant to a Bill of Injunction, 3016-C,
said Bill being denied.

7. As to paragraph 7, Respondent states the Agency Rules of Practice speak for themselves. Respondent denies the remaining allegations of paragraph 7.

VIRGINIA REAL ESTATE COMMISSION

BY: _____

Counsel

Marshall Coleman
Attorney General

Susan R. Stevick
Assistant Attorney General
2 South Ninth Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of May, 1980, I mailed, postage prepaid, a copy of the foregoing Answer to Ralph E. Main, Jr., Esquire, 416 East Jefferson Street, Charlottesville, Virginia 22901.

Commonwealth of Virginia

SIXTEENTH JUDICIAL CIRCUIT



February 12, 1980

RECEIVED
FEB 27 1980
DEPT. OF COMMERCE

COUNTIES

ALBEMARLE
CUPEPER
FLUVANNA
GOCHLAND
GREENE
LOUISA
MADISON
ORANGE

CITY OF CHARLOTTESVILLE

JUDGES
DAVID F. BERRY
CITY COURT HOUSE BUILDING
CHARLOTTESVILLE, VIRGINIA 22901
'804 200-5641

GEORGE M. COLES
CITY COURT HOUSE BUILDING
CHARLOTTESVILLE, VIRGINIA 22901
'804 200-5059

VANCE M. FRY
P. O. Box 565
ORANGE, VIRGINIA 22950
'703 672-4430

HAROLD H. PURCELL
P. O. Box 238
LOUISA, VIRGINIA 22093
'703 667-6707

Mrs. Susan R. Stevick
Assistant Attorney General
Department of Commerce
Virginia Real Estate Commission
2 South Ninth Street
Richmond, Virginia 23219

Ralph M. Main, Jr., Esquire
416 E. Jefferson Street
Charlottesville, Virginia 22901

In Re: Dorsey Bias v. Virginia Real Estate Commission

Dear Mrs. Stevick and Mr. Main:

This case deals essentially with the actions of a listing broker, Mr. Dorsey V. Bias, becoming a purchaser while another prospective purchaser had an offer pending for an amount less than the price paid by the broker. There is apparently no claim of a failure by the broker to make full disclosure to the seller, but, rather, the complaint is based largely upon the failure of the broker promptly to advise the seller of an offer to purchase for a lesser amount. The Virginia Real Estate Commission found that the broker in failing to disclose the offer, acted to the detriment of both the seller and the prospective purchaser.

The broker's right to become a purchaser having been exercised after appropriate disclosure the question then arises as to when the transition by Mr. Bias from broker to contract purchaser occurred. It would appear that once the broker himself has become a

Mrs. Susan R. Stevick
Ralph E. Main, Jr., Esquire
February 12, 1981
Page 2

contract purchaser he has no further obligation as a broker since no commissions were due on the transaction and nothing further would be required under the listing agreement. Any misconduct, then, on the part of the broker must be shown to have occurred prior to the coming into existence of the contract of sale and purchase between the seller and broker.

The evidence indicates in this case that the executed contract was received by the broker from the seller during the latter part of September, 1977, probably the 27th. Thus, any alleged misconduct on the part of Mr. Bias, the broker, thereafter is irrelevant since he was no longer capable of acting as broker in that transaction, and the Commission should not have considered activities occurring in the latter part of October of the same year. Thus, the focus of the inquiry, in my opinion, should have been the period from September 21, 1988, the date of receipt of Wetsel's offer by the office of Cavalier Realty, a sole proprietorship owned by Mr. Bias, to September 27, 1977, the date on which Mr. Bias received the contract of sale and purchase executed by the seller.

The undisputed evidence is that Mr. Bias, himself, was absent from his office attending a funeral in West Virginia from September 19 through September 21 and that he returned to his office on the 22nd. A telephone conversation occurred on that date between Mr. Bias and the seller in which he made an offer to purchase the property at a price of \$50,000.00. (The property in question being 115 acres of a 125 acre tract remaining after a proposed sale of 10 acres to another prospective purchaser, a Mr. Rathbone.) At the same time there was in the broker's office a written offer from Wetsel to purchase the entire 125 acre tract for \$60,000.00, an amount less than the combined price of the above mentioned offers. The broker claims that he was not personally aware of the existence of such a written offer but concedes that it was within the knowledge of his business firm, Cavalier Realty. As a result of the telephone conversation between the broker and the seller two separate contracts of sale for such were prepared and forwarded immediately to the seller. On the 24th of September another telephone conversation occurred between the seller and broker in which the proposed contracts were discussed, the seller having received them

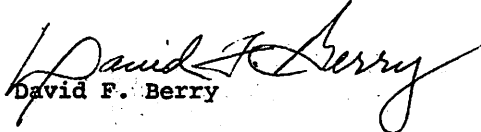
Mrs. Susan R. Stevick
Alph E. Main, Jr., Esquire
February 12, 1981
Page 3

by mail, as a result of which the price of \$50,000.00 was increased to \$53,500.00. There is uncertainty as to whether the seller verbally agreed to the terms or whether she merely indicated she would think it over. During this period of time the Wetsel offer lay in the broker's office, unknown to him, he asserts. Apparently on September 26 an inquiry was made by Wetsel of someone in the office of Cavalier Realty as to the status of his offer and Wetsel was advised that the offer was rejected. On the same date or the following day the contracts were received in the mail from the seller, executed and in final form.

The Commission found that the broker acted to the detriment of the seller in this transaction. The offer made by Wetsel was for a sum considerably less than the combined prices of the sales actually made. The terms were cash and no special conditions were attached. Thus, there was certainly no actual detriment in the form of diminution of the sales price. The most that could be said is that there was a potential for detriment in that the undisclosed offer from Wetsel which lay in the office of Cavalier Realty could have been for a larger amount. The misconduct, then, of the broker would lie in the area of internal office management, that is, the failure to monitor the incoming telephone calls and mail more carefully.

It is my opinion therefore, that an error of law exists in the ruling by the Virginia Real Estate Commission and that evidence of misconduct after the effective date of the contract for sale and purchase between the seller and broker was improperly admitted. It is, further, my opinion that pursuant to Section 9-6.14:18 of the Code of Virginia the decision of the Virginia Real Estate Commission should be set aside and the case remanded to the agency for such further proceedings, if any, as may be permitted in accordance with law and not inconsistent with the decision of this court.

Very truly yours,


David F. Berry

FB/je

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

DORSEY V. BIAS, Broker,
t/a Cavalier Realty Company,
Complainant

v.

DECREE

Chancery No. _____

VIRGINIA REAL ESTATE COMMISSION,
Respondent

This cause came on this day to be heard upon the bill of complaint filed by Complainant pursuant to Sections 9-6.14:16 and 9-6.14:17 of the Code of Virginia, 1950, as amended, seeking to set aside the order of Respondent entered on April 18, 1980 finding Complainant to be in violation of certain of the regulations issued by Respondent; upon the answer filed by Respondent; upon the appearance of Complainant and Respondent in proper person and by counsel; and was argued by counsel.

Upon consideration whereof and for the reasons set forth in a letter opinion dated February 12, 1981, the Court finds that an error of law exists in the April 18, 1980 order of Respondent and that evidence of misconduct after the effective date of the contract for sale and purchase between Tolly E. Davis and Dorsey V. Bias was improperly admitted. The Court doth accordingly ADJUDGE, ORDER and DECREE that the order of Respondent entered on April 18, 1980 be, and hereby is, set aside and that this cause be and hereby is remanded to the Virginia Real Estate Commission for such further proceedings, if any, as may be permitted in accordance with the law and which are not inconsistent with the decision of this Court.

There remaining nothing further to be done in this cause the Court doth ORDER that the same be, and hereby is, ended.

RUPH F. MAIN, JR.
ATTORNEY AT LAW
CHARLOTTEVILLE, VIRGINIA

ENTER:

Judge

DATE:

3-6-81

I Ask For This

Ralph E. Main, Jr., p.c.

Seen and Excepted To:

Susan R. Stevick, p.d.

RALPH E. MAIN, JR.

ATTORNEY AT LAW

CHARLOTTEVILLE, VIRGINIA

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in finding that certain evidence was improperly admitted.
2. The Circuit Court erred in finding that an error of law existed in the Commission's ruling. In evaluating the evidence, the Circuit Court failed to apply the proper statutory standard.