

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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CASE NO. 12-RE-311

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V.

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JANICE ELLISON
URBAN AND VILLAGE HOME
3231 BELAIR ROAD
SUITE 102
BALTIMORE, MARYLAND 21213

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CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint filed by the Commission ("Complainant"). Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated July 13, 2012 that was amended on October 11, 2012 against the Respondent Real Estate salesperson, Janice A. Ellison, license registration number 05-507054 and transmitted this matter to the Office of Administrative Hearings for a hearing on the regulatory charges. To resolve this matter without a formal hearing, the Commission and the Respondent have agreed to enter into this Consent Order and Settlement Agreement to provide for the imposition of disciplinary measures which are fair and equitable in these circumstances and which are consistent with the best interest of the people of the State of Maryland.

The Commission and the Respondent agree and stipulate as follows:

1. The Respondent is currently licensed by the Commission as a real estate salesperson affiliated with Urban and Village Home, license registration number 05-507054. At all times relevant to the matters set forth in this Consent Order and Settlement Agreement, the Commission has had jurisdiction over the subject matter and the Respondent.

2. On January 14, 2010 the Respondent formed a limited liability company known as Prime Realty Services, L.L.C. ("PRS"). The Respondent was the owner of and a member of that entity. At the Respondent's request, Dorothy Johnson, a Maryland licensed real estate broker, agreed to be the broker of record for PRS.

3. On July 28, 2010 Ms. Johnson notified the Respondent in writing that she would no longer be able to serve as the broker of record for PRS and that she was terminating her affiliation with PRS effective August 27, 2010. Ms. Johnson advised the Respondent that the Respondent must either affiliate with another brokerage firm or immediately return her real estate salespersons license to the Commission. Ms. Johnson

further advised the Respondent that she was not to provide real estate brokerage services until she affiliated herself with another brokerage firm.

4 Effective September 8, 2010 the Respondent transferred her affiliation to broker Century 21 Horizon Realty ("Century 21"). Despite transferring her affiliation to Century 21, after September 8, 2010, the Respondent continued to provide real estate brokerage services through PRS although she held only a real estate salespersons license and there was no licensed real estate broker affiliated with PRS.

5. On or about February 12, 2011, as the listing and selling agent, the Respondent wrote a Letter of Intent on PRS letterhead to Cannan Christian Church ("seller") over the signatures of individuals representing A New Beginning In Christ, Un Nuevo Comienzo En Cristo ("buyer"), advising the seller that the buyer would like to purchase the seller's property known as 513-519 Patapsco Avenue, Baltimore, Maryland ("Patapsco property") and that the buyer was providing trust money in the amount of \$1500.00.

6. The Respondent accepted a check payable to PRS in the amount of \$1500.00 from the buyer. Rather than submitting the trust money to Century 21 for deposit into their escrow account, the Respondent deposited the check into an escrow account maintained by PRS.

7. On or about April 5, 2011, as the listing and selling agent, the Respondent prepared for the buyer on PRS letterhead a contract offer to purchase the Patapsco property that required payment of trust money totaling \$25,000.00. The Respondent accepted a second check payable to PRS in the amount of \$23,500.00 from the buyer. Rather than submitting the second check to Century 21 for deposit into their escrow account, the Respondent deposited the second check into an escrow account maintained by PRS.

8. The Respondent failed to notify her broker, Century 21, of the Letter of Intent, the contract offer or that she had possession of trust money totaling \$25,000.00.

9. Effective June 9, 2011 licensed real estate broker John McGhee became the broker of record for PRS. On or about June 14, 2011 the Respondent transferred her affiliation back to PRS. The Respondent failed to notify Mr. McGhee of the transaction involving the Patapsco property and that she had possession of trust money belonging to the buyer.

10. The seller did not accept the buyer's offer to purchase the property. After the seller rejected the contract offer the buyer contacted the Respondent on numerous occasions requesting return of the trust money.

11. On or about November 8, 2011 the Respondent withdrew the buyer's trust money totaling \$25,000.00 from the PRS escrow account and closed the account, but returned only \$1500.00 of the trust money to the buyer. The Respondent had the

remaining \$23,500.00 put into money orders payable to the Respondent and held the money orders at her home.

12. The buyer hired an attorney, James E. Garland, Esquire, who wrote a letter dated January 25, 2012 to the Respondent demanding, on behalf of the buyer, that the Respondent return the balance of the trust money to the buyer.

13. On January 30, 2012, the Commission received a copy of the attorney's letter. The same day the Commission contacted the Respondent to schedule an interview with the Respondent and Mr. McGhee and to schedule an audit of her escrow account. The interview and audit were scheduled for February 1, 2012.

14. On the morning of February 1, 2012, immediately prior to the interview/audit, the Respondent opened an escrow account in PRS's name and deposited \$23,515.00 into that escrow account.

15. During the interview/audit the Respondent did not have copies of her bank statement to provide to the Commission's investigator and auditor. The Respondent left the interview/audit to obtain the bank statements which she later provided to the investigator and auditor. The bank statements reflected a balance of \$23,515.00 in the newly opened PRS escrow account. Upon her return to the interview/audit the Respondent wrote a check payable to the buyer in the amount of \$23,500.00 that she turned over to the Commission's investigator who delivered the check to the buyer's attorney later that afternoon.

16. The Respondent's conduct in the aforementioned transaction constituted bad faith, incompetence, and untrustworthiness, as well as dishonest, fraudulent and/or improper dealings.

17. The Respondent admits that by her conduct described above she has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-301(a), §17-321(a) and (d), §17-322(b) (3), (5), (22), (25), (31), (32), and (33), §17-502(a), §17-507(a), §17-532(c)(1)(v) and (vi), §17-539, §17-601(a), and §17-602(a), as well as Code of Maryland Regulations ("COMAR") 09.11.01.07, 09.11.02.01C and 09.11.02.02A which provide:

§17-301. License Required.

(a) *In general.* (1) Except as otherwise provided by this title, an individual shall be licensed by the Commission as a real estate broker before the individual may provide real estate brokerage services in this state.

§17-321. Practice through corporation, limited liability company or partnership authorized.

(a) *In general.* -Subject to the provisions of this section, a licensed real estate broker may provide real estate brokerage services through a corporation, limited liability company or partnership.

* * *

(d) *Individual licenses required.* (1) An individual may provide real estate brokerage services through a firm only if:

(i) the individual is the licensed real estate broker who has been designated as the broker of the firm; or

(ii) the individual:

1. is licensed as an associate real estate broker or real estate salesperson to provide real estate brokerage services on behalf of the broker of the firm; and

2. continues to be affiliated with the broker of the firm.

(2) This subsection applies regardless of whether the individual is associated with the firm as a partner, officer, member or shareholder or in any other capacity.

**§17-322 Denials, reprimands, suspensions, revocations, and penalties--
Grounds.**

(b) *Grounds.*-- Subject to the hearing provisions of §17-324 of this subtitle, the Commission may deny a license to any applicant, reprimand any licensee or suspend or revoke a license if the applicant or licensee:

* * *

(3) directly or through another person willfully makes a misrepresentation or knowingly makes a false promise;

* * *

(5) as an associate real estate broker or a real estate salesperson, provides or attempts to provide real estate brokerage services on behalf of a real estate broker without informing in writing any other real estate broker with whom the associate real estate broker or the real estate salesperson is affiliated;

* * *

(22) fails to account for or to remit promptly any money that comes into the possession of the licensee but belongs to another person

* * *

(25) engages in conduct that demonstrates bad faith, incompetency, untrustworthiness or that constitutes dishonest, fraudulent or improper dealings

* * *

(31) violates and provision of subtitle 5 that relates to trust money;

(32) violates any other provision of this title;

(33) violates any regulation adopted under this title or any provision of the code of ethics;

* * *

(c) *Penalty.*—(1) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this section, the Commission may impose a penalty not exceeding \$5000 for each violation.

§17-502 Handling of Trust money

(a) *Submission to brokers by associate brokers and salespersons.* An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services promptly shall submit the trust money to the real estate broker on whose behalf the associate real estate broker or real estate salesperson provided the real estate brokerage services

§17-507 Maintenance of records

(a) *Trust money.* --Each real estate broker shall maintain all records of trust money in a secured area within the office of the broker.

§17-532 Duties to client

- (c) In general.--(1) A licensee shall:...
- * * *
- (v) in a timely manner account of all trust money received;
- (vi) exercise reasonable care and diligence;
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§17-539. Trust money.

All trust money paid on account of a transaction involving commercial real estate in this State shall be received and deposited in the trust account of the Maryland broker in accordance with Part I of this subtitle.

§17-601. Providing real estate brokerage services without license.

(a) *Real estate broker.*— Except as otherwise provided in this title, a person may not provide, attempt to provide or offer to provide real estate brokerage services unless licensed by the Commission as a real estate broker.

§17-602. Misrepresentation.

(a) *Real estate broker.*— Unless authorized under this title to provide real estate brokerage services, a person may not represent to the public, by use of the title “licensed real estate broker”, by other title, by description of services, methods, or procedures, or otherwise, that the person is authorized to provide real estate brokerage services in the State.

COMAR 09.11.01 General Regulations

.07 Records of Transactions

Licensees shall maintain adequate records of all real estate transactions engaged in by them as licensed real estate brokers or salesmen. If a licensee has custody or possession of money belonging to others, in the absence of proper written instructions from the parties involved in the transaction to the contrary, these funds may not be intermingled with funds belonging to the licensee, but rather they shall be deposited and retained as required in a non-interest bearing escrow account clearly designated as containing funds held for others. The records of transactions, including bank accounts or deposit referred to in these regulations, shall be available during usual business hours for inspection by the Commission, its field representatives or other employees.

COMAR 09.11.02 Code of Ethics

.01 Relation to the Public

C. The licensee shall protect the public against fraud, misrepresentation or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the Commission charged with regulating the practices of brokers, associate brokers and salespersons in this state.

**COMAR 09.11.02. Code of Ethics
.02 Relations to the Client.**

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from his statutory obligations towards the other parties to the transaction.

18. The Respondent consents to the entry of an Order that she has violated BOP §17-301(a), §17-321(a) and (d), §17-322(b) (3), (5), (22), (25), (31), (32), and (33), §17-502(a), §17-507(a), §17-532(c)(1)(v) and (vi), §17-539, §17-601(a), and §17-602(a), as well as COMAR 09.11.01.07, 09.11.02.01C and 09.11.02.02A.

19. As penalty for the above violations, she agrees to a six (6) month suspension of her real estate salesperson's license, to pay a \$5000.00 civil penalty and to complete a 3-hour supervision course. The 3-hour supervision course referenced in this Consent Order shall be in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06. Respondent agrees to provide to the Commission a certificate of completion from the instructor of the 3-hour supervision course referenced in this Consent Order.

20. The Respondent agrees that she shall not be entitled to reinstatement of her real estate salesperson's license until she has fulfilled all of the requirements of paragraph 19 of this Consent Order and Settlement Agreement.

21. The Respondent, by entering into the Consent Order and Settlement Agreement, expressly waives the right to an administrative hearing before the Office of Administrative Hearings on the charges, the making of Findings of Fact and Conclusions of Law by an administrative law judge, any and all further proceedings before the Commission and any rights to appeal from this Consent Order.

22. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No.12-RE-311.

4 **BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS**
DAY OF JANUARY, 2013 **BY THE MARYLAND REAL**
ESTATE COMMISSION:

ORDERED that the Respondent has violated BOP §17-301(a), §17-321(a) and (d), §17-322(b) (3), (5), (22), (25), (31), (32), and (33), §17-502(a), §17-507(a), §17-532(c)(1)(v) and (vi), §17-539, §17-601(a), and §17-602(a), as well as COMAR 09.11.01.07, 09.11.02.01C and 09.11.02.02A; and it is further,

ORDERED that based on the violations, the Respondent's real estate salesperson's license number 05-507054 shall be suspended for a period of six (6) months from the date of this Consent Order; and it is further,

ORDERED that the Respondent shall be assessed a civil penalty of \$5000.00 for the violations payable as follows: \$2500.00 to be paid on or before January 28, 2013 with the balance of \$2500.00 to be paid on or before May 1, 2013, and it is further

ORDERED that the Respondent shall complete a three hour supervision course in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 and shall provide to the Commission a certificate of completion from the instructor of the 3-hour supervision course; and it is further

ORDERED that the Respondent shall not be entitled to reinstatement of her real estate salesperson's license until she has fulfilled all of the requirements of paragraph 19 of this Consent Order and Settlement Agreement; and it is further

ORDERED that the Commission's records and publications reflect the violation and civil penalty imposed on the Respondent.

MARYLAND REAL ESTATE COMMISSION:

By: [Signature] **SIGNATURE ON FILE**
KATHERINE P. CONNELLY
EXECUTIVE DIRECTOR

AGREED:

1-2-2013
DATE

[Signature] **SIGNATURE ON FILE**
JANICE A. ELLISON, RESPONDENT