

**MARYLAND REAL ESTATE
COMMISSION**

v.

MICHAEL ROSENDALE,

Respondent

and

**CLAIM OF FRANKLIN WHARTON
AGAINST THE REAL ESTATE
COMMISSION GUARANTY FUND**

*** BEFORE THE MARYLAND
* REAL ESTATE COMMISSION**

*** COMPLAINT NO.: 2009-RE-538**

*** OAH NO.: DLR-REC-26-09-
45022**

*** * * * ***

CONSENT ORDER

This matter comes before the Maryland Real Estate Commission (the "Commission") based on a complaint and guaranty fund claim filed by Franklin Wharton (the "Claimant") against Michael Rosendale, the Respondent Real Estate Broker (the "Respondent"). Based on the complaint and an investigation by the Commission, the Respondent's real estate broker's license was summarily suspended on or about December 3, 2009. In addition, the Commission subsequently issued administrative charges against the Respondent. A hearing pertaining to the matters of the summary suspension, the administrative charges, and the guaranty fund claim was scheduled before the Office of Administrative Hearings, however, the hearing was withdrawn as a result of a settlement agreement between the parties, dated January 29, 2010. Said settlement agreement, along with its terms, shall be incorporated by

reference herein and is included as attachment "A".

The parties consent to the entry of this Order as a full and final resolution of this action.

IT IS STIPULATED BY THE PARTIES THAT:

1) At all relevant times, the Respondent was licensed by the Commission as a real estate broker (Registration No. 317315).

2) The charges against the Respondent and the summary suspension of the Respondent's broker's license arose from the Respondent's conduct in connection with a transaction involving an "Agreement of Sale of Commercial Real Estate", dated on or about September 13, 2007, between Franklin Wharton, seller, and Rocket LLC, buyer, for property located at 2551 Centerville Road, Centerville, Maryland.

3) Pursuant to the agreement, the buyer provided a \$10,000.00 deposit check to Century 21 Rosendale Realty to be held in escrow. The Respondent, then broker of record for Century 21 Rosendale Realty, placed the money into the firm's escrow account.

4) The transaction failed to proceed to settlement and the Respondent issued a check in the amount of \$10,000.00 to the Claimant which purportedly constituted the forfeiture of the buyer's deposit funds. The check was returned due to insufficient funds and the Respondent has never reimbursed the Claimant.

5) On or about October 19, 2009, Patrick Richardson, acting in his capacity as auditor for the Commission, performed an audit at the Respondent's place of business and conducted an interview with the Respondent. Based on the audit and interview, it was determined that the Respondent had transferred funds belonging to the Claimant from his escrow account into

his operating account. The audit further revealed that the Respondent had commingled funds, and that his escrow account had a shortage in the amount of approximately \$28,900.00.

6) The Respondent hereby withdraws his request for hearing in the matter of the summary suspension of his Maryland Real Estate Broker's license which began on or about December 3, 2009. The Respondent waives any and all appeal rights in that matter.

7) The Respondent shall pay the amount of \$12,777.68 to the Claimant on or before March 1, 2010. The payment shall be in the form of certified check, cashier's check, or money order made payable to Franklin M. Wharton, and shall be delivered to Mr. Wharton's address at 311 South Commerce Street, Centerville, Maryland 21617 via regular mail.

8) Upon receipt of payment in full, the Claimant hereby agrees to dismiss his guaranty fund claim in this matter.

9) The Respondent hereby admits to violations of Md. Ann. Code, Business Occupations and Professions Art., §§ 17-322(b)(3), (22), (25), (31), and (33), 17-322(c), 17-328(a)(1), 17-502(b), 17-505(a), 17-505(c), and COMAR 09.11.01.07 as alleged by the Commission in the Statement of Charges and Order for Hearing dated December 9, 2009, and stipulates to the statement of facts described on pages 2 through 4 therein as the basis for the violations. Said Statement of Charges and Order for Hearing shall be incorporated by reference herein and is included as Exhibit "B". The Respondent consents to the entry of this Order finding him in violation, accordingly.

10) Based on his violations, the Respondent agrees to a suspension of his Maryland Real Estate Broker's license (Reg. No. 317315) for a period of one year from the date of this

Consent Order. The Respondent further agrees to pay a civil penalty to the Commission in the amount of \$7500.00 in accordance with the following schedule:

a) the 1st payment shall be in the amount of \$2500.00 and shall be made on or before March 1, 2010;

b) the 2nd payment shall be in the amount of \$2500.00 and shall be made on or before April 1, 2010; and

c) the 3rd and final payment shall be in the amount of \$2500.00 and shall be made on or before May 1, 2010.

11) In the event that the Respondent fails to make any of the required payments in accordance with this Order, his license shall remain suspended beyond the stated period until such time as payment in full is made.

12) The Respondent hereby agrees that his license shall remain suspended beyond the stated suspension period and his license shall not be reissued until such time as he submits proof to the Commission that his broker's escrow account is fully funded and in compliance with all applicable laws and regulations.

13) The Respondent agrees that the Commission may require an audit of his escrow account to verify that it is sufficiently funded and in full compliance prior to removing his license from its suspended status.

14) The Respondent waives any and all appeal rights relating to actions of the Commission pursuant to and in accordance with this Consent Order.

15) In the event that the Respondent fails to comply with the terms of this Consent

Order in any manner, the Commission reserves the right to commence further disciplinary proceedings and impose further sanctions, and also reserves the right to reschedule this matter for a hearing on the matter of the Claimant's claim against the guaranty fund.

16) The Respondent agrees to abide by the Maryland Real Estate Brokers Act, Md. Ann. Code, Business Occupations and Professions Article, §17-101 et seq., and regulations of the Commission in future transactions.

BASED ON THE STIPULATIONS OF THE PARTIES, IT IS THIS 16th day of March, 2010, BY THE MARYLAND REAL ESTATE COMMISSION,

ORDERED that the Respondent has violated Md. Ann. Code, Business Occupations and Professions Art., §§ 17-322(b)(3), (22), (25), (31), and (33), 17-322(c), 17-328(a)(1), 17-502(b), 17-505(a), 17-505(c), and COMAR 09.11.01.07;

AND IT IS FURTHER ORDERED that the Respondent's Maryland Real Estate Broker's license (Registration No. 317315) shall be **suspended for a period of one year** from the date of this Order;

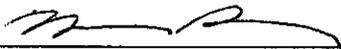
AND IT IS FURTHER ORDERED that the Respondent shall pay a civil penalty to the Commission in the amount of **\$7500.00** in accordance with the terms of this Order;

AND IT IS FURTHER ORDERED that the Respondent shall pay the amount of **\$12, 777.68** to the Claimant in accordance with the terms of this Order;

AND IT IS FURTHER ORDERED that this matter shall be resolved in accordance with the terms of this Consent Order and that the same shall be reflected among the records

of the Maryland Real Estate Commission;

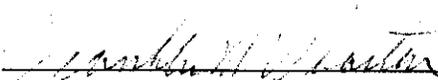
AND IT IS FURTHER ORDERED that this Consent Order shall constitute a Final Order of the Maryland Real Estate Commission.



Michael Rosendale, Respondent

MARCH 1 2010

Date



Franklin M. Wharton

3/9/2010

Date



Maryland Real Estate Commission

3/25/2010

Date