

**BEFORE THE MARYLAND REAL ESTATE COMMISSION**

**MARYLAND REAL ESTATE  
COMMISSION**

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**CASE NO. 2008-RE-605**

**V.**

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**OAH NO. DLR-REC-24-10-32190**

**THOMAS SMITH**

\*

**AND**

\*

**CLAIM OF BRIAN A. GOLDMAN  
AGAINST THE MARYLAND REAL  
ESTATE COMMISSION GUARANTY  
FUND**

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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 and Guaranty Fund claim filed by Brian A. Goldman ("Complainant"). Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated December 8, 2009 against the Respondent Real Estate Salesperson, Thomas Smith, license registration number 05-28414 ("Respondent") and transmitted this matter to the Office of Administrative Hearings for a hearing on the regulatory charges and the Guaranty Fund claim. This matter was scheduled for hearing on May 3, 2011 at 10:00 a.m. at the Office of Administrative Hearings in Hunt Valley, Maryland. Prior to the hearing date, the parties 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 and to resolve the Guaranty Fund claim.

The parties agree and stipulate as follows:

1. Pursuant to Code of Maryland Regulations (COMAR) 09.01.03.07A, this matter shall be withdrawn from the OAH docket for settlement purposes.
2. The Respondent is currently licensed by the Commission as a real estate salesperson affiliated with Long & Foster Real Estate, license registration number 05-28414. 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.
3. On or about August 20, 2007, buyer, Mark Dyce, and seller, Alfred Reed, entered into a contract of sale for 2304 Ocala Avenue, Baltimore, Maryland.

4. The Complainant was the court-appointed Chapter 7 Trustee for the bankruptcy estate of Mr. Reed.

5. Evan Goldman, Esquire, was assigned as the attorney for the Complainant.

6. The Respondent was the buyer's agent for Mr. Dyce.

7. The contract of sale required Mr. Dyce to provide a \$5000 good faith deposit to be held in escrow with the Respondent's broker, Long and Foster Real Estate, Inc., and for settlement to occur on or before September 28, 2007. Mr. Dyce did provide a check dated August 20, 2007 in the amount of \$5000 to the Respondent who caused the check to be deposited into his broker's escrow account.

8. Settlement did not occur on September 28, 2007. By written agreement the settlement date was extended to November 23, 2007. The written agreement also provided that the good faith deposit was to be increased to \$10,000 and was non-refundable.

9. Mr. Dyce provided an additional deposit check dated November 8, 2007 to the Respondent who caused the check to be deposited into his broker's escrow account. The check was returned by the bank to Long and Foster Real Estate Inc. due to insufficient funds on December 3, 2007 because Mr. Dyce stopped payment on the check.

10. The Respondent knew on or about December 3, 2007 that the additional deposit check had been returned by the bank due to insufficient funds because Mr. Dyce had stopped payment on the check. However, the Respondent did not notify Mr. Goldman about the stop-payment on the additional deposit check until January 14, 2008 almost 6 weeks after learning the information about the check.

11. The information about the additional deposit check was material and should have been provided promptly to the Complainant through his attorney.

12. After learning that the additional deposit check had been returned by the bank because Mr. Dyce had stopped payment on it the Respondent failed to place an agreement in writing concerning the additional deposit check and an extension of the contract beyond November 23, 2007.

13. The Respondent admits that by failing to place an agreement in writing concerning the additional deposit check and an extension of the contract beyond November 23, 2007 he has violated Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-322(b)(33) by violating COMAR 09.11.02.01H, which provide:

**§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:
- (33) violates any regulation adopted under this title or any provision of the code of ethics

**COMAR 09.11.02.01-H**

For the protection of all parties with whom he deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.

14. The Respondent consents to the entry of an Order that he has violated BOP §17-322(b)(33) by violating COMAR 09.11.02.01H. As a penalty the Respondent agrees to the imposition of a REPRIMAND against his real estate salespersons license number 05-28414.

15. The Complainant filed a claim against the Commission's Guaranty Fund in the amount of \$12,000.00.

16. To resolve the Guaranty Fund claim, the Respondent has agreed to pay and the Complainant has agreed to accept the sum of \$3250.00 payable as follows: \$1500.00 to be paid within 5 days of the date of this Consent Order and Settlement Agreement; \$500.00 to be paid on or before June 1, 2011; \$500.00 to be paid on or before July 1, 2011; \$750.00 to be paid on or before August 1, 2011. The payments shall be made directly to the Complainant. Upon receipt of the total sum of \$3250.00, the Complainant shall notify the Commission in writing that his claim against the Guaranty Fund is dismissed.

17. Should the Respondent fail to make the payments as set forth in ¶16 of this Consent Order and Settlement Agreement, the Complainant shall have the right to request that this matter be re-scheduled for a hearing on his Guaranty Fund claim pursuant to COMAR 09.01.03.07B.

*5th* **BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS DAY OF *May*, 2011 BY THE MARYLAND REAL ESTATE COMMISSION;**

**ORDERED** that by failing to place an agreement in writing concerning the additional deposit check and an extension of the contract beyond November 23, 2007 the Respondent has violated BOP §17-322(b)(33) by violating COMAR 09.11.02.01H and it is further,

**ORDERED** that based on the violation, a REPRIMAND is placed against the Respondent's real estate salespersons license number 05-28414; and it is further

**ORDERED** that the allegations set forth in the Statement of Charges and Order for Hearing that the Respondent violated BOP §17-322(b)(25) and (32); §17-532(c)(1)(iv), (v) and (vi) and COMAR 09.11.02.2A be and hereby are **DISMISSED**; and it is further

**ORDERED** that the Respondent shall pay to the Complainant the total sum of \$3250 as set forth in ¶16 of this Consent Order and Settlement Agreement. Upon receipt of the total sum of \$3250.00, the Complainant shall notify the Commission in writing that his claim against the Guaranty Fund is dismissed; and it is further

**ORDERED** that should the Respondent fail to pay the total sum of \$3250.00 to the Complainant as set forth in ¶16 of this Consent Order and Settlement Agreement, the Complainant shall have the right to request that this matter be re-scheduled for a hearing on his claim against the Guaranty Fund pursuant to COMAR 09.01.03.07B; and it is further

**ORDERED** that the Commission's records and publications reflect the violation and the **REPRIMAND** imposed on the Respondent.

**MARYLAND REAL ESTATE COMMISSION:**

By: SIGNATURE ON FILE  
KATHERINE F. CONNELLY  
EXECUTIVE DIRECTOR

**AGREED:**

4/30/11  
DATE

SIGNATURE ON FILE  
Thomas Smith, Respondent

4/28/11  
DATE

SIGNATURE ON FILE  
Brian A. Goldman, Complainant