

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE	*	
COMMISSION		
V.	*	CASE NO. 15-RE-100
	*	
SEAN BRINK		
PRECISE REAL ESTATE AND DEVELOPMENT	*	
B100		
5 HILLCREST DRIVE	*	
FREDERICK, MARYLAND 21703		
LIC. REG. 05-525656	*	
AND	*	
CLAIM OF MICHAEL FITZGERALD AGAINST*		
THE MARYLAND REAL ESTATE COMMISSION	*	
GUARANTY FUND		
* * * * *		

CONSENT ORDER AND SETTLEMENT AGREEMENT

This matter comes before the Maryland Real Estate Commission ("Commission") as the result of a complaint filed by Michael Fitzgerald on behalf of Gideon Properties, L.L.C. ("Complainant") against the Respondent, Sean Brink, a real estate salesperson affiliated with Precise Real Estate and Development, license registration number 05-525656. Based on the complaint and an investigation the Commission issued a Statement of Charges and Order for Hearing dated February 29, 2016 and transmitted this matter to the Office of Administrative Hearings for a hearing on the regulatory charges and Guaranty Fund claim. To resolve this matter without a formal hearing, 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. 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. The Respondent was the listing agent for Freddie Mac, the seller of a residential property known as 5642 Jefferson Boulevard, Frederick, Maryland ("subject property").

3. On or about May 30, 2014, Freddie Mac and Gideon Properties, L.L.C. entered into a contract of sale for the subject property.
4. In 2011, the Maryland Department of the Environment ("MDE") discovered two underground petroleum tanks at the subject property had leaked petroleum into the water table affecting the wells at the subject property and seven surrounding properties. MDE removed the tanks and arranged for a quarterly water analysis.
5. The then owner of the subject property defaulted on her mortgage and vacated the property. The lender filed a foreclosure action in September 2013 in circuit court. While the subject property was vacant, electric service was terminated at the subject property preventing MDE from testing the well.
6. Freddie Mac purchased the subject property at auction in December 2013.
7. In March 2014, the Respondent and Brian King, another real estate salesperson affiliated with broker Precise Real Estate and Development inspected the subject property before listing it for sale on behalf of Freddie Mac. A neighbor who was aware of the well contamination issues, met the two real estate salespersons at the subject property and informed them of the well contamination, the removal of the tanks, the involvement of MDE, and the need to contact MDE to test the subject property's well once the electric service was restored and other relevant facts concerning the well contamination.
8. On the same date the neighbor met with the Respondent and Mr. King at the subject property, she emailed to Mr. King a memorandum she had prepared detailing the well contamination issues that included the name and phone number of the person to contact at MDE to have the subject property's well tested once the electric was restored. Mr. King telephoned the contact person at MDE who provided Mr. King with information about the removal of the tanks from the subject property, the evidence of petroleum contamination in surrounding wells, MDE's involvement in the water analysis and other information related to the contamination. The MDE contact emailed to Mr. King a copy of the water analysis report from a neighboring property.
9. In April 2014 the Respondent listed the subject property for sale. After receiving the contract offer from Gideon Properties, L.L.C., the Respondent emailed to Gideon Properties L.L.C.'s buyer's agent, a Property Condition Addendum and Release form, which stated only that there was possible well contamination, but provided no reports or other information that had been provided by the neighbor and the contact person at MDE. The form was not signed or initialed by the Complainant on behalf of Gideon Properties, L.L.C. and/or the Respondent did not retain a signed and initialed copy of the form.
10. Freddie Mac and Gideon Properties, L.L.C. settled on the sale of the subject property on or about June 30, 2014.

11. On July 15, 2014, the Complainant visited the subject property. On that date the neighbor provided to the Complainant the same information she had previously provided to the Respondent and Mr. King.

12. Due to the well contamination, the Complainant purchased an additional water filter at a significant expense. In addition, an appraisal of the property shows a 33% loss in value due to the well contamination. The Complainant must use bottled water and as of the date of this Consent Order has been unable to sell the property.

13. The Respondent does not admit or deny the regulatory charges against him set forth in the Statement of Charges and Order for Hearing. The Respondent agrees that the Commission had substantial justification in bringing the charges against him based upon the complaint and its investigation, and acknowledges that the facts described above, if proven at a hearing, would sustain the charges.

14. The Commission agrees that the charges against the Respondent shall be dismissed in their entirety and no further action shall be taken to reprimand the Respondent, or suspend or revoke the Respondent's license, and/or to impose civil penalties on the Respondent, provided that within thirty (30) days of the date he executes this Consent Order and Settlement Agreement, the Respondent completes a 3-hour ethics course and provides to the Commission a certificate of completion from the instructor of the course. The Respondent agrees that the 3-hour ethics course 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. The Respondent also agrees that should he fail to provide to the Commission the certificate of completion from the instructor of the 3-hour ethics course within 30 days of his execution of this Consent Order and Settlement Agreement, the Respondent's license shall be automatically suspended until such time as he has complied with the requirements of this Consent Order and Settlement Agreement.

15. To resolve the Guaranty Fund claim, the Complainant and the Respondent have entered into the attached Compromise and Release Agreement. Based upon the Compromise and Release Agreement, the Complainant withdraws his claim against the Guaranty Fund. The Complainant understands and agrees that the Commission will not reopen the claim and that should the Respondent fail to comply with the provisions of the Compromise and Release Agreement, the Complainant will have to seek recourse in a civil court.

16. By entering into the Consent Order and Settlement Agreement, the parties expressly waive all rights to an administrative hearing before the Office of Administrative Hearings, 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.

17. The Complainant and Respondent enter into this Consent Order and Settlement Agreement knowingly, freely, voluntarily, and with the advice of counsel.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS
6th DAY OF October, 2016 BY THE MARYLAND REAL
ESTATE COMMISSION:

ORDERED that within thirty (30) days of the date the Respondent executes this Consent Order and Settlement Agreement, the Respondent shall complete a 3-hour ethics course and provide to the Commission a certificate of completion from the instructor of the course. The 3-hour ethics course 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. Should the Respondent fail to provide to the Commission the certificate of completion from the instructor of the 3-hour ethics course within 30 days of his execution of this Consent Order and Settlement Agreement, the Respondent's license shall be automatically suspended until such time as he has complied with the requirements of this Consent Order and Settlement Agreement; and it is further

ORDERED that the Claimant's claim against the Guaranty Fund be and is dismissed pursuant to the Compromise and Release Agreement between the Complainant and the Respondent attached hereto; 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 F. CONNELLY
EXECUTIVE DIRECTOR

AGREED.

SIGNATURE ON FILE

[Signature]
Michael Fitzgerald
Gideon Properties L.L.C.

Date

SIGNATURE ON FILE

[Signature]
Sean Brink, Respondent

9/22/16
Date

COMPROMISE AND RELEASE AGREEMENT

PREAMBLE

This Compromise and Release Agreement ("Agreement") is entered into by Michael Fitzgerald ("Fitzgerald"), on the one hand, and Sean Brink ("Brink") on the other hand (collectively, "Parties"). The purpose of this Agreement is to fully and finally settle and resolve all claims between the Parties, through the date of this Agreement ("Settled Period"). In consideration of the covenants, agreements, and representations hereinafter set forth, and for other such good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, and each of them, agree as follows:

TERMS OF AGREEMENT

1. **PAYMENT:** Brink shall pay the sum of Fifteen Thousand Dollars (\$15,000.00) to Fitzgerald, payable as follows: A first installment of Five Thousand Dollars (\$5,000.00) shall be paid on or before October 1, 2016. The second installment of Five Thousand Dollars (\$5,000.00) shall be paid to Fitzgerald on or before November 1, 2016. The final installment of Five Thousand Dollars (\$5,000.00) shall be paid to Fitzgerald on or before December 1, 2016.
2. **SALE OF PROPERTY.** Brink shall list the real property of Fitzgerald, located at 5642 Jefferson Street, Frederick, Maryland 21703 (the "Property"). Brink agrees to make diligent and continued efforts to sell the Property until a sales contract is pending on the Property.
 - a. **Compensation:** Fitzgerald and Brink specifically agree that there shall be no further compensation or commission paid to Brink by Fitzgerald in connection with the sale of the Property.
 - b. **Listing Agreement:** The parties shall execute a Listing Agreement consistent with this Agreement.
 - c. **Advertisement:** Fitzgerald authorizes Brink to advertise the Property as Brink deems advisable in newspapers, publications, computer networks, place appropriate transaction signs on the Property, and use Fitzgerald's name in connection with marketing or advertising the Property. Brink shall pay the costs of any and all advertising at his sole expense.
3. **DISMISSAL OF REAL ESTATE COMMISSION COMPLAINT.** Fitzgerald shall dismiss his September 16, 2014 Real Estate Commission Complaint against Brink, as well as the related claim for reimbursement from the Real Estate Commission Guaranty Fund.
4. **DENIAL OF LIABILITY:** It is expressly understood, acknowledged and agreed that settlement under this agreement is the compromise of disputed claims, causes of action,

- injuries, losses, damages, or rights arising out of the dispute or controversy described herein; and therefore is not intended, nor to be construed, as an admission of liability on the part of either party, or such party's principals, officers, agents, attorneys, servants, employees, heirs, administrators, executors, successors or assigns and/or representatives.
5. **NON-DISPARAGEMENT:** The Parties agree that each will not express (orally or in writing) any disparaging or unfavorable remarks, comments, or criticisms with regard to the other. The Parties further agree that each will refrain from engaging in any publicity or any other activity that damages or impairs, or could damage or impair, the business, goodwill or reputation of the other concerning any action taken or statement made by any of them prior to the date of this Agreement. The Parties acknowledge and agree that this prohibition extends to statements written or verbal, made to anyone, including but not limited to friends and family.
 6. **REPRESENTATION OF COMPREHENSION OF DOCUMENT:** In entering into this Agreement, the Parties represent that they enter it on their own free will and that they are aware of the legal consequences of this Agreement, that the terms of this Agreement have been completely read by them and/or their attorneys; that the terms of this Agreement are fully understood and voluntarily accepted; that they have had the opportunity to consult with their attorneys with respect to this Agreement; and that they are executing this Agreement of their own free act and deed.
 7. **ACKNOWLEDGMENT THAT SETTLEMENT AGREEMENT WAS NOT DRAFTED BY ONE PARTY:** The Parties agree that no one party drafted this Agreement; that the Agreement is the result of negotiation and a mutual decision between the parties, and that it is not to be interpreted against any party.
 8. **ENTIRE SETTLEMENT AGREEMENT AND SUCCESSORS IN INTEREST:** This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties to this Agreement, the Parties to this Agreement acknowledge that each party has not executed this Agreement in reliance on any such promise, representation, or warranty. The Parties expressly understand that all terms of this Agreement are contractual and not merely a recital.
 9. **MODIFICATION BY WRITING ONLY:** The Parties agree that this Agreement may be modified only by a writing signed by all parties to the Agreement and that any oral agreements are not binding until reduced to writing and signed by all Parties.
 10. **BINDING UPON SUCCESSORS AND ASSIGNS:** This Agreement shall bind and shall inure to the benefit of the Parties and their respective heirs, personal representatives, agents, attorneys, officers, members, agents, employees, subcontractors, suppliers, representatives, successors and assigns and any and all others who may seek to assert a claim by or through them.

- 11. SEVERABILITY: The Parties agree that if any provision of this Agreement should become inconsistent with present or future law having jurisdiction over and otherwise properly governing the subject matter of the provision, such provision shall be deemed to be rescinded or modified in accordance with any such law. In all other respects, the Parties agree that the other provisions of the Agreement shall continue and remain in full force and effect.
- 12. EXECUTION IN COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Photocopies or facsimile copies of executed copies of this Agreement may be treated as an original.
- 13. GOVERNING LAW: This Agreement shall be construed and interpreted in accordance with the laws of the State of Maryland.
- 14. EFFECTIVE DATE: This Settlement Agreement shall become effective immediately following execution by all Parties listed on the pages below.

Michael Fitzgerald **SIGNATURE ON FILE**

Date: 9.30.16

SWORN TO AND SUBSCRIBED BEFORE ME THIS 30 DAY OF September 2016.

Nancy Jennifer Presley
 NOTARY PUBLIC
 My Commission Expires: 9.1.2020

NANCY JENNIFER PRESLEY
 Notary Public
 Washington County, Maryland
 My Commission Expires 9/1/2020

Sean Brink

Date: 9/22/16

SWORN TO AND SUBSCRIBED BEFORE ME THIS 22nd DAY OF September 2016.

Sarah E.C. Popielasz
 NOTARY PUBLIC
 My Commission Expires: Feb 7, 2019

SARAH E.C. POPIELASZ
 Notary Public
 Frederick County
 Maryland
 My Commission Expires Feb 7, 2019