

**MARYLAND REAL ESTATE
COMMISSION**

v.

JOSEPH KIRBY,

Respondent

and

**GUARANTY FUND CLAIM OF
BARBARA EVANS**

*** BEFORE THE MARYLAND
* REAL ESTATE COMMISSION
*
* COMPLAINT NO.: 2011-RE-283
* OAH NO.: DLR-REC-24-12-
* 19754**

* * * * *

CONSENT ORDER

On or about January 30, 2011, Barbara Evans, Claimant, filed a complaint and Guaranty Fund claim against Joseph Kirby, the Respondent real estate broker (the "Respondent"), with the Maryland Real Estate Commission (the "Commission"). On or about April 16, 2012, the Commission issued a Statement of Charges and Order for Hearing (incorporated by reference herein) alleging that the Respondent engaged in violations of the Maryland Real Estate Brokers Act. A hearing was subsequently scheduled before the Office of Administrative Hearings with regard to the matters of the regulatory charges and the Guaranty Fund claim, however, the hearing was withdrawn in order to accommodate a resolution of this action through this Consent Order. 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) The Respondent is currently licensed by the Commission as a real estate broker with registration number 5628, and was licensed as such during all relevant times in this matter.

2) The charges arise out of a real estate transaction where the Respondent was the listing and selling broker on behalf of the seller, Premiere Asset Services for Wells Fargo Bank for a foreclosure property known as 5318 Main Street, Grasonville, Maryland.

3) In the MRIS listing, the Respondent represented that the property was served by a septic system, however, the property was actually served by public sewer service. The existing septic system had been abandoned and filled in with soil.

4) The Claimant submitted a contract offer to purchase the property on December 17, 2010. The seller submitted a counteroffer, which the Claimant accepted on January 4, 2011.

5) Based on the Respondent's representation in the MRIS listing that the property was served by a septic system, the Claimant unnecessarily engaged the services of an inspector at a cost of \$100.00 to inspect the septic system. The transaction did not go to settlement.

6) The Respondent admits to violations of Md. Code, Bus. Occ. and Prof. Art. ("BOP"), §§ 17-322(b)(4), 17-322(b)(25), and 17-322(b)(33), and COMAR 09.11.02.02A as alleged by the Commission in its Statement of Charges and Order for Hearing.

7) Based on his violations, the Respondent agrees to pay a total civil penalty to the Commission in the amount of \$1000.00 within 14 days of the date of this Consent Order. The Respondent also agrees to pay the amount of \$100.00 to the Claimant within 14 days of the date of this Consent Order to satisfy the Guaranty Fund claim. The Claimant hereby

agrees that, upon her receipt of said payment in full, her Guaranty Fund claim in this matter shall be dismissed.

8) The Respondent further agrees to take a 3 hour Continuing Professional Education ("CPE") course, above and beyond the normal CPE requirements, in Risk Management and to promptly furnish evidence of course completion to the Commission within 90 days from the date of this Consent Order.

9) In the event that the Respondent fails to make any required payment or complete the required education within the specified time frame, the Respondent's Maryland real estate license shall be immediately suspended until such time as payment is made or the education is completed.

10) If the Respondent fails to comply with this Consent Order in any respect, the Commission reserves the right to pursue further disciplinary action.

11) The Respondent waives any rights to appeal based on any action of the Commission in accordance with the settlement agreement or this Consent Order.

12) The Respondent agrees to abide by the Maryland Real Estate Brokers Act, BOP, §17-101 *et seq.*, and regulations of the Commission in all future transactions.

BASED ON THE STIPULATIONS OF THE PARTIES, IT IS THIS 5th day of October, 2012, BY THE MARYLAND REAL ESTATE COMMISSION,

ORDERED that the Respondent has violated BOP, §§ 17-322(b)(4), 17-322(b)(25), and 17-322(b)(33) and COMAR 09.11.02.02A;

AND IT IS FURTHER ORDERED that the Respondent shall pay a total civil penalty to the Commission in the amount of \$1000.00, and shall pay \$100.00 to the Claimant to satisfy the Guaranty Fund claim, in accordance with the terms of this Order;

AND IT IS FURTHER ORDERED that the Respondent shall complete a 3 hour Continuing Professional Education ("CPE") course in Risk Management, above and beyond the normal CPE requirements, 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.

SIGNATURE ON FILE

Joseph Kirby
Joseph Kirby, Respondent

10/15/12
Date

SIGNATURE ON FILE

Barbara Evans
Barbara Evans, Claimant

10/11/12
Date

SIGNATURE ON FILE

Maryland Real Estate Commission
Maryland Real Estate Commission

10/22/12
Date