

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE *
COMMISSION *

COMPLAINT NO. 2013-RE-376 GF

V.

MICHELE POSEY
CENTURY 21 COMSTOCK EARNEST, INC.*
P.O. Box 914
2587 Crain Highway
Waldorf, Maryland 20604 *

* * * * *

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 Morales (“Complainant”). Based on the complaint and an investigation the Commission determined it would issue a Statement of Charges and Order for Hearing against Michele Posey, a real estate salesperson affiliated with Century 21 Comstock Earnest, Inc, license registration number 05-607148, who was the listing and seller’s agent in the sale of 2274 Ingleside Court, Waldorf, Maryland to Mr. Morales, charging her with violations of the Maryland Real Estate Brokers Act, Md. Code Ann., Bus. Occ. & Prof. Art., (“BOP”) Title 17 and the Commission’s Code of Ethics, Code of Maryland Regulations (“COMAR”) 09.11.02 et seq. and determining Mr. Morales is entitled to a hearing on his Guaranty Fund claim. To resolve this complaint and Guaranty Fund claim without further action by the Commission, 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 Century 21 Comstock Earnest, Inc., license registration number 05-607148. 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 or about March 21, 2013 Mr. Morales entered into a contract to purchase a property known as 2274 Ingleside Court, Waldorf, Maryland.

3. The Respondent was the listing and seller's agent in the transaction. Cynthia Branch, a licensed real estate salesperson affiliated with RE/MAX United Real Estate, was the buyer's agent in the transaction.

4. In the MRIS listing for the Ingleside property, the Respondent indicated the Ingleside property was subject to a homeowner's association ("HOA") with a monthly fee of \$46.00.

5. In the resale of a property subject to a homeowner's association, the Maryland Homeowner's Association Act, Md. Code Ann., Real Prop. Art. §11B-106 ("HOA Act") requires: (1) that the contract of sale contain a written notice advising the purchaser that the contract is subject to the requirements of the HOA Act, (2) that the purchaser be given, on or before entering into the contract of sale or within 20 days of entering into the contract of sale, certain disclosures: e.g. applicable fees; the identity of the management agent; the existence of any delinquencies, unsatisfied judgments or pending lawsuits, or claims; covenant violation action or notices of default against the property; and (3) that the purchaser be given, on or before entering into the contract of sale, or within 20 days of entering into the contract of sale, certain documents: e.g. articles of incorporation; the declaration; the recorded covenants and restrictions; and the bylaws and rules. The seller's failure to provide the notice, disclosures and documents may render the contract of sale unenforceable by the seller. After a seller provides the required disclosures and documents a purchaser has a specified period of time in which to cancel the contract of sale without stating a reason and is entitled to return of any deposit made on the contract.

6. Under paragraph 17 of the contract of sale for the Ingleside property (which identified various addenda to be attached to a contract of sale if the parties intend the addenda to be made part of the contract of sale) neither the Respondent nor Ms. Branch checked off "Homeowner's Association Notice." Further, neither the Respondent nor Ms. Branch attached or otherwise included a "Homeowner's Association Notice" addendum with the contract of sale.

7. The contract of sale did include a "Home Inspection" addendum. A home inspection of the Ingleside property was conducted. The Respondent's husband, Jim Posey, is a contractor whom the seller had hired to perform certain home improvement work at the Ingleside property. Mr. Posey was present at the Ingleside property during the home inspection.

8. After the home inspection, the seller and Mr. Morales entered into a "General Addendum" dated March 24, 2013 that provided for a \$10,000 increase to the contract price. The parties further agreed the \$10,000 would be held in escrow by the title company until contractor, Jim Posey, had installed a new roof on the house and garage and repaved the driveway and walkway at the Ingleside property.

9. Settlement on the sale of the property was held on April 12, 2012. At no time prior to the settlement date did the Respondent or Ms. Branch make Mr. Morales aware that the HOA did not permit asphalt driveways.

10. The HOA disclosures and documents package was ordered by the seller on April 10, 2013.

11. Mr. Posey arranged for A-Plus Paving Company, a licensed home improvement contractor, to install an asphalt driveway at the Ingleside property. The asphalt driveway was installed at the Ingleside property on April 11, 2013.

12. Mr. Morales was not given the required HOA Act disclosures and documents until April 12, 2012 at the settlement table. The Respondent did not advise Mr. Morales to delay settlement until he had the opportunity to review the disclosures and documents.

13. On April 22, 2013 Mr. Morales received a letter from the Wakefield Neighborhood Association, Inc. Committee for Architectural Aesthetics, which notified him: "An inspection was recently completed in the Wakefield Neighborhood. It was noted that to be in compliance with the Association documents, the following issues need to be resolved. Please: * replace the driveway to meet neighborhood guidelines. Asphalt driveways are not permitted in the community. Please complete the above listed items within **twenty (20) days.**"

14. Mr. Morales will incur costs of \$5700 to replace the newly installed asphalt driveway with a concrete driveway to comply with the HOA rules.

15. The Respondent acknowledges that the above facts would support the bringing of regulatory charges that she violated BOP §§17-322(b)(4), (25), (32) and (33), 17-532(c)(1)(iii) and (vi) as well as COMAR 09.11.02.01D and 09.11.02.02A 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:

(4) intentionally or negligently fails to disclose to any person with whom the applicant or licensee deals a material fact that the licensee knows or should know and that relates to the property with which the licensee or applicant deals

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

(32) violates any other provision of this title

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

§17-532 Duties to client

(c) In general.--(1) A licensee shall:...

(iii) disclose to the client all material facts as required under §17-322 of this title

(vi) exercise reasonable care and diligence

COMAR 09.11.02.01

D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which he accepts the agency so that he may fulfill his obligation to avoid, error, exaggeration, misrepresentation, or concealment of material facts

COMAR 09.11.02.02

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.

16. The Respondent further acknowledges that the facts above would support the making of an award from the Commission's Guaranty Fund.

17. To resolve Mr. Morales complaint and Guaranty Fund claim without further action by the Commission, the Respondent agrees to pay to Mr. Morales \$2850 upon her execution of this Consent Order and Settlement Agreement and further agrees that should she fail to make the payment within 30 days of the date she executes this Consent Order and Settlement Agreement her license shall be automatically suspended and shall continue to be suspended until such time as the payment is made.

18. The Respondent, by entering into the Consent Order and Settlement Agreement, expressly waives the right to having the Commission issue a Statement of Charges and Order of Hearing, an administrative hearing before the Office of Administrative Hearings on the charges and Guaranty Fund claim, 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.

19. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of this matter.

BASED ON THESE STIPULATIONS AND AGREEMENTS, IT IS THIS
90th DAY OF October, 2014 BY THE MARYLAND REAL
ESTATE COMMISSION:

ORDERED that the Respondent shall pay to Mr. Morales the sum of \$2850
upon her execution of this Consent Order; and it is further

ORDERED that should the Respondent fail to make the above payment within
30 days of her execution of this Consent Order and Settlement Agreement her license
shall be automatically suspended and shall continue to be suspended until such time as
payment is made; and it is further

ORDERED that this Consent Order and Settlement Agreement be included in
the Commission's records and publications.

MARYLAND REAL ESTATE COMMISSION:

SIGNATURE ON FILE

By: _____

KATHERINE F. CONNELLY
EXECUTIVE DIRECTOR

AGREED:

SIGNATURE ON FILE

MICHELE POSEY, RESPONDENT

9-26-14

DATE