

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

*

CASE NO. 399-RE-2016GF

V.

*

*

BARBARA SWANHART
RE/MAX RESULTS
7210 Corporate Court, Suite B
Frederick, Maryland 21703

*

*

AND

*

CLAIM OF JENNIFER BAKALE
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 and Guaranty Fund claim filed on or about February 11, 2016 by Jennifer Bakale ("Claimant") against the Respondent real estate salesperson Barbara Swanhart, license registration number 05-528757. Based on the complaint and an investigation the Commission determined charges are warranted against the Respondent and the Claimant is entitled to a hearing on her 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 are consistent with the best interest of the people of the State of Maryland and to provide for payment and dismissal of the Claimant's Guaranty Fund claim. The parties agree and stipulate as follows:

1. The Respondent is currently licensed by the Commission as a real estate salesperson, license registration number 05-528757, and is affiliated with broker RE/MAX Results. At the time of the transaction at issue the Respondent was affiliated with broker Bach & Associates. 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 and seller's agent for Chessley R. Atchison and Evelyn M. Atchison, the sellers of 3532 Brethren Church Road, Myersville, Maryland 21773 ("the property").
3. The property's water is supplied by a well.

4. On or about August 27, 2015 the Claimant, represented by buyer's agent Barbara Davis, made an offer to purchase the property, which was accepted and ratified by the sellers. The parties agreed to settle on the transaction on or before October 1, 2015.

5. The contract of sale was contingent on various inspections including a well water test.

6. On or about September 4, 2015 Water Testing Laboratories of Maryland Inc. issued a report stating that the bacteriological analysis of a water sample from the property indicated the water was unsafe for human consumption.

7. On September 5, 2015, the Claimant requested in writing that the sellers correct the problem and provide her with a passing test. The seller's agreed in writing to do so.

8. On or about September 13, 2015 Ms. Davis contacted the Respondent by e-mail to inquire whether the water re-test had been scheduled and notified her that the results needed to be submitted to the Claimant's lender. Also on or about September 13, 2015 the sellers and buyer signed a General Addendum agreeing to extend the settlement date to October 2, 2015.

9. On or about September 21, 2015 the property's water was re-tested by Fountain Valley Analytical Laboratory, Inc. which issued a Report of Analysis stating that the level of coliform bacteria was 88.5 MPN/100 ml, rendering the water outside of potable water limits, meaning it was still unsafe for human consumption.

10. On or about September 23, 2015 the Claimant's lender notified Ms. Davis that to settle on the property the Claimant needed to submit evidence from the local health authority or other source authorized by VA that the individual water supply is acceptable; Ms. Davis forwarded the e-mail to the Respondent.

11. On September 28, 2015 the Respondent sent an e-mail to Ms. Davis that stated: "Barbara: attached is the well water report FINALLY back from the Lab. ALL GOOD!... Settlement paperwork sent to sellers on Friday. It will be back here tomorrow. Let me know if there is anything else you needed from me." Attached to the e-mail was a Report of Analysis from Fountain Valley Analytical Laboratory, Inc. dated September 23, 2015 indicating the level of coliform bacteria was <1 MPN/100 ml and noting results less than or with the reference range are considered satisfactory and within potable water limits at the time of sampling.

12. Relying on the well water report provided by the Respondent on September 28, 2015, the Claimant believed the water was safe for human consumption.

13. The parties settled on the transaction on October 2, 2015 and the Complainant moved into the property.

14. In December 2015 the Claimant discovered a strong bleach odor in the water supply. The Claimant contacted Ms. Davis who in turn conducted an investigation.

15. Ms. Davis learned from Fountain Valley Analytical Laboratory, Inc. and from the Claimant's home inspector that the well had been shocked three separate times prior to the settlement date but that additional testing of the water supply for safety was never done by Fountain Valley Analytical Laboratory, Inc. after it issued its September 21, 2015 Report of Analysis indicating level of coliform bacteria was 88.5 MPN/100 ml, rendering the water outside of potable water limits, meaning it was still unsafe for human consumption.

16. Ms. Davis learned from another water testing lab, Fredericktown Environmental Testing Labs, Inc., that the Respondent had delivered a water sample on or about September 25, 2015 but it could not be tested because the chlorine was greater than 8 and that the Respondent never brought a subsequent water sample for testing.

17. Ms. Davis notified Jennifer Grove of Bach & Associates, the Respondent's former broker, of her findings. When confronted by Ms. Grove the Respondent admitted that she had altered the Fountain Valley Analytical Laboratory, Inc. Report of Analysis to reflect that the level of coliform bacteria was <1.0 MPN/100ml rather than 88.5 MPN/100 ml and she had submitted the altered report to Ms. Davis.

18. In January 2016, the Claimant incurred expenses of \$995 to treat and re-test the well water to ensure the well water was safe for human consumption and met federal, state and local requirements.

19. The Respondent admits based on the facts described above that she has violated Md. Code Ann., Bus. and Occ. Art. ("BOP") §17-322(b)(25) by engaging in conduct that demonstrates incompetency and improper dealings as well as COMAR 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:

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

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.

20. The Respondent further admits that based on the above facts the Claimant would be entitled to a hearing on her claim against the Guaranty Fund.

21. The Respondent consents to the entry of an Order that she has violated BOP §17-322(b)(25) and COMAR 09.11.02.02A. As a sanction for the violations the Respondent agrees to the imposition of a civil penalty of \$2000.00 to be paid within 30 days of the Respondent's execution of this Consent Order and Settlement Agreement. The Respondent further agrees that should she fail to pay the civil penalty within 30 days of the date of 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.

22. The Respondent further agrees to and shall take a 3-hour ethics course within 60 days of the date of this Consent Order and Settlement Agreement in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 and the Respondent shall provide to the Commission a certificate of completion from the instructors of the 3-hour ethics course. The Respondent further agrees that should she fail to take the course and submit the completion certificate to the Commission within 60 days of the date of this Consent Order and Settlement Agreement her real estate salesperson license shall be automatically suspended and shall continue to be suspended until such time as she submits the course completion certificates to the Commission.

23. To resolve the Guaranty Fund claim, the Respondent agrees to pay directly to the Claimant the sum of \$995.00 within 30 days of the Respondent's execution of this Consent Order and Settlement Agreement. The Claimant agrees that upon receipt of the \$995 payment from the Respondent that her Guaranty Fund claim will be dismissed. The Respondent further agrees that should she fail to pay the Claimant \$995 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 and the Claimant shall be entitled to a hearing on her claim against the Guaranty Fund.

24. The Respondent, by entering into the Consent Order and Settlement Agreement, expressly waives the right to an administrative hearing before the Office of Administrative Hearings on the charges, 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.

25. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No. 399-RE-2016GF.

BASED ON THE ABOVE STIPULATIONS AND AGREEMENTS, IT IS THIS 16th DAY OF May, 2016 BY THE MARYLAND REAL ESTATE COMMISSION:

ORDERED that the Respondent's has violated BOP §17-322(b)(25) and COMAR 09.11.02.02A and it is further,

ORDERED that based on the violations, the Respondent be assessed a civil penalty of \$2000.00 for the violation, which amount is payable to the Commission within 30 days of the Respondent's execution of this Consent Order and Settlement Agreement. Should Respondent fail to pay the civil penalty 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; and it is further

ORDERED that the Respondent shall take a 3-hour ethics course within 60 days of the date of this Consent Order and Settlement Agreement in addition to, and not substituted for, the continuing education course requirements set forth in BOP §17-315 and COMAR 09.11.06 and the Respondent shall provide to the Commission a certificate of completion from the instructors of the 3-hour ethics course. Should the Respondent fail to take the course and submit the completion certificate to the Commission within 60 days of the date of this Consent Order and Settlement Agreement her real estate salesperson license shall be automatically suspended and shall continue to be suspended until such time as she submits the course completion certificates to the Commission; and it is further

ORDERED that the Respondent shall pay directly to the Claimant the sum of \$995.00 within 30 days of the Respondent's execution of this Consent Order and Settlement Agreement; upon receipt of said payment the Claimant's Guaranty Fund claim shall be dismissed. Should the Respondent fail to pay the Claimant \$995 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 and the Claimant shall be entitled to a hearing on her Guaranty Fund claim; 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: _____

Katherine F. Connelly, Executive Director

AGREED:

SIGNATURE ON FILE

Barbara Swannhart, Respondent

Date

May 4, 2016

- 05/09/16

Jennifer Bakale, Claimant

Date