

BEFORE THE MARYLAND REAL ESTATE COMMISSION

MARYLAND REAL ESTATE
COMMISSION

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CASE NO. 08-RE-858

V.

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SCOTT A. MACDONALD
RE/MAX GATEWAY
4090B Lafayette Center Drive
Chantilly, Virginia 20151
Lic. No. 01-601901

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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 filed by Spencer and Renee Williams ("Complainants") against the Respondent Scott A. MacDonald, the Real Estate Broker for RE/MAX Gateway, Lic. No. 01-601901 ("Respondent").

Based on the complaint and an investigation, the Commission issued a Statement of Charges and Order for Hearing against the Respondent dated November 22, 2011 and transmitted this matter to the Office of Administrative Hearings ("OAH") for a hearing. The OAH scheduled a hearing before an administrative law judge for May 10, 2012 at the OAH in Wheaton, Maryland.

Prior to the hearing date the Commission and the Respondent agreed to enter into this Consent Order and Settlement Agreement which is fair and equitable in these circumstances and which is consistent with the best interest of the people of the State of Maryland. Accordingly, this matter shall be withdrawn from the OAH pursuant to Code of Maryland Regulations 09.01.03.07. The Commission and the Respondent agree and stipulate as follows:

1. The Respondent is and has been since February 2006 licensed by the Commission as the Real Estate Broker for RE/MAX Gateway, license registration number 01-601901. 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. In 2007, the Complainants entered into an agreement to purchase a new home being built in Bristow, Virginia. To afford the purchase, the Complainants had to sell their home located at 9308 Fordsville Court in Clinton, Maryland ("Clinton property").

3. RE/MAX Gateway, in conjunction with the Complainants' new home builder, offered an "Assured Sales Agreement" ("ASA") program pursuant to which

RE/MAX Gateway would agree to list the Clinton property for sale and to sign a contract offer to purchase the Clinton property; if a bona fide offer from a third party purchaser to purchase the Clinton property was not received within the period of time prescribed by the ASA, RE/MAX Gateway would purchase the Clinton property pursuant to the contract offer so that the Complainants could move forward with the purchase of the new construction home.

4. On September 13, 2007 the Complainants entered into an Exclusive Right to Sell Residential Brokerage Agreement with RE/MAX Gateway. Ann E. Richardson, a licensed real estate salesperson who was then affiliated with RE/MAX Gateway, was assigned to be the listing agent for the Clinton property.

5. Also on September 13, 2007 the Complainants entered into an ASA with the Respondent, RE/MAX Gateway for their Clinton property that required RE/MAX Gateway to list the property for sale in accordance with the aforementioned written listing agreement that was attached and incorporated into the ASA and, if the Complainants had not entered into a binding contract of sale with a third party purchaser by January 2008, to purchase the Clinton property in accordance with an attached "Realtor's Purchase Contract."

6. On September 20, 2007 the Respondent drafted and signed the "Realtor's Purchase Contract" for the Clinton property listing "Scott MacDonald and Assigns" as the buyer. The Complainants ratified the contract of sale on September 23, 2007. Ann E. Richardson continued to represent the Complainants as the listing agent for the Clinton property. No other licensed associate real estate broker or real estate salesperson affiliated with RE/MAX Gateway acted as the intra-company agent for the Respondent and Assigns, as buyer, related to the MacDonald contract of sale.

7. On January 21, 2008, the Complainants received a bona fide offer to purchase the Clinton property from a third party buyer, Jewel Baltimore. The Complainants initially rejected Ms. Baltimore's offer because it provided for substantial closing costs assistance as well as a "decorator" allowance and the Complainants believed those costs would reduce the net amount they would receive from the sale below the amount they would receive if the Respondent purchased the Clinton property.

8. Thereafter, Ms. Richardson advised the Complainants that she would be out of town and unable to assist them with Ms. Baltimore's contract offer but that they could communicate directly with the Respondent regarding the transaction in her absence.

9. After the Complainants rejected Ms. Baltimore's offer, instead of assigning an intra-company agent to represent him as buyer, the Respondent contacted the Complainants directly and advised them that he would make up the difference between Ms. Baltimore's contract offer and his contract by paying the requested closing costs and the decorator allowance to the buyer and by paying their February mortgage payment so that the Complainants would net the same amount from Ms. Baltimore's contract offer as they would if the Respondent purchased the property. The Respondent then advised

the Complainants that if they failed to accept Ms. Baltimore's offer they would be in breach of the ASA and would be ineligible for the guaranteed sale.

10. Based on the Respondent's representations the Complainants felt pressured to and did accept the Ms. Baltimore's contract offer. Ms. Baltimore's lender did not allow the full amount of the closing costs and decorator allowance to be paid to Ms. Baltimore at settlement.

11. The Respondent does not admit any wrongdoing based upon the aforementioned facts. Notwithstanding, the Respondent acknowledges that Business and Occupations Article, Annotated Code of Maryland ("BOP") §17-322(b) (6) authorizes the Commission to sanction a licensee for violating §17-530 (d) of this title; that §17-530 (d) requires that "when acting as a dual agent in a real estate transaction, a real estate broker or a designee of the real estate broker shall assign a licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the seller or lessor and another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the buyer or lessee;" and that the Respondent as broker did not assign another licensed associate real estate broker or licensed real estate salesperson affiliated with the real estate broker to act as the intra-company agent on behalf of the buyer with regard to the contract of sale the Respondent signed as buyer.

12. Accordingly, the Respondent consents to the entry of an Order imposing a **REPRIMAND** against his real estate license number 01-601901 and he agrees to pay a civil penalty of \$500.00 upon his execution of this Consent Order.

13. The Respondent further agrees to and has on April 16, 2012 completed a 3-hour course on agency. The Respondent agrees to provide to the Commission upon his execution of this Consent Order a certificate of completion from the instructor of the course. The Respondent acknowledges that the 3-hour course referenced in this Consent Order 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.

14. The Respondent enters this Consent Order and Settlement Agreement, voluntarily, knowingly and with the advice of counsel. The Respondent agrees that by entering into the Consent Order and Settlement Agreement, he expressly waives his 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.

15. The Commission agrees to accept this Consent Order and Settlement Agreement as the full and final resolution of Case No 08-RE-858.

**BASED ON THE STIPULATIONS AND AGREEMENTS IN THIS
CONSENT ORDER AND SETTLEMENT AGREEMENT, IT IS THIS 14th DAY**

